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## 2 Preface/Préface/Prefacio

*R. Ramírez*

## 6 Land conflict management: a conceptual map

Gestion des conflits fonciers: définition d'un cadre conceptuel

Solución de los conflictos por la tierra: un mapa conceptual

*Sofía Monsalve Suárez*

## 26 Marcos legales y conflictos de tierras: análisis desde una perspectiva de derechos humanos

Legal frameworks and land conflicts: an analysis from a human rights perspective

Cadre juridique et conflits fonciers: analyse du point de vue des droits de l'homme

*K. Appendini*

## 36 Land regularization and conflict resolution: the case of Mexico

Régularisation des terres et résolution des conflits: le cas du Mexique

Regularización de la tierra y solución de conflictos: el caso de México

*P.V. De Wit*

## 52 Land conflict management in Mozambique: a case study of Zambezia Province

La question des conflits fonciers au Mozambique: étude de cas dans la province de Zambézia

Solución de los conflictos por la tierra en Mozambique: un estudio monográfico sobre la provincia de Zambezia

*C. R. Ribeiro*

## 70 Conflicts et gestion foncière en Guinée-Bissau

Conflicts and land management in Guinea-Bissau

Conflictos y ordenación de la tierra en Guinea-Bissau

*J.N.D. Olano*

## 84 Land conflict resolution: case studies in the Philippines

Résolution des conflits fonciers: études de cas aux Philippines

Solución de los conflictos por la tierra: estudios monográficos en Filipinas

*Manuel Morales Feijóo*

## 98 Paralegales comunitarios y la tenencia de la tierra

Community paralegals and land tenure

Entités communautaires et régime foncier

## Preface

In recent years, FAO has focused attention on issues of conflict management in relation to land and natural resources. Conflict affects the quality of people's access to land and other natural resources, frequently undermines their capacity to generate sustainable livelihoods and, on a large scale, can contribute to widespread problems of food insecurity.

The management of conflict over land and natural resources is a very broad issue and there is a growing literature on techniques that have potential for use in this field. At the moment, the Land Tenure Service of FAO's Rural Development Division is working towards achieving a deeper understanding of the current methods and practices in land conflict management and is gathering cases from all over the world to ascertain the techniques used and the results achieved.

This edition of *Land Reform, Land Settlement and Cooperatives*, prepared with the strong support of Ms A. Herrera, of the Land Tenure Service, reflects some of the Organization's recent activities in this area. Ricardo Ramírez' article provides a framework for considering the question of land conflict. The full article can be found on the FAO SD Dimensions Web site (available at [www.fao.org/sd/2002/IN0301\\_en.htm](http://www.fao.org/sd/2002/IN0301_en.htm)). This article is backed up by Sofia Monsalve's article, which outlines the importance of the legal framework and of rights in land. The remaining articles, a selection drawn from Africa (Mozambique, Guinea-Bissau), Latin America (Mexico, Ecuador) and Asia (the Philippines), provide detailed case studies of land and natural resource conflict and its management in the field.

In addition to preparing and publishing resource papers such as those presented in this issue, the Land Tenure Service is undertaking a range of other activities related to the preparation of guidelines for land conflict management. These include the provision of support for regional workshops dealing with this question. The first workshop, held in April 2002, covered the Pacific region and was hosted by the University of the South Pacific's Department of Land Management and Development. Readers are encouraged to visit the symposium Web site (available at [www.usp.ac.fj/landmgmt/SYMPOSIUM/](http://www.usp.ac.fj/landmgmt/SYMPOSIUM/)). A second workshop, covering Latin America, is planned for implementation late in 2002. An ongoing survey, coupled with the workshops, is providing a clearer understanding of the issues that are most important to practitioners and the type of materials FAO should prepare to respond to their practice needs.

As in 2002, *Land Reform, Land Settlement and Cooperatives* in 2003 will include one issue focusing on a specific theme and one with a more general content. Reflecting the establishment by the United Nations of the Permanent Forum for Indigenous Issues, which first met in May 2002 in New York, the important theme selected for the 2003 special issue is "Land tenure and indigenous peoples". Potential authors are encouraged to submit suggestions for papers to the editor of the journal.

**Paul Munro-Faure**  
Chief, Land Tenure Service  
FAO

## Préface

Au cours des dernières années, la FAO a privilégié les problèmes de gestion des conflits dans le domaine des ressources foncières et naturelles. Ce problème influe sur la qualité de l'accès des populations aux ressources foncières et autres ressources naturelles, compromet fréquemment leurs capacités à se constituer des moyens d'existence durables et, de façon plus large, peut contribuer à générer d'importants problèmes d'insécurité alimentaire.

La gestion des conflits concernant les ressources foncières et naturelles constitue un problème de portée très large, et les publications sur les techniques susceptibles d'être appliquées dans ce domaine sont de plus en plus nombreuses. Actuellement, le Service des régimes fonciers de la Division du développement rural de la FAO s'efforce de mieux comprendre les méthodes et pratiques appliquées en matière de gestion des conflits fonciers et de rassembler des cas concrets dans toutes les régions du monde pour évaluer des techniques utilisées et les résultats obtenus.

Ce numéro de *Réforme agraire, colonisation et coopératives agricoles*, élaboré avec l'appui actif de Mme A. Herrera, du Service des régimes fonciers, présente quelques-unes des récentes activités de l'Organisation dans ce domaine. L'article de M. Ricardo Ramírez définit un cadre permettant de resituer la question des conflits fonciers dans son contexte. La version intégrale de l'article peut être consultée sur le site web FAO SD Dimensions ([www.fao.org/sd/2002/IN0302\\_fr.htm](http://www.fao.org/sd/2002/IN0302_fr.htm)). Cet article est étayé par celui de Sofia Monsalve, qui traite de l'importance du cadre juridique et des droits fonciers. Les autres articles – sélection d'articles concernant l'Afrique (Mozambique et Guinée-Bissau), l'Amérique latine (Mexique et Equateur) et l'Asie (Philippines) proposent des études de cas détaillées concernant les conflits en matière de ressources foncières et naturelles et la gestion de ces conflits sur le terrain.

Outre l'élaboration et la publication de documents tels que les documents contenus dans ce numéro, le Service des régimes fonciers entreprend une série d'activités connexes liées à l'élaboration de directives en matière de gestion des conflits liés à la terre. Ce travail consiste notamment à fournir un appui aux ateliers régionaux traitant de cette question. Le premier atelier, qui s'est tenu en avril 2002, couvrait la région du Pacifique, et il était organisé par le Département de la gestion et du développement fonciers de l'Université du Pacifique-Sud. Les lecteurs sont invités à consulter le site web du colloque ([www.usp.ac.fj/landmgmt/SYMPOSIUM/](http://www.usp.ac.fj/landmgmt/SYMPOSIUM/)). Un deuxième atelier, portant sur l'Amérique du Sud, devrait avoir lieu à la fin de l'année 2002. Une étude en cours, assortie d'ateliers, donne une image plus claire de ces questions, d'une importance essentielle pour les praticiens, ainsi que des types de documents que la FAO devrait élaborer pour répondre à leurs besoins propres.

Tout comme en 2002, la publication *Réforme agraire, colonisation et coopératives agricoles* traitera en 2003 d'une question spécifique et d'une question de nature plus générale. Pour faire écho à la création par l'Organisation des Nations Unies du *Forum permanent sur les questions autochtones*, qui s'est réuni pour la première fois en mai 2002 à New York, un important sujet a été retenu pour le numéro spécial de 2003, à savoir «Régime foncier et peuples autochtones». Les auteurs potentiels sont invités à soumettre des propositions d'articles au rédacteur en chef de la publication.

**Paul Munro-Faure**

Chef, Service des régimes fonciers  
de la FAO

## Prefacio

En los últimos años, la FAO ha centrado su atención en las cuestiones relacionadas con la solución de los conflictos provocados por la utilización de los recursos naturales y la tierra. Los conflictos afectan a la calidad del acceso de las personas a los recursos naturales y la tierra, socavan su capacidad para generar medios de subsistencia sostenibles y, cuando son de gran envergadura, pueden contribuir a provocar un problema generalizado de inseguridad alimentaria.

La solución de los conflictos por los recursos naturales y la tierra es un tema muy amplio y existe una bibliografía cada vez más abundante sobre las técnicas que pueden utilizarse en este campo. El Servicio de Tenencia de la Tierra de la Dirección de Desarrollo Rural de la FAO está trabajando para comprender mejor los métodos y prácticas que se utilizan en estos momentos en la solución de los conflictos por la tierra y está reuniendo casos de todas las partes del mundo para identificar las técnicas utilizadas y los resultados logrados.

En esta edición de *Reforma Agraria, Colonización y Cooperativas*, que se ha preparado con la importante contribución de la Sra. A. Herrera, del Servicio de Tenencia de la Tierra, se recogen algunas de las actividades que la Organización ha llevado a cabo recientemente en esta esfera. El artículo de Ricardo Ramírez proporciona un marco para el examen de la cuestión de los conflictos por la tierra. El artículo completo puede encontrarse en el sitio web de SD Dimensions de la FAO (disponible en [www.fao.org/sd/2002/IN0301\\_en.htm](http://www.fao.org/sd/2002/IN0301_en.htm)). Este artículo se complementa con el de Sofía Monsalve, que describe a grandes rasgos la importancia del marco jurídico y los derechos sobre la tierra. Los demás artículos, una selección extraída de las experiencias de África (Mozambique, Guinea-Bissau), América Latina (México, Ecuador) y Asia (Filipinas), presentan estudios monográficos detallados sobre los conflictos relacionados con los recursos naturales y la tierra y con su solución sobre el terreno.

Además de preparar y publicar documentos especializados como los que se presentan en esta publicación, el Servicio de Tenencia de la Tierra está llevando a cabo otras actividades relacionadas con la formulación de directrices para la solución de los conflictos relacionados con la tierra. Entre ellas cabe mencionar el apoyo a talleres regionales sobre esta cuestión. El Departamento de Ordenación y Desarrollo de la Tierra de la Universidad del Pacífico Sur albergó el primer taller, celebrado en abril de 2002, que se centró en la región del Pacífico. Los lectores pueden visitar el sitio web del simposio ([www.usp.ac.fj/landmgmt/SYMPOSIUM/](http://www.usp.ac.fj/landmgmt/SYMPOSIUM/)). Está previsto para finales de 2002 un segundo taller, que se centrará en la región de América Latina. La encuesta que se está realizando, junto con los talleres, permite comprender mejor cuáles son las cuestiones que revisten mayor importancia para los especialistas, así como el tipo de material que la FAO debería preparar para atender sus necesidades.

Como en 2002, *Reforma Agraria, Colonización y Cooperativas* comprenderá en 2003 una publicación sobre un tema específico y otra de contenido más general. El tema elegido para la publicación especial de 2003 es «La tenencia de la tierra y las poblaciones indígenas», que se enmarca en el establecimiento por parte de las Naciones Unidas del *Foro Permanente para los Pueblos Indígenas*, que se reunió por primera vez en mayo de 2002 en Nueva York. Se exhorta a los posibles autores de artículos a que presenten propuestas de documentos al editor de la revista.

**Paul Munro-Faure**  
Jefe del Servicio de  
Tenencia de la Tierra de la FAO

## **Gestion des conflits fonciers: définition d'un cadre conceptuel**

*Cet article propose un cadre conceptuel pour comprendre la gestion des conflits, l'accent étant mis sur les conflits fonciers. Une approche systémique est utilisée pour traiter de la nature complexe et dynamique des relations entre les différents aspects du thème considéré. L'article souligne la nécessité d'une recherche fondée sur les connaissances disponibles et l'expérience acquise en matière d'aide à d'autres formes de résolution des conflits.*

*Il existe toute une série de documents sur les régimes fonciers, la régularisation de l'occupation des terres et la réforme agraire. Il existe également un nombre de publications dans le domaine de la gestion et de la résolution des conflits. La difficulté consiste à réunir ces deux domaines afin d'enrichir la documentation plus limitée portant sur ces deux aspects à la fois. Pour que ce domaine commun produise une valeur ajoutée, il doit s'enraciner dans des contextes particuliers. Il convient de trouver un équilibre entre les problèmes qui peuvent être expliqués et analysés à un niveau général, et ceux qui doivent s'enraciner dans une réalité concrète. La dialectique est un aspect essentiel de l'article.*

## **Solución de los conflictos por la tierra: un mapa conceptual**

*Este artículo proporciona un marco conceptual para comprender la solución de los conflictos, haciendo hincapié en las disputas motivadas por la tierra. Para abordar la naturaleza compleja y dinámica de las relaciones entre los ámbitos temáticos se utiliza un enfoque de sistemas. El artículo insiste en la necesidad de intensificar la investigación sobre la base de los conocimientos y la experiencia acumulados sobre los distintos métodos de solución de controversias.*

*Existe una abundante bibliografía sobre la tenencia y regularización de la tierra y la reforma agraria. Se dispone asimismo de una gran cantidad de documentación sobre la forma en que se abordan y solucionan los conflictos. El reto que hay que afrontar es el de unir ambas esferas y enriquecer el volumen de publicaciones, que interrelaciona estos dos campos. Para que esta interrelación aporte un valor añadido, debe basarse en contextos específicos. Hay que lograr un equilibrio entre las cuestiones que pueden explicarse y analizarse de modo general y las que deben situarse en circunstancias concretas. La dialéctica es un tema central de este artículo.*

# Land conflict management: a conceptual map

R. Ramírez

Consultant, International Support Group

*This article provides a conceptual framework for understanding conflict management with emphasis on land disputes. A systems approach is used to address the complex and dynamic nature of the relationships among the subject matter areas. The article emphasizes the need for action research building on current knowledge and facilitation experience in alternative dispute resolution.*

*A very large volume of literature exists on land tenure, land regularization and land reform. There is also a vast amount of published material in the area of conflict management and resolution. The challenge at hand is that of bringing these two together and enriching the smaller body of literature that intersects these two fields. For this intersection to yield value added, it must be rooted in specific contexts. There is a balance to be reached between issues that can be explained and analysed at a general level and those that must be grounded in real-life circumstances. The dialectic is a central theme of this article.<sup>1</sup>*

## INTRODUCTION

### Land tenure, land reform and tenure security

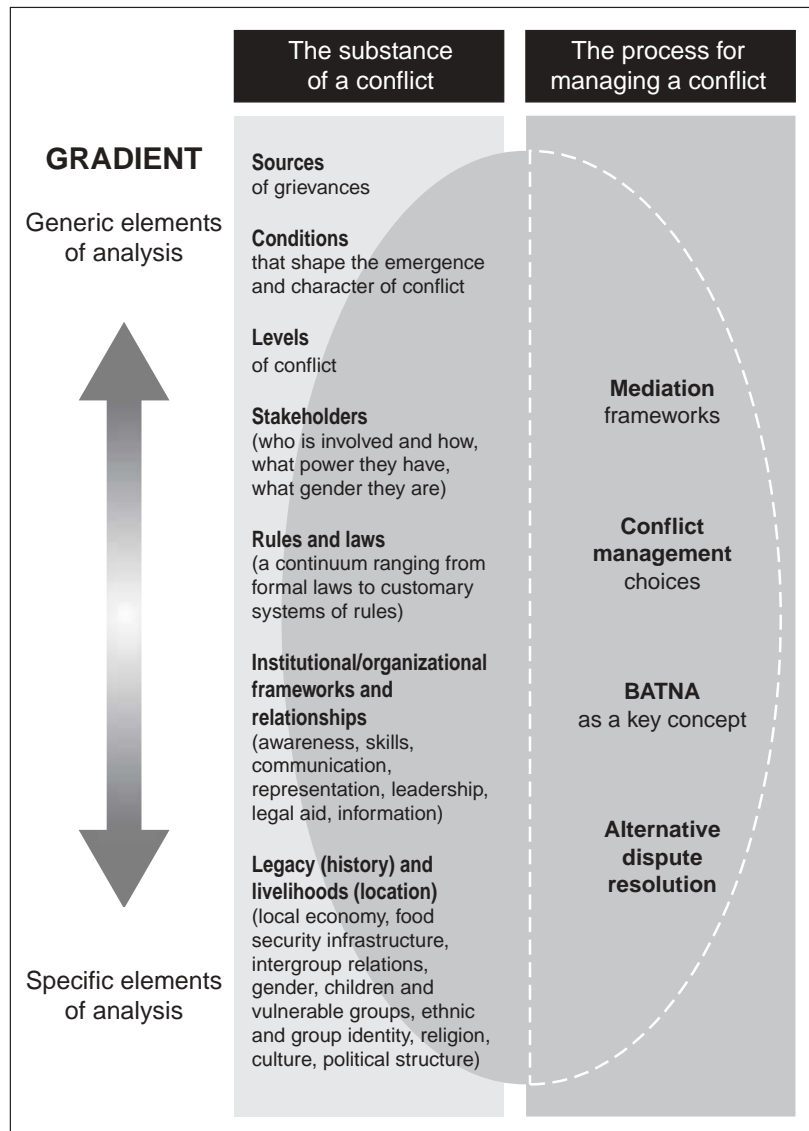
The livelihoods of individuals, families and communities depend on increasing the entitlements to food and other goods and services. Access to assets – both material and social – is central to this challenge. People's rights to access land constitute the basic building blocks for enhancing and sustaining their food security. Moreover, land rights are an integral part of social capital, giving people the foundation on which to assert self-determination within their society, culture, agroecosystem and economic context.

Access to land may be governed in different settings by customary rights, by rights enshrined in formal state laws, or by some combination of both. Land reform policies undertaken by governments may be directed

at altering existing rules governing access to land, whether customary or formal. *Land reform* refers to direct intervention by governments to change agrarian structures with the aim of redistributing land – for equity and productivity purposes – and changing land tenure rules. A range of instruments has been used by governments to implement land reform programmes, from state-led interventions at one end of the spectrum, to market-based reform at the other. Land reform brings about changes in social power balances, rules and norms, as well as institutions; as such, it tends to provide solutions to some members of a society, while creating sources of conflict for others. With or without land reform, tensions and land conflict are a part of every society. At the heart of these tensions are issues of *land security*. Land security is the result of customary, state, legal or other mechanisms that provide people with the recognition of a right to access land and the

<sup>1</sup> This article is a summarized version of a more comprehensive review entitled "A conceptual map of land conflict management: organizing the parts of two puzzles" (available at [www.fao.org/sd/2002/IN0301\\_en.htm](http://www.fao.org/sd/2002/IN0301_en.htm)).

FIGURE 1  
A conceptual map



assurance that the right can be upheld. The erosion of land security is a common source of grievance that can contribute to land conflicts.

### Conceptual and systems frameworks

To address complexity – dynamic interrelationships across hierarchies and stakeholders, and different disciplines – it is necessary to use conceptual and theoretical frameworks that embrace those characteristics. This article makes use of two general approaches to respond to this challenge: systems thinking and concept mapping.

Systems thinking is holistic; it addresses overall patterns and relationships rather

than reducing issues to smaller parts.

Systems thinking guides the way we perceive a situation; it is part of the stock of ideas by means of which we interpret the world around us (Checkland and Scholes, 1990). Systems thinking is useful as a tool for learning about complex situations and for interdisciplinary research (Emery and Trist, 1969; Churchman, 1971). Systems thinking embraces interdisciplinary research in that it embraces multiple dimensions, hierarchies, actors and perspectives.

The notion of conceptual maps is often used in interdisciplinary research to organize and display groups of concepts and their linkages. It serves as a guide for



literature searches by providing a set of keywords. The “map” locates the concepts along categories gleaned from models and conceptual frameworks in the literature. The conceptual map serves readers by “locating” the concepts and categories that have played a role in each particular circumstance; it helps to signal which concepts and categories are common, and which ones are context-specific. The conceptual map is a systems-thinking tool that encourages the user to appreciate the dynamics across the major categories of concepts: the substantive, and the process dimension.

The conceptual map in Figure 1 was assembled from a number of existing models in the literature; however, no single model was found that specifically addresses the issue of land tenure and conflict management and resolution. This conceptual design is therefore incipient and subject to further adjustments; it constitutes one attempt that is based on a systems perspective. The major categories reflect common categories across different sources of conflict literature, although with some modifications (Bercovitch and Langley, 1993; Daniels and Walker, 1997; Barringer, 1972).

The above concepts interact in a systemic and ongoing manner; thus, for example, the different phases of a conflict will involve different stakeholders that are affected or may influence the source of the conflict. The concepts are organized along a gradient: those at the top refer to the more generic categories, while those at the bottom tend to be location-specific.

## THE SUBSTANCE OF A CONFLICT

### Sources of grievance

The differentiation between the source of a grievance and the conditions that shift this situation towards conflict merit particular attention. Barringer (1972) provides an example of a conflict model of war with 300 variables on the “substantive” side that are analysed mathematically, together with a “procedural” framework and a few definitions. The model is based on three definitions for dispute, conflict and hostilities

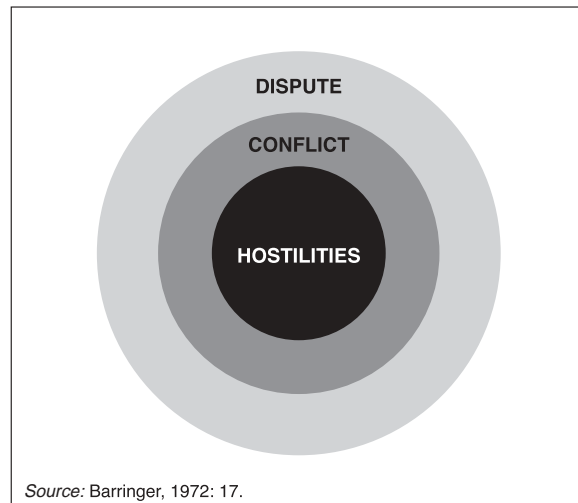


FIGURE 2

### Three concepts

(violence), which is a useful continuum for reference in this article (Figure 2).

Although Barringer’s model focuses on war, the analysis is relevant (Barringer, 1972: 17–18:

... a dispute arises between parties capable of waging war when at least one party becomes aware of an incompatibility of perceived interests, objectives, or future positions. The essence of a dispute is a felt grievance by a party capable of waging war that, in its eyes, demands some more tolerable accommodation with another party capable of waging war than presently exists. If grievance is of such a magnitude as to warrant action by this party (and most, happily, are not), a multiplicity of political mechanisms and institutions exist for achieving accommodation. In some instances, however, one party will introduce a military option to the dispute. It will see the issue at hand as either so threatening or so central to its interests as to warrant introducing military considerations and activities into what had previously been a purely non-military issue. A dispute thus becomes a conflict. On the relatively rare occasions when organized, systematic, and continued violence is undertaken by any party to a dispute in pursuit of its objectives, the conflict evolves into hostilities.

The key concepts are:

- the definition of conflict as a pre-hostilities phase;

- the definition of hostilities as prolonged and organized conflict;
- the notion of a dispute as the incompatibility of perceived interests, objectives or future positions;
- a shift from a situation that demands a more tolerable accommodation;
- the shift from dispute to conflict results from one party perceiving the situation as threatening and acting to change the situation; hence the notion of phases;
- a multiplicity of political mechanisms and institutions exist for achieving accommodation.

### Examples of sources of grievance

- Endogenous *population increase* leading to intensification in resource exploitation and degradation.
- *Exogenous populations immigrating* into lands and communities with established tenure regimes; the increase in population and the diverse cultural backgrounds can be a source of grievance, especially when the immigrants' access to land has no specific time limit, nor does it conform to customary rules; this is the case with displaced or resettled populations.
- Changes within the endogenous population arising from *shifts in social consensus*, be they caused by internal issues (increased pressure on resources from endogenous growth) or from external sources (new markets driving demand for resources previously untapped).
- Changes in *land prices and productive potential* (technology, infrastructure development, markets, subsidization, weather, speculation).
- Confusion among the three *sources of rules*: customary rules, official law and land markets; expressed in different interpretations (of legal designations, zoning, common property, private, open access, boundaries); and their administration (voice and representation, perception of fairness of procedure, transaction costs).
- Disagreement over *arbitration procedures*

and the legitimacy of the mediating organizations.

Clearly, many of the sources of grievance described above are common to many societies and yet they do not necessarily shift into a conflictive situation or into hostilities. In fact, most land tenure systems tend to be resilient to change and can absorb turbulence, but only to a limited extent. Beyond certain thresholds, they can begin to break down. "Serious land conflicts tend to be generated by an accumulation of different sources of tension which result in the erosion or abandonment of previously accepted and socially recognized rules of access to and use of land and other natural resources." (FAO, 2001a: 20). The *accumulation of sources of tension* is a key concept necessary to explain the shift from grievances to conflict.

A particularly complex situation arises when statutory ("legal") rights are granted in a way that does not take into account existing customary rights (e.g. for agricultural and grazing). This clash of *de jure* rights (existing because of the formal law) and *de facto* rights (existing in reality) often exists in already stressed marginal rainfed agriculture and pasture lands. (FAO, 2001a: 8)

### Conditions that shape the emergence and character of conflict

This article suggests that there is another layer of conditioning factors that trigger the shift from a dispute or grievance to a conflict. When several sources of grievance are present at the same time, a situation may become compounded and "flip" from a balanced dispute to a conflict and hostilities. This flip may be precipitated when one social group seeks to force its agenda on others for political purposes or exploitative aims. A dispute situation that may have been held in balance for years may be catalysed into a conflict as a result of external interventions, changes in weather, challenges to leadership structures, weak administrative systems or changes in rules and laws. On the other hand, by understanding the elements that *catalyse* the change in balance,

opportunities may be identified to intervene and mediate a conflict.

These factors, in combination with the source of grievance, will contribute to a shift from a dispute to a conflict. This shift is based on how individuals and groups perceive the behaviour of other parties, in combination with the extent to which they feel they are adequately represented in a process that is fair, where they have a voice and where there is procedural justice (Pruitt and Carnevale, 1993). What it amounts to, basically, is how people perceive threat, danger, safety and security. In the final analysis, it is individuals who make decisions, and threat has been shown to shift decision-making from a rational basis to an emotional or affective one (Gordon and Arian, 2001). It follows that conflicts that are basically land-based can escalate into major hostilities and be masked by political interests to appear as ethnic differences, as has been described in the case in the Sudan (Suliman, 1999).

### Levels and phases of conflict

In addition to the sources of conflict and the conditions that shape the shift from grievance to conflict, there are issues of level (scale) and phases that require attention.

Agrarian reform is a national-level mechanism for land reallocation and legal reform. At the same time, however, local-level realities, customary rights, tradition and ancestral resource management and allocation practices exist at a more regional and local level. The levels of jurisdiction are part of the context, and they shape how different parties will address a grievance. The shift from grievance to conflict can take place through different phases, each providing management opportunities to diffuse the situation and/or adjust institutional arrangements (Rupensinghe, 1995):

- *Formation*. At this stage, the conflict is still a dispute and if addressed adequately it may not escalate and manifest itself.
- *Manifestation*. The dispute manifests itself as a conflict; intervention tends to be directed towards preventing further

escalation and possibly mitigating any destructive aspects of the conflict.

- *Endurance*. At this stage, the conflict is ongoing, as is the process for addressing it. Depending on the situation, this stage may allow for empowerment of the parties and/or for mediation to begin.
- *Management*. At this stage, negotiation/mediation may be started.
- *Transformation*. This is considered the implementation stage of conflict resolution, which may include new institutional developments and/or new ways to address the source of the conflict.

Terraciano (1998) refers to groups “shopping” around for the customary or legal frameworks that best fit their interests in the context of land disputes in the Niger. A comparative study of land tenure between Bolivia and Norway highlights the way in which different kinds of conflict are resolved using different kinds of customary or official law system (Goodale and Sky, 2000). Furthermore, Alston, Libecap and Mueller (1999) provide evidence about how different parties to a conflict will exploit the legal framework that best meets their needs.

According to other analyses, three phases occur in accommodating interests: a first phase where stakeholders are content but where coordination is not questioned; a transition phase where some stakeholders feel threatened and work to meet their own needs without coordination; and a problem phase, in which all stakeholders feel uneasy and communicative action and participatory planning occur (Engel, Houberichts and Umans, 2001). What is important in the context of this article is that the different stages can be recognized, each leading to different strategies and mediation opportunities. In other words, conflicts evolve through time (phases) and space (different parties seeking to exploit local, customary rights versus national, formal legal systems), and so must the efforts to manage them.

### Stakeholders

Disputes take place between people – as individuals and as organizational actors –

and the nature of the disagreements is expressed through the relationships among them. Gender and power differences will dictate who participates in a dispute, who is left out, and who is consulted. Analysing the stakeholders involved and understanding why they are involved is an important element in conflict management. *Who* is involved is interrelated with many other factors: a dispute about boundaries will affect which groups or individuals are involved, what customary rules or legal mechanisms they may agree to refer to and how they relate to one another, and this in turn can be the very source of a conflict. In Potosí, Bolivia, a dispute about crop damage by a neighbour's flock of sheep will be addressed by an intrahamlet customary dispute resolution authority that understands the role and concept of boundaries. In contrast, interhamlet disputes will be referred to the legal authority in the nearest town.

Establishing who is a stakeholder depends on several interrelated considerations. "Stakeholder analysis can be defined as an approach for understanding a system by identifying the key actors or stakeholders in the system, and assessing their respective interest in that system" (Grimble *et al.*, 1995: 3–4). Stakeholder analysis is an integral part of conflict management, and is best addressed using a systems approach that acknowledges the many interrelated factors that influence who is a stakeholder.

Grimble *et al.* (1995: 7) list a flexible set of steps for conducting stakeholder analysis:

- identify the main purpose of the analysis;
- develop an understanding of the system and decision-makers in the system;
- identify principal stakeholders;
- investigate stakeholder interests, characteristics and circumstances;
- identify patterns and contexts of interaction between stakeholders;
- define options for management.

In this useful guide, three major phases are described: defining the problem, analysing constraints and opportunities,

and agreeing on an action plan. These phases are common to several methods that seek to engage multiple stakeholders in joint analysis and action in natural resource management.

... land boundaries in many parts of rural Bolivia are not understood by people spatially, but rather conceptually. Property is not something that is seen primarily as land divided on geometric principles, but rather as a set of continuing relationships regarding access to agricultural products that happen to be grown in widely diverse ecological niches. (Goodale and Sky, 2000: 4)

The above example from Bolivia underlines how stakeholder analysis addresses the web of networks and relationships to which individuals and groups belong (Ramírez, 1999). The importance of these social networks is captured by the notion of "social capital", which is relevant in a wide range of contexts ranging from industrialized settings to traditional common property management regimes (Ostrom, 1995; Reimer, 1997; Forni, 2000; FAO, 2001a). "Those types of social relationships that a person has that are reciprocal and supportive of other capital formations have been designated lately in the literature as social capital" (Riddell, 2000). Social capital is particularly relevant in local policy implementation, as existing webs of social organization become mechanisms for local adaptation of norms and practices. Who becomes involved, then, is not just the result of a checklist of static attributes, but also the acknowledgement of the groups, mandates and activities that make up communities. In addition, by addressing interested parties as *actors* (or stakeholders), rather than as passive *beneficiaries*, the potential for community-driven approaches is reinforced as opposed to centrally driven reform (Alden Willy, 2000).

### Legal frameworks

In this section, some general considerations about legal frameworks are reviewed, including the duality of official and customary law, legal frameworks as sources

of agrarian conflict (especially with regard to implementation and institutional constraints) and questions about legitimacy. Legal frameworks can constitute a tool for stabilizing a land tenure situation, or a factor in destabilizing one.

Property regimes are not only legal and production factors, they can also be interpreted as an expression of the power balance (Ostrom, Gardner and Walker, 1994; Ostrom, 1995; Dubois, 1998). “Legal frameworks for land holding and land use are never neutral” (Klug, 1996: 192). Regimes, laws and rights are part of the influences that underscore stakeholder and resource relationships. Some authors refer to the package or “bundle of rights and entitlements” (Goldring, 1996) to signal the fact that legal frameworks can only be understood when analysed closely with economic opportunities as component factors of production.

Vira *et al.* (1998) highlight the following issues:

1. Usufruct or management *rights* may be more important than ownership, especially when there is confidence in security of access in the future. Furthermore, the coexistence of different users and uses of the same resource can be achieved and may be a more relevant approach than a focus on the exclusionary use of space.
2. *Responsibilities* are spread over three levels of decision-making: local involvement in management requires real power and rights at the local level; local and regional institutions must have legitimacy and sufficient autonomy to undertake activities and modify local rules; the state, in turn, must play a facilitating role concerning local initiatives.
3. *Returns* are major motivators for stakeholders to engage in a negotiated settlement, especially as the returns need to be higher than the transaction costs of negotiation. The returns may be monetary as well as social. However, a very high value can lead to a second generation of tension whereby one party

may propose a change of use for a natural resource of a different value for sale or leasing.

4. Particular attention needs to be paid to power *relationships*: On what basis is power built? How does it affect the relationship? When and how do power relations change? What are the different dependencies at play (financial, social and personal)?

The meanings of *property rights* and *use rights* are specific to the laws of a country. In Nicaragua, for example, property rights have been organized into a typology that includes four main “pure rights” (public lands, collective rights, private property rights and possession rights) and one category that includes the main cases of superposition of rights – where lands may be claimed by more than one owner (de Janvry and Sadoulet, 2000). In the last category, where there is a superposition of rights, there is considerable scope for conflict, especially when there are conflicting interpretations of laws, documents and use rights. De Janvry and Sadoulet list seven different use rights in Nicaragua over and above the typology of property rights.

In addition, the implementation capacity by agencies implementing new laws is a key factor. The implementation of the law can lead to a contrast between the official, or *de jure*, package of rights and the actual, or *de facto*, package of rights.

Other cases worth mentioning are where the legacy of the legal framework is questionable, thus hindering the facilitation of reform (see Box 1). In South Africa, for example, some users opt to ignore the formal law and resort to customary systems (Klug, 1996: 173): “Informal tenures, then, represent the sum at any given time of how social tenures are managed by users on the basis of the prevailing political economy together with their perceptions of what is legitimate, as opposed to what is prescribed in the official tenures.” Klug and many others, such as Terraciano (1998) and Goodale and Sky (2000), argue for the importance of integrating local norms and self-organized community groups in

## Box 1

### “The legacy of illegitimacy”

The framework of South African land law that has been inherited by a post-apartheid South Africa is characterized by a number of elements which undermine its legitimacy and have profound consequences for the establishment of a functional system of land law. These elements include: a hierarchy of land tenures in which freehold title is privileged; the fragmentation of land law in different parts of the country; the lack of an adequate system for recording all land rights; the prevalence of bureaucratic discretion over the land rights of the majority of land holders and even over the disposition of land claims under the Advisory Commission on Land Allocation; a racial and gender stratification of inheritance in land rights; and, the resorting to informal tenure systems by those excluded from the privileged, official system of land rights. (Klug, 1996: 163)

updating legal frameworks for land distribution (Klug, 1996: 163).

Legal frameworks change with major policy shifts, and coexist with other customary systems and with emerging ones that acknowledge local perceptions and norms. Organizational capacities and political commitment limit the implementation of new land tenure frameworks. In particular, the following factors will come into play (Klug, 1996: 197):

- The accessibility of the legal system – how expensive is it for participants to engage the legal process, and does the system favour the demands of certain groups or classes over others?
- The prevailing legal culture – what are the dominant values that guide the legal system and process?
- What values or interests guide the actions of the actors involved in the legal process (lawyers, judges, bureaucrats, legislators) or even those active in the reform process (bankers, agronomists, agricultural economists, etc.)?
- Which groups are affected by or interested in the reform process (landowners and beneficiaries, as well as their political and social allies who may include foreign officials – USAID, World Bank, IMF, etc.)? To what extent are these groups interested in and capable of influencing the legal process, or even the wider rural policy environment and legislative process?

In addition to the above factors, legal frameworks have an important role to play from a gender perspective. In many societies,

women are excluded from effective decision-making processes and are without landownership rights, be they under traditional or formalized laws (FAO, 2001a). In the Niger, women have use rights to inherited plots, and there are disagreements among chiefs as to whether women are permitted to own gardens (Terraciano, 1998). In South Africa, according to Klug (1996), neither formal nor customary systems grant women access to rights to land. While rights discrimination against women is a violation of a basic human right, much remains to be done both in terms of reforming tenure rules and changing the administrative systems in order to ensure that women’s tenure rights are enforced.

#### **Institutional/organizational frameworks**

The above brief on the dimensions and constraints of legal frameworks signals the central role that institutions play in implementing laws and regulations. While official law is implemented through formal institutions, this article also reviews alternative “legal” frameworks that operate in parallel (e.g. customary or traditional law), as well as alternative means of managing disputes (e.g. alternative dispute resolution). Clearly, the institutional and organizational dimensions of land conflict management are of particular importance. “Thus, the movement from conflict ‘management’ towards conflict ‘resolution’ or ‘transformation’ requires strategies and interventions that promote institutional arrangements that can facilitate and

sustain the transition from violent conflict towards sustainable development” (Bush and Opp, 1999: 187).

It can be argued that bottom-up approaches to managing conflicts over natural resources will remain ineffective as long as the broader institutions that govern the management of natural resources are not reformed (Hendrickson, 1997). In the case of the Philippines, grassroots organizations, non-governmental organizations (NGOs) and government agencies opted to cooperate in the implementation of reform through the agrarian reform communities (ARCs). One programme provided the means for local implementation with involvement of grassroots organizations, NGOs and local authorities. In this context, the NGOs have helped local groups to organize themselves and take advantage of the opportunities that the Local Government Code provides (decentralization). In this case, NGOs have therefore played a mediating role (Carlson, 1999; Berger and Neuhaus, 1977), one that is also recognized as relevant in the case of Mexican agriculture and rural development (de Janvry *et al.*, 1995). There is scarce literature available, however, concerning their role as potential mediators or managers of conflict.

The nature and skill of organizations that are able to take on a mediating role in land conflict disputes will include the following features:

- official recognition as mediator;
- recognized by disputant as a neutral and legitimate third party (this requires trust in the skills and the added value of the arrangement over and above other approaches to dealing with conflict – *third party decision-making* or *separate action*);
- agreement to work along a dispute resolution system based on mediation that is agreeable to all parties;
- qualified and skilled in techniques of mediation;
- qualified and familiar with the official law, customary law and legal opportunities (legal aid), technical issues (cadastral systems, land registry, etc.);

- skilled in communicating information clearly, able to train people to present their case;
- immersed in the local history, organizations, social capital, political institutions and regulatory frameworks and programmes;
- trained in/linked to land information systems.

### **Legacy (history) and livelihoods (location)**

One can distinguish two sources for the claiming of custodial authority for the past as community patrimony: the first is “genealogy”, through descent, and the second is “management” through control over resources, both of which interpret the past as ethnic history. (FAO, 2001b)

This last section constitutes an acknowledgement that local realities are the context where case-study development begins. Addressing the legacies of conflict (local economy, food security, physical and psychological health, personal security, availability of leadership, physical infrastructure, intergroup relations, women, children and vulnerable populations) and the political and social dimensions of the conflict (religion, cultural, group identities, political structures and institutions) are central challenges to land-conflict management (Bush and Opp, 1999: 189). The appreciation of historical and livelihood issues sets the context for conflict assessment. A history of conflict may signal the difficulties that a mediator may discover. Rothman (1989) talks about the importance of defining conflict as a problem of relationship between parties rather than as conflicting interests (from international conflict management). He suggests that less attention be placed on competition over scarce resources and more on how the relationship dynamics deteriorate so that each party frustrates the fundamental human needs of the other.

### **THE PROCESS FOR MANAGING A CONFLICT**

The process dimension includes several component concepts: the choices of approach in conflict management, the

notion of the best alternative to negotiated action (BATNA), the range of mediation frameworks and alternative dispute resolution (see Figure 1). Several concrete examples are provided as guides for practice. These components interact in a systemic and ongoing manner, with the underlying influence of power and power differences among stakeholders.

### Mediation frameworks

“Mediation is assistance to two or more interacting parties (Kressel and Pruitt, 1989) by third parties who (usually) have no authority to impose an outcome” (Wall, Stark and Standifer, 2001: 370). Considering mediation as one of the oldest forms of conflict resolution worldwide, the definition provided by Wall, Stark and Standifer (2001: 371) (Box 2) is of relevance.

The model presented in Box 2 challenges us to review the stages of a conflict as a guide to the range of mediation approaches

and techniques that may be appropriate. Figure 3 provides another complementary model that includes the nature of the mediator as part of the context. Both models approach conflict from the perspective of mediators and expand on the determinant variables accordingly.

In the contingency model, the nature of the dispute is understood through three general aspects: the intensity of the dispute; the duration of the dispute at the time of intervention; and the issues at the heart of the dispute.

These mediation frameworks serve as reminders that the mediator and the nature of his or her involvement are part of a range of variables and determinants that shape the different outcomes.

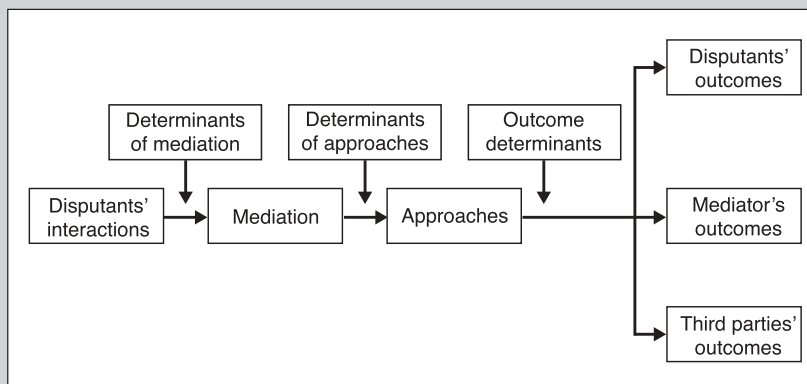
### Conflict management: choices of approach

Intervening in a conflict requires a map of the choices, phases, methodologies, and expected outcomes. The following general

#### Box 2

#### The mediation framework

The origin of mediation is the interaction between two or more parties who may be disputants, negotiators, or interacting parties whose relationship could be improved by the mediator's intervention. Under various circumstances (determinants of mediation), the parties/disputants decide to seek the assistance of a third party, and this party decides whether to mediate. As the mediation gets under way, the third party selects from a number of available approaches and is influenced by various factors (labelled determinants of approaches), such as environment, mediator's training, disputants' characteristics and nature of their conflict. Once applied, these approaches yield outcomes for the disputants (e.g. satisfaction, a perception of fair treatment), the mediator and the third parties (other than the mediator). As the figure indicates, the nature and extent of this influence are mitigated by factors such as the intensity of the dispute, the relative power of the disputants and the type of issue.



Source: Wall, Stark and Standifer, 2001: 371-372.



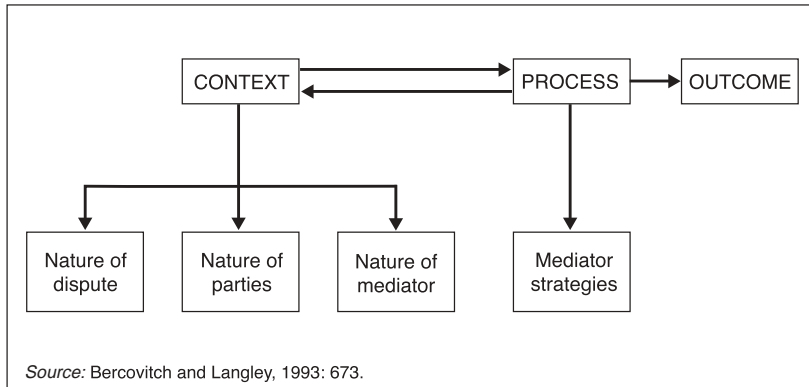


FIGURE 3  
A contingency model of mediation

Source: Bercovitch and Langley, 1993: 673.

principles serve as an overall guide for practitioners intervening to manage conflicts (Carpenter and Kennedy, 1988).

1. Conflicts are a mix of procedures, relationships and substance. Solutions do not come only from technical solutions to substantive problems, but also from the relationships and procedures used to work out disagreements).
2. To find a good solution, it is necessary to understand the problem. First untangle the muddle of emotions, perceptions, needs and cross-purposes that surround the issues.
3. Take time to plan a strategy and follow it through. The strategy should focus on: a) finding a common definition of the problem; b) determining mutually satisfactory procedures for carrying out a negotiation; c) identifying the issues and interests of each party; d) developing a range of options for solving the problem; e) agreeing on a solution; and f) deciding exactly how agreements will be implemented.
4. Progress demands positive working relationships. Data alone will not solve a conflict; parties must be willing to exchange information.
5. Negotiation begins with a constructive definition of the problem. Avoid a problem statement that can be answered with a yes or a no.
6. Parties should help design the process and solution. Parties need to have a stake in the method of decision-making.
7. Lasting solutions are based on interests, not positions. By talking about their interests, hence about themselves,

parties lose their adversarial tone.

People in conflict will have one position, but many interests; most interests are reasonable and can be described; often the other side will find out that their interests are not mutually exclusive.

8. The process must be flexible. Time requirements, the cast of characters, perceptions of the issues, and many other elements will change as problems are analysed more carefully. Formulate a process plan, a preliminary blueprint, that gives initial direction but is continuously modified as more adequate methods are identified.
9. Think through what might go wrong. Be prepared for the unexpected and have options at hand.
10. Do no harm (for example, a federal agency allocated 12 weeks to a consensus process that took longer and the end result was harmful).

Becoming involved in a conflict with the intention of mediating a solution is a delicate issue that requires answers to two basic questions (see Box 3):

- Can a consensus be reached?
- Are there conditions that suggest there is no room for collaboration?

The disputing parties must also agree on the need for a mediator. In other words, stakeholders make choices among three different classes of procedures for dealing with social conflict. Procedures can be grouped into the following three classes (Pruitt and Carnevale, 1993: 183):

- *Joint decision-making*
  - Negotiation
  - Mediation

### BOX 3

#### Determining the conditions for mediation

##### Can a consensus be reached?

- Can you identify the key stakeholders and will they come to the bargaining table?
- Are the power relationships sufficiently balanced?
- Can you find a legitimate spokesperson for each group?
- Do you have deadlines, and are they reasonable?
- Can you free the dispute from a debate over sacrosanct values?

(Susskind and Cruikshank, 1987)

##### When is collaboration unlikely?

- The conflict is rooted in deep ideological differences.
- One stakeholder has the power to take unilateral action.
- Constitutional issues are involved or legal precedents are sought.
- A legitimate convener cannot be found.
- Substantial power differentials exist or one or more groups of stakeholders cannot establish representation.
- The issues are too threatening because of historical antagonisms.
- Past interventions have repeatedly been ineffective.
- Parties are experiencing perceptual or informational overload and need to withdraw from the conflict.
- Maintenance of interorganizational relationships represents substantial costs to the partners.

(Whetten and Bozeman, 1984, cited in Gray, 1989: 255–256)

- *Third-party decision-making*
  - Adjudication
  - Arbitration
  - Autocratic decision-making
- *Separate action*
  - Tacit coordination
  - Struggle
  - Retreat

The three classes of procedure for dealing with social conflict form a continuum, and numerous factors influence why stakeholders or “disputants” will opt for one over another, depending on the nature of the conflict, the stage of the negotiation, and the attributes of the mediator. Box 4 provides an example that elaborates on the differences across the approaches.

The choices made by stakeholders are based on their perception of the chances of success at a minimal cost, and the choices will change over time and hence are not mutually exclusive. These choices may be made explicitly or not, but they are always based on the perceived odds of advancing one’s interests. For traditional societies that retain indigenous conflict management

systems, the above may be relevant only when a conflict situation involves other cultures, norms and institutions beyond what the local systems are able to address (Fisher, 1996). In addition, stakeholders make decisions on the basis of other factors beyond the apparent, immediate self-interest.

The decision of stakeholders to engage in negotiation is influenced by many factors, not simply self-interest. Pruitt and Carnevale (1993) suggest that, beyond *self-interest*, preference for different conflict management procedures is a function of:

- other interests beyond self;
- norms;
- relationships, group process and networks;
- coalitions;
- power to negotiate;
- mediation; and
- internal organization dynamics.

Most disputants have some degree of concern for the other party’s welfare, especially as they continue to interact in future. *Norms*, including principles of fairness, encourage efforts to achieve equal outcomes and

concessions. Past and future *relationships* will shape positions, especially when stakeholders know they will have to continue interacting with opposing groups on a regular basis. Furthermore, *coalitions* form within organizations to influence positions; coalitions are common in multistakeholder negotiations where groups of stakeholders may coalesce to build support for a position (Ramírez, 1999: 113).

Critics warn that consensus processes are powerful tools, but they can also artificially manufacture consent and agreements that ordinary political processes are unable to do (Britell, 1997). Collaborative approaches are attractive, but there is a danger if underlying power differences are ignored (Hildyard *et al.*, 1998; Hildyard *et al.*, 1999). Who comes to the table and who does not depends on the options of different stakeholders. Staying away from the negotiation table is a powerful option the stakeholder can choose, and this is the essence of the notion of having a “best alternative to a negotiated agreement”.

#### **BATNA: a key concept**

Stakeholders enter into negotiation when it is seen as the best alternative to what they could expect to obtain “away from the

bargaining table”. Western negotiation writers do not differentiate between *conflict* and *collaboration*; their thinking focuses on how to increase one’s power in negotiation. The notion of the “best alternative to a negotiated agreement” (BATNA) is central in this thinking. “The better your BATNA, the greater your power” (Fisher and Ury, 1981: 106). In other words, power in negotiation also stems from having alternatives. The extract below provides an example of this thinking:

Generating possible BATNAs requires three distinct operations:

1. inventing a list of actions you might conceivably take if no agreement is reached;
2. improving some of the more promising ideas and converting them into practical options;
3. selecting, tentatively, the one option that seems best.

... Having gone through this effort, you now have a BATNA. Judge every offer against it. The better your BATNA, the greater your ability to improve the terms of any negotiated agreement.” If the other side has a very strong BATNA, they will not negotiate until you come up with a stronger one (e.g. by starting a legal suit). If both sides come up with strong BATNAs, they may realize that each wins

#### **Box 4**

##### **Procedures for dealing with conflict: an example**

A small farmer and local landlord are in a dispute: the first claims that the limits of his property have been reduced by one hectare after the landlord increased the cultivated area while the other demands the property of the whole cultivated area. *Negotiation* would mean discussing these issues, and *mediation* would involve the help of a third party. *Adjudication* would mean going to court, whereas *arbitration* would involve a hearing and a decision by an official of lesser rank than a judge. *Autocratic decision-making* occurs when the third party gathers the information directly rather than inviting testimony in a hearing. If one of the disputants gives in – if the small farmer were to abdicate his position and agree to the landlord’s – it would be *yielding* or *retreating*. *Struggle* occurs if one or both disputants employs harassing moves, such as destroying the crops planted in the one hectare concerned or putting a fence to mark the limits. Finally, *tacit coordination* would involve both parties trying to work out an exchange of concessions without talking, for example if the first reduced the claimed area to half, and the other were to commit to provide part of the collected harvest of the claimed area in kind. In this classification, *struggle* is the only procedure in which the disputants do not collaborate. At any point in the process, disputants will differ in their preference for these various procedures, but with the exception of *retreat*, they almost always end up using the same procedure.

(Adapted from Ramírez, 1999: 112)

most by not trying to reach an agreement. The more easily you can walk away from a negotiation, the greater your capacity to affect its outcome ... Developing your BATNA is perhaps the most effective course of action you can take in dealing with a seemingly more powerful negotiator.

(Fisher and Ury, 1981: 110–111).

The notion of BATNA is particularly important in explaining those cases where one stakeholder has the power to stay away from the negotiation process. When the power differences between two parties are even, the odds of a gain through negotiation increases. Hence, the choice to negotiate is associated with not having a strong BATNA.

For a negotiator to become involved, the different parties will have had to agree on the approach to dealing with a conflict. This “locates” mediation in the context of a broader number of approaches. Once negotiation is possible and the parties have agreed to collaborate, then, according to Gray (1989), there are three major phases to complete:

- *Phase 1. Problem-setting*
  - common definition of a problem
  - commitment to collaborate
  - identification of stakeholders, legitimacy of stakeholders, disputes over legitimacy, necessary trade-offs, differing levels of participation, legitimacy within stakeholder groups
  - convenor characteristics, insider or outsider, convening power, legitimate authority
  - skills
  - identification of resources
- *Phase 2. Direction-setting*
  - establishing ground rules
  - agenda setting
  - organizing subgroups
  - joint information search
  - searching for “the facts”, managing complex and controversial data, role of third parties in information search;
  - exploring options
  - reaching agreement and closing the deal
- *Phase 3. Implementation*
  - dealing with constituencies
  - building external support

- structuring
- monitoring the agreement and ensuring compliance

## OUTCOMES AND CONFLICT RESOLUTION

What is the nature of the outcome and who decides whether it is resolved or settled? Hill (1982) differentiates between the two terms by underlining that a resolved conflict is one where the parties have developed integrative solutions that do not require compromise. On the other hand, a settlement may be associated with the parties being coerced into accepting a solution, often by threat or by reference to a past norm or practice that may no longer be perceived as relevant or fair.

Mediation outcomes/benefits *for the disputants* can include: agreement, satisfaction, efficiency (cost-effective and expedient), improved relationships, procedural justice, favourable agreements, empowerment, improved problem-solving, restorative justice and higher compliance/implementation.

Mediation outcomes/benefits *for the mediator* can include: reputation and social skills (Wall, Stark and Standifer, 2001: 381).

As criteria for judging the success of collaboration, Gray (1989: 256–257) includes:

- Does the outcome satisfy the real issues in dispute?
- Do the parties feel they affected the decision?
- Are the stakeholders willing and able to implement the decision?
- Does the agreement produce joint gains for the parties?
- Was communication between the parties increased and did the working relationship improve?
- Has the agreement held over time?
- Was the process efficient in terms of time and resources?
- Do the parties perceive the procedures as being fair?
- Did the procedures conform to accepted standards of procedural fairness?

## Alternative dispute resolution

Alternative dispute resolution (ADR) and alternative conflict management (ACM)

approaches have emerged in the literature to describe win-win alternatives that belong to the first collaborative approach (joint decision-making). Such approaches are based on the following premises:

1. It is assumed that conflict is a normal process in society, and it is treated as a “given”. Thus the goal is not to avoid conflict, but to focus on the skills that can help people express their differences, solve their problems and meet their needs.
2. Successful conflict management requires the participation of all legitimate parties or stakeholders in a dispute.
3. Power imbalances are virtually always an issue.
4. Weaker parties can realize that powerful parties are neither monolithic nor uniformly adversarial; conflicts are dynamic and there are often “cracks” in the power structure that allow for action. This may lead some parties to choose confrontational (separate action) and organizational efforts before they are in a position to negotiate.

(FAO, 1994)

ADR embraces value differences and strategic behaviours (Daniels and Walker, 1997). While there is a broad consensus that conflict is to be expected as an inevitable mechanism of adjustment among different parties’ interests, there is also the differentiation to make between violent and non-violent conflict. “The presence or absence of conflict-mediating mechanisms and institutions are central factors influencing whether a conflict passes the threshold into violence – this might include representative political systems, a transparent and fair judicial system, an equitable social system, and so on” (Bush and Opp, 1999: 1887). This is what some authors refer to as bounded conflict, where a minimum of rules is followed and the parties are able to develop new arrangements and “learn”; whereas in unbounded conflict the rules are disregarded and there is less scope for “learning” (Lee, 1998). In land-conflict management, this differentiation is central,

as such conflicts are often part and parcel of a change in tenure laws.

Furthermore, ADR recognizes that for customary mechanisms of dispute resolution to remain effective, the diversity of customary land-tenure arrangements needs to be recognized (Hendrickson, 1997). Hendrickson emphasizes that ADR is about reconciling traditional and modern law. In eastern and southern Africa, the renewed recognition of customary tenure systems as equivalent in the eyes of national law (Alden Willy, 2000) would suggest that there will be further scope for ADR approaches.

ADR focuses attention on the difference between positions and interests. A *position* is something a party has decided upon, whereas *interests* are made up of the needs, desires and concerns that motivate people. Negotiation works best where interests are involved, as there is always room to explore alternatives, especially when particular needs and interests may be shared among the parties. ADR approaches, therefore, place emphasis on finding options that are acceptable to both parties. In addition to legal training, ADR practitioners require training in negotiation techniques, mediation and conciliation, participatory approaches (including diagnostic and problem identification, networking and communication). A central theme in ADR is finding ways to constructive conflict resolution.

ADR is an example of a joint decision-making approach to dealing with social conflict. It is less intrusive and less costly – in monetary and social terms – than any sort of third-party decision-making, especially as those procedures involve outsiders who may arbitrate or adjudicate without regard for, or understanding of, the social fabric underlying their decision. Most people in a conflict will prefer the more familiar and traditional forms of mediation or customary arbitration.

This continuing support for locally based solutions is explained by several factors (FAO, 2001a: 20):

- Local rules still prevail in practice.

- Customary authorities retain their legitimacy through settling conflicts.
- State intervention tends to introduce new rules that are not seen as legitimate by local stakeholders.
- New players becoming involved in a conflict necessarily bring in their own principles and interests that cannot be controlled.

ADR provides an avenue for situations where customary systems cannot provide the answer on their own, but where both parties remain reluctant to formal, external approaches. ADR follows a set of principles that suggest more respect will be given to customary rules, even if the *customary mediation system* is not being used, and to social networks and cultural norms that are important in a society. As was mentioned earlier (see Box 3, on page 18), people in a dispute often need to continue interacting, and an accommodated settlement that is acceptable to both parties may help “save face” in contrast with a costly externally imposed solution. ADR is culture-specific, whereby it is paramount to work within oral and cultural norms of communication and social behaviour (Lederach, 1992).

### INTEGRATING THE SUBSTANCE AND PROCESS DIMENSIONS

We have now covered two sets of concepts or elements, one summarized as part of the substance of a conflict, and the other as part of the process of managing a conflict. In Figure 1 (page 8), these elements are listed as components of two dimensions – substance and process. Clearly they are tightly interconnected, as each influences the behaviour of the other. Any land conflict should conceivably lend itself to analysis through the above two dimensions and conceptual groupings. What has been accomplished thus far is analogous to the job of organizing the pieces of a puzzle before attempting its assembly; the problem in this case is that we are “playing” with two puzzles. A number of questions arise regarding their integration:

- Does this conceptual map guide help practitioners make choices and

document their accomplishments in a more structured manner?

- On what basis can we seek the integration of the two dimensions? In other words, do we generate an analytical framework to do the job?
- Do we have the elements to guide case-study development?
- Is there justification for a typology of land conflicts? If we follow the logic presented by de Janvry and Sadoulet (2000), then a conflict typology should be based on the specific legal and customary laws of a particular nation state.

Moving ahead in complex, interdisciplinary subjects is both a practical and theoretical challenge. The old tools of the trade are no longer useful and new approaches are needed. It is noteworthy that the literature coming out of forestry management and pluralism (Daniels and Walker, 1997; Anderson, Clement and Crowder, 1998; Vira *et al.*, 1998), conservation and protected area management (Borrini-Feyerabend, 1996; Borrini-Feyerabend *et al.*, 2000), natural resource management (Lee, 1998; Röling and Jiggins, 1998) and agroecosystem management (Lightfoot *et al.*, 2001; Engel *et al.*, 2000; 2001) all highlight the need to learn, consult multiple stakeholders and adapt management schemes. The methodological innovation in this field is often associated with the term “learning” (Ramírez, 2001). Those who innovate in this field are the practitioners, mediators and facilitators; they are the ones who are learning from conflict. *It is they who assemble the puzzles.*

For FAO’s Land Tenure Service, there is a vast challenge at hand in terms of integrating theory and practice. There is scope for creating a new body of experience and reference material to support the development of mediating organizations able to apply conflict management approaches to land conflict situations. There are no blueprints, but there is a considerable amount of reference material from other disciplines. As is the case with other approaches for accommodating multiple interests, the innovation needs to

take place in an action-learning process, where *learning* is the mechanism for developing new approaches (Lightfoot *et al.*, 2001; Ramirez, 2001).

The challenge now lies in creating the learning spaces, tools and resources to invite practitioners into centre stage. They can assemble the puzzles and provide us with the field-level examples on which future analytical frameworks may be built. For now, a learning approach based on empirical evidence appears to be the most promising opportunity.

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