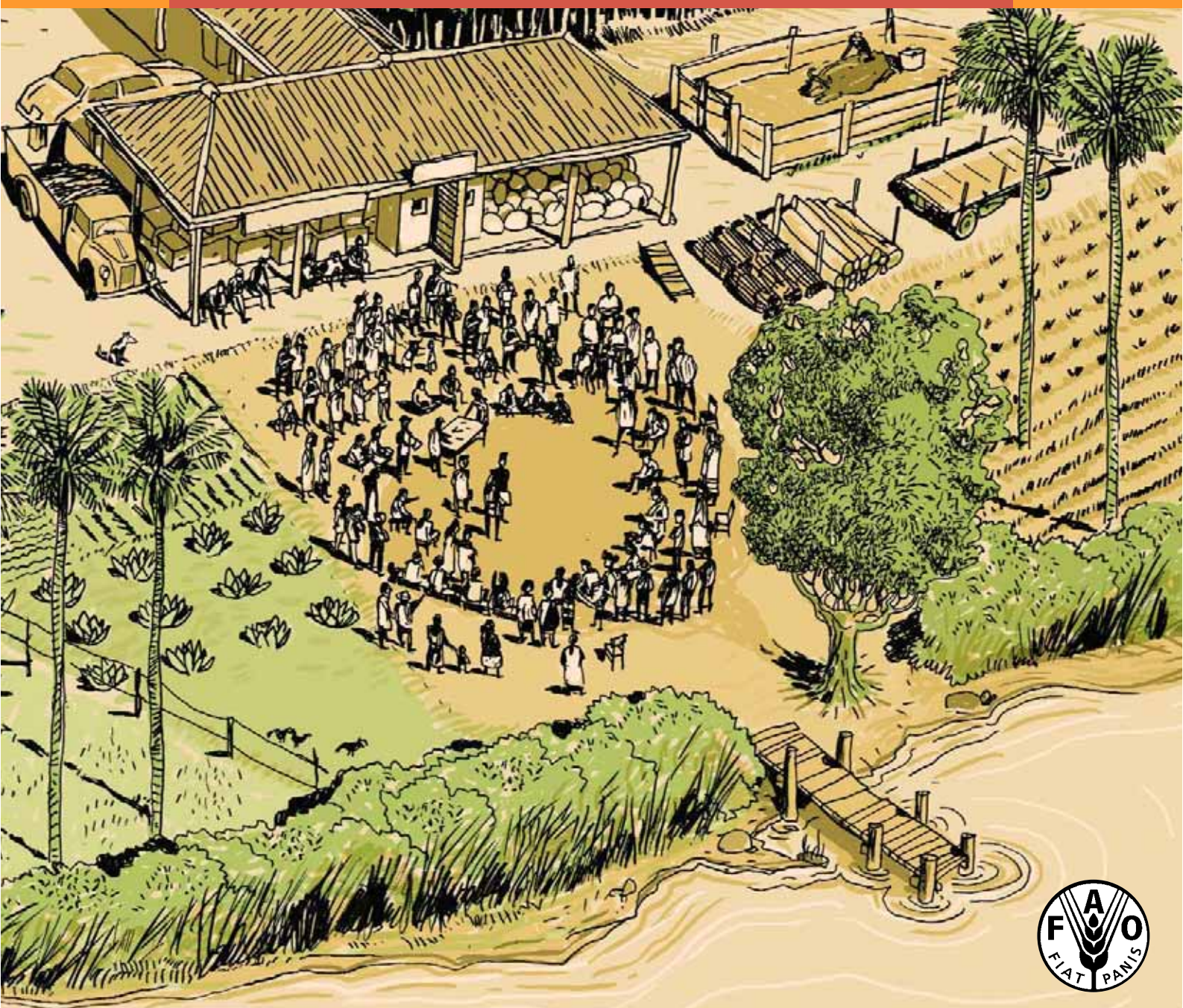


Negotiation and mediation techniques for natural resource management

CASE STUDIES AND LESSONS LEARNED



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Prepared in the framework of the
Livelihood Support Programme (LSP)
An interdepartmental programme for improving
support for enhancing livelihoods of the rural poor

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Foreword and Acknowledgements

This publication is part of a series of training materials on natural resources conflict management developed by FAO's Livelihood Support Programme. It supports the discussions presented in *Negotiation and mediation techniques for natural resource management* (2005) – a conceptual guide – by sharing recent, real-life experiences of Africans who have used the processes and principles of consensual negotiation and mediation to address natural resource conflicts. The series also includes a trainer's guide containing learning activities designed to support training in natural resources conflict management.

This publication presents the results of the African Training-of-Trainers Programme for natural resources conflict management, which was conducted from April 2005 to August 2006.

Among the many institutions and individuals who were involved in implementation of the training programme the following are to be mentioned: InWEnt – Capacity Building International, Germany, which collaborated with FAO's Livelihood Support Programme to implement the programme; Demetrio Polo-Cheva and Anja Glatzel from the Department for Environment, Energy and Water in Berlin, and Friederike Subklew from the South Africa office are especially recognized for their continued support to the programme.

Special thanks to Katherine Means, the trainer and mentor of the training, and Dirk Floeter, who followed the programme from FAO, Rome for a short but critical period.

A particular word of appreciation to the authors of the original case studies for presenting readers with the contexts, problems and experiences of mediators and other stakeholders in real-life conflicts.

It is hoped that this publication will contribute to a better understanding of conflict, as well as strengthening people's belief and confidence in the many ways conflict can be positively influenced to support sustainable livelihoods.

The Livelihood Support Programme

The FAO Livelihood Support Programme (LSP) 2001–2007, supported in part by the United Kingdom's Department for International Development (DFID), is helping to improve the impact of FAO interventions at the country level through the effective application of sustainable livelihood (SL) approaches.

LSP evolved from the conviction that FAO could have a greater impact on reducing poverty and food insecurity if its wealth of talent and experience was integrated into a more flexible and demand-responsive team approach. LSP aims to increase knowledge of and capacity to apply SL principles and approaches. LSP works through teams of FAO staff members, who are attracted to specific themes being worked on in a sustainable livelihoods context. These cross-departmental and cross-disciplinary teams, known as sub-programmes, act to integrate sustainable livelihoods principles in FAO's work at Headquarters and in the field. These approaches build on experiences within FAO and other development agencies.

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Contents

Foreword and Acknowledgements	iii
The Livelihood Support Programme	iv
Acronyms	vii
INTRODUCTION: BUILDING LOCAL CAPACITY TO MANAGE AND RESOLVE NATURAL RESOURCE CONFLICTS IN AFRICA	1
Purpose and institutional context	3
Conflict management in support of sustainable livelihoods	4
The case studies: the Gambia and Namibia	7
Using case studies	8
References and suggested reading	9
CASE STUDY 1: WHO WILL BENEFIT FROM TOURISM AND WILDLIFE MANAGEMENT? CONFLICT MANAGEMENT IN SALAMBALA CONSERVANCY, NAMIBIA	13
Summary	13
Key issues and context	15
Conflict history	20
Conflict management and resolution process	23
Conflict management and resolution outcomes	28
Lessons learned	28
References	29
CASE STUDY 2: WHO OWNS KAYAI ISLAND? COMMUNITY FORESTRY CONFLICT MANAGEMENT IN CENTRAL RIVER DIVISION, THE GAMBIA	31
Summary	31
Key issues and context	33
Conflict history	39
Conflict management and resolution process	41
Conflict management and resolution outcomes	47
Lessons learned	49
Acknowledgements	51
References	51

CONCLUSIONS: FINDINGS AND LESSONS LEARNED	53
The case studies	53
Conflict management	55
The training programme: some reflections	58
Conclusion	61
References	62

Tables and Figures

TABLES

Table 1	Attributes of Salambala Conservancy, 2005	19
Table 2	Sikanjabuka conflict time line	22
Table 3	Socio-economic data on Kayai and Saruja	36
Table 4	Stakeholders and their interests	38
Table 5	Kayai Island conflict time line	40
Table 6	Time line of NACO's involvement in the Kayai Island conflict	43
Table 7	The conflict onion tool: findings from Kayai and Saruja	45

FIGURES

Figure 1	Map of Namibia	15
Figure 2	Map of Caprivi	18
Figure 3	Mulisi Conservancy in relation to Salambala Conservancy	27
Figure 4	Map of the Gambia	33
Figure 5	The experiential learning process	58

Acronyms

BATNA	best alternative to a negotiated settlement
CBNRM	community-based natural resource management
CDC	Colonial Development Corporation
CFMA	Community Forestry Management Agreement
CRDFP	Central River Division Forestry Project
DFID	Department for International Development
FAO	Food and Agriculture Organization of the United Nations
GTZ	German Agency for Technical Cooperation
IRDNC	Integrated Rural Development and Nature Conservation
LSP	Livelihood Support Programme
MET	Ministry of Environment and Tourism (Namibia)
NACO	National Consultancy for Forestry Extension and Training Services
NGO	non-governmental organization
SNV	Statement of the Neighbouring Villages
USAID	United States Agency for International Development
VDC	village development committee

Building local capacity to manage and resolve natural resource conflicts in Africa

Many parts of Africa are experiencing increased conflicts over natural resources (see Blench, 1996; Collier and Hoeffler, 2002; Addison, LeBillon and Murshed, 2003; Peters, 2004; Gausset, Whyte and Birch-Thomsen, 2005; and related items in the reference list at the end of this chapter). These tensions involve all social levels, from families, neighbourhoods, communities, ethnic or religious groups, private enterprises, voluntary associations and nation-States, to global entities such as donor agencies and conservation groups. The reasons behind the rise in conflict vary. In many cases, the origins of conflict are rooted deep in Africa's historical political economy, especially colonialism, which not only reorganized rights and access to natural resources, but also shifted in complex ways the relationships across and within social groups. Recent processes and events are intensifying competition over the continent's vast and diverse resources. Such trends include economic liberalization, decentralization and privatization, which are increasing the opportunities for community involvement in natural resource management.

Community-based natural resource management (CBNRM) has been successful in that it has become an integral part of government policy and programmes in many countries. By 2002, for example, more than 30 African nations had launched participatory forestry initiatives, and similar reforms were under way regarding wildlife and other resources (FAO, 2002). These changes in resource access and use patterns, however, can affect stakeholders in diverse and unexpected ways. Although such initiatives offer new possibilities for resource management or benefit sharing, not all people necessarily gain from these. Experience shows that community members or resource users may sometimes find themselves in a more vulnerable or precarious situation owing to changes brought about by the implementation of CBNRM. It is therefore not surprising that these processes sometimes generate new tensions, or serve to revive or refuel long-standing or latent conflicts (see FAO, 1997; Buckles, 1999; Ribot, 1999; 2002; Castro and Nielsen, 2001; 2003; Peluso and Watts, 2001; Warner, 2001; Peters, 2004).

The emergence of non-violent conflict is not necessarily negative in CBNRM. The appearance of public disagreements and disputes may reflect that society is becoming more open and participatory, with people giving voice to their perceived priorities, interests and needs. Indeed, conflict can serve as the catalyst for progressive societal change. People may bring to attention to the wider society their exclusion, marginality or insecurity regarding resources or livelihoods. How people handle disagreements, conflicts and disputes is what truly matters. Managing and resolving conflict in a participatory, consensual and peaceful manner can strengthen civil society; land and resource conflicts that are ignored or unjustly handled always have the potential to become intractable and violent, resulting in environmental degradation, diminished livelihoods and human rights abuses. Such disputes also run the danger of generating more and deeper distrust and divisions, undermining the foundation of society and its ability to cope with social tensions. The livelihoods of poor households are especially vulnerable to disruption, but everyone is at risk when conflict escalates. Because natural resources are so close to livelihoods, identities and security in Africa, conflicts over their control, management and use demand special attention.

As in other parts of the world, people in Africa have formal and informal conflict management institutions and procedures for addressing natural resource conflicts.¹ These entities can be based in different bodies of law or legal traditions – a situation called “legal pluralism”. Legal orders may derive from the nation-State, customary law rooted in social groups (ethnic, tribal, caste or community) or religion. The various legal orders are not closed systems, but overlap, and they can be complementary or competitive, in harmony or contradictory. People involved in disputes take courses of action based on their preferences, knowledge about the options available to them, perceived likelihood of success, and relationship with their opponent(s). Not all people have equal access to all options; gender, class, age and other factors may restrict which avenues are open to certain individuals or groups. The lack of substantial public roles for women in the conflict management institutions of many African societies merits special notice, but the situation is changing (see for example, Elmi, Ibrahim and Jenner, 2000; Hamilton and Dama, 2003). In addition, legal orders differ in their capacities to handle conflicts, including ones involving multiple stakeholders from diverse social backgrounds.² For example, national court systems are often inaccessible to people because of cost, location, social distance and an inability to consider local knowledge. Even customary conflict management practices may exclude some people on the basis of gender, caste, class or other factors. Training in consensual negotiations and mediation (an approach that derives from alternative dispute resolution, but is also similar to indigenous practices) offers a potentially significant means to overcome obstacles to participatory conflict management that are inherent in legislative, administrative, judicial and customary approaches. This approach can help strengthen the capacity of Africa’s different legal orders.

1. There is a long-standing and extensive literature on Africa’s customary and contemporary legal orders, conflict management practices, land tenure systems and related topics. See for example, Biebuyck, 1963; Kuper and Kuper 1965; Bozeman, 1976; Moore, 1986; Deng and Zartman, 1991; Shepherd, 1992; Shipton, 1994; Bruce, 1998; Osaghae, 1999; Zartman, 2000; Toulin and Quan, 2000; Berry, 2002; Peters, 2004; Environmental Law Institute, 2004; Moore, 2005.

2. Engel and Korf (2005) review the strengths and weaknesses of customary law, national legal systems and alternative conflict management; see also Anderson, 2003.

It should be noted that consensual negotiation, like all forms of conflict management, has limitations. For example, it may not be appropriate in dealing with violent conflicts involving high levels of insecurity among stakeholder groups. Such critical situations require specialized approaches to addressing conflict. It may also be difficult to use consensual negotiation in cases where enormous differentials of power separate stakeholders, making the negotiating field and process highly uneven. Nonetheless, in appropriate settings, it can serve to enhance people's capacity to address natural resource conflicts in a peaceful and participatory manner that facilitates the creation of mutually acceptable outcomes. Consensual negotiations also provide the basis for enhancing or developing collaborative working relationships among diverse stakeholders in natural resource management.

PURPOSE AND INSTITUTIONAL CONTEXT

This publication seeks to support sustainable livelihoods in Africa and elsewhere by sharing the recent, real-life experience of Africans who have used the processes and principles of consensual negotiation to address natural resource conflicts. The case studies were carried out as part of a programme for building African capacity to manage and resolve natural resource conflicts. The programme was initiated by the Food and Agriculture Organization of the United Nations (FAO) through its Livelihood Support Programme (LSP) and implemented in partnership with InWent, Capacity Building International, Germany. The programme is based on training materials and a specific approach to training developed by LSP.³ The publication will also provide reflections and lessons learned about the training approach, and accomplishments and limitations of the programme, for those interested in carrying out similar tasks.

FAO has long supported the peaceful, participatory and equitable management and resolution of natural resource conflicts. The Department for International Development (DFID) has sought to boost the effectiveness of global development institutions and interventions through the application of sustainable livelihood approaches. LSP is an interdepartmental programme within FAO dedicated to improving the lives of the world's poor by strengthening their capacities to support themselves. Among its activities are the development of natural resource conflict management training materials, the holding of training sessions and the provision of related technical support.

Members of the conflict management teams featured in the two case studies participated in LSP's African Training-of-Trainers Programme, which was designed as an applied and guided learning process lasting 15 months. Practitioners learned how to engage in consensual negotiations/mediation through hands-on experience of trying to manage or resolve an ongoing

3. *Negotiation and mediation techniques for natural resource management* (2005) is a conceptual guide providing practitioners with step-by-step guidance on how to establish a process on consensual negotiations. To support the discussions presented in the conceptual guide there is also a *Trainer's guide* (2007), which contains learning activities designed to support training in natural resources conflict management.

dispute involving natural resources. They were asked to document and reflect on what happened in implementing the principles and methods of consensual negotiation and collaboration building. The case studies not only illustrate the nature of conflicts involving community natural resource management, but also shed light on the practical steps and actions entailed in fostering, achieving and implementing a negotiated agreement. Although several training participants attempted to prepare detailed case studies, only two groups completed the process of both resolving a conflict and writing about it. This outcome demonstrates the challenges of trying to address conflicts. They are not simply problems that can be “fixed” by applying a social technology. Conflict management requires high degrees of commitment on the part of the mediators and the communities – and even then the outcomes are not certain. For both mediation teams, writing about the conflict management processes for the purpose of global exchange of experience proved to be a significant task, even with technical support.

In many ways the two case studies presented here can be considered success stories, but they also reveal the complexities and challenges faced by practitioners engaged in natural resource conflict. Effective conflict management based on consensual negotiation requires not only commitment, skills and logistical support, but also policy and administrative environments that enable all stakeholders to interact in an open, respectful and equitable manner. Perhaps one of the most stunning aspects of these case studies is how much each team accomplished with relatively modest financial and other resources. This outcome suggests that a great deal could be achieved in addressing many of Africa’s pressing natural resource conflicts with similarly modest but effectively deployed investment of resources in training and logistical support for consensual negotiations.

CONFLICT MANAGEMENT IN SUPPORT OF SUSTAINABLE LIVELIHOODS

Sustainable livelihoods

The sustainable livelihoods approach focuses on one of the most fundamental aspects of life: people’s ability to support themselves now and into the future. It does so by viewing livelihoods within both a micro- and a macro-context, spanning both physical and social environments at the local, national and global levels. A livelihood is the set of capabilities, assets and activities that furnish the means for people to meet their basic needs and support their well-being. Livelihoods are not simply localized phenomena but are connected by environmental, economic, political and cultural processes to wider regional, national and global arenas. As such the sustainable livelihood approach provides a useful framework to examine the links among conflict management on the ground, the effects of policy processes on livelihoods and the need to support the development of multiple livelihoods opportunities. Conflict at the local level can only be managed effectively when there is understanding of the macro-environment that creates the conditions for conflict and the processes necessary to deal with this.

Natural resources conflict management

Natural resource management usually involves the active participation of a large number of people who often possess a range of different interests, needs and priorities. Decentralization has added to the complexity of stakeholder relations, by bringing together such divergent groups as State resource managers, local resource users and non-governmental organizations (NGOs) of varying sorts. Even where traditions, customs, rules, laws or policies govern competing access to and use of natural resources, conflicts and disputes inevitably arise. The necessity of addressing conflict is now acknowledged as an essential aspect of sustainable livelihoods and participatory development. Conflict management that follows the principles of sustainable livelihoods seeks to facilitate consensual negotiation as a means for stakeholders to deal with – and hopefully resolve – their perceived incompatibility of interests. It provides a peaceful and balanced setting for people to reach mutually acceptable agreements. Ideally, conflict management should:

- enhance people's knowledge of approaches, skills, tools and techniques, particularly for conflict analysis, consensual negotiations and mediation, to identify and overcome constraints in the development process;
- strengthen relationships and build trust within and among groups;
- increase the capacity of communities, organizations and institutions to solve problems;
- contribute to strengthening the institutional arrangements that regulate access to and use of natural resources;
- foster increased flows of income and benefits through improved access to and management of natural resources.

In general, people's ability to pursue sustainable livelihoods is strengthened by increasing or enhancing their human and social capital. This also involves fortifying the capacity of institutions and civil society to resolve conflicts of interest by consensual means.

The process map for consensual conflict management

LSP has developed a conceptual guide on informal conflict management procedures to meet the needs of practitioners working on participatory natural resource management and rural livelihoods (see Engel and Korf, 2005). The focus is on processes and techniques for consensual negotiations and mediation to resolve natural resource conflicts, which occur every day in all regions of the world. The objective is to deal with conflicts and disputes that are at a low level of intensity, and so are not characterized by high degrees of violence or insecurity. Overall, the orientation is towards crisis prevention, with the aim of dealing with conflicts and disputes before they escalate into high-intensity, violent situations. Preventing escalation is much easier and more cost-effective than intervening only when severe damage has already been done.

Engel and Korf (2005) furnish the main framework for resolving natural resources conflicts. This seeks to supplement traditional or local decision-making procedures by bringing the conflicting parties together to solve problems jointly through negotiated settlement. The framework includes

procedures for collaborative decision-making that can take place with or without mediation. The hallmark of these procedures is their flexibility, which allows for optimal adjustment to the specific needs of parties in the conflict management process. It should be noted that the role of mediator – an impartial third party who serves in a facilitative role – can be crucial in helping to overcome mistrust, procedural questions, stalemates or other circumstances that can halt negotiations. The mediator's role often involves providing procedural, substantive and psychological support.

Guided by the goal of fostering collaboration, and mindful of the ethical imperative to “do no harm”, Engel and Korf (2005) present a ten-step conflict management process map. This process map is not intended as a uniform, rigid sequence to be applied in the same way in all settings and situations. On the contrary, it is offered as an inherently flexible and adaptable framework. Those engaged in conflict management procedures can tailor its approach, techniques and exercises to suit their own particular needs or previous experience. Nonetheless, a virtue of the framework is its following of a progressive sequence from entry to exiting the conflict management process. It also provides extensive practical information about mediation and negotiation processes. The ten steps can be summarized as follows:

- Step 1: Preparing entry:** Mediators clarify roles, prepare contacts, examine background information and develop strategies for contacting the various stakeholders.
- Step 2: Entering the conflict scene:** The first contact is usually through separate meetings with each of the concerned parties; mediators then clarify their own roles and secure a commitment to start mediation.
- Step 3: Conflict analysis:** This involves clarifying assumptions about the stakeholders' positions in order to ascertain whether consensual and interest-based negotiations are possible and whether the process should continue with the mediators' involvement.
- Step 4: Broadening stakeholder engagement:** Participatory stakeholder analysis is facilitated, with the involved parties assuming greater control and responsibility.
- Step 5: Assessing options:** Mediators help stakeholders to formulate and assess options for managing or resolving the conflict.
- Step 6: Preparing negotiations:** People and logistics are made ready for the conducting of negotiations.
- Step 7: Facilitating negotiations:** Mediation, facilitation and reconciliation methods are used as the contesting parties engage in face-to-face discussions to identify possible options for agreement; ideally, this involves a shift in the framing of the conflict from positions to interests and needs.
- Step 8: Designing agreement:** Mediators help the parties to define, evaluate and decide on the specific points of agreement.
- Step 9: Monitoring the agreement:** Mediators assume a support role in clarifying implementation and monitoring of the agreement.

Step 10: Preparing to exit: Mediators hand over responsibility for the conflict management process to local stakeholders or a trusted local mediator, providing capacity building support, if needed within the community for conflict management.

Engel and Korf strongly stress that their ten steps should not be treated as a rigid blueprint: “The actual process is not linear, but moves forwards and backwards as situations and capacities change. This requires flexible handling of the steps according to how the process develops” (Engel and Korf, 2005: 6). The need for flexibility and creativity is evident in the case studies.

THE CASE STUDIES: THE GAMBIA AND NAMIBIA

This publication features two cases studies:

- “Who owns Kayai Island? Community forestry conflict management in Central River division, the Gambia”, by A. Dampha, K. Camara, A. Jarjusey, M. Badjan and K. Jammeh. This describes the experience of the Gambia’s Forestry Department and the National Consultancy for Forestry Extension and Training Service in resolving a long-standing dispute between two rural communities over landownership and resource use. This old conflict had been given new impetus by decentralization in the form of community forestry.
- “Who will benefit from tourism and wildlife management? Conflict management in Salambala Conservancy, Namibia”, by C. Murphy with D. Nheta and E. Mwilima. This describes the efforts of the NGO Integrated Rural Development and Nature Conservation and the Ministry of Environment to address a dispute arising within the context of the country’s conservancy programme, which seeks to promote decentralization and local development through wildlife and tourism co-management. Traditional authorities sought to prevent a village from receiving its benefit share from the conservancy. The conflict turned out to be deeply rooted in the region’s history, and illustrates a power struggle between traditional and recently created institutions and authorities.

Despite their diverse locations (West and Southern Africa) and sectors (forestry and wildlife, respectively), both of the cases share many aspects. Both conflicts reflect the legacy of colonialism, when State policies excluded rural communities from natural resource management. The case studies also deal with some of the social complexities, including different identities and conflicts of interest, which arose in the colonial era. Both case studies occur within the context of new and innovative government initiatives – decentralization programmes promoting natural resource co-management as a means of sharing benefits. In terms of conflict management approaches, both teams were dealing with disputes that turned out to be more complex than they initially appeared. Conflict analysis revealed the complexity and long-standing tensions of the disputes. Differences between the case studies include the reporting of conflict management processes, the level of detail the authors provide and the analysis of lessons learned.

USING CASE STUDIES⁴

Case studies as learning tools

These case studies aim to build skills in the processes and principles of consensual negotiation by presenting readers with the contexts, problems and experiences of mediators and other stakeholders in diverse situations. The case method offers a learning tool that stimulates the reader to:

- **discover**, by examining key issues in natural resource conflicts as manifested in the cases, identifying primary and secondary stakeholders, exploring the historical background, analysing contemporary causes, reviewing the roles of local and wider institutions and markets in the conflicts, and assessing past and present attempts at conflict management and resolution;
- **probe**, to explore stakeholder agendas, analyse social and power relations among the interested parties, evaluate the benefits and costs of conflict management and resolution options for stakeholders, examine social variables that influence the implementation of conflict management and resolution processes, and consider the outcomes from different stakeholders' viewpoints;
- **practise**, through building readers' knowledge from the clear and concise presentation of real-life examples that serve to sharpen analytical and technical skills, such as negotiation and mediation, through discussion, role playing and other forms of learning;
- **contrast and compare**, by providing different situations for reflection on key issues regarding how and why people engage in conflict management and resolution processes, what happens when they do so and whether what they learn from the cases can be adapted to readers' situations.

Organization of the case studies

Each case study focuses on the following five areas:

- **Key issues and context:** Where does the case study take place? What is its environmental and social setting? What resources are involved? What is the official policy regarding the resource? Who are the stakeholders and other interested parties?
- **Conflict history:** What is the history of the conflict? How did it manifest itself? How has the conflict been viewed or interpreted?
- **Conflict management and resolution processes:** How have people tried to address the conflict? How did the teams enter the conflict? How did they carry out conflict analysis and broaden stakeholder engagement? What strategies and tools were used? How did they prepare for the negotiations? What logistical arrangements were necessary to carry out the conflict management process?

4. This section is adapted from Castro and Nielsen, 2003.

- **Conflict management and resolution outcomes:** What was accomplished by the efforts to manage or resolve the conflict? Was an agreement reached? If so, what did it involve? How was it to be enforced? How did the various stakeholders and other interested parties feel about the outcome? Did the conflict appear to be fully resolved?
- **Lessons learned:** What specific lessons are to be learned from this case? What are the lessons regarding policy, legal frameworks and institutional structures? What does the case reveal about power relations?

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