ADR/MEDIATION



A focus on customary land tenure in Teso, Lango, Acholi and Karamoja

Simplified Guide

GIZ CPS/RELAPU/RGIL

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1.0 Introduction to the Guiding manual

The ultimate aim of this guiding manual is to help participants enhance their values, skills, and resources to contribute to peaceful change particularly in land matters through mediation, both in their own lives, and in their work with communities.

The discussions in this manual are based on the principles of experiential learning and respect for participants' knowledge. It recognizes people, their skills and their experiences as key resources, acknowledging that the discussions are therefore expected to bring new learning and new insights.

The main thematic scope of the manual is mediation – with a focus on customary land conflicts. However, it recognizes that mediation skills alone do not work in isolation but rather a mediator must also have substantive knowledge and skills that provide key skills that compliment mediation - thus the inclusion of other sessions.

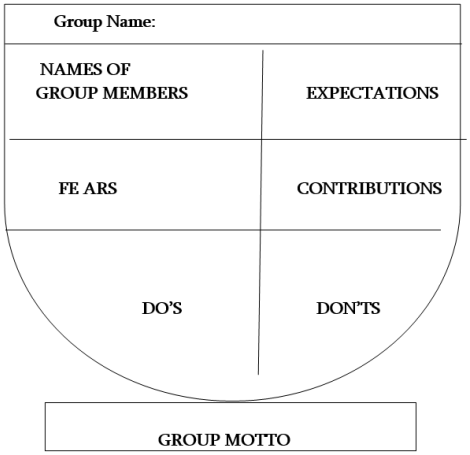
Session 1: Confidence and community building

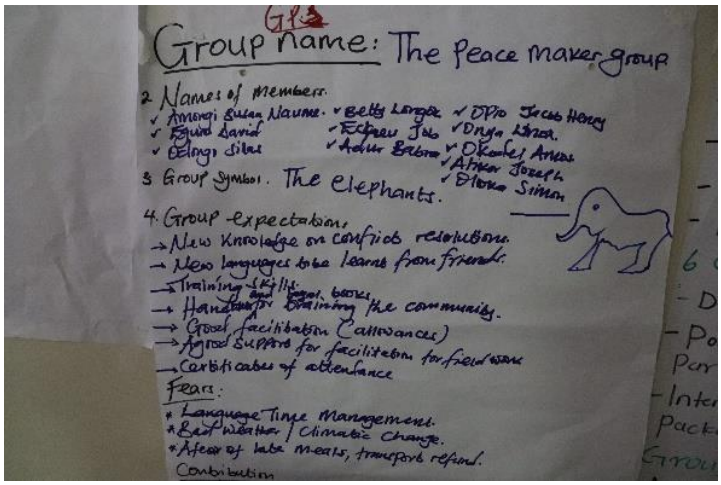
Objective: To create a conducive environment for the participants to share ideas

- In peace education and non-violent conflict resolution workshops, there is always need to create a conducive environment for the participants.
- This conducive environment is created by what we call Confidence and Community Building.
- It endeavors to create team spirit.
- In order to make this community real, every participant should feel belonging to it and that she or he has a vital role to play for the common purpose and objective.
- This community during the training is a resemblance of the desired community or peaceful co-existence outside a working environment.

Examples of a community building exercises:

a). Filling in the Group shield





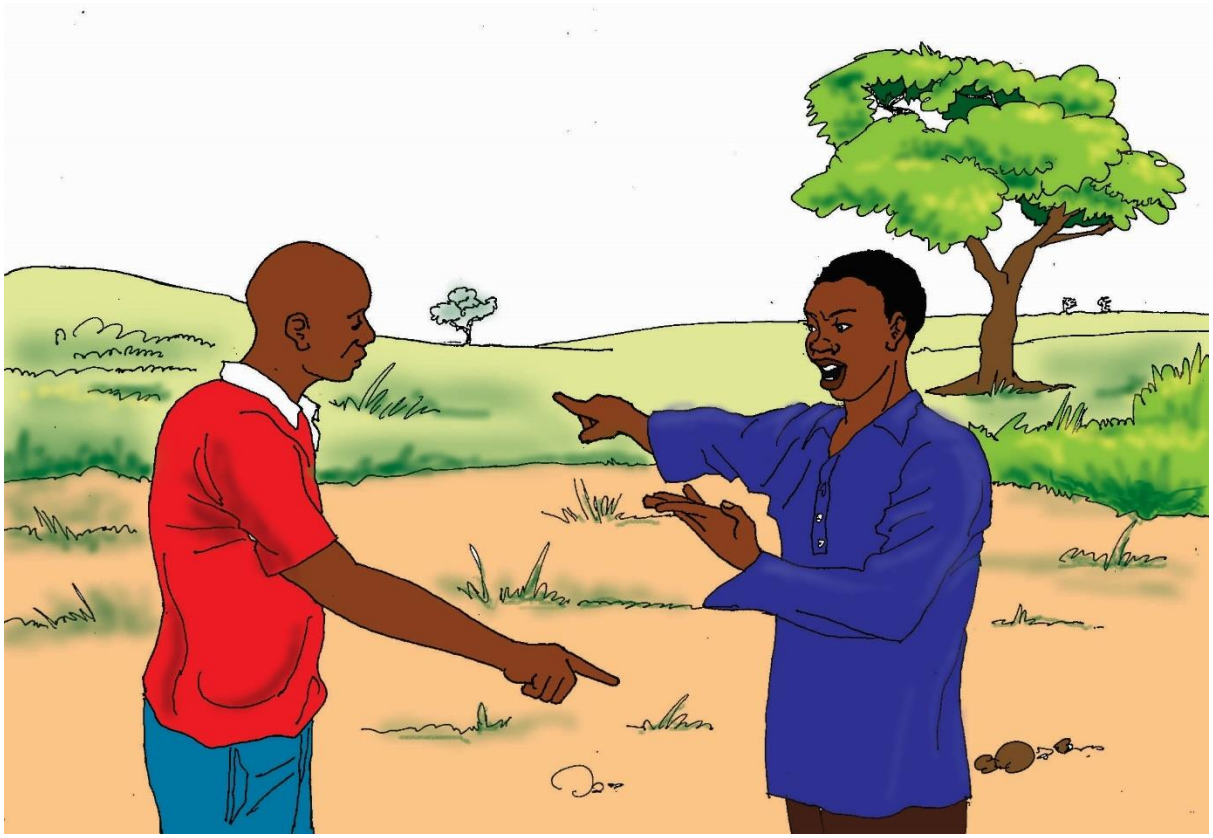
b). **Shelving titles**
Purpose: To create an environment where all participants feel equal and foster active participation by all participants

c). **Household duties**
Purpose: To identify leaders during the training to ensure a success training and fulfillment of participants expectations. The team also help in coordination of logistical issues

Session 2: Understanding of relevant concepts

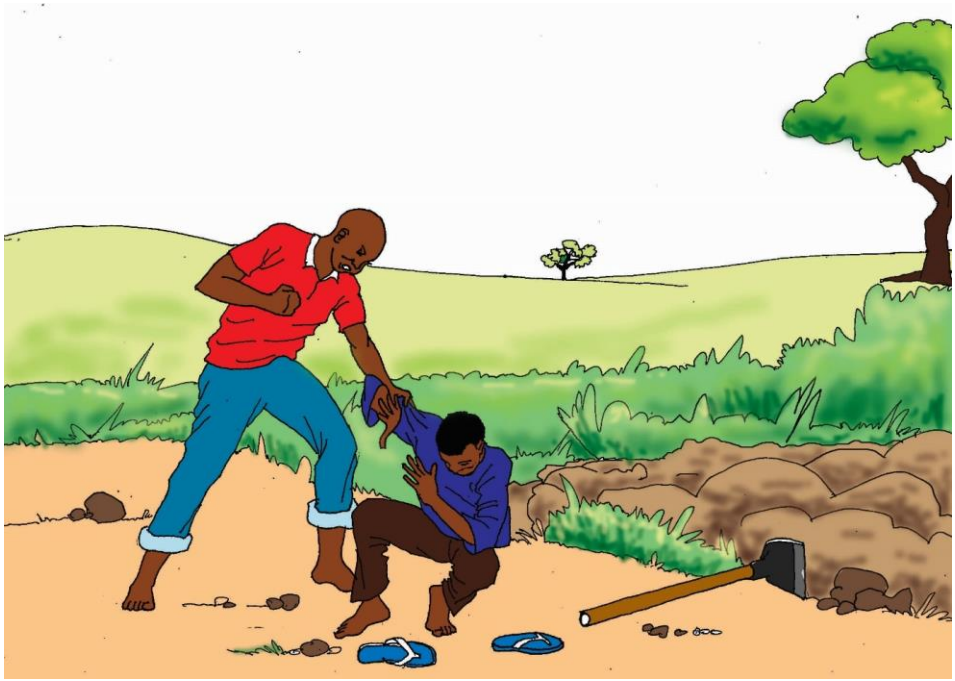
Purpose: To help participants clearly understand the meaning of conflict, violence and peace

What is Conflict?



- Conflict refers to a state of disagreement or argument between opposing groups or opposing ideas or principles. Conflict exists in all human nature.
- It is part of our existence. Conflict is not necessarily a bad thing.
- We need conflict in order to develop, for after a conflict positive change can take place.
- It can be change for the better or for the worse - depending on how it is perceived and responded to/handled.

What is Violence?



- Violence refers to the use/expression of psychological or physical force to react to a disagreement
- It is usually characterized by harm/injury/pain, damage/destruction, torture, deprivation etc.
- Violence usually occurs as a result of failure to amicably agree about an issue(s).

What is Peace?



- Peace in a broad sense refers to a state of harmony (shalom)

- Some of the elements of peace could include: fair treatment for all; access to complaints/redress mechanisms for everybody; similar economic, social and political opportunities; no discrimination/exclusion; harmony, co-existence; good relationship; unity; respect of human rights; stability; comfort; calmness; freedom; security; development; good life; equality; safety; joy; liberty; friendship; productivity; availability of food etc.

Types of peace

Negative Peace: This is the absence of direct physical (overt)

It is negative because something undesirable has stopped happening (the violence stopped). However, the reasons why the conflict began and escalated to violence have not been addressed

Positive Peace: The **absence of all forms of violence** supported by a set of relationships or harmony that exists at all levels ranging from international relationships, social relationships, to family relationships and even within individuals.

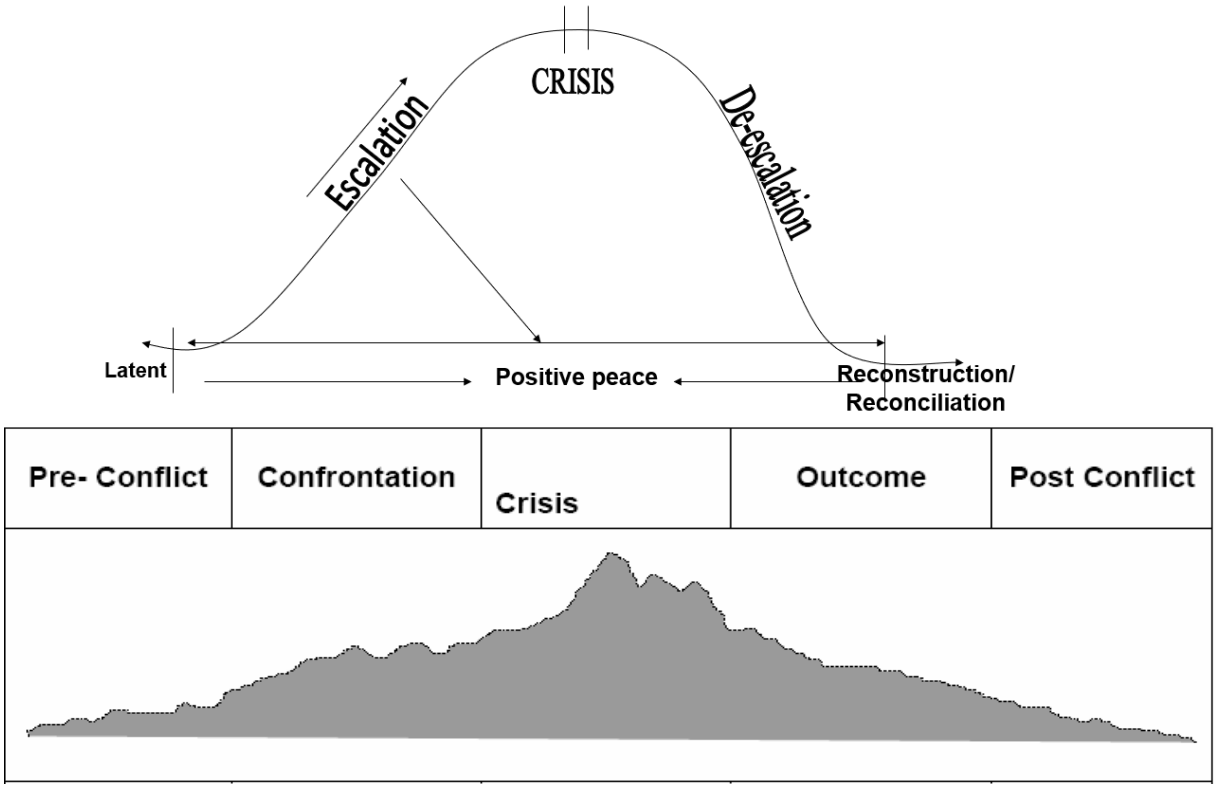
Relative peace: This is usually in comparison to worse situation in the past – for example in post-conflict settings

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

Peace is not necessarily the absence of conflict

Conflict Stages and their indicators

Conflict cycle



Indicators of the above

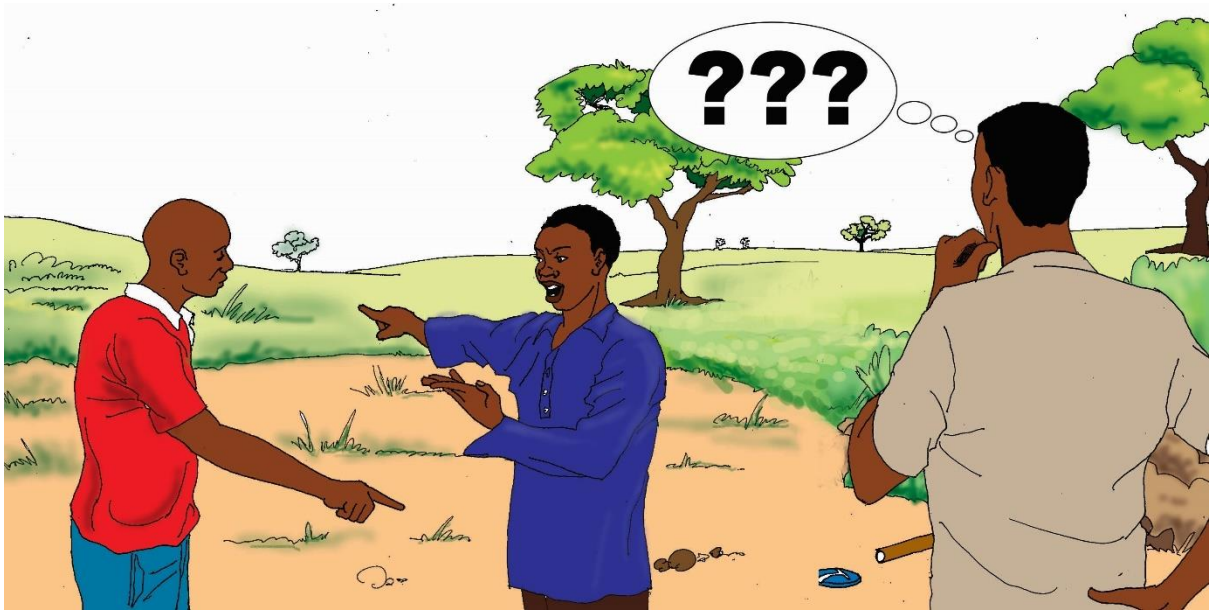
Rumours War of words Complaints	Attacks Land grabbing Raiding Demonstrations Increase in petty crime	Death Revenge Displacement Increased violence Closure of business Emergency relief	Mediation Agreement Re-opening schools and hospitals	Rehabilitation Reconciliation (DDR)

Session 3: Conflict Analysis and Conflict Sensitivity in mediation

Objective

- To understand the meaning of conflict analysis and why it is important
- To understand some of the tools of conflict analysis and how to apply them

"The first step in any mediation is a good analysis of the conflict"



Meaning of Conflict Analysis

- Conflict analysis is a deep analysis of a conflict
- Helps you to understand the history, root causes, actors, context, effects, interests and needs, possible solutions, etc

3.1. Tools of conflict analysis (examples)

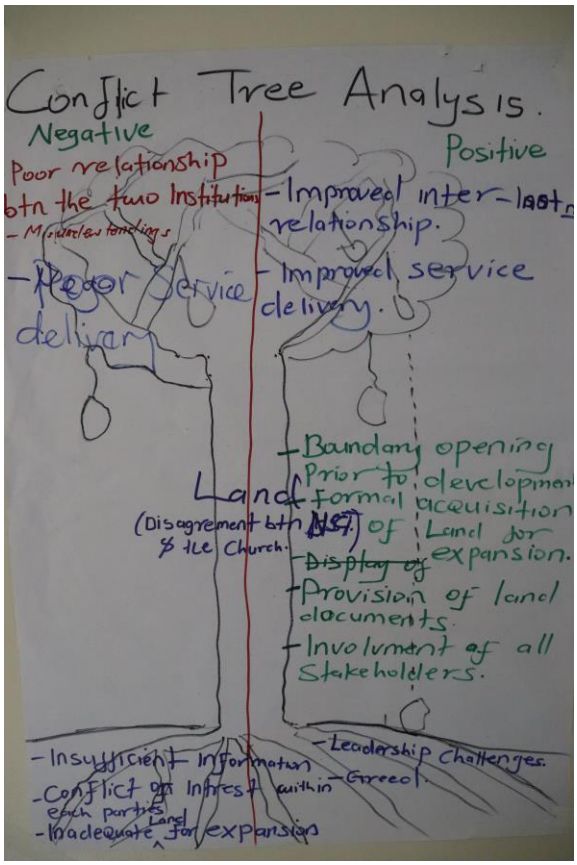
3.1.1: Human Knot Game:

- This tool is useful in understanding the processes/formation of a conflict and how to resolve it.
- While debriefing on the game, you realize that there are various lessons to learn from the game.
- For example, that it is easy to enter into/start a conflict but not easy to get out/end it; conflicts lead to harm; if the resolution is not done in a sensitive manner, some people may suffer more harm in the process of trying to resolve; the parties in a conflict themselves have a key role to play in resolving the conflict; some people tend to be manipulated by leaders to participate in violence without clearly understanding the motive; among others.



3.1.2. Conflict tree (cassava analogy)

This tool is important in enabling one to identify the core issue and root causes of a conflict. When the root causes are identified, it makes it easier to identify appropriate interventions.





Roots *s*ymbolize the root causes

Stem symbolize the conflict issue

Branches, leaves and fruits symbolize effects or consequences

3.1.3: Actor / stakeholder analysis

This tool is useful in enabling one to identify the various parties with interest in a conflict.

It is especially useful in conflicts involving stakeholders with influence beyond the direct ones.

Stakeholders are defined as actors who share an interest towards the conflict or are affected directly or indirectly. They involve:

- Those who have vested interest in the conflict/issue
- Proximity to the conflict important
- Vital in negotiation

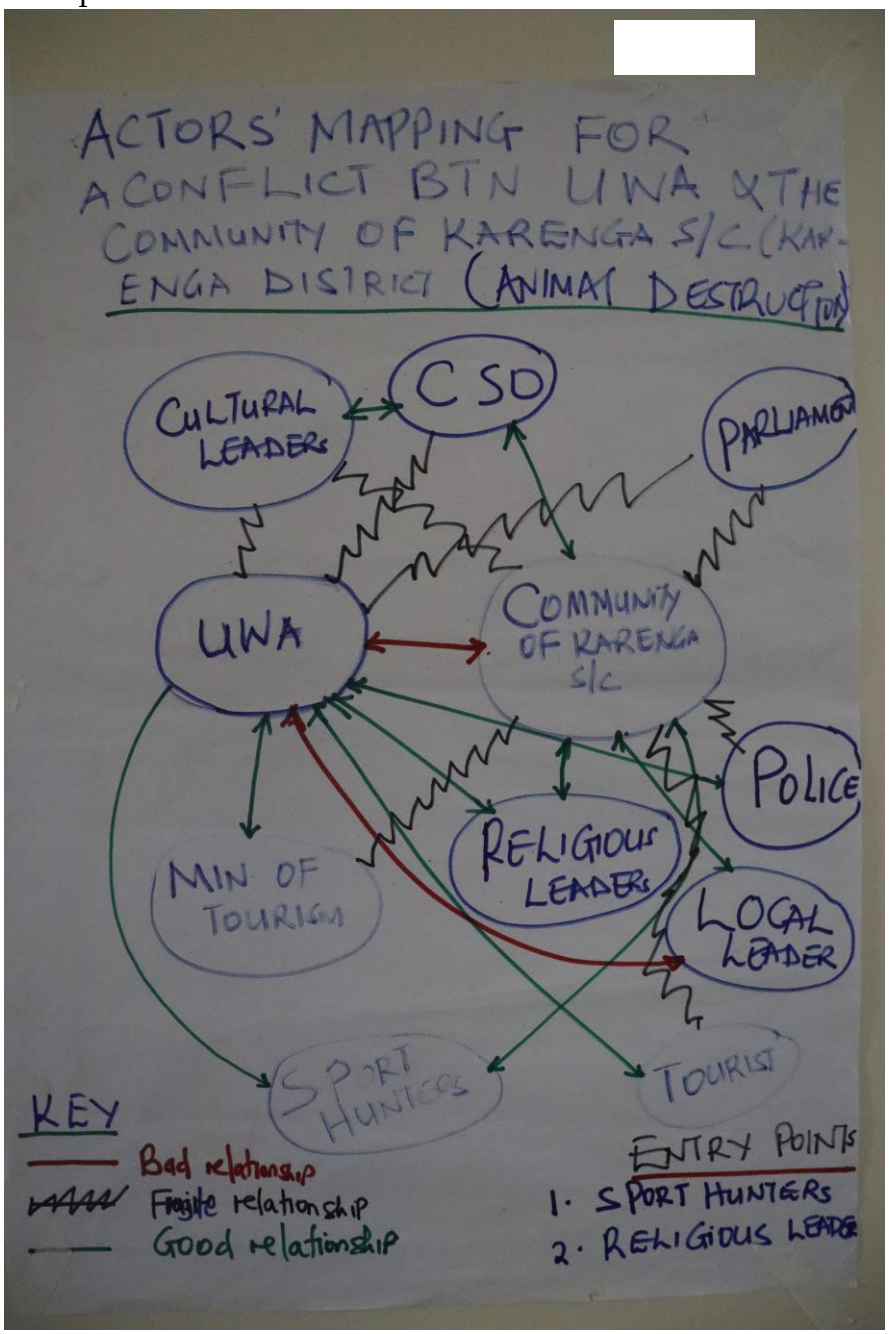
Examples of stakeholders/parties:

Primary Stakeholders	Secondary	Tertiary
- closest	- next in line	- not necessarily affected (directly/indirectly)
- direct stake	- indirectly affected	- could gain
- visible	- " benefiting"	-live outside the conflict
- affected		- can fuel conflict
-benefit from the outcome		

3.1.4. Actor mapping

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

Example:



Key

Positive Link

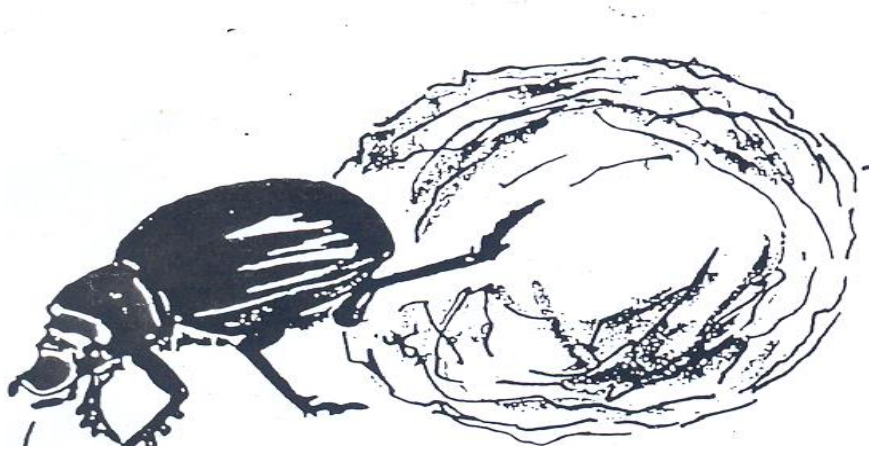
Violence/conflict

Neighbours –party to situation

Informal/broken relationship

3.1.5. The dung beetle (analogy)

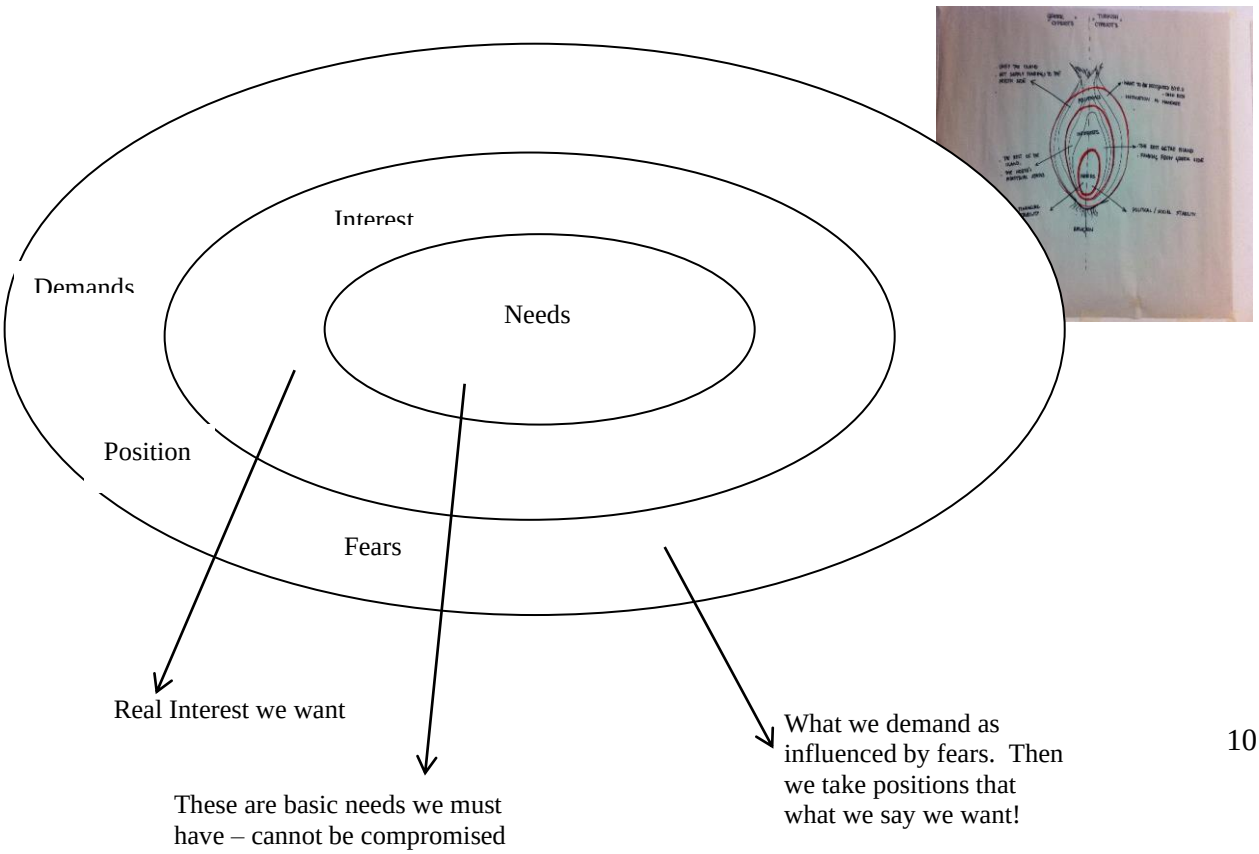
This analogy is useful in understanding the formation of a conflict and hidden interests of parties



Dung Beetle illustration is used to confirm the fact that the longer a conflict lasts the more intricate it becomes because of the external interference

3.1.6. The Doughnut/onion analogy

- The purpose of this tool is to help one understand the positions, interests and needs of parties.
- It also enables one to understand the underlying fear, interests and needs behind the positions.
- Looking at all these clarifies more human approach to conflict resolution and the human beings involved.
- The doughnut represents the needs, interests and fears/demand and positions. That for every conflict, there is a basic need at the core.

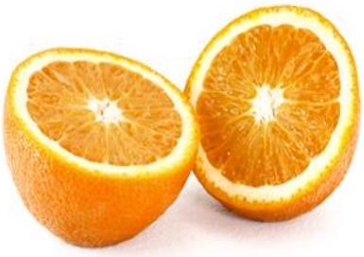


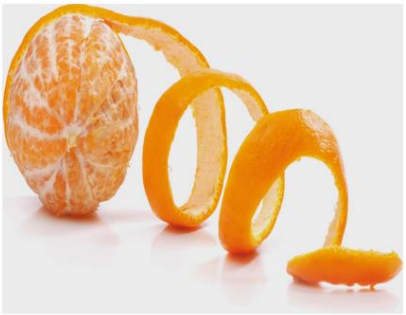
Exercise: The orange game

To help participants to further understand the differences between positions, interests and needs, and to appreciate the importance of understanding the interest and needs in mediation

The Orange game







3.1.7. Conflict Sensitive Approaches

Objective: To help a mediator/peacebuilder ensure that his/her intervention does not make the situation worse, create new conflicts or lead to negative consequences– often made unknowingly.

- Introducing this tool can start by asking question like "have you ever attempted to help resolve a conflict and instead ended up making the situation worse?".
- A facilitator can also start by sharing stories where a good intended project/intervention was not sensitive to the local context, how it worsened the situation, and how it was resolved/end.
- The key lesson is that some issues like that of land are complicated and one needs to apply conflict sensitivity to minimise possible negative consequences and maximise positive ones.

The bird and fish story







The "What and How" of Conflict Sensitivity

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

Session 4: Responding to conflict

Objectives: To understand the different ways people respond when faced with a conflict

Diagrams: Flee, Fight, Flow (The 3Fs)





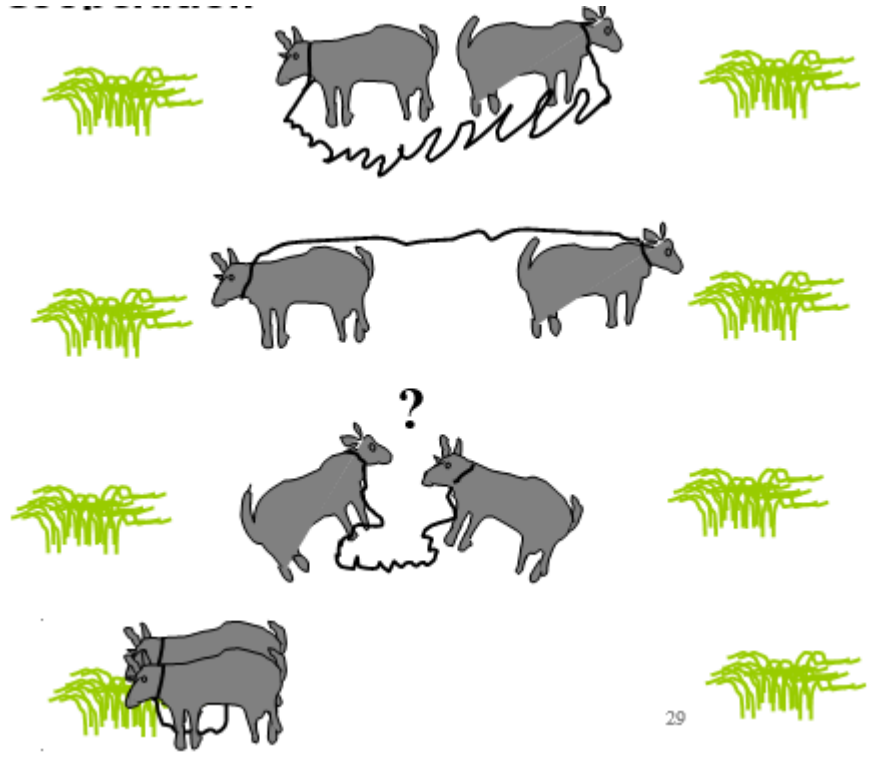
Lion and Buffalo: They often respond by Force when faced with a conflict

The ostrich: Buries its head in sand & refuses to face reality or admit there is any problem

Reponses to conflict depend on perceptions and attitudes. This demonstrates the Flee response



The cooperation goats: This illustrates the Flow response



About the diagram:
The diagram above tells us that the people we develop a misunderstanding with are not necessarily the problem and so we should shift our eyes off them and rather work with them to understand the problem and deal with it jointly. The goats in the diagram did not look at themselves as the problem but how to eat the grass as seen in the third drawing. Therefore, in our mediation work, let's help the conflicting parties focus on issues but not each other as problems.

Responding to Conflict and Violence (***fight, flee, flow)*** depends on individual perceptions, background and aptitudes.

Below are some of the lessons:

- That conflict when perceived as a means to an end becomes aggression
- That conflict when seen as a fight ends in destruction
- Avoidance only lets the problem grow bigger
- That conflict when perceived positively and constructively becomes a means to resolve problems and leads to development and thus relationship and community.

Whenever we are faced with a conflict in any relationship with others, the most common reaction to that conflict is either to **fight** back, blow for blow, or **flee,** run away or pretend the conflict does not exist.

But there is a third way, a positive acknowledgement of the existence of the conflict.

We must therefore learn to **flow** with the conflict, engaging positive responses to it in order to transform it.

Session 5: Spectrum of Conflict Handling Mechanisms

Objectives **To understand the various conflict handling mechanisms and their role in conflict resolution**

(this could be explained through live demonstrations for easy understanding)

Negative ← → positive

0% FORCE	20% ADJUDICATION/ LITIGATION	50% ARBITRATION	70% NEGOTIATION	80% MEDIATION	100% RECONCILIATION
- Increase Conflict	e.g. family situation, court of law -Punishment -No choices -Enforced -Legal resolution -3rd party decides -Parties have a chance to tell their story	-Binding -Choice -Outcome -Choice of lawyers/judge	-decision-makers are the parties themselves -Parties tired -Must talk at table	-no fear of parties losing face -Third party has no decision, judgment	- we do it our selves
→	→	→	→	→	→

Session 6: MEDIATION

Objectives:

To understand mediation as an approach to conflict transformation

To equip participants with practical skills, steps and techniques essential for mediation – with a focus on customary land conflicts.

6.1. What is mediation?

- Mediation is a conflict transformation process where an **impartial third-party** assists/facilitates two or more disputants to seek **a mutually acceptable** solution to a conflict.
- The process of mediation is modeled along the negotiation process, the only difference being that the parties to a conflict bring in a third party to help them reach an agreement satisfactory to all
- When direct problem-solving or negotiation becomes difficult, we have to sometimes call in another person: a "third party" (mediator).
- Mediation is one of the Non-violent Conflict Transformation Approaches. The process is **voluntary** and **confidential**.
- A mediator does not impose a solution on the participants.
- Mediation is a win-win process.

6.2. Styles of mediation (Updated March 2015 by John Stephens 2016)

Objectives: To provide participants the various styles they can employee while conducting mediation

Facilitative mediation:

- The mediator assists the parties in reaching a mutually acceptable resolution by assisting parties to communicate, providing a process within which they can understand interests and concerns, and explore and evaluate options.

Evaluative meditation:

- It is modeled on settlement held by judges.
- The mediator usually assists the parties in reaching resolution by pointing out the weaknesses of their cases and evaluating what a judge would likely do in that case.

Transformative mediation:

- Is based on the values of empowerment of each of the parties as much as possible
- The transformative mediator follows the parties' interests in how they would like the process of mediation to be
- The potential for transformative mediation is that any or all parties or their relationships may be transformed during mediation.

Note: For the purpose of this manual, the emphasis and focus is on facilitative and transformative styles of mediation

6.3. Shuttle/caucus mediation

Possible icebreaker question:

"How would you mediate between a daughter in-law and a father-in-law?". Or how would you mediate between two communities where tensions are high and no longer see each other eye-eye"

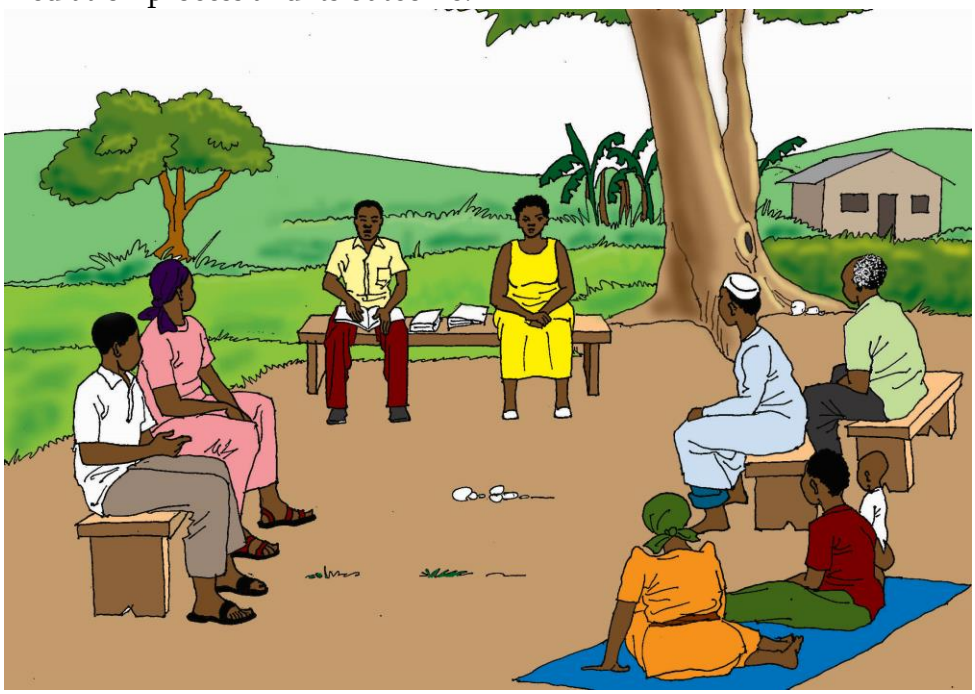
- Sometimes it is difficult for parties in a conflict to come together.
- Shuttle mediation offers a "shuttle" process where a mediator first meets each party separately
- It is sometimes referred to us Caucus mediation.
- The mediator needs to understand each party's story, perspective, interests.
- In understanding the one's interest, it is important to ask questions like "what do you what to see change? What does "success" in this mediation mean to you?. In practice the mediator has to move back and forth from one party to another receiving offers and counter offers until an agreement is almost reached.

- In Uganda caucus meetings are common among members of parliament of political parties - ahead of discussion of contentious issues in parliament.
- Shuttle mediation can also be used as a pre-mediation phase to build confidence among the parties before bringing them together for the actual mediation.

Team mediation/co-mediation

Co-mediation is a mediation involving multiple mediators - usually two

They can complement each other by gender, personality, culture, professional background or other ways in a manner that can improve the quality of both the mediation process and its outcome.



Co-mediation can be done in at least three ways:

1) front-seat/back-seat driving,

2) division of labor

3) taking turns

Advantages:

- The approach can bring more knowledge, more resources, and more control to the mediation setting
- A gender balance for example a male-female team provides a role model interchange for the couple. This lessens the perception of possible bias if it is one gender.
- Co-mediators/teams also provide checks and balances on one another that can ensure that all issues are adequately addressed.

Possible challenges:

- Can increase complexity with possible miscommunications among the team: Disagreements or Incompatibility

When conducting as a team/doing co-mediation, meet with your co-mediator/team before the mediation begins. You need to discuss how you will work together. Divide and agree on the tasks and roles.

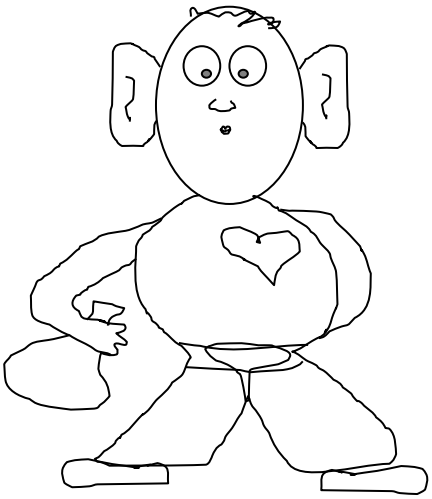
6.4. Characteristics of a Mediator

Objective: To help participants clearly understand the characteristics mediators ought to have

Characteristics of a Mediator

- ♥ Objectivity
- ♥ Supportive
- ♥ Non- Judgmental
- ♥ Asking Questions
- ♥ Does not own the Problem/Solution
- ♥ Leads the Parties to come to/dialogue and Common Understanding
- ♥ Facilitates a Common Agreement

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



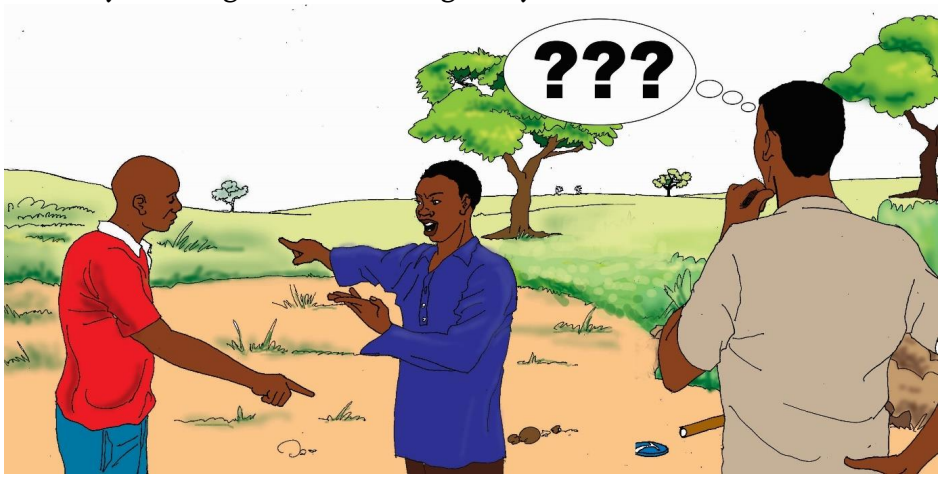
6.5. Principles of Mediation

Objectives: To understand the guiding principles of mediation in relation the mediator (a trainer can engage participants to understand the principles in the local language)

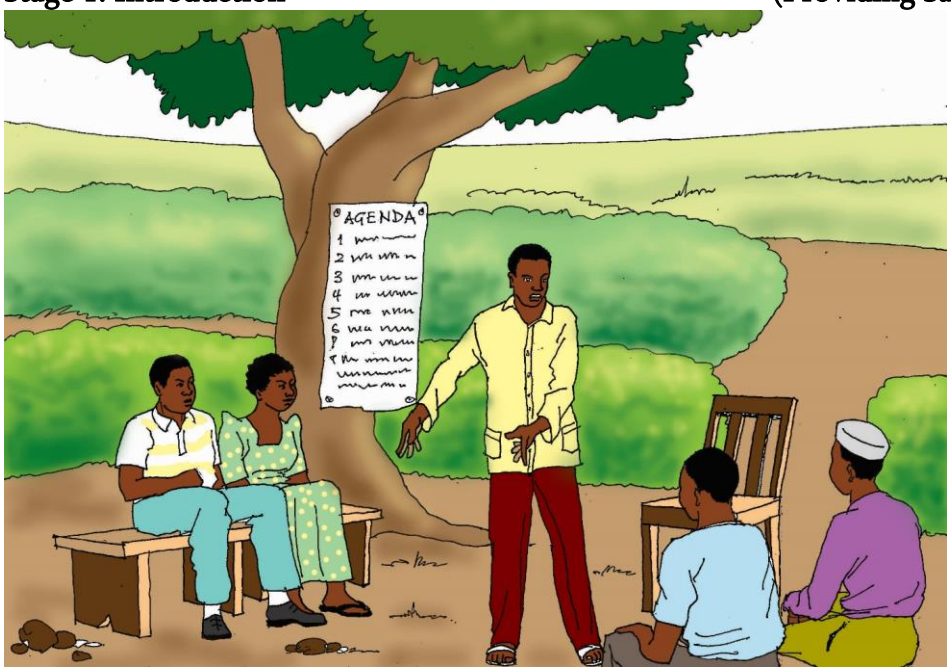
Principles of mediation (summary)	In local language	Notes/comment
Voluntary		
Neutrality/ impartial		
Confidentiality		
Mutual acceptance		

6.6. Stages of mediation

Pre-Mediation: Preparation; meeting the conflicting parties, carrying out an analysis - getting to understand the issues, the parties, the root causes, possible threats, the impact; laying strategies, organizing resources; building trust, plan for the meeting, etc.
Basically this stage involves doing analysis



Stage 1: Introduction **(Providing Safety)**



In this stage:

- Greet, seat, and introduce the parties
- State goals, emphasizing that this is a voluntary process for parties to reach a mutual agreement

- Describe the mediator's role (to help the parties talk, not to judge or give answers)
- Describe the process (each side will speak in turn: then both will agree on the key issues, etc)
- Gain commitment to the ground rules (not interrupting, confidentiality, respect, etc)

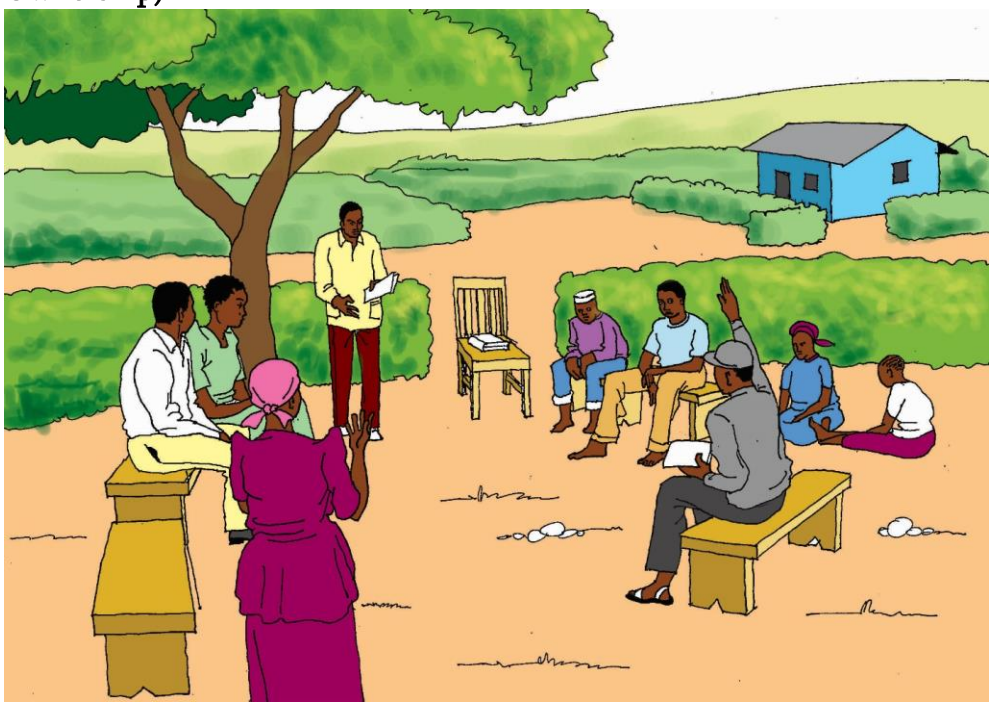
Stage 2: Storytelling **(Offering Understanding)**



In this stage, the mediator guides the parties into presenting their issues one at a time, exploring issues to clarify remaining questions. It is the time to identify interests, needs and fears

- Get A's perspective on the situation.
- Get B's perspective.
- Listen for issues of common ground

Stage 3: Problem solving and exploring issues, interests needs and solutions (Building Ownership)



In this stage:

- Clarify the issues
- Identify common concerns and establish common ground
- Parties work on one issue at a time (usually start with the easiest to resolve)
    - Maintain control by using a list of the issues and interviewing each party in turn
    - Move away from the parties' demands and focus on each party's underlying interests
    - Parties generate options. Invite them to suggest their proposals for resolution. Do you don't have to do immediate evaluation of each proposal.
    - Evaluate the options together, one at a time, after all the possibilities have been suggested
    - Select options most acceptable to all parties and plan implementation
    - At all times, look for opportunities to:
        - Point out areas of commonality and positive intentions
        - Acknowledge hurt, anger, and frustration

- Suggest that parties speak directly to one another (direct dialogue)
- Affirm constructive moves and highlight progress made

Stage 4: Agreement and follow-up **(Seeking Sustainability)**



At this stage:

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

Monitor the implementation of the agreement, provided that conflict parties agree.
Follow up on the implementation of the agreement, provided that conflict parties agree.

6.7. Mediation - additional case studies (to annex I).

Objectives: To enable participants, get to practice and apply the mediation skills learnt

6.7a. The Kampswahili Muslim -Christian role play

- In Kampswahili, a Muslim has taken a Christian brother to police for slaughtering a cow at home – instead of letting him (a Muslim) to slaughter
- The law is not clear of what charges to charge the Christian. However, the general practice is that Muslims are the ones to slaughter animals.
- The Christian brother says if the Muslim brother wants to slaughter animals at home, he should also slaughter pigs as well.
- Each of the brothers insist that the other should leave the family land and find another place because of the other's ill behavior.

6.7b. The Boroboro family land distribution matter

- In Boroboro, Mr. Tabu aged 80 has 2 wives.
- The first wife is barren. The second wife has 10 children – 5 girls and 5 boys
- The first son has sold all the cows at home to "Acholi Kuc Ltd" to pay bride price
- The other boys are angry with the first son's act and have also sold half of the family land to Alakara Ltd
- The first wife is worried that the sons may sell even the remaining land. She wants the husband to distribute equally the remaining land between the wives.
- The second wife insists that the land should be distributed among children
- The sons insist the land should be distributed among the sons
- Mr. Tabu insists the land is his and the children should buy theirs if they want land. He has even chased those the children sold the land to.

6.7c. Scholarship offer

- In Ber-Ber village the wife of Biasara-man has got a master scholarship to study in USA. This has always been her dream
- The husband is against the wife's study in fear of leaving him alone with the children. He also silently expresses fear of having a more educated woman
- The wife's father is also resisting the offer in fear that the husband may divorce his daughter yet men in the area fear marrying educated women
- The wife's uncle advises her to go for studies and tells her that if the husband divorces her, she can get another husband.
- The wife however is concerned about securing the land and house she acquired together with the husband – she wants assurance over this before she leaves for studies.

6.8. Advantages and challenges of ADR/Mediation

Objectives: To enable participants, get to understand and appreciate the mediation benefits and challenges

Alternative Dispute Resolution (ADR)

- Alternative Dispute Resolution (ADR) refers to mechanisms of resolving disputes other than litigation/Court. Such mechanism includes arbitration, negotiation, and mediation
- Others include conciliation and reconciliation
- Mediation is one of the key ADR mechanisms



Advantages of ADR/Mediation

- Formal mediation is relatively simple.
- Settlements reached in mediation are more agreeable to both parties than court judgments.
- In comparison with the formal mediation, the customary justice process is quicker, cheaper, and often promotes stability in society.
- Its process is more flexible, context specific, use simple (non-technical) and local language, and is easily accessible.
- It is also more affordable, and able to provide tailor-made solutions suitable to parties.
- Mediation is good at rebuilding and sustaining relationships between parties minimize re-occurrence

Challenges:

- Customary / traditional mediation systems have been criticized for being "gender blind
- Depending on the stage of escalation of the conflict, mediation might not to be able to applied immediately.

Session 7. Customary land mediation and ADR mechanisms (focusing on Teso, Acholi, Lango and Karamoja)

Objectives: The understand the contextual mediation is customary land tenure setting in Teso, Acholi, Lango and Karamoja

7.1. contextual and analytical pointers

- Uganda is experiencing a number of land related challenges.
- Areas like Teso, Acholi, Lango and Karamoja that are dominated by customary land tenure setting are among the most vulnerable areas to land disputes
- In the context of customary land tenure, the existing laws tend to be weak and contextually inappropriate.
- Although formal land laws and redress mechanisms exist, they are not effective in addressing the often-complex land and resource issues.
- As a result, land and other natural resource related tensions are increasing rapidly with tendencies of parties resorting to violent attacks as a means of protecting their interests on land.
    - Land conflicts remain complex and fragile – characterized by high interests and emotional attachments.
    - With land being a key source of livelihood, it is important that mediation interventions are conducted in the most effective way possible to avoid inadvertent escalation or emergence of new conflicts.
    - Land access is also particularly more difficult for vulnerable groups like women, widows and children - in a system where land is held and controlled by the clan through male elders.
    - In responding to the above, mediation is an essential tool and a better alternative to handling such conflicts.

    - The ADR used are mainly customary/traditional methods that are embedded in the traditional systems and customs.
    - In places like Teso, Acholi, Lango and Karamoja, there is a high level of legitimacy and confidence in the traditional systems. In most cases traditional redress mechanisms are usually the first point of reference.
    - The role of elders, clan leaders and elders is key in customary mediation processes - for example under the traditional systems of Akiriket in Karamoja, Ker Kwaro in Acholi etc),

7.2. Case study: The Adong and Opio land dispute story – customary setting

Objective: To enable participants get to practice and apply the mediation skills learnt in a customary land conflict and general setting

See annex 1:

Some of the key elements in the story:

Multiple parties, culture, multiple issues, vulnerable groups, land as a root and driving force, relationships, traditional institutional framework, referral pathways.

Key issues to look out for in the exercise:

- Positions of the parties, factors that underlie positions, underlying interests
- Stakeholder diversity
- Opposing and restraining forces
- Structural violence issues (including cultural violence and gender violence exhibited in land ownership, distribution, inheritance, etc)
- Bases of authority
- Spoilers
- Resources, influence
- Marginalized groups (especially the most vulnerable individual

Session 8: Particularities of land and resource conflicts in the mediation process

Objective: To equip participants with skills to understand and deal with the unique complexities in mediating land resource conflicts

Issue	*Notes*
Issue of trust	Land agreements are difficult in the absence of mutual trust. Yet trust is one of the main prerequisites for successful mediation.
Cultural and gender differences	Culture tends to shape our perceptions, attitudes, behaviours, and outcomes.
Issue of authority/power asymmetry	Different levels of power and influence
Spoilers	Certain stakeholders may prefer "no deal" as the outcome. These can be spoilers.
Mediation involving large groups.	Land conflict issues tend to be owned by a whole family or community
Multi-level mediation involving a diversity of stakeholders	Land issues often involve multiple parties with different needs and interests and with multiple issues
Issue of mandate and representation	Right parties not at the table/Is the decision maker/s on the table?
Issue of time	Land conflict mediation often drag on for several years. This is worse if no one feels any time pressure.
Irrational expectations	Agreement is hard to find when one or more parties have expectations that cannot be fulfilled. Often conflicting parties view a mediator as an expert arriving with "a magic button" for a solution. Each party also tend to assume his/her positions will be realised and gain the whole piece of land without compromising.
Unwillingness by some parties/getting the other	Tends to be more common in land related mediation - influenced by strong BATNA

side to the table.	
"Forum shopping".	Taking dispute before various institutions (family, customary courts, legal authorities, local authority working in the domain of land) at the same time
Interference of some de facto authorities	"Power from above"
Anger and strong emotions attached to land	"Land is more that just a commodity"
Adherence to the agreements	Is not always guaranteed especially when new actors such as children, relatives come out to oppose the agreement at a later stage. May not be legally binding
Information asymmetry.	Knowledge of land issues by one/some of the parties and ignorance by the other

Session 9: Mediation with a gender lens

Objectives:

To ensure gender sensitivity in mediation processes. To appreciate why it is important to consider gender issues in the mediation process



Key pointers

- Gender is a socially constructed definition of women and men. It is not the same as sex (biological characteristics of women and men) and it is not the same as women.
- Mediators or trainers need to be mindful about gender considerations because issues of land ownership are very contentious when it comes to the family context.
- There are cultural perceptions which put women and girls at a disadvantage when it comes to land control and ownership.
- There are issues of brother to sister relations, husband to wife, then the case of polygamous marriages, clan land ownership among others. Such issues may be internally within one party (family) but affects the mediation process with other parties.
- A mediator should be mindful that even during mediation it could spark heated debates to the extent of disrupting the process, if not well handled (sensitively).
- This is because some of the participants are culprits; either they have issues with their spouses, sisters or brothers, so it needs sensitive handling by the trainers.
- For example, in the context of customary land, there are social expectations like; women and girls are not supposed to be heirs of land

A mediator should guide the parties to ensure that the interests of all sexes are catered for

There is need to use a **Gender approach** that focuses on women and men and not only women

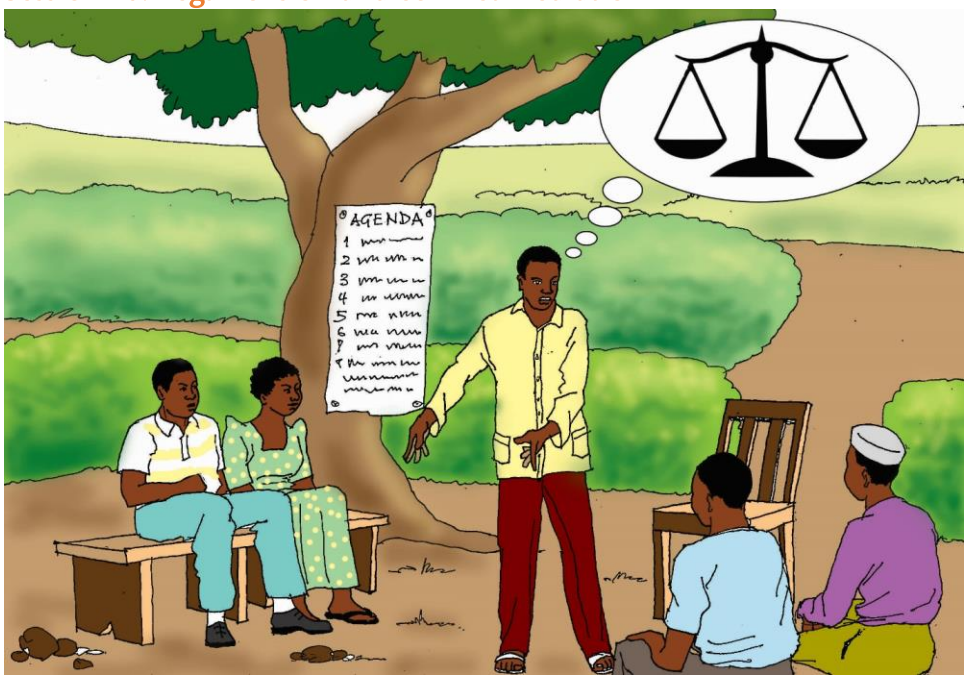
From the legal point of view, there are Legislative Frameworks that relate to gender. For example, Article 32 and 33 of the Uganda Constitution 1995 (as amended), and The National Gender Policy indicates that the rights of both women and men should be respected. A mediator should be aware of such basic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

Right from the beginning, a mediator must be cognizant of biased practices that influence decisions in mediation - in a way that disadvantage some gender. A

mediator must also be self-aware to ensure that his/her gender does not biase the way he/she guides the mediation process. Example, when:

- A family of the deceased decide that the heir be the oldest son or sons – regardless of whether a girl is the first born.
- A family agrees on dividing land among boys alone

Session 10: Legal lens of land conflict mediation



Objective:

To understand the legal provisions with regard to ADR/land dispute resolution processes.

The legal lens helps in ensuring that the mediation process is not conducted on a way that contradict existing laws OR inadvertently violate the rights of others.

As noted:

- Traditional dispute mechanisms are legally recognized as one of the mechanisms of Alternative Dispute Resolution (ADR) in Uganda.
- The 1998 Land Act (Art. 88(1), allows the use of ADR mechanisms such as customary dispute settlement and mediation by traditional authorities.

Relevant legislations

- Constitution of the Republic of Uganda 1995, The Land Act and 1998 amendments plus the National Land Policy.
- However, their application is very challenging due to a number of realities.
- There are also Legislative Frameworks that relate to gender. For example, Article 32 and 33 of the Uganda Constitution 1995 (as amended), and The National Gender Policy indicates that the rights of both women and men should be respected.

Objective 111 Under National Unity and stability

i) All organs of State and the people of Uganda shall work towards the promotion of national unity and stability

iv. There shall be established and nurtured institutions and procedures for the resolution of conflicts fairly and peacefully

XV Recognition of the role of women in society:

For example:

If the general consensus is that "a widow should vacate a certain piece of land because it was a husband/clan who owned the land" a mediator can advise the parties on the possible ways of how this matter would be decided according to the law.

What happens where mediation fails- alternative referrals / Referral pathway

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

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

Session 11: Communication in Mediation

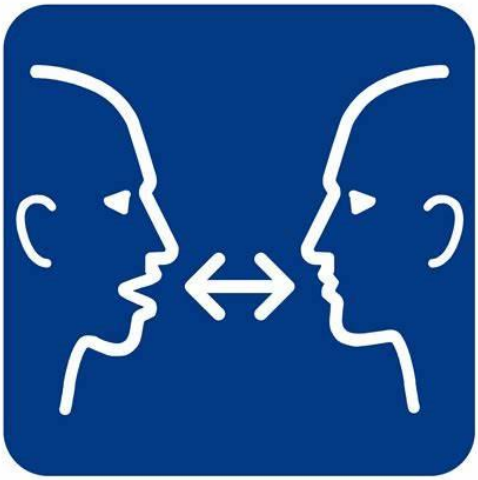
Objective: To ensure active listening and sensitivity in the mediation process

What is communication:

Brainstorm question; **drowning woman and boy kid on the street**

There is a woman who is alone and drowning and screaming calling for help in the middle of the lake. There is also a street kid quietly holding a plate in the middle of the market. Who of the two is communicating and why?





Communication exercises:

1. Good and bad listener
2. Chinese telephone

It is believed that where communication stops or breaks down, conflict starts.

Effective communication involves:

a) Sending the message
b) Receiving the message
c) Feedback

Active listening is key in communication

Elements of active listening includes / Some of the signs that show someone is listening

Body posture	Be physically open relaxed, facing the person with your body, leaning slightly forward
Facial expression	Friendly and relaxed at first, show that you are concerned about what they are saying and feeling
Eye contact	This involves looking at the person's direction so that your eyes

	meet reasonably often
Gestures	Nod your head to show that you are really understanding
Physical proximity	Try to keep a comfortable space between you and the other person

11.1. Characteristics of a good/bad listener:

A good listener	A bad listener
Looks at the person speaking Reacts responsively Pays close attention to the speaker Does not interrupt the speaker Is sensitive to the speaker Does not rush the speaker Asks appropriate questions Is emotionally controlled Has no hidden agenda Tries to understand the person Showing interest Say "yeah," "uh huh," "I see," etc (shows interest and listening to hear more	Always interrupts Jumps to conclusions Makes moral judgments Keeps completing the speaker's sentences Is always writing and taking notes Changes the subject Does not care Is impatient can't control emotions Avoiding eye contact Fiddling with your watch, finger nails, cell phone Looking asleep Looking bored, yawning

Pay attention to the NON-VERBAL communication

55% - 65% of communication is non-verbal.

Chapter 12: Training of Trainers (ToT) Skills

Objective: To enable participants, gain the necessary knowledge and techniques to apply and enhance their training work.

The techniques and approaches to conducting a training can be summarised in 4 different stages. These are before the training, at the beginning of the training, during the training and after the training.

Before the training, a trainer needs to:

- Understand the objectives of the training. And nature of training (e.g ToT)
- Understand the audience; context, who they, how many
- Need assessment survey; learning continuum, skills needed, expectation
- Check if is a co-facilitated training

- Develop a guiding approach; participatory, adult learning, facilitation as opposed to lecture, etc. A trainer should endeavor to apply the adult learning principles as much as possible
- Develop relevant tools and methodology
- Tailor-make content manual
- Master the content

This process also includes ensuing that one has a tool-kit with all the necessary materials. Examples of tools/ materials could include: Pens, Books, Flip charts, Flip stand, Markers, Masking tape, Pins, Off-cut papers, Manilla paper, Handouts, Case studies, Hard copy of slides/manual. Others could include the Guiding Agenda, Attendance list etc. It is helpful to have a check-list of items/things needed.

1. **At the beginning of the training, a trainer need to:**

Arrive early

Make a seating arrangement e,g U-shaped

Do a community building session. Activities could include; Prayers, anthems, songs, and Ice breakers. Others activities could include; Introductions; House hold duties/course leadership, shelving titles, expectations (and response to expectations); Packing lot; Learning continuum (if not done during pre-training); Introduction to the training and purpose; Welcome remarks/Official opening (where need be).

2. **During the training, a trainer need could facilitate through a combination of:**

- Brain-storm, Power-point, Group work and plenary, Case studies, use of eexamples (preferably familiar ones), Story-telling, Pictures, Short videos, Use of in-door and outdoor spaces; Role-plays and simulation exercises; Experience sharing and appreciative inquiry; Recaps, etc.

Furthermore, a trainer should regularly; Reflect on objectives and expectations, use energizers, Keep engaging audience, Proper body language (including voice tone); Use clear language; do Check-ins; Be mindful of his/her communication (insensitivities, jargons etc).

It is important that a trainer is confident, understands the content and also avoid reading directly from his/her notes all the time.

Other skills to incorporate during training:

Charting: Avoid heavy-content slides, Chart only main points, make clear and visible fonts.

Use colours that can be seen from a distance (e.g black and blue). Can use shouting colours only for bordering, underlining, drawing

Room management: Be aware of your position, Use of space, Control the audience, mind your listening position

When working as a team/ co-facilitation, it is important to plan together. It is also important to; Check-in with co-facilitator regularly; Understand your strength and weakness; Divide roles, Use signals and do Debriefs

Deflection is also important when facilitating a training: You don't have to be the "expert" in the room

Transition: Provide clear transition between sessions/ Or transition to a co-facilitator.

When using PowerPoint presentations, it is preferred to use the "Presenters slide" format. It is also important to craft your opening, middle (content) and end. When using pictures, relevant and action photos/speaking photos are most preferred. Also, it is better to use animations that match the audience. Some animations styles might be irritating to adults.

3. At the end of the training, a trainer needs to:

- Check the parking lot
- Re-check the objectives
- Conduct a course evaluation/satisfaction survey
- Create room for closing remarks/Official Closing (where need be)

4. After the training, a trainer could (in consultation with the organisers):

- Make follow-up messages
- Share handouts – if need be
- Do a survey on application of the skills learnt
- Do 0utcome harvesting – attributed to the training

Annex 1: **Part A**

Customary mediation -*The Adong and Opio land dispute*

1. The land belonged to Adong's father – who died when she was 5 years
2. Opio (Adong's paternal Uncle) comes with his son Oria, inherits Adong's mother, and produce Toto
3. Adong (now 18 years) sells part of the ancestral land to Tamu-Tamu Ltd to get school fees
4. The clan is disappointed by "foreigners" settling amidst them. Says "our identity is going"
5. Opio and Adong fight and Adong cuts off Opio's finger. Police arrest Adong
6. Adong is released after 5 years. Opio, approaches Adong demanding "I want my finger back"
7. Oria says he has seen Adong sharpening a knife and that she is planning to attack his father.
8. Oria says Adong should be chased from the land for her "un-cultural" behavior of fighting her father. Some clan members feel the same. He also claims he is the rightful owner of the land as the eldest son
9. However Toto advises Oria "remember to return where you belong"
10. Adong is worried she will not have where to be buried – since she is not married
11. Adong approaches an elder who reminds her "land belongs to the clan"
12. A church leader intervenes to ask who the rightful owner of the land is – Adong, Opio, Oria or Toto, - but is told by the clan leader to go and handle church matters instead

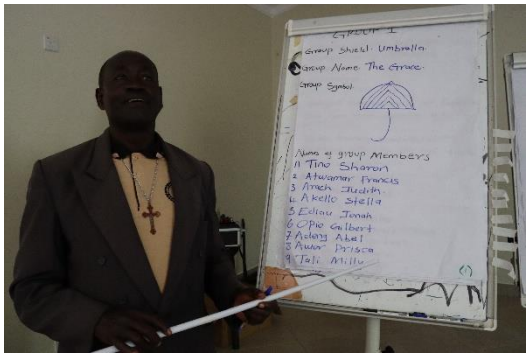
New facts – Part B

1. *Tamu-Tamu limited has sold the land to an investor called Locan pe nino and the land title is in the names of Locan pe nino.*
2. *Recently it was discovered that the land in question has gold and NEMA has conducted an environmental impact assessment and approved exploration of gold*
3. *Government says it is willing to compensate the rightful owner of the land at a market rate*

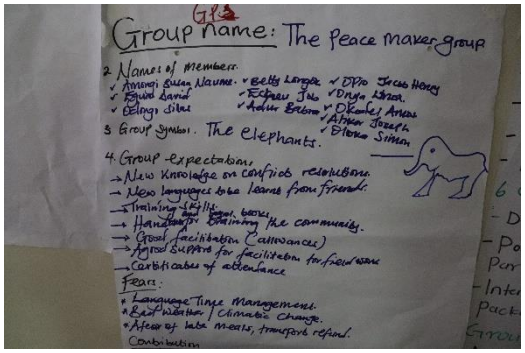
4. *Half of the land is on a hill with forest cover and National Forestry Authority claims it should be the one to be compensated.*
5. *Adong reported a case of land grabbing by Opio to police 5 months ago but investigations are still ongoing*
6. *Meanwhile Toto filed a case to police accusing government of land grabbing*
7. *The clan claims ownership of the land but Opio insists he is the sole owner.*
8. *'Team No Sleep" has intervened to reconcile Adong and Opio but Oria is blocking any efforts of reconciliation.*

Annex II: Gallery

Community building plenary

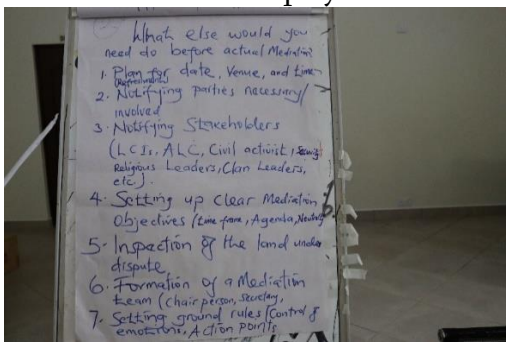








Reflections and role-plays on mediation case study

















Group exercises









Group roleplays on mediation









Outdoor reflection and learning exercises




Energizers




Practicing training skills




Group photo and closing remarks



