

Land Conflict Mediation

In Acholi, Karamoja and Teso

THE PRACTITIONERS' GUIDE



Standing Mediation Committee
(SMC) 2021

Acknowledgement

The production of this Practitioners' Guide has been an effort of many stake holders and more so of women activists to address alarming challenges faced by communities to resolve their land conflicts. The Interest Groups (IG) from the three Sub Regions of Teso, Karamoja and Acholi are supported by GIZ CPS in their work on transforming conflicts related to land. These IGs are leading contributors to the production of this guide as it is responding to their expectation to support communities in land dispute resolution.

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Land Conflict Mediation in Acholi, Karamoja and Teso

The Practitioners' Guide

Background

In 2014, GIZ CPS presented a report on findings on land conflicts in Teso and Karamoja in the Sub Regions of Teso and Karamoja during two Multi-Stakeholder Meetings (MSHM). In the meetings key land conflict areas in Teso and Karamoja were identified.

Individuals, CBOs, NGOs, Government Institutions and Faith Based Institutions were asked to register their interest based on the identified conflict issues. Land conflict areas in Teso included conflicts around borders, settlement and resettlements, women land rights, customary land, institutional land, dual land management and natural resources.

Land conflict areas in Karamoja included grazing areas, conflicts around mining areas, border land conflicts, formal land management conflicts, traditional land management conflicts and conflict around protected areas. In 2020, Acholi Sub region was brought into the IG process focusing on environment and protected areas, large scale investments as well as women land rights as well as inter and intra clan conflicts.

Capacities of IGs to conduct effective and quality intervention have been developed especially in areas of communication, fact finding, land management and **Alternative Dispute Resolution (ADR)**. To support IGs working with mediation and ADR teams to transform land conflicts the following guide was developed.

Introduction

This Practitioners' Guide (PG) is an initiative of Standing Mediation Committee (SMC) with support from GIZ CPS advisors. It was conceived in 2019 from outcomes of Interest Groups intervention in their efforts in Land Conflicts Transformation in Teso, Karamoja and Acholi to respond to an outstanding community demand for Land Conflicts Mediation.

This guide is part of the processes initiated to support Land Mediation Committees within existing community structures and those that may be formed in the future to intervene in land and other resource-based disputes. The book will guide the community ADR structures on what conflicts they may mediate on and which ones they may refer to other authorities.

Where mediation is successful, parties become happy and can express it by dancing. Practitioners can participate in celebrating a successful mediation and they can as well join the dance. In Karamoja, Teso and Acholi this is common.



The Guide contains a chronology of the stages and steps involved in the mediation process, basic methods and skills that a mediator needs to have, an appendix of examples of important ADR forms like the dispute intake form, actions form, referral and feedback forms, consent agreement forms, follow up forms, and references to other resourceful documents.

The book is purposed to guide mediation practitioners in the process of conflict intervention. The Practitioners' Guide is simplified for use by individuals or institutions that may have interest in intervening in land conflicts in any of the three Sub Regions.

The Mediation Concept

Definition of mediation

Mediation is a method of dispute resolution that involves neutral third party who comes in to support conflicting parties to negotiate and come up with a resolution to their conflict. A mediator (third party) must be chosen and accepted by both parties in a conflict. The mediator can be any person who is trusted and asked to take on the responsibility and should be knowledgeable and skilled in mediation.

A good practitioner is able to make conflict parties listen to each other, ask questions and interact peacefully so as to agree on a common position amicably.



A mediator should have some of the following qualities among others these are being; objective, impartial, neutral, supportive, nonjudgmental, not corrupt, compassionate, patient, not self-centered and observant. It also involves listening more and talking less, being wise, empathetic, approachable, able to shock absorb heat and tension, and being credible.

A mediator is required to ask questions, facilitate dialogues among the parties, encourage common understanding, facilitate a common agreement and therefore should not own the problem nor the solution during mediation.

Types of conflicts that a mediator should not mediate:

When not to mediate on conflicts:

- When the issue is already in Court. You will need a Court permission to go ahead with the mediation. The conflicting parties will have to call off the file from Court and request for the case to be mediated customarily/out of Court.
- Criminal matters for example defilement, murder, assault, etc. must not be mediated.
- Very complex situations that might involve the burning of houses, destruction of property, security issues. A mediator must secure his/her self-first. Remember, the problem is not yours as a mediator. You do not own the problem.
- When important stakeholders are not present.
Remember with mediation, you must involve all the actors/stakeholders.
- Where one party does not trust in mediation but prefers Court/adjudication and wants to go ahead with the Court proceedings.
- When mediator(s) have a conflict of interest in a particular situation for example mediating on family land dispute/land dispute involves a friend or relative/interest in a particular land.
- When the mediator's life is at a risk: When your life is being threatened keep off the matter to secure your life first before any other thing.

Types of conflicts that a mediator should seek for permission to mediate:

When the matter is already in Court: in such cases, a mediator will need a Court permission to go ahead with the mediation. The conflicting parties will have to call off the file from Court and request for the case to be mediated customarily/out of Court.

Mediation Stages

Stage 1: Pre-mediation

Pre-mediation stage is a three steps preparatory phase to get ready for the actual mediation sessions. In this stage the practitioner does the following:

Step 1: Receiving and registering the dispute (refer to dispute intake form in appendix A)

When a conflict is reported, the mediator takes keen of the following details;

- a. Recording the date, time, place (when, and where the conflict took place).
- b. Who is involved in the dispute (name, sex, location of complainant(s) and the respondent(s)).
- c. Type of the conflict (is it civil or criminal in nature, a land conflict, struggling for property, domestic violence, defilement, assault, malicious damage, trespass, etc.?).
- d. Who else is/are involved in the conflict (who are the witnesses/who else has/have interest in it?).
- e. What steps have been taken to resolve the dispute? (any intervention so far done and by who?).
- f. The reporters' fears about the conflict (what threats are there, if nobody intervenes as required by the reporter/complainant?).
- g. When does the complainant want an intervention to be made and why?
- h. Who else can be of help towards resolution or can be consulted about the conflict?

Step 2: Conflict analysis and assessment

Conflict analysis is conducted to establish basic information to guide in planning for conflict intervention (parties involved, time it has taken, magnitude of conflict, any attempted resolution, stakeholders involved/actor mapping, etc.).

In the conflict analysis the mediator listens to both disputants and any other identified parties and stakeholders to establish facts and background information about the conflict.

Note 1: Take note of the positions, interests and needs of the disputants (using the Onion Tool). Also take note of the core problem, its root causes and Effects (Using the Conflicts Tree Tool) and other tools like Actors Mapping to establish the stakeholders involved and their relationships.

Note 2: During conflict analysis, it is very important for the mediator to ask and exhaust the 5WH questions to get an in-depth understanding of the issues involved, timeline, stakeholders and the root causes of the conflict.

Box 1: The 5WH:

- What happened? What else? What has been done before? What should be done now?
- What threats, fears and opportunities exist?
- Where did it happen from? Is that all?
- When did it happen? How long ago?
- Who is/was involved (parties/stakeholder)? Who else is concerned?
- Why did it happen? For what reasons? What caused it?
- How did it happen (the process it took)? How are/were others involved?

Note 3: On assessment, if the conflict has a criminal aspect, please refer to the relevant authorities (refer to attached sample of referral form and referral pathway).

If the conflict does not involve a criminal aspect, then the mediator may prepare for mediation as follows:



Some of the conflicts that affect community relationships in Acholi, Karamoja and Teso are related to grazing of animals. Animals may get in to somebody's garden and destroy crops. Such is a civil conflict which practitioners can handle to create harmony and peaceful coexistence.



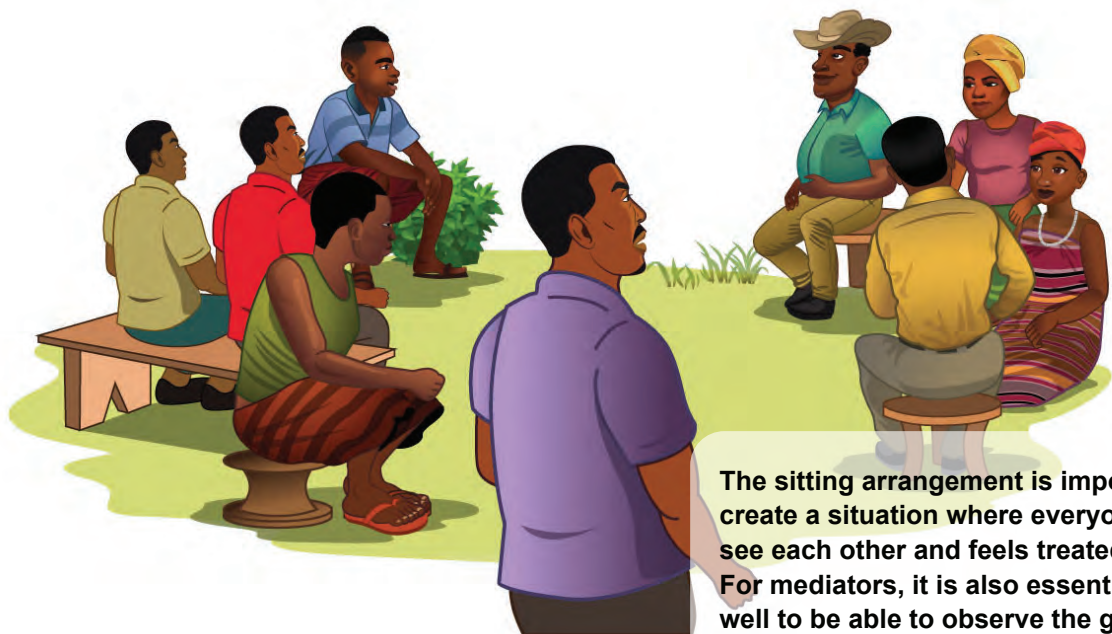
Violence against women and girls is very common in Karamoja, Teso and Acholi communities. If violence is happening and continues, you are advised to approach the police and health services to stop and document it. Only then can mediation be considered to deal with the root causes of the conflict.

Step 3: Preparation for a mediation meeting

This involves agreeing with the disputants on the next steps, informing the other parties about mediation, agreeing with the parties on who should be part of the mediation, mobilization of agreed participants, agreement on the venue, time; in case of team mediation, the lead mediator should mobilize the team, agree with them on the roles and responsibilities, for example, who will chair/moderate the mediation, who will take the minutes and how to come in/interject for corrections and supplements.

There should be a preparation of the team before the mediation and a debriefing after.

The later allows for better mutual understanding and learning. Here we also need to agree on the sitting arrangement depending on context and set up of the venue.



The sitting arrangement is important to create a situation where everyone can see each other and feels treated equally. For mediators, it is also essential to see well to be able to observe the group dynamics in case they may lose tempers or begin to confront one another.

- Making arrangement of the venue (set the agreed venue ready, clear on permissions, clear on security, check on possible interference, set the seats or sitting arrangement).
- Inviting parties and other identified individuals, groups, and officials with conscience of gender representation.
- Physical confirmation with the parties in case of some issues that may arise/scare them from participation.

Note: Before settling in for the actual mediation meeting, ensure that any unfriendly reactions (a lot of anger, hostilities, hatred, enmities) between the disputants is cooled down, to promote human safety and security during the mediation meeting.

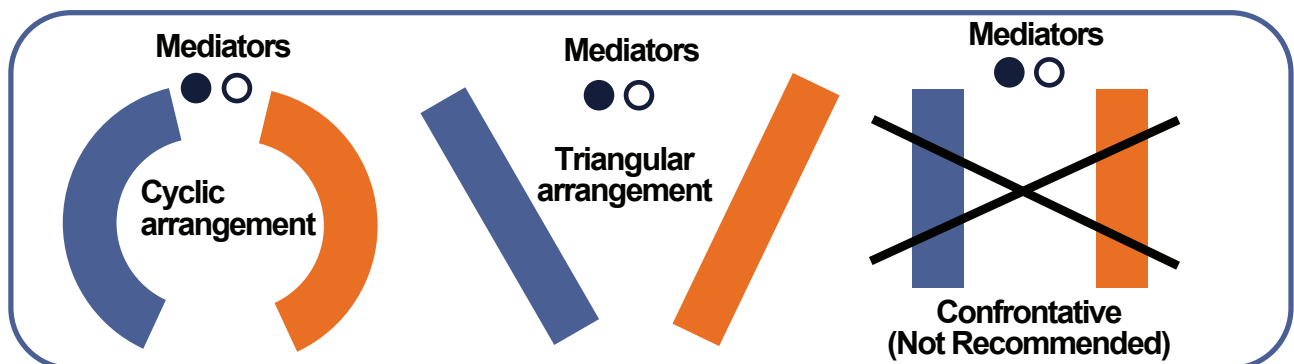
Stage 2: Actual Mediation

This is the stage at which the Practitioners conduct the actual mediation.

As mediators, they are to ensure the following:

Arrive at the venue early in time; avoid passing through any disputants' home, take caution of hand shaking with any disputant or actors in conflict, re-organize the sitting arrangement.

SITTING ARRANGEMENTS FOR CONFLICT PARTIES



Analyze the power relationships among the conflicting persons. If the power is imbalanced try to support the weaker person(s) to speak first, give enough time and help with formulations and the language.

Note: depending on the acceptance by the disputants, local leaders may be involved in the mediation meeting. Their involvement is however not a must.

This stage has five steps that the mediator must follow and they are explained below:

Step 1: Setting and Agreeing on the Agenda

Here the mediator(s) greet and seat the parties, set and agree on the agenda together with the parties involved in mediation.

Box 2: A sample of a Mediation meeting agenda

- Prayers.
- Introductions.
- Guidelines for the meeting by the mediator.
- Presentation of the conflicts (story telling) by the parties.
- Community inputs and discussions.
- Drawing resolutions/ generating settlement options.

Step 2: Introduction/confidence building

Here the mediator(s) introduces self and team (including name, position, area you have come from, why you are there);

- The mediator introduces the disputants and the other participants in the mediation and reassures participants of the safety of the chosen venue.
- The mediator reassures parties that they all matter to the mediation process and the success of mediation depends on each of them.
- The mediator talks about the purpose of the meeting and agreeing on Ground Rules.

Box 3: Ground rules – Do's and don'ts while in the mediation meeting

- **Respecting one another.**
- **Talking one at a time.**
- **No interrupting the speaking party.**
- **Respecting of one another's views/opinions.**
- **Keeping discussions within the conflict issues only.**
- **Avoiding confrontations.**

The mediator clarifies procedures: mediators only facilitate the process and support the parties in generating their own solutions. It is the conflicting people who must accept and sustain the decisions in the long run. They have the power and shall be empowered. This should be done before the parties begin any interaction with the mediator or with each other.



CHARACTERISTICS OF A GOOD MEDIATOR

- Big head for wisdom
- Large ears for listening more
- Big eyes for observation
- Small mouth to talk less

- Large heart for compassion
- Small hands for controlled movements
- Large bladder to sit patiently
- Large belt to be strong

- Big/Large legs to be firm/stable
- Ego container not to be self-centered

Step 3: Story telling

The mediator also gives word of encouragement to disputants and communities for example work cooperatively as partners and not opponents toward a settlement.

The mediator also gives word of encouragement to everyone to participate and especially to women to speak and support in generating settlement options.



The balance of power is a challenge in mediation. Mediators should help to ensure that parties meet on equal footing. Power imbalance can be seen, for example in difference in dressing and other status, symbols, as well as in the ability to speak in public. If the power imbalance cannot be resolved, the mediator should advise the weaker party to consider whether there are other ways of resolving the conflict.

Ask all parties if they are willing to proceed with the session and with you as a mediator/s. Do they understand the role of mediators and accept them to realize it?

Here the mediator guides the disputants to agree on who among them speaks first. In case the disputants fail to agree, the mediator writes numbers 1 & 2 on two pieces of paper and the disputants pick at random. Whoever picks Number 1 should speak first, narrating his/her side of the story, then the other follows.

Note 1: As a mediator ensure that equal time is given to both parties to narrate and exhaust their stories, and clearly tell them, and encourage them to speak with ease. Help to use respectful language. Intervene when people start to use harsh words.

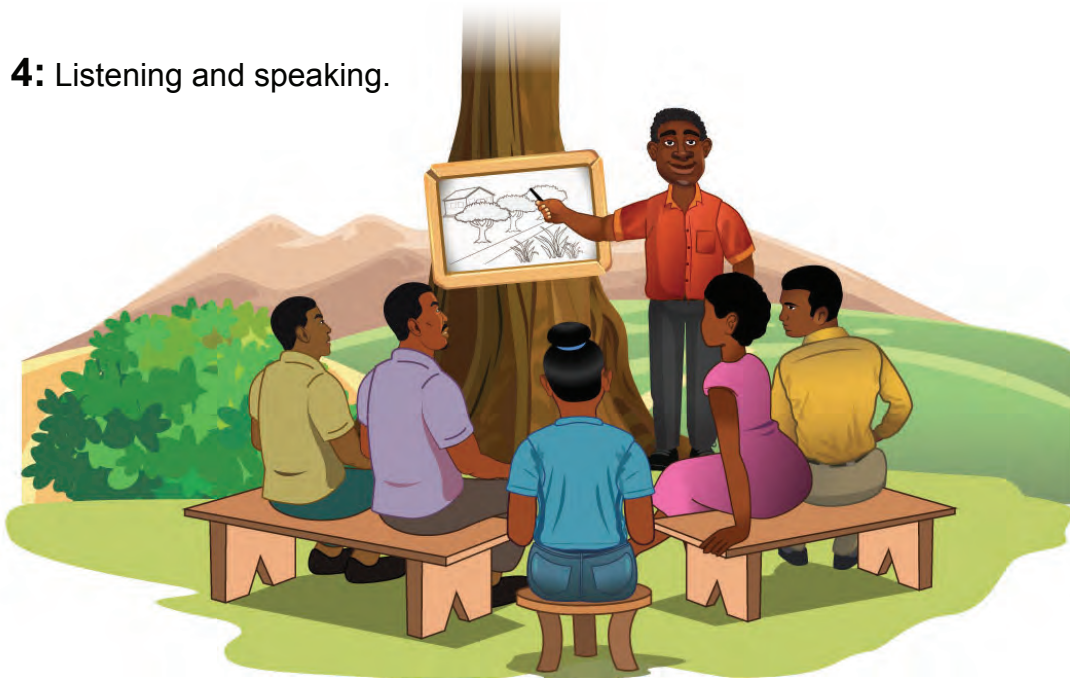
Take note of and capture all the issues narrated by each of the parties.

Paraphrase (re-phrase) each of the stories and ask questions whether what you heard is what the speaker meant. Seek clarity on whether they have exhausted their issues e.g. too; “Is that all you wanted to say?” “Do you want to add anything?”

Note 2: Paraphrase immediately after each disputant narrating their story.

Note 3: Be very observant of non-verbal communication and other behaviors and intervene before it gets out of hand.

Note 4: Listening and speaking.



The visualization helps (writing down or drawing) to explore the different issues in-depth and also helps for problem-solving.

Remind parties on guidelines during the process that:

- Each party can take the time they need to tell their side on the story.
- No one should interrupt, when someone is speaking. Only the mediator can do this, e.g. when language is inappropriate.
- Each person/party will have a turn to speak and tell their stories, problems, concerns and feelings.
- The mediator's role is to protect each person's speaking time and make sure that the person telling the story is not interrupted.
- As a mediator, write down the different issues to be explored in-depth for problem-solving and try to visualize them.

Step 4: Problem solving/generating settlement options/ exploring issues

After the stories have been presented, the mediator(s) allow open (but controlled) community inputs and discussions to gather more facts that may aid in generating settlement options;

Clarify the conflict issues; one at a time. Maintain control, focus on interests and needs for the parties, and not demands.

- **Keep the parties' discussions within issues identified so as to arrive at a resolution. However, if it becomes clear that the deeper root for the conflict is somewhere else, be flexible and allow persons to explore this further.**
- **Acknowledge hurt, anger, frustration, and other emotions.**
- **Help each party to understand their own and the others' needs by finding out the needs behind their feelings and getting a clear understanding of each other's interests.**
- **Identify common concerns and establish common grounds, mutual understanding and positive intentions.**



A boundary conflict is resolved, if the conflict parties have agreed and the boundaries have been demarcated by the planting of trees.

Help them try to find solutions for their future relationship;

- Support the parties to select and suggest their most acceptable options / proposals, and ensure that the options / proposals really respond and resolve the conflict issues.
- Once all options/proposals have been collected, evaluate them together with both parties, one option at a time.
- Let parties find their best answer. Support them to reflect the feasibility of this shared “solution”.

Note 1: Encourage disadvantaged persons (e.g. youth, women, persons with disabilities) to speak and support in generating settlement options.

Step 5: Agreement

The purpose of the agreement is to document the agreed options that aim at restoring relationships for sustainability. It is important to document the agreed upon resolutions.

- The agreement can be written or an appropriate ritual for Teso, Karamoja and Acholi can be practiced.
- However, it should be encouraged to document it in a consent agreement form (please refer to the sample of consent agreement form at the Appendixes).
- The agreement should be as specific as possible in order to avoid future misunderstandings which would lead to further conflict or resurfacing of the conflict.
- Emphasize on the areas of agreement by the parties.
- Review the agreement
- The mediator should summarize the agreement reached.
- Together with the parties the mediator needs to check if:
 - The agreed solution wording is acceptable by all involved parties.
 - The whole agreement is well-balanced and maintains balance in the parties' responsibilities.

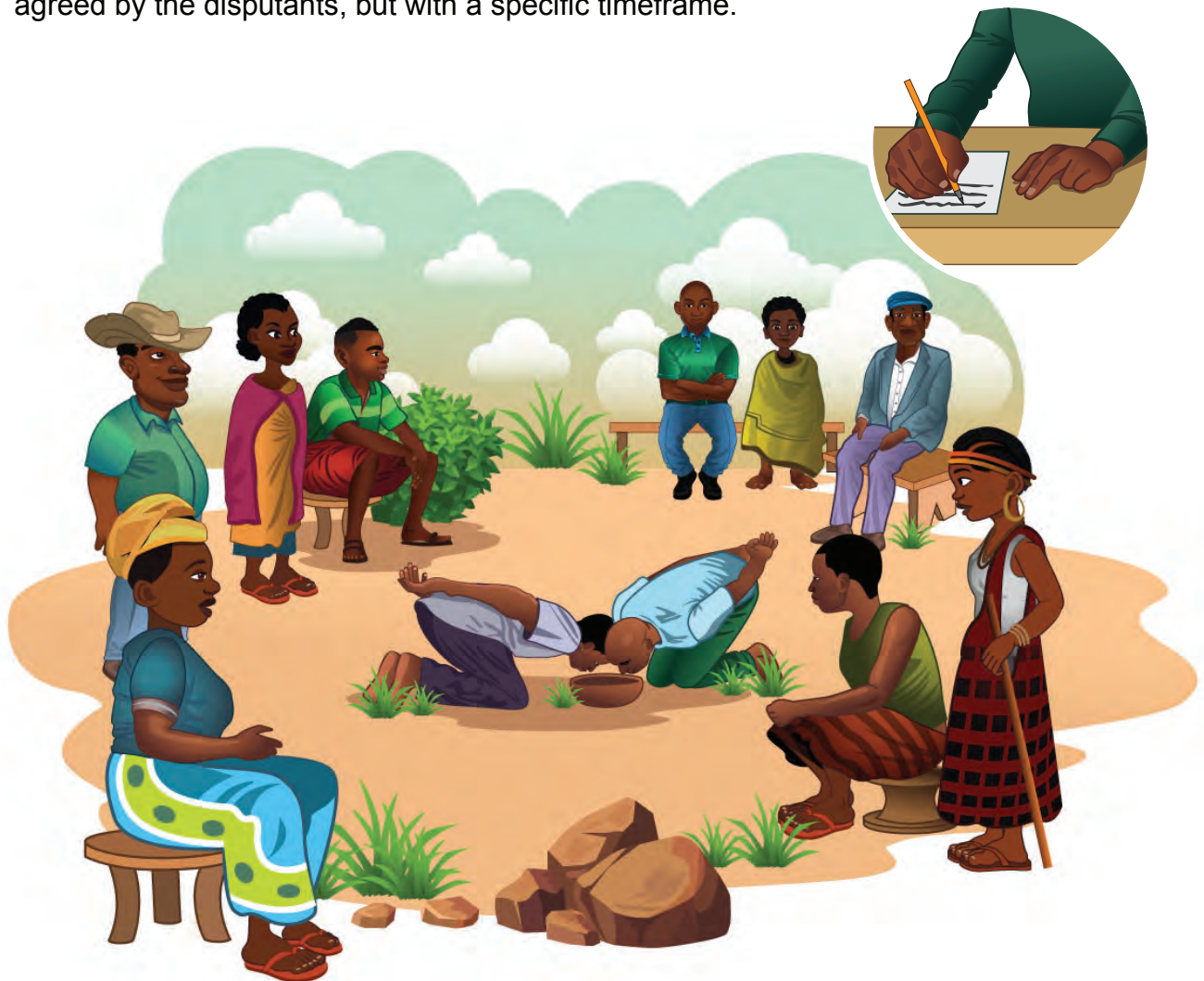
- Both the parties should sign, and the key witnesses or persons present during the mediation should also sign.
- The mediator(s) sign(s) in his/her/their position(s) as facilitator(s) of the process and as one of witnesses.

Note 1: Make sure the agreement is fair to all parties, realistic, clear, simple and contributes to the dignity of each party, is gender sensitive, and captures the commitments of all parties involved.

Closing remarks.

Thank the parties and participants for their time and agreement arrived at.

Note 2: If no agreement is reached, the mediator will review whatever progress has been made and offer to support the parties in the further meeting possibilities as may be agreed by the disputants, but with a specific timeframe.



A successful mediation is celebrated to show total submission to resolution reached by the conflict parties. The Iteso, Acholi and Karimojong have various ways of celebrating a resolved conflict. 'MATO PUT' is widely used by the Acholi.

Stage 3: Post Mediation

Post mediation is the last stage to be carried out by the Mediator(s). This is carried out to ensure consistency of conflicting parties to their written and signed agreement, to see whether parties are taking up with agreed respective roles/responsibilities and whether the resolutions agreed are really respected by both parties.

The practitioner / mediator(s) may carry out the following tasks:

1. Monitor and follow up on the implementation of the agreement signed by the parties.
2. Follow-up on the conflicting parties to check on the relationships, whether it's positive or negative and take appropriate actions. For example, if they are greeting each other, sharing resources like salt, children playing together, fetching water from the same borehole. If they are not doing the above, then take up appropriate action to inquire why such behavior is so, and ensure mechanisms are in place to change the behaviors.
3. Monitoring whether there are any emerging issues between the parties and dealing with them before they escalate into bigger conflicts.
4. Assessing the parties' commitments to reconciliation.
5. Participating and witnessing the reconciliation process. Sometimes reconciliation starts immediately after mediation, the mediator(s) should therefore be part of it.
6. Carrying out home visits in support of reconciliation, forgiveness, and counselling of the parties to restore broken relationships.



After the conflict is settled, it is important that the ADR mediator returns after some time to see whether the things are fine, and the settlement is working.

Note 1: In case there was no agreement reached during actual mediation:

1. The mediator(s) should follow up with the parties to encourage and show them the importance of using non-violent means of conflict resolution.
2. The mediator(s) should support the parties and voluntarily offer to avail time to continue supporting them in their attempts to seek a resolution to the conflict.

Note 2: In case the dispute was referred to any other relevant authority;

1. The mediator should team up with the parties to follow up with the referred dispute to establish the level it has reached.
2. The mediator(s) should get and give feedback to the parties where necessary about the dispute. (see the attached sample of follow up and feedback forms)



Celebrating a successful mediation is commonly done by sharing to drink beer in one pot. It is common in Teso as well as in Karamoja and Acholi.

Appendix 1: A sample of a Dispute intake form

A practitioner uses this form to record statement of the dispute/conflict from both parties.

Dispute intake form

Case Number..... Staff Handling:.....

Date of opening:.....Date of Closure:.....

A: Details of Client

Name(s) of Client (s).....

Place of Residence.....Address/Phone Number.....

Client Details: ☐ Orphan ☐ PWD ☐ Sexual minority ☐ Refugee

Gender: Male ☐ Female: ☐ Other (Specify).....

Age group: Child (1 -17) ☐ Youth (18 -35) ☐ Adult (36-50) ☐ Elderly (50+) ☐

Marital Details: Single ☐ Married ☐ Cohabiting ☐ Divorced ☐

Educational Level: **Religion:**.....

Employment Status ☐ Peasant ☐ Unemployed ☐ Formally Employed ☐ Retired

Source information about mediation services:.....

B: Details of Respondent (s):

Name(s) of respondent (s)

Place of Residence.....Address/Phone Number.....

Gender: Male ☐ Female: ☐ Other (Specify).....

C: Summary of the Case/Brief Facts:

I state as follows;

.....

.....

.....

.....

.....

.....

.....

NB: Additional sheets may be attached where necessary and signed.

Any other specific assistance or support requested:

.....
.....

D. Clients Declaration:

I.....(Address/Contact).....

Acknowledge that my application for mediation will be prejudiced if I;

1. Fail to provide information required of me and is relevant to my application for mediation .
2. Provide documents to mediation team in connection with this application, which are false.
3. Make a false or misleading statement either orally or in writing in relation to this application for mediation .

I therefore declare that all the information I have given is true and correct to the best of my knowledge.

Applicants Signature/RHT Print.....Date:

E. For Official use only:

Case Classification: (Tick as appropriate)

Subject Matter: Corruption ☐ Domestic Relations ☐ Land ☐ Criminal ☐ Civil ☐
Commercial ☐ Human Rights ☐ Labour ☐ Other (please specify).....

Lawyer's / Advocate's certification:

(NOTE: If this application is made through a lawyer it MUST be completed)

I (name)Of (address).....;

CERTIFY that I have assisted the applicant to fill this application form. Prior to the applicant appending his/her signature, I have read over and explained all the contents of the application to the applicant.

Action Taken/Recommendation:.....

.....

Staff name **Signature** **Date:**.....

Appendix 2: A sample of Dispute referral form

A practitioner uses this form to refer disputes/cases that may not be mediated to other levels of intervention.

Case referral form

A. Details of Client

Name(s) of Client(s).....

Place of Residence.....

Address..... Phone Number.....

Case Number..... Staff Handling:

Date of opening: Date of referral:

B: Nature of complaint (Tick)

Criminal case ☐ Civil Case ☐ Corruption ☐ Labor Dispute ☐ Land Dispute ☐

Human Rights Case ☐ Others (Specify)

C: Officer Referred to (tick)

IGG ☐ Police ☐ Labor Officer ☐ LASP/ULS ☐ Court ☐ HRC ☐ RDC ☐

Others (specify).....

D: Specific Assistance required

Lodge complaint ☐

Legal Representation ☐

Record Case ☐

Mediation ☐

Investigate ☐

Administration review ☐

Assessment of Case (respondent(s)) ☐

Protection ☐

Legal Assistance ☐

Others (specify).....

Staff name.....Signature.....Date:

Appendix 3: A sample of Dispute feedback form

This form goes hand in hand with the referral form. It is to be returned by the client to the practitioner so that the practitioner may know some of the steps and actions taken on the dispute.

DISPUTE REFERRAL FEEDBACK FORM

(To be returned by referred client)

Case number: Date reported:

Agency referred to:.....

Name of client:

Action(s) Taken:

.....

.....

Comments:

.....

.....

.....

Responsible Officer/Person:

Name: Sign:Date:

APPENDIX 4: A SAMPLE OF CONSENT/SETTLEMENT AGREEMENT FORM

The practitioner uses this form to capture details of the agreement reached, any conditions put in place and details of stakeholders involved in settling the dispute.

CONSENT AGREEMENT / SETTLEMENT AGREEMENT

MEDIATION CONSENT AGREEMENT / MEDIATION SETTLEMENT AGREEMENT

BETWEEN

.....

[THE COMPLAINANT(S)]

AND

.....THE RESPONDENT(S)

THIS Day of 20....., in,

We the Parties to the dispute/case ID number:.....agreed to go through a mediation process by a Mediator .

That we have undertaken mediation process in good faith with the help of mediation teams/officers under our own consent and understanding;

That we the parties to the dispute have, freely agreed to resolve the dispute between/ among us in the following ways: -

1. _____
2. _____
3. _____
4. _____
5. _____
6. _____

That we have agreed to the following terms, conditions and warranties to this agreement thus: -

i. _____

ii. _____

iii. _____

That in the unlikely event that neither of us the parties to the dispute does not keep their responsibility in this agreement, we have agreed on this agreement, that this agreement will be used as evidence in a Court of law by the aggrieved party.

That we remain committed to a peaceful resolution of our dispute even in the event that one party does not perform the agreed to terms;

That we covenant to resort to other legal means of dispute resolution to resolve our differences.

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Signed by the said parties on the date and place first above mentioned:

Complainant(s)

Name Complainant : _____ Sign: _____ Date: _____

Telephone: _____

Place: _____

Respondent(s)

Name of Respondent(s): _____ Sign/RHTP: _____ Date: _____

Telepho ne: _____

Place: _____

Respondent(s)

Name of Respondent(s): _____ Sign/RHTP: _____ Date: _____

Telephone: _____

Place: _____

IN THE PRESENCE OF:

S. NO.	FULL NAME OF WITNESS	SEX	AGE	OCCUPATION	PHONE #	PARISH AND VILLAGE	SIGN/RHTP

Signed _____

Lead Mediator

Name _____

Signed _____

Mediating team member

Name _____



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