Harmonizing Boundaries

A Training Manual
on
Effective Negotiation Procedures
to
Delimit, Demarcate and
Resolve Disputes over Boundaries

Land Governance Support Activity (LGSA)
Liberia

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Effective Negotiation Procedures
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DISCLAIMER

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1. INTRODUCTION TO NEGOTIATION

Negotiation

- A relationship establishing and problem-solving process in which two or more people or groups voluntarily discuss their views and differences on one or more issues of importance to them, and reach a joint decision that satisfactorily meets their individual and common needs and interests.

  Successful negotiations result parties reaching common understandings or agreements, making promises or exchanging tangible or intangible things that each values.

The Exercise

- During the next period of time you will negotiate in pairs and try to reach agreement on a problem assigned to you by your trainer(s). At the completion of the exercise, the whole group will discuss what happened in your negotiations and explore some of the key concepts and terms listed below.

Key Concepts and Terms

Issue – A topic of importance and concern that a party would like to have considered and satisfactorily addressed.

Problem – A confusion or predicament shared by two or more parties, which they want or need to be solved.

Dispute or Conflict – A significant difference or disagreement between two or more parties that they want or need to be resolved. (If a conflict, it may involve potential or actual psychological or physical coercion or harm.)

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Targets or Goals – The maximum benefits a negotiator hopes to achieve through talks.

Position – A preferred option or solution to an issue, problem or dispute advocated to meet a party's needs or satisfy their interests.

Need or Interest – A necessity, desire or concern that a party wants have addressed, met and/or satisfied. Needs or interests may be psychological/relationship, procedural or substantive in nature.

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Positional Negotiation – A problem-solving process for addressing an issue, solving a problem or resolving a dispute in which negotiators develop and sequentially exchange positions and counter-positions until they happen upon, make adequate concessions or propose a solution that adequately meets their individual and joint interests.

Distributive Outcomes – The results of competitive or win-lose negotiations in which one party's gain requires loss for another.

Demand or Offer – A claim or proposal for a specific solution to an issue, problem, dispute or conflict.

Concession – Something granted or given up by one negotiator to another, commonly in response to a demand.

Bargaining Range – A range of potential options, which if positive may allow for an agreement, and if negative indicate no room for settlement.

Offer – A proposal of a specific solution or concession to address an issue, problem, dispute or conflict.

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Interest-based Negotiation – A problem-solving process in which negotiators establish and build positive working relationships, educate each other about their needs and interests, collaborate to identify or develop multiple potentially acceptable options an ultimately agree on a "win-win" solution that results in individual and joint gains.

Alternatives or Options – Two or more possible ways to address, solve or resolve an issue, problem, dispute or conflict, which helps parties achieve their goals and meets or satisfies their needs and interests.

Integrative Outcomes – The results of collaboration where all parties "win" and get all or most of their needs and interests met or satisfied. (Also called "non-zero sum" outcomes.)

Proposal – Suggestion of one or more possible alternatives or options that might satisfactorily address an issue, solve a problem or resolve a dispute or conflict.

Mixed Motive and Outcome Negotiations – A combination of positional and interest based negotiations in which outcomes have mixed "win-lose" (distributive) and "win-win" (integrative) elements. Resolution of some issues may be compromises in which negotiators' gains and losses are shared in a mutually acceptable way.

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Negotiation Strategy – A plan of action implemented to achieve a desired goal, meet a need or satisfy and interest.

Relationship and Trust Building – Demonstrating attitudes and behaviors that promote positive interactions between negotiators and that foster beliefs about the reliability, ability, strength or truthfulness of someone or something.

Shadow of the Future – Negotiators' understandings and assessments of potential interactions between them in the future, and how they may positively or negatively impact current negotiation strategies and behaviors.

Power and Means of Influence – Sources of power and means negotiators use to change minds, get something done or achieve desired benefits or outcomes. They may take a variety of forms such as a good idea, new information, rewards, benefits, future positive association/relationships, coercion, etc.
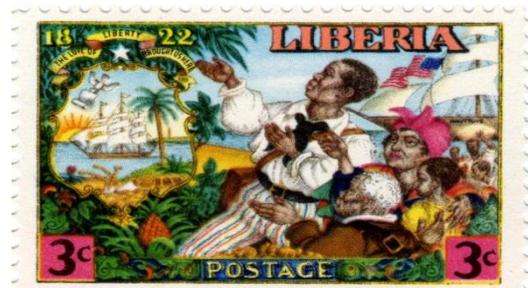
Deadlines – The latest time or date by which something should happen or be completed.

Best Alternative to a Negotiated Agreement (BATNA) – The best alternative outcome – procedurally, substantively and in terms of the parties' current and future relationship – if a voluntary negotiated agreement is not possible.

Worst Alternative to a Negotiated Agreement (WATNA) – The worst alternative outcome – procedurally, substantively and in terms of parties' current or future relationship – if a voluntary negotiated agreement is not possible.

Most Likely Alternative to a Negotiated Agreement (MLATNA) – The most probable alternative outcome – procedurally, substantively and in terms of the parties' current and future relationship – if a voluntary negotiated agreement is not possible.

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Ethics – Beliefs, principles and rules that guide negotiators' attitudes and behaviors regarding what they believe to be morally right or wrong, good or bad, just or unjust, or fair or unfair, etc.

2. BOUNDARIES

Definitions

Land – The unmovable portion of the earth's surface which generally consists of the soil and any space above the soil that is needed for the construction and/or use of any building inclusive of attachments by the possessor or occupier of the land.[1]

Boundary – A conceptual dividing line, physical barrier or mark between two tracts of land. From time immemorial, people have engaged in claiming and establishing boundaries for land for which they want pubic recognition, access, use or legal ownership.

Why Boundaries are Important

Boundaries:

- Confirm common expectations and understandings of adjacent land users or owners concerning the dividing line between their properties;

- Provide greater predictability and security for users, communities, owners and other concerned parties by establishing what land is under their control and how it can be used;

- Are required for obtaining legal government recognition and rights to land, deeds or titles;

- Assure greater predictability concerning terms of access, use and ownership of natural resources on bounded land;

- Help prevent conflicts over land due to different views by adjacent land users or owners concerning terms for access, use or encroachment;

- Promote investment by formal users or owners, and allow potential access to funds for improvement of land due to predictable terms for use or ownership;

- Encourage development of both rural and urban land markets so that land can be put to the highest beneficial use; and

- Clarify or establish potential or actual political jurisdictions for land governance, and who will have the authority to participate in and make decisions concerning land.

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[1] Liberia Land Rights Act, Chapter 1: General Provisions: Article 2: Definitions, p. 5.

Ten Common Types of Land and Boundaries

1. Private land and boundaries

2. Internal community land and boundaries

3. Government or public land and boundaries

4. Municipal land and boundaries

5. Community land and intercommunity boundaries

6. Leased land and boundaries

7. Concession land and boundaries

8. Protected areas and boundaries

9. Easements and boundaries

10. Land and borders between political jurisdictions

Two levels of detail for Boundary Definition

- **A hard boundary** – A natural barrier that limits access between tracts of land, or a formally recognized and clearly marked dividing line between land claimed by two parties and over which each has a high level of authority or control.

- **A soft boundary** – A vaguely recognized or poorly defined dividing line between tracts of land and/or two or more parties. Soft boundaries are not rigid and pose few if any barriers to people crossing and having access to land or resources on either side.

3. BOUNDARY HARMONIZATION

Boundary Harmonization

Boundary Harmonization – Intentional and planned activities by parties to share their views and perspectives, identify and confirm common understandings, negotiate solutions to reconcile differences and reach a mutually acceptable settlement on a conceptual or physical dividing line between land claimed by each of them.

Boundary Harmonization involves:

- Boundary identification or **"*delimitation*"**

- Boundary marking or **"*demarcation*"**

Boundary harmonization occurs in two contexts:

1. ***Delimitation and demarcation of land <u>within</u> a community or political entity***, such between neighbors in a customary community or adjacent land claimants in a town where land is statutorily owned;
2. ***Delimitation and demarcation of boundaries <u>between</u> land claimed by two or more individuals, communities or political entities***, such as customary communities, municipalities, districts, counties or countries.

> ### Liberia Land Rights Act, Customary Communities and Land
>
> The new Land Rights Act of the Republic of Liberia defines a community as "a self-identifying coherent social group or groups comprising people of all ages, gender, beliefs, and other backgrounds who share common customs and traditions and reside in a particular land area over which members exercise jurisdiction communally by agreement, custom or law and manage their land in accordance with customary practices and norms. A community may thus define itself to be a single village, town, clan, or chiefdom, or a group of villages or towns or clans".
>
> Community land is "customary Land owned by a particular Community" and "used or managed in accordance with customary practices and norms, and which include, but is not limited to wetlands, communal forestlands, and fallow lands".
>
> ***Liberia Land Rights Act, Part I: Preliminaries Chapter 1: General Provisions: Article 2: Definitions*, p. 2**

Liberia Process for Securing Legal Rights to Community Land

1) Customary and statutory Leaders meet and decide to participate in the Customary Land Recognition Process

2) Broader Community Members meet, decide and commit to participate in the Customary Land Recognition Process

3) Community Members define the Roles and Mandate for an Interim Coordinating Committee (ICC) and select its Members

4) Community Members define Community Membership Criteria and Self-Identify Members

5) Community Members Map Community Land and Identify, Harmonize and Demarcate what they believe are its Boundaries

6) Community Members select a Community Negotiation Team, and it prepares to Negotiate with neighboring Communities to identify, harmonize and demarcate common Boundaries

7) Community Negotiation Teams identify, discuss, harmonize and tentatively demarcate Boundaries between Neighboring Communities, and consult with, test and confirm Agreements with their Communities

8) Negotiation Teams, ICC and Communities Document and Formalize Agreements on Boundaries within and between involved Communities

9) Community Members develop Community Rules/By-laws on how Land within their Community will be developed and managed

10) Community Members establish a Land Development and Management Body (or Governance Council), define its mandate, identify membership criteria and selection procedures and select its Members

11) Communities and Statutory Authorities Formally Map Community Lands

12) Communities apply to the Government and secure Legal Title to their Community Land

Standards and Criteria for Boundary Harmonization

- Natural physical boundaries

- Current and active use of land

- Population preferences for affiliation

- Lineage

- Historic and customary use

- Maps and surveys

- Religious or cultural importance

- Location of towns, villages or infrastructure

- Conformance with administrative government boundaries

4. NEGOTIATION APPROACHES AND STRATEGIES

Positional Negotiation

Position – A preferred option or solution to an issue, problem or dispute advocated to meet a party's need or satisfy an interest

Positional Negotiation – A problem-solving process for addressing an issue, solving a problem or resolving a dispute in which negotiators develop and sequentially exchange positions and counter-positions until they happen upon, make adequate concessions or propose a solution that adequately meets their individual and joint interests. The outcome is often a compromise in which gains and losses are shared.

Attitudes of Positional Negotiators

- Negotiators are opponents

- The resource being negotiated is limited

- The goal of negotiations for each negotiator is to get the greatest amount possible, commonly at the expense of the other party

- There is only one right solution, the one advocated by each negotiator

- A win for one party must result in a loss for the other

- A concession, for whatever reason, is a sign of weakness

- If a full win is not possible, a compromise with shared gains and losses is the best that can be expected

Procedures used by Positional Negotiators

They:

- Consider their needs and interests, but not necessarily those of the other negotiator(s), and select a position, a preferred solution, which best meets them

- Make initial high or low, demands that will result in the most benefits for the negotiator making them

- Stay on the offensive at all times, as this is important for achieving desired goals

- Engage in proposing and exchanging positions and counter-positions, each of which grants more or accepts lower benefits for the negotiators making them

- Arrive at agreements as a result of a compromise in which gains and losses are shared in an acceptable manner

Figure 1: The Positional Negotiation Process

KEY

Acceptable
Negotiating Range =

Party A's Bottom Line

Party A's Target

Acceptable Options for Party A

Party B's Target

Party B's Bottom Line

Acceptable Options for Party B

1 2 3 4 5 6 7 8 9 10
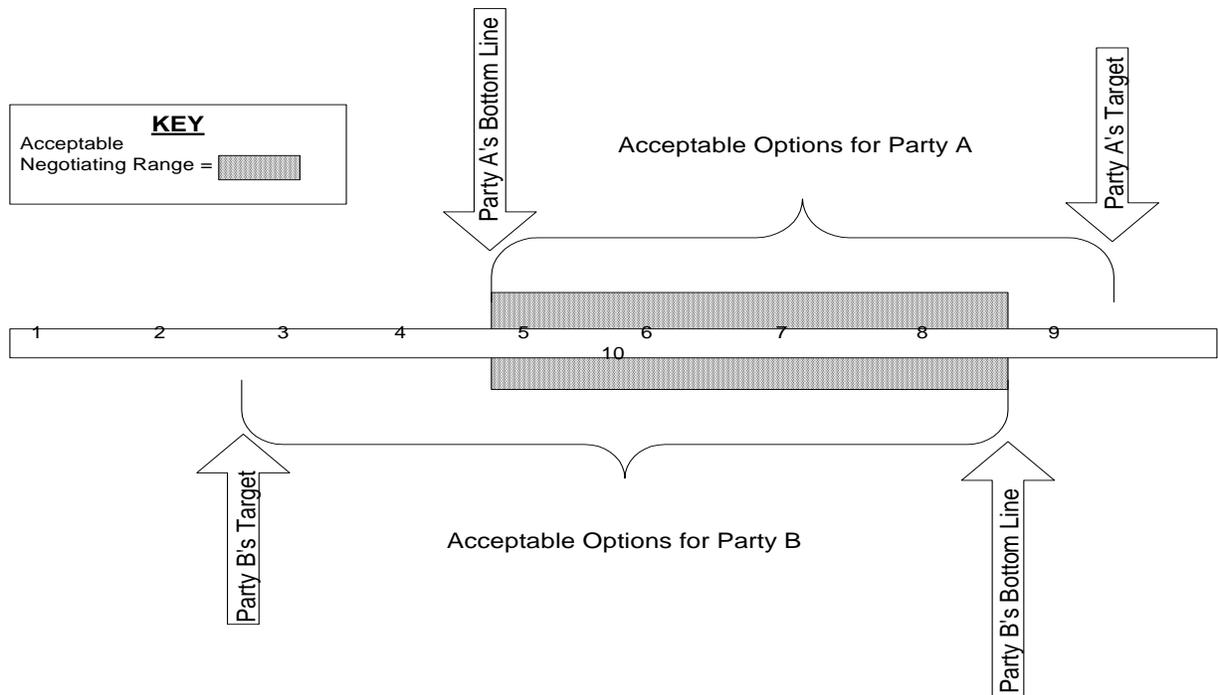
Interest-Based Negotiation

A Need or Interest – A necessity, desire or concern that a party wants have addressed and/or satisfied. Needs or interests may be psychological/relationship, procedural or substantive in nature

Figure 1: Triangle of Satisfaction
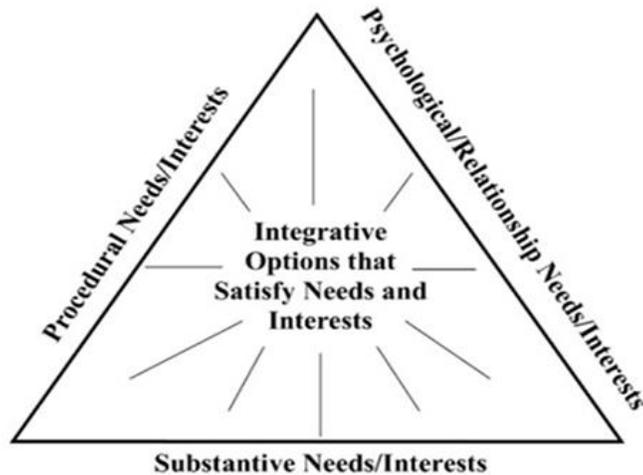
Needs or interests can usually be met and satisfied by a variety options or solutions.

Interest-based Negotiation – A problem-solving process in which negotiators establish and build positive working relationships, educate each other about their needs and interests, collaborate to identify or develop multiple potentially acceptable options an ultimately agree on a "win-win" solution that results in individual and joint gains.

Attitudes of Interest-Based Negotiators

They:

- See all parties as cooperative problem-solvers and strive to build respectful and positive working relationships with their counterparts

- Describe the goal of negotiations as finding or building solutions that meet all parties' needs to the greatest extent possible

- Assume that the resource being negotiated is not necessarily limited, and trades on items that parties value differently can result in mutual benefits

- Believe that there are probably several solutions that will be mutually satisfactory

- Think that win-win outcomes are both desirable and possible

Procedures used by interest-based negotiators

They:

- Strive to educate each other about the needs and interests to be addressed or problems to be solved if agreements are to be reached

- Hold off generating potential solutions until each of their interests and needs are fully understood

- Use focused and collaborative discussions to identify or build multiple potential outcomes that address issues of concern

- Evaluate potential outcomes to identify those, or the one, that is acceptable to everyone and provides the most benefits to all concerned

- May use links and trades on issues and options they value differently or create package agreements that in total satisfy as may parties' interests and needs as possible

5. GENERAL STEPS FOR NEGOTIATING AGREEMENTS

Preparation

1. **Each party identifies its interests, needs, concerns about the future boundary and speculates about what the other's might be**

   - Identify each party's (or community's) substantive, procedural and psychological needs and/or interests

   - Clarify each negotiator's (or community's) power and means of influence, including their Best Alternative to a Negotiated Agreement (BATNA), and worst alternative to a negotiated agreement (WATNA)?

   - Develop initial ideas on options for the location of the boundary that might meet all parties' needs and/or interests?

2) **Each party thinks about the overall format for negotiations and what each will say and how**

   - Determine how will a positive tone and negotiation climate be created? How will positive relations and history be recognized and enhanced and negative ones minimized?

   - Determine what needs to be said and/or done early in negotiations to accomplish the above goal?

   - Determine the steps for negotiations, how will each of them be conducted and by which negotiator (or on team member(s)? Consider opening statements, tone setting, identification of goals for talks, process for issue identification, description of interests and who will go first.

Negotiation Sessions

1. **Negotiators begin talks with positive opening statements**

   - Establish rapport by spending time relationship establishing and building. Identify past positive relations (and agreements) and, if necessary and appropriate, acknowledge, apologize or address any past problems that may pose barriers for productive talks. Focus on separating the person from the problem to be addressed.

- State the purpose for talks in general or for the specific negotiation session in a clear and impartial manner, which emphasizes a desire to find mutually acceptable solutions to the issues in question.

- Ask the other negotiators to confirm any past positive relationships or history between the parties or communities.

2. Negotiators identify, state and agree on issues for discussion

- State issues to be discussed in a neutral and impartial manner.

- Confirm agreement on the issues to be discussed.

- Discuss the sequence for discussion and develop an agenda.

3. Negotiators educate each other about issues, interests, needs and concerns that are important to discuss, understand and reach agreement on

- Determine which negotiator or negotiation team will start to present its views.

- Ask members of that team present their views and their thinking on the issue in question, including their interests and logic and rationale for them.

- Be inquisitive – Ask open-ended questions to better understand each other's their needs and interests – "peel the onion".

- If a negotiator states a position, ask what their underlying interests are – "Can you tell me why that idea or proposal is important you? What interests does it meet?"

- If a negotiator proposes an option, ask how it meets their interests.

- Summarize the needs and interests that have been heard and check in to see if the summarization is accurate. Correct any misunderstandings.

- The other team should then share its views, logic and rationales and needs and interests.

- Explain how the teams are more likely to come to an agreement if they can find solutions that both communities needs and interests.

4. Negotiators develop multiple options to address issues and/or resolve differences

- Develop a joint problem statement that asks how the negotiators can find a solution that meets both party's/community's needs and interests "What can we do that will meet (your interests) and (my interests) too?"

- Highlight general principles may be able to be agreed upon a starting point.

- Consider developing standards and criteria to frame potential options – mutual goals or general levels of agreement that will ensure the solution meets both party's/community's needs and interests.

- Use discussions, brainstorming, finding a key idea and elaborating on it, or using model agreements from elsewhere and modifying them to address the current problem.

- If they criticize your ideas, ask "why"? This will help create a common understanding of interests.

- Use cross questions – "What is needed from me/us/our community to meet your interests and needs?" "What can you/ your community do and provide to me/ours to get what it wants?"

- Use collaborative language – "Building off your idea…", "What might you do to improve my idea".

5. Negotiators evaluate options

- Narrow the list of options by identifying the ones that look the most promising or are definitely off the table.

- Evaluate options based on whether they meet principles, standards and criteria or key interests or needs – substantive, procedural and psychological.

6. Negotiators modify, refine and select options

- Choose options that meet most needs and interests, modify them or make necessary links and trades.

- Note: Some positional negotiation may occur here.

7. Negotiators finalize agreement and develop an implementation and monitoring plan

- Clarify who will be involved and what, when, where and how the agreement will be implemented. If needed, set up implementation and monitoring procedures, and a method for re-opening issues if there are future problems.

- Conduct appropriate rituals for closure – consider statements and behaviors that enhance closure on relationship/psychological, procedural and substantive issues.

6. IDENTIFYING AND PREPARING A BOUNDARY HARMONIZATON TEAM

A Negotiation Team

- A group of individuals who come together to represent and advocate for the needs and interests of a specific entity.

The Value of a Negotiation Team

Having a team involved in negotiations, rather than just one negotiator, can serve a number of purposes. It can:

- Provide broader knowledge, expertise and skills, both for internal discussions and with other negotiators.

- Assure representation of all constituent parties' views and concerns.

- Guarantee multiple speakers and "voices" are heard.

- Assure an adequate number of people to "share the load" and perform tasks required to implement negotiations involving multiple parties.

- Assure accurate advocacy of constituents' views, and protecting negotiators from the "hero-traitor dynamic".

Qualities and Criteria for selecting Effective Boundary Negotiators and Teams

- Personal honesty, integrity and trust by community members and good relationships and communications with them.

- A personality that enables them to talk with and work effectively with people who hold diverse views.

- An understanding of the diverse members in the community, their interests and capacity to represent them.

- An understanding of the diverse members in the community, their interests and capacity to represent them.

- An in-depth understanding of issues to be negotiated, interests of those they represent and a range of potential options that might be mutually satisfactory to address them.

- Skills in persuasion to apply with other negotiators and members of communities.

Determining the Size of the Negotiation Team

- There is not a right size for a negotiation team. The number of members required usually depends on the:

  1. number and complexity of issues to be negotiated;

  2. kinds of specific knowledge, expertise and skills that will be required to negotiate and reach agreement on issues in question;

  3. diversity of constituencies to be represented and their need or demand to have people who share their views to be included on a negotiation team,

  4. number of members to needed perform all required tasks prior to, during and at the conclusion of talks, and

  5. number of members of the other negotiation team.

- Five is generally a good size. Others with specific knowledge or skills may be added at a later time when they are required.

Selecting Negotiation Team Members

- Current members of a community's Interim Coordinating Committee (ICC) may be drafted to serve as participants on the negotiating team.

- If new people are desired, needed or required, a community may ask its ICC to solicit nominations from the community or nominate potential candidates itself for community consideration.

- The ICC may convene and conduct a large and inclusive community meeting in which candidates for the negotiation team are identified and representatives chosen by a vote (either a simple or super 2/3 majority), consensus or acclamation.

Team Members' Roles and Responsibilities

There are a number of potential types of members of negotiation teams:

- **Spokesperson** – Team member with the major responsibility for advocating for and/or coordinating presentation of the team and community's views and interests, and developing options and proposals that address and settle issues under discussion. Spokespersons may or may not be the team leader(s).

  Spokespersons may be:

  - **Solo spokespersons** – Individuals who lead in representing the team, presenting its views on most if not all issues during talks and reaching agreements with the other party, or
  - **Facilitative spokespersons** – A team member or members who coordinate and facilitate how issues of concern to the team and their community are communicated to members of the other team and who does it.

- **Decision makers** – One or more team members, or the team as a whole, authorized by their community or constituents to make decisions for the team and preliminary decisions for the community. They may or may not be the spokesperson.

- **Team member(s)** – One or more team members that are directly engaged in discussing and advocating team/community interests and developing options that address and settle all or specific issues of concern.

- **Recorder(s)** – Team member or members that are responsible for taking notes prior to negotiations during the team's deliberations and preparations and during talks and recording discussions and agreements that are reached.

- **Providers of technical assistance** – Individuals that may be formal or informal members of a negotiation team and serve as advisers, consultants or assistants and provide specific expertise needed by a team to perform effectively.

Once team members have been selected, they should define each of their roles and responsibilities.

In addition to members of negotiation teams, there are three other potential roles that may enhance the process and outcomes of negotiations.

- **Witnesses** – Individuals or groups that have personal knowledge of or have seen an event or action in the past that is relevant to settle issues under discussion in negotiations and can provide testimony about what they have seen or know.

- **_Observer witnesses_** – Individuals or groups that attend and observe negotiations to see for themselves or for their communities, that all relevant issues and views have been discussed and considered, and that procedures and outcomes are fair.

- **_Community member stakeholders_** - These individuals are often community members who live and have land or structures near, on or across a proposed boundary who have a direct interest in the demarcation of the boundary who attend and observe community boundary negotiation meetings.

7. CONDUCTING COMMUNITY LAND MAPPING

Community Mapping

A major component of preparation for successful boundary harmonization and negotiations is mapping community boundaries.[2]

Community Mapping – A participatory process in which all or a significant number of community members identify their community's boundaries with a neighboring community and significant features within it – places of cultural or religious importance, infrastructure or natural resources. Engagement of community members in mapping builds common knowledge and understanding of community boundaries, enhances their power and influence in future talks with neighboring communities and creates ownership of decisions and outcomes.

Timing

- Ideally, community boundary mapping should occur after the selection and formation of the community's negotiation team, so that its members can be fully participate in the process, understand the basis for community thinking and decision-making about boundaries, and be clear about the boundaries they will advocate for.

General Approaches

- **The "inside out" method** - This approach involves community members meeting and identifying a central plot of community land or significant community landmark, ideally whose boundaries are not contested. Based on further discussions, community

members delimit and demarcate the boundaries of members land and boundaries of important sites to the community, such as towns, churches, hospitals, government buildings, community forests, water points, protected areas, sacred sites, etc. Working from the initial central point, community members delineate boundaries until they reach the outer perimeters of what they understand the boundary of the community to be.

- **The boundary periphery method** – This approach focuses on delimiting what community members perceive to be the outer parameters of their land and features such it such as towns, infrastructure or other sites importance, without necessarily defining internal boundaries of community members' land.

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[2] Rachel Knight et al *Community Land Protection Facilitators Guide.* Seattle, Washington: Namati, 2016;

The process involves either all community members meeting as a whole to identify what they perceive to be the community's boundaries with neighboring communities, or asking community members along the potential periphery of the community to meet in smaller groups along what they believe to be the community's boundaries to discuss and identify what they believe them to be. This information is then brought back to the whole community in a larger meeting to be confirmed.

Tools to create Visual Images to support Community Mapping

- **Sketch mapping and maps** involve community members drawing one or more pictures of their community's land, important features on it and their understanding of its boundaries.

- **Satellite mapping** is conducted using a Global Positioning System (GPS), a space-based satellite navigation system that provides images of locations along with maps of any place on earth. GPS can be used to gather information on both areas of tracts of land, and distances between important points.

- **Digital mapping and graphics**, which is also called digital cartography, involves the collection and compilation of data from satellite imagery that formatted and presented as a virtual image. The primary function of this technology is to produce maps that accurately portray a particular area and provide details of major landmarks or points of interest. It requires a computer and appropriate software. Images can be viewed on a computer screen or projected using a LED projector onto a wall or screen so that all parties concerned about land and its boundaries can see it and use images in discussions.

Implementing Community Mapping

Described below are potential steps for conducting community mapping. Most, but not all of them, may be required to successfully map community land and its boundaries. More details about community mapping can be found in Rachel Knight, et al

1. Identifying champions

2. Planning the community mapping process

3. Carrying out an initial land and settlement profile

4. Designing forms to solicit greater detail on issues related to community boundary delineation/identification

5. Drawing an initial sketch or preliminary map of a community's boundaries and other places of importance to prod community members' thinking

6. Drawing a more detailed map of the community

7. Completing a detailed land inventory related to boundaries

8. Analyzing the data

9. Validating the data

10. Recording the Data

8. PREPARING THE TEAM TO WORK TOGETHER AND WITH THE COMMUNITY

Internal Team Decision-making

For negotiation teams to function effectively, members need to clarify and agree on the authorities of each member and the team as a whole, and how team decisions will be made. This is often done by consensus.

Box 4: Consensus

Consensus decision making is a procedure by which a group makes a collective decision or agreement without voting, which all participants can accept.

- Reaching a consensus requires group members to educate each other about their important needs, interests and concerns, and identify or develop an integrative agreement that addresses and satisfies both individual and group interests to the greatest extent possible.

- A consensus decision or agreement does not require or mean unanimity. Participants do not have to feel equally strongly about or have the same degree of enthusiasm for a specific outcome or its component parts.

- A consensus will be considered to have been reached when either a meeting participant or facilitator recognizes or develops a proposal for a potential agreement, states it and all participants verbally or non-verbally affirm their concurrence, or at a minimum agree not to actively oppose or subvert it.

Consensus, CDR Associates 2014

Determining Procedures for Community Engagement

Community members and the team will need to determine expectations for how the broader community and team will interact prior to, during and at the conclusion of negotiations. They need to decide:

1. What kinds of engagement the community expects and wants with the team;

2. What kinds of updates on progress of talks are expected;

3. When, frequency, kind and who should attend community meetings;

4. How the community will be involved in pre-negotiation preparation and decision making; and

5. Kinds of consultations the team should have with the community before the team reaches tentative, partial or a comprehensive agreement, which will later be brought back to the community for consideration and final approval.

Defining Negotiation Mandates

Mandate – Guidance given to a negotiation team by the group to whom it is accountable that defines the objectives for negotiations.

Inflexible and Flexible Mandates

▪ It is critical for communities to be clear about what flexibility their team has in developing possible agreements, so that they do not violate their mandate.

Developing Negotiation Strategies

Conducting a Situation Assessment or Conflict Analysis and Developing Strategies

Teams should work with their communities and together to conduct a situation assessment and conflict analysis. They should identify and analyze:

▪ **Involved Parties** – The communities and members of each of the negotiation teams

- Their histories and past or current positive or negative relationships within them, or between them and the other community or team
- Personalities
- Involvement in past intercommunity or other negotiations
- Leadership and decision-making structure and process
- Common and favored negotiation styles
- Other relevant characteristics

▪ **Issues to be addressed** – Topics that each party would like to have considered and satisfactorily addressed.

- Importance/rank
- How they are or should be framed

▪ **Needs and Interests** – Needs and interests to be met and satisfied as a result of negotiations

- Psychological/Relationship – During and at the end of negotiations, and in the future
- Procedural – How negotiations will be conducted and outcomes implemented
- Substantive – Tangible outcomes

- **Positions –** Preferred options or solutions to an issue, problem or dispute advocated to meet a party's needs or satisfy their interests.
  - Any positions advocated in the past that need to be considered and a response developed
  - Any positions that need to be developed or advocates, such as those for "must haves"

- **Power and Influence** – Sources of power and means negotiators use to change minds, get something done or achieve desired benefits or outcomes.

  - Immediate availability of power or influence or must be mobilized
  - Willingness of each part to exercise various kinds of influence
  - Risks and coats to parties of drawing on and exercising power and influence

- **Factors that may/are influencing Negotiations and their Dynamics** – Common structural sources.

  - Internal community or team factors
  - Factors related to external parties
  - Other structural factors – laws, rules, regulations time, resources, geographical closeness or distance, etc.

- **Willingness of Parties to Engage**

  - Talk about all or specific issues
  - Settle all or specific issues

- **BATNAs, WATNAs and MLATNAs** - Relationship, procedural and substantive options if a negotiated agreement is not possible

  - Best, worst and most likely alternatives
  - Costs and benefits of pursuing alternatives

- **Potential Options to Address, Solve or Resolve Issues, Problems Disputes or Conflicts**

  - Options that may meet or satisfy both individual and joint needs or interests for each issue

- **Strategies to Address each Issue or combination of Issues**

  - Which party will go first
  - The content of the opening statement to create a positive tone
  - How issues be presented and described/framed
  - How will interests be presented or drawn out
  - How potentially competing or contradictory needs and interests will be addressed
  - How options will be developed or presented
  - Role of spokesperson(s) and team members in presenting, addressing and reaching conditional agreement on issues

9. Coordinating with Neighboring Communities and Negotiation Teams

Procedures for Coordination

A Joint Coordination Meeting

A joint meeting of community leaders and members of each community's boundary harmonization negotiating team should be held to confirm each community's willingness and readiness to engage in good faith negotiations to reach agreements on their common boundary. At this meeting they should also discuss the logistics and process for talks. Important logistical questions include:

Participants

- Who will be involved and represent each community in talks – the members of the Boundary Harmonization Teams and any others each community wants to be involved and present – and their authority to make conditional or final decisions?

Information

- What information should or needs to must be shared before negotiations begin and once they have started?

Process

- What process will be used for productive negotiations? Ideally interest-based negotiations

Principles

- What common principles, standards or criteria will the communities and their negotiation teams use to guide talks and joint efforts to find mutually acceptable solutions to boundary issues?

Locations

- Where negotiations will occur – generally along the projected boundary line
- Are the parties willing "walk the land" to identify where they believe the boundary to be, and when will this happen?

Time and Frequency of Meetings

- What will be the date, time and place for the first negotiation session?
- What is the expected length of time for each negotiation meeting?
- If meetings last more than a morning or afternoon, who will provide refreshments for negotiators – such as each community alternating provision of refreshments for all negotiators
- How frequently will negotiation meetings be held and what time should be allowed between them to gather any needed information or for internal community discussions and consultations?
- How long do communities want talks to be held, and do they want to set either mileposts or a deadline to help promote and measure progress?

Consultation with Communities

- How will each boundary harmonization team consult with their community members during negotiations to secure their input and agreement on boundaries?

Recording

- How will the negotiators record progress of talks and agreements that are reached?

Formalization of Agreements

- How will agreements be recognized and approved individually by each community and jointly by the involved communities?

A report back by representatives of each community and their negotiation teams to their community members

- A briefing on the outcomes of and decisions made at the coordination meeting and next steps for talks.

Consideration of the types of meetings that will be needed for productive negotiations and boundary harmonization.

Types of Meetings for Boundary Harmonization Negotiations[3]
In-team Negotiation Meetings

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[3] Original conceptualization of these negotiation meeting forums was developed by W.F. Lincoln, National Center Associates. This section is adapted from Christopher Moore and Susan Wildau, "Chapter 9: Designing the Negotiation /Mediation Table". In *Strengthening the Practice of Peacemaking and Preventive Diplomacy in the United Nations: The UNITAR Approach.* Connie Peck and Eleanor Wertheim (eds.), Geneva, Switzerland, UNITAR, 2014, pp. 73-80.

- Meetings for private internal discussions among members of each negotiation team.

Figure 2: In-team Negotiation Meetings

Team A   Team B
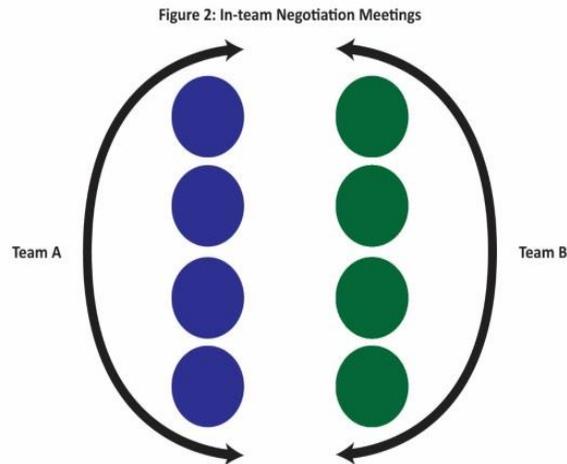
Bilateral Negotiation Meetings

- Formal meetings between negotiation teams.

Figure 3: Bilateral Negotiation Meetings

Team A   Team B
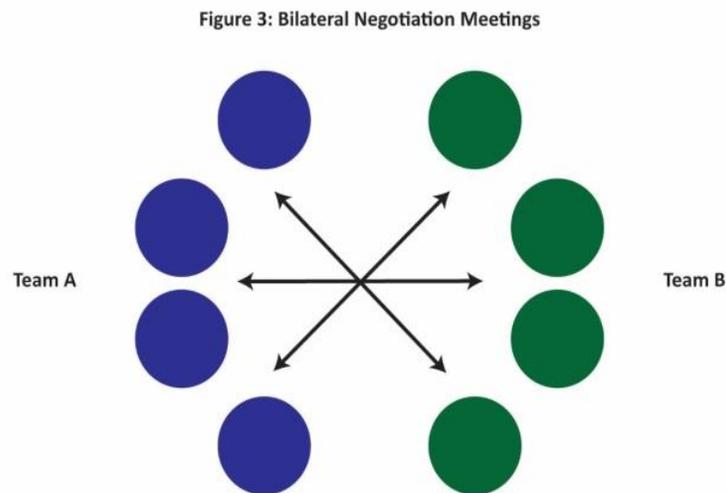
Bilateral negotiations may be conducted in private with only the teams from each community, or in an open meeting with a larger number of participants or observers.

Constituent Negotiation Meetings

- Meetings held a negotiator or a team is accountable to a larger group of people – such as an extended family, clan or community – whose members are not directly involved in negotiations.

Figure 4: Constituent Negotiation Meetings
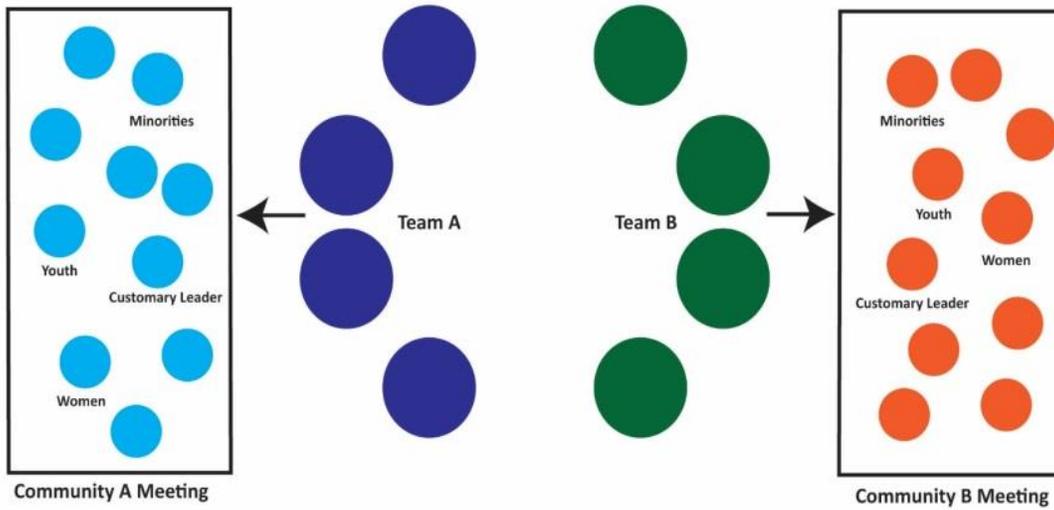
These meetings are needed and used to get guidance or a mandate for the negotiation team from the broader group, to update community members on the progress of talks, to find solutions for difficulties encountered in negotiations and to ultimately approve any settlement reached.

Hierarchical Negotiation Meetings

- Meetings held when a negotiation team is responsible and accountable to superiors in an organization.

Figure 5: Hierarchical Negotiation Meetings
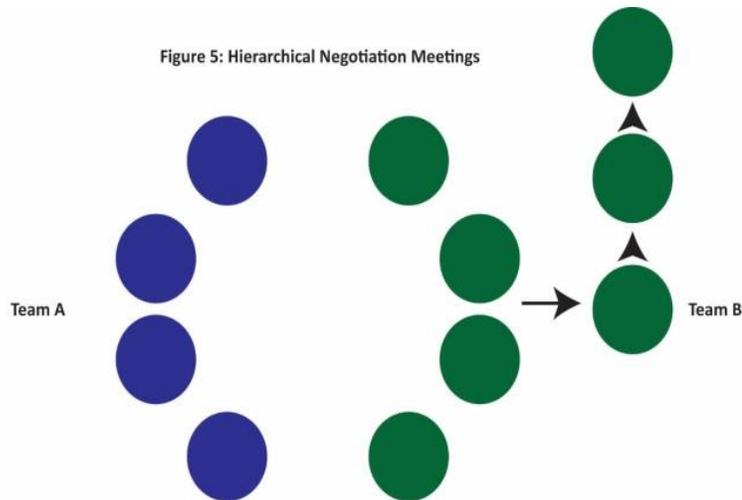
Vested Interest and Conciliatory Negotiation Meetings

- ***Vested interest negotiations***, or "under the table" talks, involve one or more negotiator talking privately with a negotiator from the other side, without the knowledge, authorization, or approval of his or her team, constituents or other authorities. The goal of these talks is to explore settlement possibilities that will directly and personally benefit the individuals involved, or enrich a subgroup they represent, rather than their team, constituents or organization.

- ***Conciliatory negotiations*** involve one or more negotiators from each team engaging in informal talks with the permission of their teams. The goal of conciliatory discussions is to find integrative options and areas of agreement that can be brought back to participants' respective teams' broader constituency for consideration and approval.

Leader-Leader Negotiation Meetings

- Meeting for private conversations between the spokespersons of teams or leaders of communities engaged in negotiations.

Mixed Interest Group Negotiation Meetings

- Meetings of small working groups with representatives from each team, and occasionally external participants with needed knowledge or skills, to negotiate agendas, break deadlocks or refine options to be brought back to both or all teams and/or their constituents for consideration and approval.

  It is important that the negotiation teams jointly clearly define the tasks delegated to the small groups and define the limits of their decision-making authority.

External Party Negotiation Meetings

- Meetings to reach understandings with specific parties within or outside of communities, who though not directly involved in talks, have concerns about their potential outcomes and impacts.

Multilateral Negotiation Meetings

- Meetings among multiple parties, such as multiple communities along another's boundaries to negotiate and reach agreement on complex issues with multiple concerned constituents.

Figure 6: Multilateral Negotiation Meetings
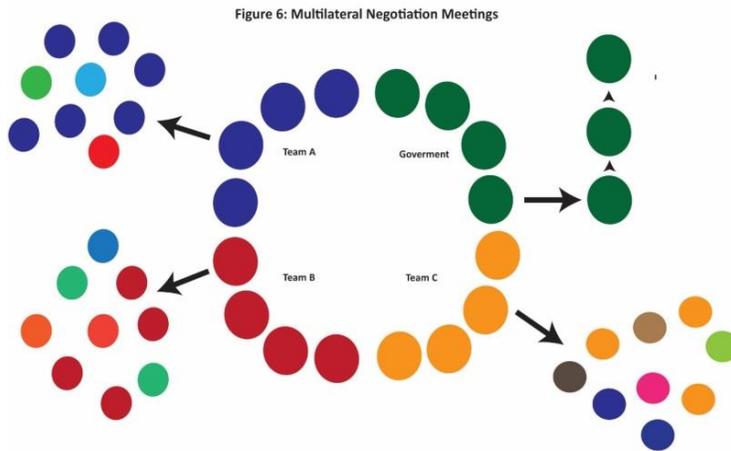
10. Walking the Land to identify where Communities agree, have Questions or Disagree over Boundaries

"Walking the Land"

"Walking the land" can be a joint preparation and data collection activity before negotiations start, or the first step in formal talks. It serves several functions:

▪ Building positive working relationships between the negotiation teams and their members

▪ Developing a greater and common understanding by the members of the negotiation teams of each communities perspectives on the common boundary

▪ Identifying the issues will need to be addressed

▪ Gathering background information to prepare for future

Procedures for Walking the Land and Starting Negotiations

▪ Negotiation teams from each community should meet at a mutually agreeable location where they have decided to begin conducting preliminary boundary identification activities. Ideally, this should be a place where communities have already agreed, or will likely easily agree on, where their common boundary is.

▪ The teams walk or drive together through the land that each party has identified where their common boundary should be. As they travel, they should observe, discuss and identify:

1. Where they agree on the location of the boundary,

2. Where they might be able to agree on the location of the boundary if minor adjustments were made of one or more of their views,
3. Where they need more information, what type and from whom it can be obtained to make a decision on the boundary, and

4. Where they have serious questions or disagree about the location of the boundary and will need more discussion to reach an agreement and complete boundary delineation.

- If the first "walking the land" is primarily a data collection exercise, after completing the first "round" of walking the negotiation teams should return to their communities, analyze information gathered, consult as appropriate with their community members and begin to develop a strategy for addressing specific issues along various reaches of the boundary.

Potential Outcomes of Walking the Land[4]

After "walking the land", members of Boundary Harmonization Teams may have identified:

1. A clear and hard boundary delimited by an immovable and or fairly permanent natural barrier between lands claimed by each community;

2. A clear and hard boundary marked by a permanent or fairly permanent marker – such as a soap tree, stone or formal boundary marker – which will likely be recognized and accepted by members of each community;

3. A clear and potentially hard boundary demarcated by a man-made structure, such as a road or powerline;

4. A clear and potentially hard boundary due to clear past and/or present occupation of land by members of a community, and their building structures and planting live trees on it.

5. A clear and potentially hard boundary identified by respected and trustworthy customary leaders (from both communities if they are identifying community boundaries), "owners of the land" or elders who can provide credible and valid testimony about granting of past use rights to community members;

6. A clear and potentially hard boundary delimited and demarcated as a government administrative unit or political jurisdiction;

7. An unclear boundary due to the loss, destruction or unintentional or intentional moving of a boundary marker;

8. An unclear boundary due to lack of or differing documentation, such as Tribal Certificates, surveys or legal deeds;

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[4] These issues or conditions may also be found when doing internal community land mapping,

9. An unclear boundary due to potential or actual encroachment;

10. An unclear boundary due to past or current joint use by community members and those from one or more neighboring communities;

11. An unclear boundary due to assignment of land by the government to a concession or designated as a protected area, and lack of formal delimitation or demarcation of this land;

12. An unclear boundary due to a possible legal or illegal land sale on or near the boundary without appropriate delimitation, demarcation and documentation;

13. An unclear boundary due to lack of prior necessity or interest of members of neighboring communities, or physical barriers to delimiting or demarcating it.

Starting to Address Boundary Issues

- If "walking the land" is the first step in actual negotiations, parties may want to take one or more of the following approaches for discussions. They may:

  1. Identify areas where they agree on the boundary and confirm them.

  2. Move to a focus on the areas where agreement on the boundary is likely with minor modifications, and discuss and reach agreement on what they will be. After discussions, and if agreements can be reached on this second set of issues, they can be combined with the first agreements to begin development of a settlement package with agreed upon boundaries.

  3. Decide to delay talks on reaches of the boundary that are not as clear until additional information can be gathered and analyzed.

  4. Move to discussions of boundary issues about which there is not agreement.

11. Reaching Agreements and Resolving Disputes over Boundaries

There is not one correct way to negotiate or reach agreements on boundaries. The approach and procedures used depend on the issue in question and whether the involved parties believe they are "negotiable", how important each party's interests or needs are to them and their knowledge and skills in implementing their chosen method for reaching agreements – ideally, interest-based negotiation.

Making Transitions from Positional to Interest-Based Negotiation[5]

Negotiators can develop and implement strategies that will promote the use of interest-based negotiations. A few of them are listed below.

What to do before formal negotiations begin – "preventions"

- **Focus on establishing, developing or maintaining a positive working relationship with the other negotiator(s)** by recognizing and emphasizing "connectors" (things that bond, link or pull you together), and minimizing "dividers" (things that push you apart).

- **Explain and get agreement to use an interest-based negotiation process before beginning discussion of substantive issues.** This can prevent parties from beginning positional negotiations.

- **Initiate an interest-based negotiation process on your own.** Doing so can model, encourage and motivate the other negotiator(s) to use the same collaborative process.

- **Avoid asking for or proposing positions early in negotiations.** Doing so can avoid negotiators getting prematurely locked in to unacceptable positons or beginning an exchange of positions and counter-positions.

- **If proposing a position at the beginning of negotiations is absolutely required, state that the position is only one of a number of possible options that could address and satisfy your interests.** Follow-up by stating that you are open to hearing about and considering others that may be developed.

- **Focus early in negotiations on presenting your interests and discovering those of the other negotiator(s).** This should be done before developing or presenting any positions or options.

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[5] This section on Making Transitions from Positional to Interest Based Negotiations was copyrighted by CDR Associates in 2007. It is use with permission.

What to do during negotiations to respond to a positional approach – "Interventions"

- **If another negotiator presents a position early in negotiations, do not immediately reject or respond to it with a counter-position of your own.** Recognize that the position is the negotiator's preferred way to meet their needs or satisfy their interests. Draw out the needs and interests contained in the position. Clarify and confirm that you accurately understand what has been presented.

- **State that you will consider a position proposed by the other negotiator as long as it can be shown to meet and satisfy both their needs or interests <u>and</u> yours.** Ask them how the solution meets their needs interests, and how they think it might meet yours. After their answer, if their argument is not convincing, explain in as diplomatic a way as possible how their position falls short in meeting your needs or interests.

- **Ask whether the issue or problem being addressed has to be resolved in a win/loose manner** if the other negotiator's position seems to result in an outcome in which you would be a loser. State that your goal for negotiations is an agreement with mutual benefits and gains.

- **Acknowledge a position proposed by another negotiator as one, but not the only, possible way an issue or problem can be addressed or resolved.** Acknowledgement of a position does not mean agreement. Follow-up with a statement explaining that you would like to explore a range of possible other options before evaluating them or making any final decisions.

- **Probe and fully explore a position proposed by another negotiator to uncover and better understand their needs or interests.** Ask open-ended or clarifying questions rather than ones that can be answered by either a "yes" or "no", or which may make your counterpart feel as if he or she is being cross-examined.

- **Guess and develop hunches about the needs or interests that are important to the other negotiator and test them they will not directly or explicitly reveal or discuss them with you.** Ask about and try and get confirmation of different interests that you think might be important to them. If appropriate, make them aware of needs or interests that they might not have considered.

- **Frame the issue, concern, problem or conflict to be addressed in terms of meeting individual and joint needs or interests.** Clearly articulate all needs or interests to be addressed and met in a satisfactory solution.

- **Look for or develop general principles to which you think all negotiators can agree.** These should be objective and fair criteria or general levels of agreement that will help frame or shape development of later agreements.

- **Ask your counterpart to suggest multiple options that might address and meet their needs or interests as well as yours**. Avoid presenting, or having them present, only one position for consideration.

- **Individually or jointly evaluate the acceptability of possible options.** Determine how well options meet or satisfy each party's individual and/or joint substantive, procedural and relationship/psychological needs or interests. If necessary, in private or together, assess how various options compare to each negotiator's Best Alternatives to a Negotiated Agreement (BATNA) – procedural, substantive or impacts on relationships – that could be achieved by not using negotiation, and also the worst or most likely alternatives.

- **Eliminate unacceptable options, those with fatal flaws, and focus on developing and refining the most acceptable ones.** A focus on those with the most potential can promote momentum for agreement-making.

- **Add to, elaborate, modify, refine or drop components of options to create individual solutions that will best meet all parties' individual and/or joint needs or interests.** Find ways to meet the interests of an individual party without harming others. Do not leave any benefits "on the table".

- **Explore links and trades of options or components of options that negotiators value differently to develop mutually acceptable solutions.** Linking issues can promote agreements that are not possible when solving one an issue alone.

- **Test out, restate, confirm and write down agreements and execute appropriate closure rituals and procedures.** Consider and implement activities that will increase parties' commitment to and compliance with agreements.

Resolving Disputes over Boundaries

Described below are some general steps negotiators can use to address and resolve specific boundary issues.

- **State and confirm a common understanding and agreement on the issue to be addressed** – "We need to reach an agreement on where our common boundary will be between these two points. Is that correct?"

- **Clarify each of the community's interests and needs** – " We *each have needs and interests needs about where the boundary should be, which may either be the same, complementary (one can be met without eliminating satisfaction of another) or different. Let's take some time for each of us to describe our interests and needs concerning where the boundary will be.*"

- **Explore the current occupation and use of land in question and its potential boundaries** – "Let's spend some time talking and sharing information on: a) the current status and use of the land that may be affected by our decision on our common boundary, b) its current occupant or uses (if any), c) the community to which they belong and d) any other factors that should be considered in our decision making (such as live trees and plants; use of land for hunting, gathering or timber; structures or improvements to them; access to something of importance such as a water point or sacred site; etc.)

- **Discuss the historical use and occupation of land in question** – "Who has been on this land in the past, when did they arrive, how did they get a use right, and how was it used? If occupants or users changed, how did this happen, and what changed? Who knows about this, could tell us more, serve as a witness and testify if we need additional information?"

- **Review any written documents may help clarify occupation, use or ownership rights** – "Are there any written documents that have granted a use or ownership right to the land in question that will help define its boundary and determine to which community it should belong?"[6]

- **Invite knowledgeable people who can provide additional information needed for informed and wise decision making** – "Who can we invite as credible and mutually acceptable witnesses to tell us what we need to know about past events and the land in question?

- **Request input from a community member or members from one or both communities who will likely be affected by a decision over the**

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[6] Customary documents in Liberia include Tribal Certificates. Statutory documents identified by the Liberia Land Commission can be found in Appendix A: Statutory Documents on Land Ownership in Liberia.

location of a boundary – "Who do we need to hear from to better understand a local view of the boundary and the concerns they want to have considered in deciding where it will be?"

▪ **Identify standards and criteria that will be applied in making a decision about the common boundary** – "What standards and criteria can we apply to help us make a decision that will be mutually acceptable to both communities?"   (For example, "Can we agree that a community member whose occupation of a parcel of land has been uncontested for at least one generation, say 20 years, will have the boundary drawn so that the member's land will be designated for management by his/her community?"

Based on negotiators' provision of information or answers to the above questions, negotiators are likely to be able to reach an agreement on a specific boundary issue. If, however, this is not possible, the issue may need to be linked to the resolution of another one so that trades can be made and agreement can be reached.

12. Confirming Negotiated Boundaries with Communities

Once communities' boundary harmonization teams have reached tentative agreements on either segments or the complete future boundary line, they need to return to their communities, explain the outcome of talks and the conditional boundaries on which they have reached agreement. Agreements are conditional until they are accepted and approved by the involved communities.

Box 5: Sample Agenda for an Internal Community Boundary Approval Meeting

▪ **Welcome** - A member of the community's ICC or its Boundary Harmonization Team and explanation of who will
be the facilitator for the meeting

▪ **Review of the agenda for the meeting and expected outcome**
- An overview of the boundary identification process and outcome
▪ Community discussion and approval of the proposed boundary between the community and its neighbors

▪ **A brief review of the new Liberian Land Act and requirement for communities boundary identification for legal recognition of community land**

▪ **A brief review of the mandate and work of the Boundary Harmonization Team**

▪ **An overview of the proposed boundary**
- Sketch maps, photographs, or digital maps may be used to provide a detailed picture of the proposed boundary
- Reasons will be provided for the recommended location, and an explanation of proposals for specific stretches where there were issues or concerns of each community

▪ **Questions from community members and answers from Boundary Harmonization Team Members**
- Meeting participants may ask up to four related questions at a time on a topic of concern, to which the Team members will respond. The process will be repeated until all questions have been answered.
▪ **Request for approval of the proposed external community boundary**
- A member of the ICC or Boundary Harmonization Team will ask the assembled community *"Do we as a community accept the proposed boundary that has been identified between our community and our neighbors?"*, and ask for a sign of approval - verbal, nodding of heads or a straw poll by members raising their hands.

Box 5: Sample Agenda for an Internal Community Boundary Approval Meeting (Continued)

They will then ask, *"Does anyone have a major or significant concern about any impact of the proposed boundary on the community that would prevent us from approving it?"*

- If there is no dissent, an agreement is considered to be reached and the ICC or Boundary Harmonization Member Team member restates the agreement, *"It looks like the community is in full agreement of the community on the proposed common boundary. We will now consider it to be approved."*

- If there is disagreement the whole community should be asked if they want more discussion of the concern, and if so whether it should be done by the whole community or by a smaller group. If the former, the facilitator will lead a discussion and work to develop a consensus.

- If a subcommittee is preferred, the meeting may be adjourned for a brief time to allow members of the ICC, Boundary Harmonization Team, person with the concern and other concerned community members to talk and try and resolve the issue. If resolution is expected to take more time, the community meeting may be adjourned and convened at a later time to consider the outcome of the small group talks to resolve the issue, and if acceptable approve it.

- If after either the whole community or small group talks about the issue in question, a there is still not a consensus, the facilitator or ICC team may propose that the community switch from consensus to voting to determine if the proposed boundary is acceptable. If the community agrees to change procedures, the facilitator or ICC should ask whether they want to use a supermajority, such as 2/3 or 3/4ths or a simple majority of 51% to approve the boundary. (They may also explain the benefits of each number of votes to approve a proposal.) Depending on the community's decision on the number of votes required to approve a proposal, a vote on the proposed boundary should be taken.

- If the proposed boundary is approved, the agreement should be written down, read back to the community and verbally confirmed again by community members.

- **Confirmation of Next Steps**
  - The ICC should then explain the next steps for boundary confirmation including marking the boundaries, a meeting of the involved communities and their leaders to confirm the boundary and sign a Memorandum of Understanding that will serve as a record of the agreement.

13. Demarcating Negotiated Boundaries Confirmed by Communities

Once each of the involved communities internally approved the dividing line between them they are ready for boundary demarcation. This may occur after a joint meeting between all involved communities at which they sign a Memorandum of Understanding (MOU), a formal agreement between them, or prior to the joint community meeting by the conduct of a survey or use of electronic mapping.

Demarcation can be conducted by members of both boundary negotiating teams working together, or by participation of a broader number of community members from each community. Greater involvement generally promotes greater understanding and ownership of where the new boundary is because of direct participation in and/or witnessing the demarcation process.

Recording Methods

Paper

- Written agreements or maps jointly created by the boundary harmonization teams that provide initial proof of agreed-upon boundaries. Documents are duplicated and provided to each community, their customary leaders, members of the ICC and Boundary Harmonization Teams and an appropriate government agency.

Photographs

- Photos of specific reaches of a boundary, natural or man-made markers.

Global Positioning System (GPS)

- An electronic record of community agreements on boundaries using GPS, a navigational system that uses satellite signals to fix the location of a radio receiver on or above the earth's surface.

Surveys

- A technical process that formally establishes the size of a given parcel of land, which defines its distances and angles. It is generally conducted by a professional surveyor who is licensed and qualified to conduct this service. Once completed, survey results are often created as a map or update an existing plat map with the property's new boundaries. Surveyors may also create a physical record of the survey on the land itself by erecting some form of boundary marker.

Marking Community Boundaries

This process often occurs after a common boundary has been recognized in formal meetings between members of the involved communities and a formal Memorandum of Understanding (MOU) has been signed.[7]

Boundary marking is usually conducted by a Boundary Marking Team with members from each of the involved communities. Ideally, some members of the Boundary Harmonization Teams should be involved.

The Team walks or drives along the boundaries negotiated by the Boundary Harmonization Teams and places or plants appropriate markers – commonly stones or trees – at designated location to demarcate the boundary of community land. If rights of way have been granted to specific land user groups, these too should be designated with appropriate markers.

Ideally, community members who live along the boundary to be demarcated should be invited and participate in the demarking process to confirm its accuracy and build their commitment to adhere to and comply with the designated boundaries.

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[77] A good description of procedures to be mark community boundaries can be found in Rachel McKnight et al. *Community Land Protection Facilitators Guide.* Seattle, Washington: Namati, 2016.

14. Formalizing Community Boundaries

Formalizing community boundaries commonly involves convening a joint meeting between leaders and members of all of the communities that have participated in the boundary harmonization process, and their leaders or representatives signing a memorandum of understanding (MOU) that confirms understandings and agreements about the location of the communities' boundary or boundaries.[8]

Purposes of Joint Community Meetings

Joint community meetings and signing of MOUs:

- Provide another forum to educate community leaders and members about where a common boundary has been delimited (and has or will be demarked);
- Confirm the boundary's location;
- Formalize in writing understandings and agreements about the boundary;
- Document agreement in the form of a MOU, appropriate maps and photographs; and ,
- Promote psychological commitments of community leaders and members to respect the boundary by their participation in the signing ceremony.

Drafting the MOU and preparing for the Signing Meeting and Celebration

MOUs should be drafted before the formal signing community. Drafting may be done by:

- Members of one community, or
- A joint drafting committee with members of all of the communities that have been involved communities.

(Potential contents for a MOU are presented in the box on the following page.)

Once the draft MOU is considered to be final, it should be:

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[8] A memorandum of understanding or MOU is an agreement between two or more parties that confirms a common understanding or agreement between or among them, and indicates their commitment to a joint course of action. It is not a legal document, but may be turned into one depending on the way it is written and the parties' intent. The terms of parties' MOU on their boundary or boundaries will be legally recognized after they have followed the designated government filing process for recognition of customary land.

- Presented to each of the communities for review and conditional approval prior to the joint community meeting,
- Duplicated with multiple copies for the MOU signing meeting.

Common Components in MOUs

- **The names of the parties to the agreement**, commonly the names of the communities rather than its leaders or a family that is the ancestor of the original settlers or "owners of the land";
- **The date and location where the MOU signing is taking place**
- **A preamble** that describes the purpose and intent of the agreement, "To permanently settle and establish the common boundary between… and provide concrete proof for all time of our understandings and agreements ";
- **A written description of the agreed upon boundary or boundaries** with enough detail that it is clear and easily understood;
- **Drawings, maps and photographs** and survey or electronic documentation if one has been conducted or collected
- **Descriptions of any special conditions** such as joint use areas, natural resources, use rights for specific community members or rights of way;
- **Designated names of signatories and spaces for them to sign the MOU**, generally for community leaders authority to represent and make commitments for their communities;
- **Designated names of signatories and spaces for witness to the signing of the MOU** (which may also include non-designated spaces for community members to sign);
- **Spaces for government officials to sign** to confirm that they attended the joint community meeting and witnessed the signing ceremony.

Representatives of involved communities should also discuss the agenda and logistics for the signing ceremony and following celebration. Issues to be agreed upon include:

- Who will sign for each party
- Who will attend
- The time, location and duration of the signing ceremony and celebration
- Arrangements for food and housing for visiting parties
- Logistics for the celebration

Sample Agenda for a MOU Signing Meeting

- A welcoming speech or ceremony conducted by the host community

- Reciprocal speeches by leaders and representatives of other communities who have been involved in boundary harmonization activities

- A description of the goals, process used for boundary demarcation and the roles of the Boundary Harmonization Teams

- The public reading of the MOU, its terms and optionally the logic and rational for the location of any specific or potentially problematic delimitation issues

- A question and answer session to address any final concerns that leaders of involved communities or members may raise

- Signing or thumb printing of the document, first by community leaders, second government officials, third by witnesses and finally, optionally, by community members

- A concluding speech indicating the full support of the communities for the agreement and confirmed boundaries and a vote of thanks for everyone's participation in the process

- Adjournment and celebration

At the conclusion of the signing ceremony, leaders of each community should receive a copy of all signed agreements and documents. Similar documents should be provided to local government officials, as appropriate.

15. SECURING LEGAL RECOGNITION OF COMMUNITY LAND BY THE GOVERNMENT

Regulations for securing legal recognition of community land differ from country to country. Procedures for Liberia are described below.

Formation of a Governance Structure

In Liberia, once involved communities have delimited and demarcated their boundaries, if they have not done so already, they will need to establish an inclusive community land management governance structure, a Land Development and Management Association (CLDMA). Creation of Community Land Development and Management Associations also commonly involves negotiations to develop procedure's for identifying and nominating candidates for membership, approving them and negotiating by-laws by which they will operate. Once again, interest-based negotiations are highly appropriate for reaching agreements related to the formation and operation of the association.

Conducting a Confirmatory Survey

Once the Confirmatory Survey provided for in in the Land Rights Act has been completed using GPS or other comparable technology, and accepted by two or more communities, they may execute a Stipulation of Boundaries, which includes coordinates and maps of the concerned customary land.

Registering and Securing Government Recognition of Land Ownership

The Stipulation of Boundaries needs to probated and registered with the land registry – the Center for National Documents & Records (CNDRA). In the future, ownership of registered community land will be enforceable as any other deed or written instrument evidencing interest in land.[9]

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[9] Land Rights Act, Chapter 10: Demarcation And Categories Of Customary Lands
Article 37: Demarcation Of Customary Land
5, p. 23.

16. Promoting Compliance with Community Land Boundaries and Resolving Disputes when unassisted voluntary Agreements are not possible

Promoting Compliance

Compliance by community leaders and members with agreed-upon community boundaries can be promoted by:

- Documentation and registration of agreements and associated technical documents
- Community education
- Development of an issue or complaint resolution or process

An Issue or Complaint Resolution Process

An Issue or Complaint Resolution Process is a predictable procedure for communities to address and resolve disputes or conflicts concerning their borders. They include agreements between communities and procedures for:

Raising Issues

- Who can raise an issue about a perceived or actual violation of a boundary or terms of the agreement – Any community member, customary leaders, members of the Land Development and Management Association (CLDMA), others such as executives of a concession?
- To whom in the community should a complaint first be raised before referring it to the other party, their representative(s) or community? A customary authority, a member of the CLDMA, someone else?

Assessing the Merit of Issues

- What should be the internal process for evaluating the validity and merit of a complaint? What standards and criteria, and procedures will be used?

Referring the Complaint to the Other Community

- If a complaint is judged to be valid, how will it be communicated to the other party or community, and by whom?
- Should the complaint be written or is verbal communication acceptable?

An Issue or Complaint Resolution Process (Continued)

- What evidence should be provided in a complaint to demonstrate its merit?
- Should a suggestion for a solution be included in the complaint, or merely a statement of the perceived or actual problem?

Investigating and Responding to the Complaint

- How will an investigation of the complaint be conducted, and by whom? The responding party, jointly by all parties and independent party?
- How long should the recipient of a complaint have to investigate it, make a decision, offer or implement a remedy or agree to attend a joint meeting to discuss it?
- If a joint meeting is needed to address complaint, who should attend? The complainant(s), community leaders, members of the Land Develop and Management Association, others?
- Who will chair or facilitate the meeting? A member of one of the parties or an independent outsider?
- What will be the process for conducting the meeting? (Ideally, interest-based negotiation using procedures described earlier in this monograph.)

Deciding on how the Complaint will be Resolved

- Can the outcome of a complaint be decided and resolved unilaterally by one community or will both communities need to be involved?
- What authority will communities have to make a decision and impose a consequence on a violator of an agreed-upon boundary or terms in the harmonization agreement? Can they order, require and enforce compliance, restitution or compensation if harm has occurred?
- If a voluntary agreement between parties is not possible, how will they individually or jointly decide on an assisted dispute resolution process that will enable them to reach a voluntary agreement, get advice on a possible settlement or secure a binding decision that resolves their differences?

Third Party Assistance in Resolving Disputes

Sometimes parties involved in a dispute cannot resolve their differences on their own. They may need the help from a third party, and individual or group that is not part of the dispute, to settle their confusions or conflicts.

There are three kinds of third-party dispute resolution assistance:

- Help to reach voluntary agreements
- Advice on potential settlements or agreements
- Non-binding or binding Third-party Decision Making

Help to reach voluntary agreements

- **Facilitated problem-solving** – A process in which a trusted third party, a facilitator, designs and conducts a meeting in which participants improve their working relationships, share information, solve a problem and reach mutually acceptable decisions. Facilitators either do not have an interest in the specific outcome of issues under discussion, or are able to step aside from their personal views and facilitate an impartial process. Facilitators do not have any authority to make substantive decisions for meeting participants.

- **Mediation (mediated negotiations)** – A dispute resolution process in which a mutually respected and independent third party, a mediator, helps disputants to establish or improve their working relationships, communicate more effectively and engage in productive talks to increase common understanding and/or develop voluntary agreements that resolve contested issues. Generally, mediators do not have a relationship with any of the involved parties that might bias their views toward one or more of them, and are impartial regarding the issues in dispute. Mediators do not have any authority to make a decision for the involved parties, and may or may not have expertise on issues under discussion.

Advice on potential Settlements or Agreements

- **Independent neutral evaluation** – A dispute resolution process in which parties to a dispute submit contested issues to a mutually acceptable and knowledgeable third party to assess the strengths and weaknesses of each party's case, provide assistance in finding common ground and/or issue an advisory and non-binding

opinion on how dispute could be settled. They may also provide an opinion on the likely outcome if the dispute is taken to a court for a judicial decision.

- **Fact-finding** – A dispute resolution process in which a person in a position of authority or government agency requests an impartial individual, a factfinder, to conduct an independent and neutral investigation into facts related to a dispute and issue a recommendation on how the conflict could or should be settled. Fact finding has been used successfully to resolve planning, development and housing disputes, and collective bargaining conflicts between labor and management.

- **Surveys** – A survey is a technical process to formally establish the size of a given parcel of land, which defines its distances and angles. It is generally conducted by a professional surveyor who is licensed and qualified to conduct this service

Non-binding or Binding Third-party Decision Making

- **Administrative rulemaking or hearing and decision-making** – Promulgation of rules and regulations by a designated government administrative agency with authority to define boundaries, or parties voluntarily submitting contested issues to a government entity for either a non-binding or binding decision. (The new Liberian Land Authority will be mandated to adjudicate disputes over land.)

- **Legislation** – Passage of laws that define boundaries and specific access, use, ownership rights or political jurisdictions for defined parcels of land. Legislation is most likely to be used once there has been agreement among concerned parties on boundaries, and as a process to recognize and formalize them.

- **Arbitration** – Parties voluntary submitting contested issues to a jointly acceptable arbitrator and arbitration process for either a recommendation for a non-binding settlement or a binding decision. Arbitration may be initiated privately or in the context of a judicial process.

- **Litigation and Adjudication** – An adversarial conflict resolution process in which a legally recognized authority, such as a judge or jury, hears and reviews evidence and argumentation including legal reasoning set forth by opposing parties or litigants to a dispute, applies standards and criteria set out in law and makes a binding decision regarding the rights and obligations between involved parties.