

Supplemental Resource

Boundary Harmonization

How to Use this Guide

Phase 1, Task 2, Step 4 of the Model Guidebook for Communities discusses how a community can conduct initial due diligence to support responsible investment. This resource provides more detailed steps on harmonizing boundaries: the process through which people agree on the land boundaries between neighboring individuals and communities.¹ The process of determining community boundaries tends to unearth latent, unresolved land conflicts — even ones that have been long dormant or festering for years — and may also create new land disputes. As a result, activities may stall, and conflict resolution will become a critical component.

Causes of Conflict

Intra-community conflicts can occur between members of households, families in a community or whole sub-groups within a community. Key drivers of intra-community conflicts may include:

- Individuals encroaching upon the land of another community, group or family and claiming the land as their own;
- Inheritance disputes within families, including dispossession of “weaker” family members by “stronger” family members;
- Historical ownership based on a founding or elite family’s claim to community land, which the family feels entitles it to more extensive or stronger land rights than other community residents;
- Elite or landless families claiming communal areas for their own homes and farms; and
- Migration patterns, population shifts or post-conflict settlement of internally displaced people, which tend to create overlapping or multiple, contested claims to a single piece of land.

Inter-community conflicts can occur between one community and a neighboring community. Key drivers of inter-community conflicts may include:

- Differences between indigenous/customary and state-drawn/administrative boundaries, which create an opportunity for each community to side with the boundary that gives it claim to more land;
- The suspected or known presence of valuable natural and/or mineral resources on a given piece of contested land;
- The historical division of families (related to internal power struggles or intra-community disagreements) where one side of the conflict split off and formed a new community; and
- Community elites or leaders acting in bad faith to ensure that boundaries are never harmonized, so that the community's land cannot be formally documented, thus allowing more time for them to grab community lands for themselves and their families.

Conflicts between a community and an outside actor can occur with a local elite, outside investor or a government official. Drivers of community-outside conflicts may include:

- Government grant of a large-scale concession to an investor without community consultation;
- A national or regional elite or government official grabbing land from a community for private use;
- An investor failing to comply with the terms of a lease agreement, polluting community resources or blocking essential rights of way necessary for community members' access to their livelihoods; and
- Government seizure of local land for infrastructure without following proper expropriation procedures.

Principles for Successful Boundary Harmonization

- **Facilitate open dialogue.** Facilitating dialogue involves bringing together all parties to a disagreement and related stakeholders and creating an open, public discussion about the land conflict. The object is to gather all of the stories and perspectives and identify the roots of the problem, the harm done and all relevant laws that apply.
- **Work with trusted community leaders and government officials.** Communities must be careful to involve all respected, trusted leaders and ensure that all leaders feel included and valued.
- **Provide sufficient time.** The boundary harmonization process can take a

long time so it's important to allow communities as much time as they need to arrive at genuine boundary agreements.

- **Prepare to speed up the process.** A community motivated by a strong desire to maintain good relationships with neighboring communities while working to protect its land may move through the process faster than others.
- **Resolving disputes might require meditation.** If community members are not willing to compromise, the boundary harmonization process will stall. If negotiations fail, it may be necessary to use alternative dispute resolution strategies such as meditation.

Facilitating Boundary Harmonization

Step 1: Provide an overview of the boundary harmonization process.

- Call a community meeting and explain all the steps of the process.
- Remind the community members that they should proceed carefully and peacefully and be ready to make compromises.

Step 2: If available, revisit the community's map and identify all boundaries and "hotspots."

- Ask the community to look at its map and discuss what it thinks are the exact boundaries of its lands.
- Have community members mark any "hotspots" (sites of boundary disputes or possible tensions with neighbors) on the map.
- To help identify potential disputes, ask the following questions:
 - Who are your neighbors? How many communities do you share a boundary with?
 - Do you and your neighbors agree on where your land stops and their lands begin?
 - Why is that particular location the boundary of your land? Is there a story to explain that boundary?
 - Describe your relationships with each of your neighboring communities.
 - What history do you have with each of your neighbors?
 - Do you share any resources or land areas with your neighbors?
 - Is the boundary a customary boundary or one made by the state?

- Do you have a marker at each boundary? If you had a marker that is now gone, what happened?
- Did you have any conflicts at these borders that have now been resolved?
- Do you have any existing conflicts at these borders? What are these conflicts about?
- Has your community ever tried to resolve these conflicts? What happened?

Step 3: Support the community to make a plan for how it will try to address any boundary conflicts.

- Remind the community members of the bigger picture: it is better to compromise to gain peace and protect their lands rights than to fight over small pieces of land and remain in conflict, without legal protection.
- Discuss a range of compromise solutions.

Potential Solutions to Boundary Conflicts and Other Land Conflicts

I. Inter-community boundary conflicts:

- **Agree to accept one community's definition** of the boundary.
- **Agree to share the disputed land** as a common area, recorded on formal documents as owned by or belonging to *both* communities with equal rights of use and access.
- **Agree to divide the disputed land equally in half**, each party giving up half of the contested area.
- **Allow towns or households located within the contested area to choose which community they would like to belong to.** For example, members in one community described during fieldwork how: "We failed to come to one understanding, so we fought among ourselves. Some people kept talking about history, and we could not go nowhere. So we started talking to the community people in the town [on the border of the two fighting communities] to decide what they wanted to do. We allowed the town at the border to decide what they want to do and then we supported them."
- **Locate and compromise on either the administrative boundary or the original traditional boundary.** In cases where conflict stemmed from differences between administrative and customary boundaries, some communities agreed to abide by one of these pre-defined limits. For example, one boundary conflict between two communities was easily resolved because these communities thought of themselves as "brother" communities. Their boundary conflict was over a small area of land, and each community felt that it would be less of a loss to compromise and lose some land than to fight with its "brother." They resolved their conflict by agreeing to use a relevant pre-existing administrative boundary as their formal dividing line.

II. Intra-community disputes over common areas:

- **Allow encroachers to stay where they are**, conceding that the land they have taken as no longer being part of the common lands.
- **Allow encroachers to keep part of the land they have taken** but return part of the land to the community.

- **Evict encroachers and give them a reasonable time period to move off the land.** For vulnerable or impoverished encroachers who have moved onto common lands because they have nowhere else to live (such as widows, elderly men with no children, etc.), communities may respond by finding alternative land to give them to live and farm on. For richer families who have grabbed land in bad faith, communities might take a harder line, giving them a specified time period to return the land to the community or their neighbors.

III. Conflicts between a community and an outside actor:

- **Allow small-scale users** from other communities using community resources for livelihood purposes to continue to use resources, but pay a fee for a monthly license, with limits placed on the amount of extraction permitted.
- **Allow medium-scale regional investors to pay for licenses, leases or permits** to use the land and natural resources on a monthly basis, with limits on the permitted amount of extraction or degree of environmental degradation.
- **Renegotiate terms of a pre-existing agreement** with international investors to address concerns of the community and investors, as raised in the mediation.

Step 4: With the support of CSO, discuss dispute resolution and mediation techniques. As part of this discussion, the boundary harmonization team should:

- Discuss each of the “hot spots” along their borders and think carefully about the origins of each boundary conflict.
- Remind each individual about any past efforts to resolve the conflict(s) and the results of those efforts, particularly what happened and what were the outcomes of previous resolution attempts.
- For each dispute, create a strategy for how it will be resolved This strategy should include:
 - Which decisions can be made without community input and which decisions should be made with community input.
 - How the conversations will be shared and documented with neighboring communities and individuals.
 - What circumstances will require support from local government or CSOs.
- For disputes with neighboring communities, brainstorm a range of compromises, paying careful attention to only include solutions that the community will accept.
- Strategize possible responses to counter-offers that the neighbors might suggest – including various responses if the neighbors refuse to compromise.

Step 5: Meet with both parties to discuss, negotiate and agree on boundaries.

- It is best to have the meetings at the actual site of the boundary when possible, so that people can look at the landscape for clues as to where the boundary is located.
- If there is no conflict or only minor disagreements, negotiations may take only one meeting. If there is a serious conflict, it may take many months.
- If there is no agreement during the first meeting, leave the discussion for the day and give everyone time to think.
- Keep having meetings until a compromise is found or until mediation or another conflict resolution strategy is necessary.

Negotiation

In negotiation, the people on either side of a conflict come together *without an external mediator* to work towards resolution on their own. Facilitators can support the parties to prepare for negotiation and provide advice on how to negotiate most effectively.

Preparing for Negotiation:

- Select a neutral location for the negotiation that will ensure a balance of power between the parties. In many boundary disputes, it is best to hold the negotiation at the site of the conflict. There, it is possible to discuss the conflict in practical terms, instead of theoretically, and look for evidence that can contribute to the discussion (based on the physical terrain and natural resources at the site). If the parties cannot go to the site, use a detailed map of the area with resources clearly marked.
- Only the Land Committee should take part. Establish how many people will be present and participating from each party, and who will be the primary representative from each side. If there are a large number of stakeholders, a few elected or chosen representatives from each side should negotiate.
- Set ground rules for the meeting (e.g., one person speaks at a time, no demeaning or hurtful language, etc.).
- Support the parties to decide whether or not they will call witnesses, and if so, who will speak.
- Support the parties to think about their ideal outcome, what they are willing to compromise about, and what they are not willing to compromise about.
- Help each side to understand the other's perspective and desired outcomes.

Effective Negotiation Strategies:

- **Opening statements.** A negotiation begins with an uninterrupted opening statement by each side that expresses its views, understandings and desired outcomes. *After* each side has made its opening statement, the other side can ask questions to clarify anything that remains unclear (not to argue back).
- **Testimony by witnesses.** Next, witnesses may come forward to add useful or important details or information to the conflict at hand. If the roots of the conflict are in the distant past, witnesses might include elders who were alive at the time.
- **Offers and counter-offers.** Together, the parties discuss possible outcomes, including what an ideal future might look like. Each party then offers to give something up to keep

what is most important to it and reach a compromise. The other side can agree to that offer or make a counter offer of what would be a better compromise for its needs. The parties go back and forth until a compromise is reached.

- **Recording the agreement in writing.** Once agreement is reached it should be written and signed by all parties and witnesses, then publicly announced. Written agreements work best when they include detailed instructions for how the agreement will be made “real” – for example: who will plant or erect boundary markers, what will happen if someone disrespects the agreed boundary, etc.

Step 6: Return to the community to discuss and confirm the boundaries agreed upon with neighbors.

- After an agreement has been reached, the negotiators from both communities must return to their communities to seek final approval for the agreements.
- If the community does not agree with the negotiated boundary, then the boundary harmonization team must return and resume negotiations, bearing in mind the communities’ objections.
- It is important that everyone in both communities is aware of the agreed boundaries and accepts them.
- To prevent last-minute community disagreement after lengthy negotiations, it may be useful for the boundary team to provide regular updates to its community between meetings with neighbors.

Step 7: Mark the agreed-upon boundaries.

- After the boundaries have been agreed and accepted by communities, the agreements are formalized using MOUs and boundary trees, signs and culturally appropriate markers (see Supplemental Resource: Documenting Boundaries and Land Rights).

Preparing for Mediation (when boundary harmonization reaches an impasse)

Step 1: Choose a respected mediator whom both parties trust, agree is impartial and welcome into their process of conflict resolution. It is often best to choose respected local customary or religious leaders, government officials, or thoughtful elders. A good mediator should:

- Remain impartial and fair;
- Be able to earn and maintain trust and acceptability;
- Be self-confident, friendly and focused;
- Keep the details about the dispute confidential and the process transparent;

- Be able to listen, analyze problems and identify the issues involved for resolution;
- Use clear and neutral language;
- Be sensitive to possible factors that might create power imbalances or otherwise affect the discussion, such as local gender dynamics, relations between two ethnicities or cultures, etc.;
- Positively address and balance power imbalances;
- Positively address the underlying emotional aspects of the conflict;
- Help the parties articulate their specific interests;
- Screen out issues that cannot be mediated and help the parties set them aside;
- Help the parties invent creative solutions and options;
- Help the parties understand the pros and cons of different outcomes;
- Help the parties make informed choices; and
- Help the parties find their way to a practical agreement that can be realized and satisfies both parties' needs and interests.

Step 2: If the dispute has ever been brought to court, review all court records to get a sense of the conflict's history.

Step 3: Talk separately with both parties to understand the history of the land conflict as well as both sides' points of view.

- One strategy to try during these discussions is to ask each party how things "should have happened" – describing the conflict and its outcome as they could have happened in an ideal world.
- The mediator might also ask each party to envision a "positive future" where the conflict is resolved. What would happen as a result of the conflict's peaceful resolution? What will relations between the parties look like in the future? Identifying and thinking about a peaceful, productive future may make the parties more willing to compromise to attain that future vision.
- The mediator may work with each party to draw a "tree" or a map of the conflict, in which the roots of the tree represent the roots of the conflict and the history of the land in question, the trunk represents the conflict itself, describing who is involved, the timeline, what the disagreement is about, etc., and the branches represent possible resolutions and the positive outcomes of

peaceful reconciliation. Creating these visual maps may help each party articulate its point of view and realize where interests/desires overlap or differ.

- The mediator might also ask each party to talk about positive steps the other party has made towards resolution as a way of helping each side remember all the good actions of its opponent.

Step 4. Hold a preparation meeting with both parties to the conflict.

- Determine a neutral time and place for the mediation to take place.
- Discuss the format and structure of the mediation.
- Support each party to decide if it will call witnesses, and if so, who will give testimony about each relevant issue.
- Support each party to think about its ideal outcome and what it is willing to compromise on to reach resolution.
- Ensure that the parties are actually interested in coming to a resolution and ending their conflict.
- Agree to each party's negotiation team.
- Agree to who may be in the audience, watching the mediation.
- Set ground rules for conduct during mediation, such as:
 - Be respectful and patient; one person speaks at a time.
 - Do not interrupt, use demeaning or hurtful language, or make threats.
 - Do not make promises that cannot be kept.
 - Focus on resolution, not past grievances.
- Clarify the major points of disagreement and create an agenda that describes which issues will be discussed in what order.
- Ensure that all the necessary information is available to both parties ahead of time – parties should agree to a “no surprises” principle.
- Ensure that the parties reaffirm their willingness to mediate and arrive at an authentic resolution.

During Mediation

Step 1: Introduction and ground rules.

- Both parties affirm that they are ready to enter into mediation and ready to arrive at a resolution of the land conflict.
- Mediator sets the tone of the proceedings by proclaiming his or her neutrality and clarifying his or her role.
- Review the mediation process.
- Review the agreed ground rules, making sure that there are not any rules missing from the list, and seek the parties' agreement to follow these rules.
- Summarize the parties' positive past interactions and feelings (before the conflict began).

Step 2: Each party side tells its side of the story without interruption.

- The "opening statements" should explain: the history of the conflict, the basic issues at stake, the party's needs and interests, and the desired solution(s).
- At the end of the statement, the mediator and any neutral local leaders assisting with the mediation may ask clarifying questions.

Step 3: Statements and presentations are made by witnesses, elders or local experts (identified during the preparatory meetings).

- These statements should add useful information that can help clarify the facts of the conflict.
- The witnesses should aim to be impartial, only stating what they know to be true, not taking one side or the other.
- The witnesses' main role is to validate and clarify facts.

Step 4: Mediator summarizes and provides facts.

- Next, the mediator summarizes what each party has said, identifies key issues that must be addressed and reminds the parties about any relevant laws that must impact the agreed outcome.

Step 5: Each party then describes its desired solutions and outcomes.

- The mediator facilitates the discussion with an aim towards arriving at a mutually agreeable settlement and, as appropriate, offers creative solutions that may bridge the parties' interests.

- The mediator may engage in open-ended questioning during this phase to make sure that all of the parties' main points come across clearly.
- If there are power asymmetries between the parties (such as an elite ex-military commander or politician on one side and a poor community on the other side), the mediator may want to take a more active role in moderating this discussion. The mediator can do this by asking questions to allow the weaker side to state its position more clearly or clarify or repeat a point in more detail. If, in the course of the mediation, the power asymmetries become so unequal as to obstruct the weaker side from asserting its ideas and desires, the mediation should not proceed.
- If emotions run high, the mediator must have strategies to defuse anger and tension that might cause a breakdown in goodwill. Such strategies can include:
 - Refusing to allow the use of hurtful or destructive language;
 - Asking a speaker to repeat an angry sentiment in a more constructive manner (which allows the speaker to clarify and explain what he or she is thinking and feeling);
 - Pausing the mediation to give people time to take deep breaths, sit for a few moments in silence to think, or go off and cool down for a bit; and
 - Breaking to privately check in with each party.
- The mediator should encourage creative solutions and problem-solving but allow the parties to arrive at the final resolution themselves.

Step 6: Once the parties reach an agreement, the mediator's job is to restate the exact terms agreed upon and make sure that there is true agreement.

- The mediator may suggest various hypothetical situations that challenge the agreement and ask the parties how those situations might impact the agreed solution. For example, the mediator might ask:
 - What if a community member disrespects the agreed boundary?
 - What if valuable minerals are found under this boundary?

Step 7: Drawing up and witnessing a written agreement.

- Once the terms of the agreement have been clarified, the mediator writes down the agreement, reads it out loud for confirmation, and has both parties and all witnesses sign it.
- The moment of signing should ideally be captured in a photograph or video. Signing witnesses can act as social enforcers over time.

- Both parties and the mediator should keep a copy for their records.
- The written agreement should include:
 - All the terms of the agreed solution;
 - A plan for carrying out the solution, including who, what, where, when and how the plan will be put into practice;
 - A clear arrangement for how the agreement will be enforced over time;
 - A written and pictorial description of the agreed boundaries of the land at issue;
 - Any penalties or actions that will occur if the parties violate the agreement;
 - Signature lines for as many witnesses as would like to sign; and
 - Any other provisions the parties think are necessary.

What to Do when Mediation Does Not Work.

If community meetings, negotiation, mediation and working with trusted community leaders and government officials do not resolve a conflict, it may be necessary to refer the case to the formal court system.

¹ This resource is adapted with permission from Namati, *Community Land Protection Facilitators Guide* 149-166 (2017).