

## SECTION 4



## SECTION 4

# DEVELOPING A STRATEGY FOR MANAGING CONFLICTS

### 4.1 DIRECTION SETTING

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This section examines how to develop a strategy to manage conflict. It explores:

- ◆ the possible responses and options that stakeholders may have in managing a conflict;
- ◆ factors that affect the selection of a particular strategy;
- ◆ approaches and tools that are useful in making decisions about which direction to pursue.

Setting direction and outlining plans of action occur at different stages of managing conflict. As described in Section 3, a preliminary conflict analysis at the outset can help the initiating stakeholders to understand the different interests and relationships involved. It can also help determine a provisional strategy for expanding the engagement of other stakeholders in conflict management.

The next step is working towards a mutually agreeable strategy that gains the support of all stakeholders. This step is usually difficult. It is often the case that stakeholders do not support the adoption of a collaborative or consensus building approach to managing conflict. Perceptions of the key issue or issues may differ widely. Many people suspect that conflict management strategies based on collaboration are only a way to undermine power rather than to build supportive working relationships.

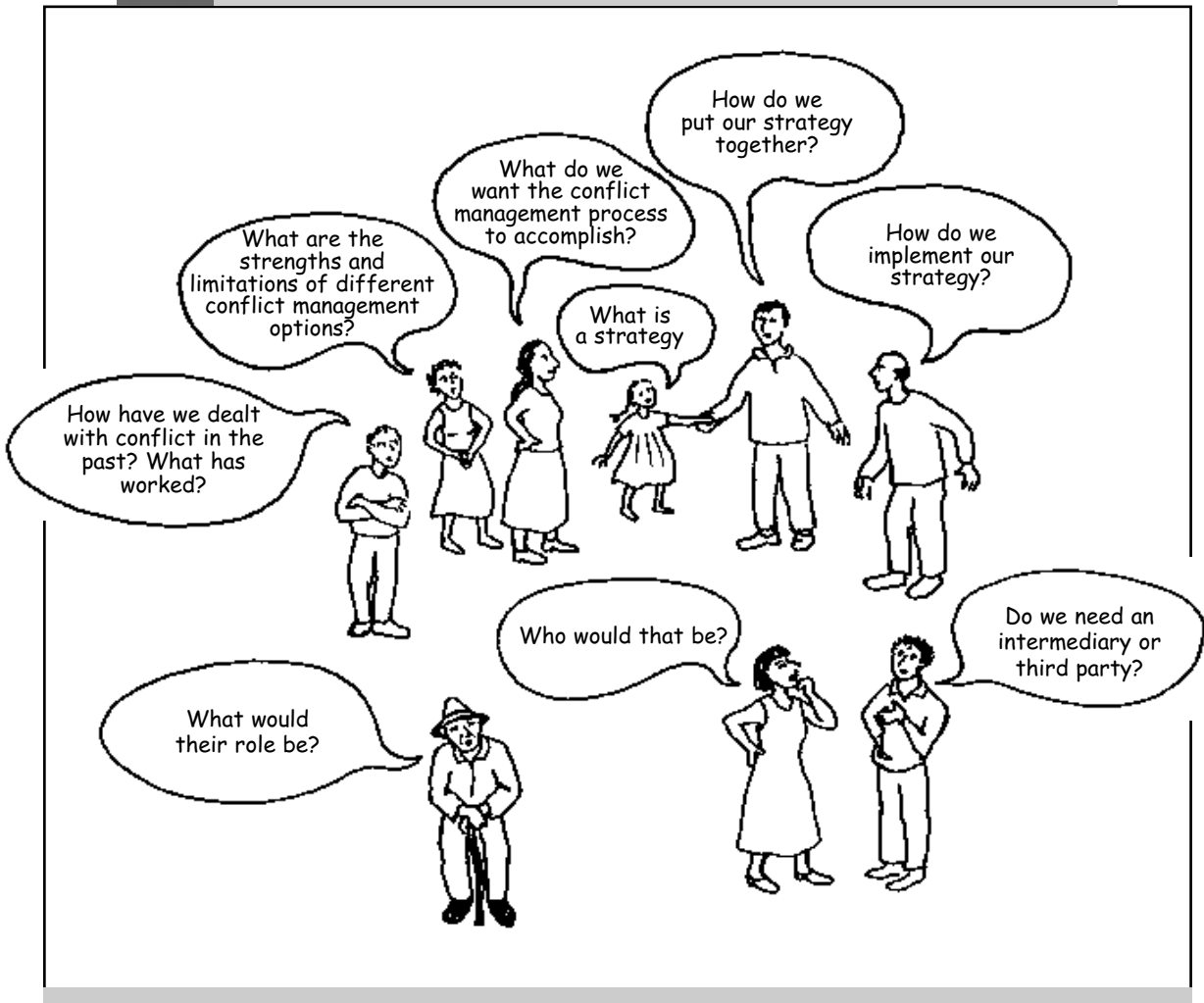
At this point, stakeholders participate in a broader conflict analysis and determine whether they wish to proceed further, as described in Section 3. At the same time, key stakeholders individually consider their possible responses to the conflict and their preferred strategy for managing it (see Figure 4.1). To assist this process, stakeholders outline their interests and directly state what outcomes they want in relation to those interests. This

builds on their ongoing analysis of conflict causes, existing and desired relationships among stakeholders, and the interests, incentives to negotiate and capacities to participate of both themselves and other stakeholders. Before a collaborative process can emerge, groups need to decide that working towards an agreement based on mutual gain is the best choice for obtaining an acceptable outcome.

Even if initially individuals or groups agree to collaborate, after they have started examining the conflict they should reconsider or reconfirm their agreement to use consensus building approaches.



FIGURE 4.1  
SOME KEY QUESTIONS IN SELECTING A STRATEGY



## 4.2 CHOICES IN CONFLICT MANAGEMENT

As discussed in Section 3.3.4, people choose to respond to conflict in varying ways. Some withdraw from the conflict and refuse to acknowledge the dispute, while others may adopt various strategies to address it. When stakeholders publicly acknowledge the dispute and are interested and willing to address it, they may then:

- ◆ decide to accommodate and concede to the other group or groups;
- ◆ compromise; or
- ◆ work to manage the conflict collaboratively.

These training materials promote the third approach as a strategy in which all stakeholders potentially work for mutual gain. Collaborative solutions can be stronger, and their final result more acceptable, because stakeholders assess a range of views and are confident that they will get more from this type of agreement than they would from a unilateral action (such as the use of courts, coercion or withdrawing from the situation). Stakeholders must balance the potential benefits and risks so that they can feel more confident that their interests will be met at the bargaining table rather than away from it (Susskind and Cruikshank, 1987).



### TRAINER'S NOTE # 26

#### BRINGING DIFFERENCES TO THE FOREFRONT

Remember that the absence of obvious public disputes over forest use or resources does not mean that conflicts do not exist. Grievances are often allowed to smoulder for various reasons: fear, distrust, peer pressure, cultural differences, financial constraints and exclusion from certain disputing procedures, or strategic reasons (for example, one stakeholder group may wait for more favourable circumstances to pursue its case).

In instances where latent conflict exists, participants should be encouraged to create ways to air grievances constructively. Examples include facilitated public or community meetings, special sessions of village forest management committees and semi-structured discussions with representatives or leaders of various stakeholder groups. Once the issues have been identified, the process of managing the differences can begin.

Stakeholders should understand that they have a number of choices for how they can manage a conflict. Communities regularly use either their own customary practices or the laws and administrative procedures for addressing conflict. Alternative conflict management has emerged as another approach – which is often sanctioned by governments and communities – for addressing conflicts.

In this section, we will assess the strengths and limitations of each of three different frameworks or “legal orders” for addressing forest management conflicts:

- ◆ customary practices;
- ◆ legal or administrative strategies;
- ◆ alternative conflict management approaches.

Although these materials focus on alternative conflict management, it is important to be aware of the full range of options that are open to stakeholders. Additionally, although the frameworks are treated separately, they do not always exist as discrete or closed systems, and may overlap. They can be complementary or competitive, and at times even contradictory.

### 4.2.1 Customary systems of managing conflict

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A vast number of local-level strategies and techniques for managing conflict over forest resources have evolved within communities. There are many cross-cultural similarities in how people handle conflicts. Negotiation, mediation and arbitration are common practices in communities throughout the world (see Sections 4.2.2 and 4.2.3 for a discussion of these terms). People use other means as well, including coercive measures such as peer pressure, gossip, ostracism, supernatural sanctions and violence (or the threat of it).



*Indigenous knowledge is interpreted as local knowledge as well as knowledge that is shaped and delimited by the distinctive characteristics of a particular place. Indigenous knowledge has two characteristics: (i) it is a product of a long process of adaptation to a particular environment; and (ii) it applies to a small, relatively homogenous group. Indigenous knowledge is a form of common wisdom that allows communities to carry out their everyday activities and to resolve conflicts in a manner that maintains the local community balance. This knowledge*

*is applied for different things, but does not define strict rules by which the community is to operate. Instead, it is a set of ideas and tools that different individuals can use or draw from depending on the situation and their own knowledge.... Local dispute resolution mechanisms are part of indigenous knowledge. (Castro and Ettenger, 1997)*



Traditional knowledge systems and local mechanisms for managing conflict are integral to supporting the group or culture in which they develop. These approaches are culturally appropriate and maintain the power dynamics and relationships of the community concerned. They are often characterized by the building of relationships with kin, neighbours and various subgroups as part of the conflict management process. Bargaining, exchange and compensation may play key roles, but often the underlying principle of negotiation is to move towards a consensus. Negotiation-based processes are generally more accessible to local and traditional peoples, building on their available time, their language and their resources.

**Although there are some distinct advantages of customary practices, it is also necessary to recognize that these practices are not perfect.** Not all conflicts within a customary setting end in harmony. There are no guarantees that settlements will necessarily be long-lasting (Castro and Ettenger, 1997). Traditional systems do not ensure fairness and they can maintain the status quo to the disadvantage of subgroups. Such practices

may not provide an equitable opportunity or forum for some groups, such as women, certain castes and ethnic minorities, to express their grievances.

**Local knowledge and practices evolve and change over time in response to the shifting social context.** An array of social, political and economic factors may undermine the ability of traditional power and authority to enforce agreements.

The increasing heterogeneity of rural or indigenous communities – which is caused by cultural change, intermarriage, education and population movements – has, in many cases, eroded the social relationships that supported customary conflict management, for example, where educated youth are no longer willing to accept traditional autocratic decision-making styles. In such instances, change or rebellion against traditional power holders may not necessarily be negative, especially if it encourages greater pluralism. However, such change will have an effect on the use and impact of customary resolution methods.

Finally, customary practices for managing conflict emerge to address disputes *within* the culture or group they support. They are not designed to manage conflicts with *external* organizations, companies or communities, which are common in community forestry disputes (see Box 4.1).



#### TRAINER'S NOTE # 27

##### HOW APPROPRIATE ARE LOCAL OR CUSTOMARY PRACTICES?

Conflict management trainers should stress that each local or customary situation must be evaluated on its own merits. It is important to ask:

- ◆ In what type of conflict situations do local or customary practices work best?
- ◆ Where do local or customary practices not work as well?
- ◆ How can local or customary practices be strengthened and expanded?

*Training activities #28 and #29* give training participants an opportunity to explore various customary practices and their appropriateness for managing different types of conflict.

**BOX 4.1 WHEN CUSTOMARY CONFLICT MANAGEMENT SYSTEMS DO NOT WORK AMONG COMMUNITIES**

In northern Thailand, boundary conflicts arose between two ethnic groups, the Karen and the Hmong, over different uses of a forested watershed. The Karen, who are generally perceived as being more conservation-oriented, maintain traditional beliefs that encourage forest protection. The Hmong are more oriented to growing commercial crops for outside markets. Conflict emerged when the Hmong wanted to expand their area of land clearing on to forest land that is protected by the Karen. The two ethnic groups have their own mechanisms for resolving conflicts among their own group members, but found these styles of negotiation inappropriate for working with each other. Difference in language was also an obstacle. Both groups had to speak in lowland Thai, in which they found it difficult to express their interests accurately. Frustration at not being able to negotiate easily increased the tensions.

### 4.2.2 National legal systems

Legal systems governing forest management differ from nation to nation. All, however, are based on legislation, policy and regulatory and judicial administrative orders. The main strategies for addressing conflicts are:

- ◆ *arbitration*: submitting a dispute to a mutually acceptable third party who renders a decision;
- ◆ *adjudication*: passing the dispute resolution process to a judge or administrator who has authority to impose a binding decision.

Both legal systems give authority and responsibility for the decision and outcome to an officially designated and sanctioned third party.

In some instances, stakeholders prefer to seek a legally enforceable settlement. However, legal and administrative systems can be inaccessible and intimidating environments for groups who are poor, have low levels of lit-



eracy or live in remote locations. Procedures are generally adversarial and promote only a win-lose outcome. The procedures, language and rigidity can be in serious contrast to local practices.



Some nations' legal systems increasingly take into account the local customs, tenure systems, culture and religions of different social or ethnic groups. They are trying to adapt and blend aspects of customary systems into administrative conflict management practices.

### 4.2.3 Alternative conflict management

The field of alternative conflict management (also referred to in these materials as alternative dispute resolution [ADR]) addresses forest conflicts through the promotion of collaborative decision-making (Pendzich, Thomas and Wohlgenant, 1994). It arose, in part, as a way to provide lower-cost, flexible, timely and participatory conflict management mechanisms. It also developed as a response to the adversarial style of managing conflicts used by legal systems and other modes of resolution. The field draws on the conflict management strategies that some communities have long used to settle their disputes.

Collaborative approaches aim to help disputing stakeholders to reach mutually acceptable agreements. The goal is to seek long-term mutual gain for all stakeholders. As much as possible, this approach seeks agreements that address, at least to some extent, the interests of each of the various stakeholders.



Specifically, alternative conflict management interventions seek to:

- ◆ improve communication and information sharing among interest groups;
- ◆ address the causes of conflict in a voluntary and collaborative manner;
- ◆ transform conflict into a force that promotes positive social change;
- ◆ build the capacity of communities to manage conflicts;
- ◆ limit the destructive force of future conflicts.



The following are the main strategies for addressing conflict:

- ◆ *Conciliation*, in which a third party communicates separately with the disputing parties to reduce tensions and create an acceptable process for resolving the dispute.
- ◆ *Unassisted negotiation*, which refers to a voluntary process in which parties meet face-to-face, without a mediator or facilitator, to reach a mutually acceptable resolution of the dispute.
- ◆ *Facilitation*, in which a facilitator supports a process of voluntary negotiation among two or more groups in a non-partisan manner. Using a facilitator can be particularly useful when multiple groups of stakeholders are involved in a conflict. The facilitator focuses almost entirely on the process and logistics of bringing stakeholders to negotiations and ensuring that stakeholders agree to and abide by the process. When facilitators act as moderators in negotiation meetings, they focus on enhancing communications among the groups and supporting an equitable exchange of views. Facilitators rarely volunteer their own ideas on solutions or become involved in the substantive content of discussion beyond synthesizing and summarizing viewpoints.
- ◆ *Mediation* is a process of assisted negotiation for two or more conflicting groups supported by a third party. In addition to ensuring that the different stakeholders agree on the process and logistics, the mediator can have considerable influence in bringing the disputing groups to negotiations and putting forward possible solutions. Unlike facilitators, mediators may put forward their own views on the likely acceptability of solutions in order to help stakeholders identify mutually acceptable solutions (Pendzich, Thomas and Wohlgenant, 1994). Mediators, however, have no power to render a decision. Their primary role is supporting the confidential exchange of views and information among the stakeholders.

### ***Recognizing differences in negotiation styles***

It is important to recognize that there are differences in how parties see and participate in negotiations. These materials, which focus on collaboration, advocate *principled* or *interest-based* negotiations.



**Principled negotiation** examines stakeholders' needs and interests and looks for mutual gains. This approach is highly collaborative, and presumes that the parties have the necessary goodwill and that communications have not broken down. It is often developed through conciliation. Principled negotiations are seen to be particularly important when the concern is to strengthen long-term working relationships (Doucet, 1996).

Other types of negotiation include *hard* and *soft negotiation* styles. The former often relies on the use of more coercive strategies to get each side to make concessions and reach agreement. It is particularly applicable when one conflicting party has taken up an extreme and inflexible position. Hard negotiations tend to be antagonistic and adversarial. Outcomes tend to be compromises rather than mutually satisfying agreements.

Soft negotiation can go to the other extreme, by placing emphasis on gaining an agreement without generating any disagreement. Sometimes this means that concessions are given too easily, and difficult issues that may provoke disagreements are avoided. More powerful stakeholders may use soft negotiation to increase rather than to moderate their demands. Outcomes tend to be accommodation.

### ***Do alternative conflict management approaches work?***

A number of factors influence the potential effectiveness of alternative management approaches. The key requirement is that stakeholders be committed to working out a solution through a collaborative decision-making process based on discussion, joint learning and persuasion. They must accept that, in the end, each stakeholder can only obtain what others involved in the negotiations are prepared to allow (Gulliver, 1979).

Another significant factor determining effectiveness is the extent of power differences among stakeholders, as discussed in Section 3. It can be counter-productive if only certain groups have power to mediate their differences and if the causes of conflict that result from the interests of

more powerful elite groups are ignored (Buckles and Rusnak, 1999). Other considerations include:

- ◆ cultural or social willingness to acknowledge a conflict publicly;
- ◆ administrative and financial support for negotiated solutions;
- ◆ the availability of trained mediators and facilitators;
- ◆ the urgency of resolution (gaining willingness of the stakeholders to negotiate and organizing negotiations may take considerable time).

**TRAINER'S NOTE # 28****EVOLVING PRACTICES**

As the principles of ADR are increasingly incorporated within multi-stakeholder land and environmental disputes, the process for building consensus has evolved. The strategy selected for building consensus may incorporate any of the process models presented in Section 3.3 that aim to widen stakeholder involvement.

Similarly, some believe that in recent years, with the widespread use of ADR approaches globally, too much emphasis has been placed on the role of mediators and conflict management professionals. The strengths of these approaches need to be blended and balanced with local systems. An overreliance on external experts can result in “the neglect of processes that lead to enhanced capacity to manage recurring conflicts” (Buckles and Rusnak, 1999).



**TABLE 4.1 THE STRENGTHS AND LIMITATIONS OF DIFFERENT SYSTEMS OF CONFLICT MANAGEMENT**

| Conflict management system       | Strengths   | Limitations  |
|----------------------------------|---|--|
| <i>Traditional and customary</i> | <ul style="list-style-type: none"> <li>◆ Encourages participation by community members and respect of local values and customs.</li> <li>◆ Provides familiarity and past experience.</li> <li>◆ Can be more accessible because of low cost, use of local language, flexibility in scheduling.</li> <li>◆ Decision-making is often based on collaboration, with consensus emerging from wide-ranging discussions, often fostering local reconciliation.</li> <li>◆ Contributes to a process of community self-reliance and empowerment.</li> </ul> | <ul style="list-style-type: none"> <li>◆ Not all people may have equal access to customary conflict management practices owing to gender, class, caste, ethnic or other discrimination.</li> <li>◆ Courts and administrative law have supplanted local authorities that lack legal recognition.</li> <li>◆ Communities are becoming more mixed, resulting in weakened authority and social relationships.</li> <li>◆ Often cannot accommodate conflicts among different communities or between a community and the State.</li> </ul> |
| <i>Legal and administrative</i>  | <ul style="list-style-type: none"> <li>◆ Officially established with supposedly well-defined procedures.</li> <li>◆ Takes national and international concerns and issues into consideration.</li> <li>◆ Judicial and technical specialists are involved in decision-making.</li> <li>◆ Decisions are legally binding.</li> </ul>  | <ul style="list-style-type: none"> <li>◆ Often inaccessible to the poor, women, marginalized groups and remote communities because of cost, distance, language barriers, political obstacles, illiteracy and discrimination.</li> <li>◆ May not consider indigenous knowledge, local institutions and long-term community needs in decision-making.</li> <li>◆ Judicial and technical specialists often lack expertise, skills or interest in participatory natural resource management.</li> </ul>                                  |

Table 4.1 continued

| Conflict management system             | Strengths  | Limitations  |
|--|--|--|
| <i>Alternative conflict management</i> | <ul style="list-style-type: none"> <li>◆ Promotes conflict management and resolution by building on shared interests and finding points of agreement.</li> <li>◆ Processes resemble those already existing in many local conflict management systems.</li> <li>◆ Low-cost and flexible.</li> <li>◆ Fosters a sense of ownership in the solution and its process of implementation.</li> <li>◆ Emphasizes building capacity within communities so local people become more effective facilitators, communicators, planners and handlers of conflict.</li> </ul> | <ul style="list-style-type: none"> <li>◆ May encounter difficulties in getting all stakeholders to the bargaining table.</li> <li>◆ May not be able to overcome power differences among stakeholders so that some groups remain marginalized.</li> <li>◆ Decisions may not always be legally binding.</li> <li>◆ Some practitioners try to use methods developed in other countries and settings without adapting them to local contexts.</li> </ul> |
| <i>Adapted from: Matiru, 2000.</i>     |  |  |

#### 4.2.4 Mix, match, modify or adapt?

Attitudes towards different frameworks for addressing forest management disputes vary among individuals, among groups and across cultures. Local stakeholders who are developing a management strategy should be able to:

- ◆ recognize different responses to conflict;
- ◆ clarify how they personally respond to conflict and how their responses fit with the cultural, financial and social resources, the leadership and conflict-management capacity, the time constraints and other stakeholder concerns;
- ◆ reflect on their past experiences using other conflict management or resolution strategies;
- ◆ identify what they feel are the strengths and weaknesses of different conflict management approaches.

Community-based forest management requires the continual integration of knowledge systems and the recognition of established practices and institutions. Conflict management has a similar aim. In principle, indigenous and local community approaches should be incorporated as much as possible into conflict management approaches in order to benefit from the strengths listed in Table 4.1. Strengthening these approaches, and adapting them where necessary, in order to address the complexities of natural resource conflicts effectively is a challenge.

Decisions on the appropriate process can be complex, as shown in Box 4.2. In selecting an appropriate process, stakeholders often weigh the benefits, costs and risks of participating in different management fora. Similarly, the three frameworks for managing conflict described in Sections 4.2.1 to 4.2.3 may:

- ◆ coexist independently in a given location;
- ◆ be complementary and used in sequence;
- ◆ be mixed and integrated into a single institution (Chevalier and Buckles, 1999);
- ◆ contradict one another.

A comprehensive plan that examines all contingencies is rarely outlined at the beginning. Instead, a path is determined, tried and re-evaluated, based on the acceptability of the outcome.

**BOX 4.2 FACTORS THAT STAKEHOLDERS CONSIDER IN CHOOSING THE MOST APPROPRIATE CONFLICT MANAGEMENT STRATEGY**

People choose one strategy over another based on a range of factors, including:

- preferences for and familiarity with certain practices;
- their interest in maintaining a relationship with the other groups involved;
- the levels of trust among groups;
- their knowledge and understanding of the options;
- the urgency and need to manage or resolve the conflict;
- their perceived chance of success, contrasted with the risks associated with losing;
- the choices of other involved stakeholders and the power of opposing groups to force through their own agendas;
- the availability and transparency of information;
- the perceived fairness and honesty of the proposed process;
- changing circumstances surrounding the dispute, such as intensification of conflict or outbreaks of violence;
- the persuasion or influence of intermediaries who help stakeholders to see opportunities and advantages in negotiation;
- the availability of time (including seasonal considerations in terms of labour and employment, income flow, transportation networks, and so on);
- the relative cost-effectiveness, including the financial and transaction costs of pursuing the conflict and the potential costs associated with losing;
- the desirability of legal enforcement of a decision (for example, the need to have a legal ruling or court decision to ensure that it is followed).





*We must keep in mind that communities use of a plurality of fora may create checks and balances that a single conflict management system may not generate. (Chevalier and Buckles, 1999)*



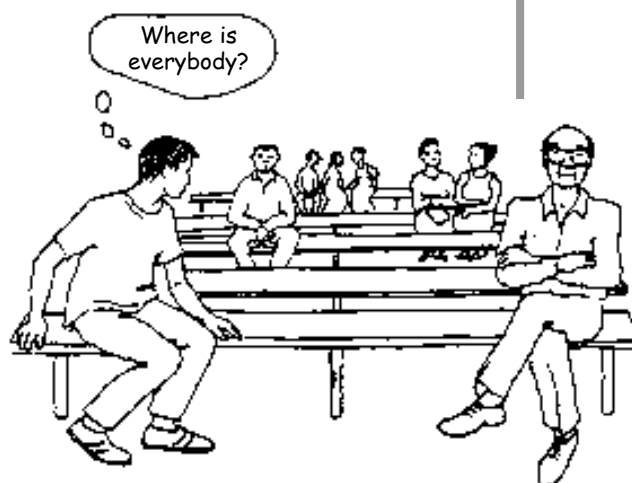
#### BOX 4.3 **COMBINING CONFLICT MANAGEMENT APPROACHES**

In one African country, the tribal elders have traditionally used conflict management approaches to mediate disputes among local forest users. This practice continues. In cases where disputants come from several tribes or villages, they have the option to take their case to the local community forest management committee. These committees have recently been established under new forestry legislation to support and formalize collaborative management arrangements among forest users.

If the dispute involves other more powerful external stakeholders, such as industrial timber companies, the parties may proceed to either subregional or national arbitration committees. The arbitration committees are composed of government and technical experts who have authority to make a third party decision. However, as compliance with such decisions is voluntary, members of the arbitration committee mediate and work to bring the parties to a mutually satisfactory agreement.

**TRAINER'S NOTE # 29****REALITY CHECK: NOT ALL PEOPLE  
HAVE ACCESS TO ALL CONFLICT MANAGEMENT OPTIONS**

Gender, class, age and other factors may restrict the options of certain groups and individuals. Seasonality, through its influence on labour patterns, resource availability and income flow, can also affect people's ability to act. Participatory processes of conflict management, performed at strategic times, need to offset such biases deliberately in order to ensure that the full range of stakeholders is involved.



### 4.3 BUILDING CAPACITY FOR MANAGING CONFLICTS

In order to build sustainable outcomes in managing conflict, it is crucial to ensure that both the interests of stakeholders and their capacity to participate effectively shape the selection of an appropriate strategy.

Building the capacity to participate effectively is a multi-dimensional activity. It can vary in scale and focus, from strengthening institutions and organizations to centring on the needs of specific individuals. Capacity to address conflict involves a range of competencies – knowledge, skills, attitudes, organizational structures and logistical support. These are the same set of competencies required for effective participatory forest management and community development.



### *Important elements of capacity:*

- access to, and the ability to understand, information;
- group leadership and decision-making mechanisms;
- organization planning and management skills;
- communication and negotiation skills;
- communication systems within the group and with networks of supporting partners;
- problem solving and analytical skills;
- self-confidence;
- availability of time;
- financial resources;
- transportation;
- technical knowledge of an issue (i.e. about policy, legislation, sustainable livelihood development).



Individual stakeholder groups need to assess their own capacity to follow a specific strategy or course of action. On the basis of such self-assessment, they can then decide whether they can acquire the necessary skills and resources or will have to follow a different path.

**TRAINER'S NOTE # 30****TOOLS TO ASSESS CAPACITY**

*Training activities* #25 to #27, #30 and # 31 can assist local community groups to examine different conflict management strategies. Through these activities, groups can decide which approach is most appropriate, based on their past experience, attitudes and skills.

Section 3.3.2 outlined a number of suggestions for increasing the influence and power of more marginalized stakeholders. *Training activities* #34 to #41 can help in situations where groups are inexperienced in negotiation or mediation and unsure of the required steps and skills

## **4.4 BEST ALTERNATIVE TO A NEGOTIATED AGREEMENT (BATNA)**

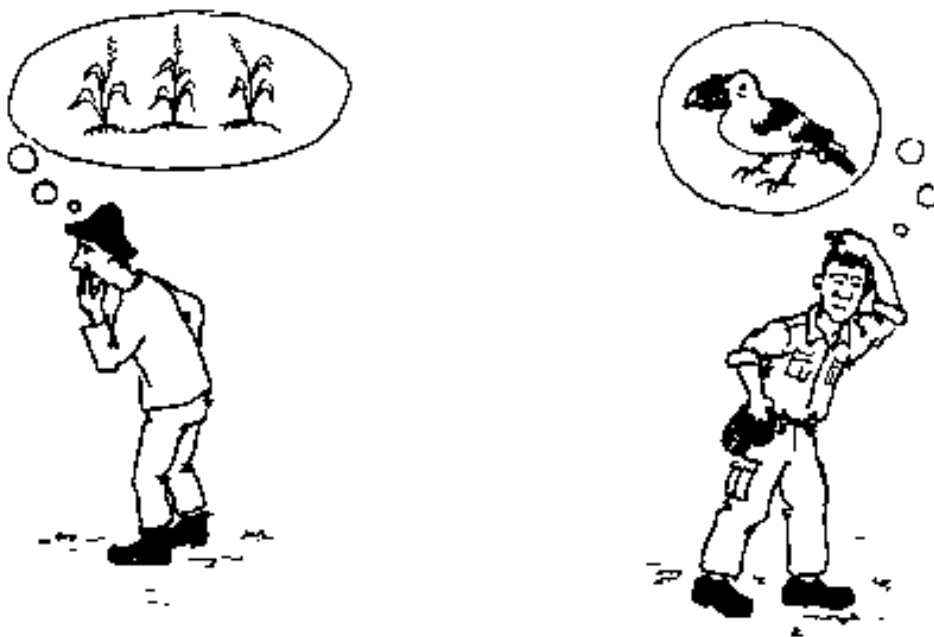
The process of determining the optimum strategy for any group is not straightforward. It requires consideration of a range of factors – practical, social, cultural and contextual. Researchers in alternative conflict management have developed the best alternative to a negotiated agreement (BATNA) as a guide to help individual stakeholders understand a conflict and confirm or reconsider their desire to negotiate (Fisher and Ury, 1981) (see Boxes 4.4 and 4.5).

BATNA is a guideline to help a group analyse how best to address their interests (see example in Box 4.6). A BATNA:

- ◆ builds on the lessons of a participatory stakeholder conflict analysis;
- ◆ clarifies the key components of the conflict;
- ◆ asks what alternatives stakeholders could use if the forum they initially choose does not meet their interests.

These points assist people in considering what would make a less than favourable agreement and where they can strengthen their power to achieve their interests. Once they address these questions individually, they anticipate the BATNAs of other stakeholders.

With a BATNA, a group entering into a conflict management forum will have far greater confidence in the discussions. It will have identified clearly what issues are negotiable, what power it has to achieve its interests, and what alternative course of action it can take if the discussions are not successful (Fisher and Ury, 1981).



**BOX 4.4 BATNA GUIDELINES***Review the conflict:*

- What are the central issues in this conflict?
- Who is involved?
- What kind of outcome do I hope to achieve?
- Which conflict management method would best help me reach that objective?
- What are the potential outcomes with that method:
  - the best outcome?
  - the minimal outcome?
  - the worst outcome?

*Assess the alternatives:*

- Are there any issues that I am unwilling to negotiate?
- What alternatives do I have to satisfy my interests if we do not reach an agreement?
- What would be the best alternative?

*Strengthen the BATNA:*

- What can I do to achieve my interests?
- Will any additional resources be required?
- Will I need extra time or financial support?

*Consider the other parties' BATNA:*

- What do I think that their key interests might be?
- What might they do if I do not reach an agreement?



#### BOX 4.5 KEY POINTS IN APPLYING A BATNA

- Stakeholders base their estimates of best, worst and minimal outcomes on their *interests*, not on their *positions*. As discussed in Section 3.3, negotiations should focus on the interests and needs of stakeholders, rather than on inflexible positions. Stakeholders have fewer opportunities to identify solutions for mutual gain if they rigidly stick to the predetermined outcome that a position represents.
- Each group needs to calculate its preferred outcomes so that it can compare the advantages and disadvantages of different approaches.
- The proposed negotiation has to offer a “better than BATNA guarantee” to all the groups involved (otherwise not all of them may come to the table).
- Calculations of different outcomes may be tricky. You need to balance what you want or fear and the expected value of each proposed outcome.
- Best, minimal and worst outcomes are affected by attitudes to risk taking:
  - If you are a big risk taker, you may set your outcomes by anticipating that you will get everything you want.
  - If you do not like to take risks, you will probably set outcomes according to what you are willing to lose.
- In calculating an outcome, you have to imagine and anticipate what the other groups are going to do. What are the other stakeholders’ options and motivations? This affects every other stakeholder’s estimate of desired outcomes. It also emphasizes the need to spend time analysing and understanding the conflict from the perspective of all stakeholders.
- It is not possible to take away all uncertainty, no matter how good the information.



*Adapted from: Susskind and Cruikshank, 1987.*

**BOX 4.6 AN EXAMPLE OF A BATNA IN PRACTICE**

The Department of Natural Resources (DNR), concerned about the potential long-term effects of certain farming practices on land bordering a sensitive forest conservation area, declared that it was establishing a buffer zone around the park. This policy meant that people would be prohibited from cultivating the land, and anyone living on it would have to move. The farmers who cultivated the land protested because their families had farmed and lived on that land for generations. They did not hold title to the land, but had paid property taxes to the government, held tax documents for many years and felt that it was illegal for the government to evict them.

The DNR considered its decision to be non-negotiable, but lacked the financial resources to hire more than two rangers to enforce its declaration. The farmers understood this and refused to move, continuing their farming as before. On several occasions, the conflict escalated into violence between the rangers and the farmers. Concerned, the governor of the region offered to help the DNR and the farmers negotiate an agreement. When both groups initially refused to negotiate, the governor asked each to consider its BATNA.

The farmers felt that their central interest in the conflict was land and resource use security. They considered the potential outcomes as follows:

- *The best outcome:* each farmer receives land title certifying his or her ownership and right to use the land in dispute indefinitely.
- *The minimal outcome:* the DNR promises that farmers can continue living on and cultivating the land.
- *The worst outcome:* the DNR evicts the farmers from the land.

The farmers considered their BATNA to be continuing to farm on the land and hoped that the DNR would not obtain the resources to enforce its buffer zone declaration. This would only add to their insecurity, so they agreed to negotiate with the DNR on condition that their interest in land and resource use security was protected.



The DNR officials were most concerned about the protection of a forest area containing a wide range of rare, sensitive plant species. They ranked the potential outcomes with negotiation to be:

- *The best outcome:* a buffer zone protects the biodiversity and health of the forest area.
- *The minimal outcome:* the farmers agree to practise conservation farming methods in order to protect the forest area.
- *The worst outcome:* the farmers continue to cultivate as they have been, using what the DNR considers harmful farming practices.

The DNR knew that its BATNA was to maintain its buffer zone policy, but recognized its low capacity to enforce the current declaration and feared further violence against its rangers. The agency therefore agreed to negotiate with the farmers, as long as the forest area was protected.

Six months later, the governor who had facilitated the negotiations was pleased to announce that the parties had come to a solution. The DNR modified its buffer zone policy to allow those families currently living in the area to remain on the land, with title, as long as they met certain minimum conservation standards, with strict penalties if they failed to abide by the agreement. In order to avoid further stress on the environment, no new families could move on to the land. By the final agreement, a committee of DNR officials and the original farmers would form to help the DNR enforce its policies.



#### TRAINER'S NOTE # 31

#### PRACTISING USING A BATNA

*Training activity #32* is useful in assisting decisions and preparations for negotiation. It outlines a process for developing a BATNA and gives participants an opportunity to use this tool in simulated negotiation.

## 4.5 BRINGING OTHER STAKEHOLDERS TO THE TABLE

The voluntary participation of all key stakeholders is fundamental to a collaborative approach to managing conflict. A group's decision to negotiate is only effective if the other parties also feel that it is in their best interest to do so. There can be many situations in which people choose not to negotiate, such as when there are severe power differences among stakeholders, outstanding fears, major difficulties in communication or polarized positions of opposing parties. A commonly asked question is: How do you bring other stakeholders to the negotiating table if they are resistant?

**1. Strengthen consensus building.** Consensus building is not limited to bringing stakeholders to agreement on one issue or part of a dispute. Consensus building is an ongoing process that builds on and binds a series of understandings and agreements among stakeholders. It establishes an enabling atmosphere for seeking mutual gain and creative solutions to conflict. Essential elements of consensus building are contained in Section 2.2 (Table 2.1: Guidelines for a collaborative process).

**2. Identify the widest range of possible stakeholder interests.** These materials emphasize the need to identify and focus on stakeholders' underlying interests, rather than on inflexible and extreme positions. Identifying the widest range of needs and presenting constructive ways in which these might be met through negotiations can be a powerful incentive for engagement.

Furthermore, interests or needs should not be limited to the substantive issues surrounding conflict that seem especially intractable – for example, the need to harvest certain forest resources or to change a management ruling, or value differences. Instead, stakeholders should focus on needs that are related to the impacts of conflict or to a future vision or goal. With the former, for example, the need to reduce conflict and increase peace may be a central but overlooked interest of an opposing group. Stakeholders may be weary of the disruption of daily life that has resulted from the dispute and want to focus on other activities. Similarly, stakeholders may want to move forward when reminded of the impacts of violence, the financial costs of conflict and, possibly, the damage to their public image or legitimacy. Having confidence that this need will be met can be very persuasive, particularly after a protracted conflict.

**3. Build the power of less influential stakeholders.** Levelling of the playing field is considered essential to ensuring that negotiations are fair and equitable for all concerned. Additionally, increasing the relative power of marginalized groups is crucial to engaging more powerful stakeholders who are resistant to negotiations. When stakeholders feel that they can take unilateral action or force an outcome in the direction that they want, they are less inclined to negotiate. As discussed in sections 2.3 and 3.3.2, identifying the levels of power and the sources of this power is crucial. Methods for building power to bring stronger, opposing parties towards negotiations include:

- ◆ use of media;
- ◆ establishment of information networks;
- ◆ formation of political alliances;
- ◆ building of coalitions of supportive stakeholder groups;
- ◆ building of internal leadership within weaker groups.

**4. Build legitimacy.** Some groups may dismiss involvement in negotiations by using the argument that the other stakeholders do not hold legitimate interests. Such attacks on another group's legitimacy can come in many forms. An opposing group may claim that another group is not a key stakeholder. For example, an international conservation organization may be said to be too remote to the conflict site, or it may be claimed that migrants have not resided in an area long enough. Some groups may accuse others of being too narrow in their interests and of failing to consider broader nation-building needs or goals. A particular group may be seen as representing only a small minority of interests. Some actions to address these situations include:

- ◆ widely disseminating information explaining why each group's interests are legitimate;
- ◆ gathering recognition (possibly via petitions or surveys) that indicates a broad base of support;
- ◆ seeking other influential and credible individuals or organizations who will testify to legitimacy.

**5. The negotiation process needs to be fair and trusted.** Some weaker stakeholders avoid engagement in negotiations because they do not trust the process to be fair. In order to build trust in the process, actions are required that make the process transparent and open to public scrutiny, for example, through using the media, gaining support from an observer

NGO, obtaining agreement on the ground rules and revisiting as necessary, or finding a trusted third party. At the same time, building stakeholders' capacity to participate is crucial. Increased confidence from understanding the negotiation process, knowing one's alternatives and preferences, and having skills to negotiate and access to sound information can lead to greater capacity and, therefore, a more fair process.

**6. Use conciliation.** As pointed out earlier, a key third party role is to start negotiations. Conciliation often plays an important role in identifying negotiation incentives with each group of stakeholders.

Stakeholders often enter into a process of conflict management when they have been encouraged by another stakeholder group that has a great deal of influence over them or on which they depend. Such influential groups may act overtly in this capacity or play highly effective roles in conciliation.

## 4.6 DO YOU NEED AN INTERMEDIARY?

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Negotiation and the building of a collaborative process often involve the use of an intermediary or third party to help conflicting parties to find agreement. Alternative conflict management encourages the involvement of third parties when there are significant power differences among the parties. Traditional practices for resolving disputes also commonly rely on local people to play key mediating roles. All the parties must discuss and evaluate several factors in deciding whether to involve a third party.

The following are key questions to consider in deciding whether to use a third party:

- ◆ What is the process we are following for building consensus?
- ◆ What are the advantages and disadvantages of involving a third party?
- ◆ What will the third party's role be?
- ◆ Who should the third party be?
- ◆ Is this person biased?
- ◆ What is the third party's background?

### 4.6.1 Selecting a process

As discussed in Section 4.2.3, there are several different options for bringing stakeholders together in joint decision-making: unassisted negotiation, facilitation and mediation.

#### Unassisted negotiation is preferred when:

- ◆ each stakeholder group is willing to discuss its interests and agrees to work towards a solution of mutual gain;
- ◆ all stakeholders are confident of their negotiation skills.

#### Facilitated negotiation is preferred when:

- ◆ the conflict issues affect many people;
- ◆ the majority of stakeholders are willing to participate in managing the conflict;
- ◆ not all stakeholders feel confident of their negotiation skills;
- ◆ all stakeholders agree that a third party's skills would ensure a fairer process.

#### Mediation is preferred when:

- ◆ stakeholders are willing to discuss their interests, but need greater support in working towards a solution of mutual gain;
- ◆ not all stakeholders feel confident of their negotiation skills, particularly because there are different levels of authority and power;
- ◆ all stakeholders agree that a mediator's skills would ensure a fair process.





## BOX 4.7

## DIFFERENT KINDS OF THIRD PARTY ASSISTANCE

**Procedural assistance:** both facilitators and mediators may provide procedural assistance to the communication process among the stakeholders. Such assistance can range from facilitating joint brainstorming to assisting the exchange of information among opposing groups. When providing procedural assistance, facilitators explicitly do not involve themselves in the substantive issues and do not suggest solutions or negotiation positions. The responsibility for both designing solutions and reaching agreement remains with the groups involved.

**Substantive assistance:** mediators can also involve themselves in fashioning solutions; that is, they can provide substantive assistance. In this case, the parties ask the mediator to share greater responsibility for identifying possible solutions. The parties, however, maintain direct communication among themselves and retain the authority to determine what constitutes an agreement.

*Source:* Rijsberman, ND.

**Advantages of a third party.** One of the most common reasons why unassisted groups fail to begin negotiation or to produce a satisfactory result is an imbalance of power among stakeholders. Using a facilitator or mediator is often the key to helping negotiations to advance (see Box 4.7). It is similar to the presence of a referee to enforce the rules in a sports contest. It can provide confidence to weaker stakeholders and it may also help to level the playing field significantly (Susskind and Cruikshank, 1987).

In this regard, the third party has the responsibility to:

- ◆ play a catalytic role in moving the process along and building trust among the stakeholders;
- ◆ assist disputants in defining the conflict issues that they seek to resolve, and in selecting an appropriate conflict management forum;
- ◆ help the stakeholders to design a relevant process to guide their communications during the negotiations and assist them in reaching their defined goals.

**Disadvantages of a third party.** A third party changes the dynamics of the conflict for the stakeholders. Some groups feel that involving a third party makes the dispute too public, and they are hesitant to do so. Some people, particularly powerful stakeholders, may also strongly resist inviting the intervention of a facilitator or mediator. The presence of a third party may raise questions that require stakeholders to rethink their negotiation strategy.

**Who can best act as a third party?** Linked to weighing the advantages and disadvantages of engaging a third party and defining his or her role is the critical question of who it should be. Who is most appropriate depends on the context; the selection must fit the nature and setting of the conflict.

**Traditional or not?** In most traditional settings, there are people who have been established as mediators to help resolve local conflicts. Mediators are trusted and respected by all the individuals or groups. They can be part of the immediate social network, for example a village leader or elder, or they can be independent, such as a religious or political leader who is asked to help mediate rights between two communities. Traditional mediators often do not have authority to impose settlement, but focus on promoting ongoing dialogue among the groups. They can play a crucial role in persuading the different stakeholders to find a mutually acceptable solution.

Neutral conflict managers use the alternative conflict management practices of mediation and facilitation. These people are trained to provide impartial assistance to disputants in designing their negotiation strategy. They are increasingly called on to assist in conflicts when traditional systems are unable to handle the conflict's complexity. Acting as a facilitator or mediator requires experience and training in conflict resolution methods and good communication skills.



## TRAINER'S NOTE # 32

## NEUTRAL OR TRUSTED?

Alternative approaches to conflict management frequently emphasize the need to identify a neutral third party to mediate or facilitate. "Neutral" often refers to an outside person who is not a primary stakeholder in the conflict and who can work fairly and objectively for all the groups involved.

*When working in rural communities there can be real limitations on the availability and desirability of a true neutral or outsider. Community forestry activities often occur at remote sites where locating a trained outsider is difficult, if not impossible. More important, local people may not have a relationship with outsiders, whom they often view with suspicion. Community members may not always understand that outside people take on the third party role as part of their work and do not have a hidden agenda.*

The ability to work with stakeholders effectively in order to support collaboration requires trust. For many, such trust comes only when there is a pre-existing relationship – be it through kinship or familiar and positive past interactions.

Stakeholders can make more informed decisions about the use of a third party by reviewing their past use of third parties, exploring the strengths and limitations of different negotiation processes and identifying who might best fill the role. *Training activities #27 to #29 and #33 can support this analysis.*



## 4.7 SECTION SUMMARY

Section 4 has outlined different approaches to managing conflict and presented a generic process for developing a conflict management strategy. The following is a brief summary of the key points covered in this section. To support the introduction and discussion of concepts in training, refer to the training activities in Section 9.



**There are different contexts for conflict management.** Section 4 considered three different frameworks, or legal orders, for conflict management: customary, legal and administrative, and alternative approaches. The contexts, strengths and weaknesses of each were presented.

**Conflict management strategies are adaptive and dynamic.** In determining an appropriate strategy, there are no recipes. Similarly, it is not necessary that only one approach be used. A process of managing conflict may combine a number of approaches sequentially. Conflict management may require the use of different approaches aimed at different stakeholders in a multi-stakeholder conflict. Stakeholders should choose and adapt a strategy that fits the social, cultural and political context. The strategy should also be consistent with the number, preferences and resources of the stakeholders, the power differentials, the stage and history of the conflict, and levels of trust.

**Aim to build on and strengthen existing and familiar practices.** As with many aspects of community-based forest management, there are real advantages to conflict management approaches that build on what already exists. Marginal and forest-dependent communities, in particular, may be intimidated by unfamiliar fora and may require greater resources. They may also fear that involvement will further weaken their power base. The use of existing approaches may require adaptation to make them more equitable or accommodating to outside cultural groups, organizations or stakeholders.

**Strategy selection can be assisted by BATNA.** This section introduced BATNA, a tool that those considering negotiations can use to help them determine whether and how best to pursue their interests. BATNA analysis builds on the outcomes of conflict analysis discussed in Section 3. As will be seen in Section 5, the decisions from a BATNA analysis guide negotiations among stakeholders.

**There are important considerations in choosing an appropriate third party.** Use of an intermediary or third party is often required in order to start and support the negotiation process, particularly when multiple stakeholders are involved. This section reviewed the questions to address when selecting a third party. Intermediaries may come from the local or traditional social setting or from outside the community. The selection and role of a particular mediator is defined by the conflict context.

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