SECTION 5

SECTION 5
NEGOTIATIONS AND BUILDING AGREEMENTS

5.1 SOME FUNDAMENTALS

This section examines how to bring people together, through the use of a third party, to find a mutually beneficial way forward. The assumption is that stakeholders have agreed to participate in interest-based negotiations.

The objectives of a negotiation process are to:

◆ develop agreements that are beneficial to all parties;

◆ nurture a collaborative, mutually supportive relationship for ongoing problem solving;

◆ focus on interests over positions in the approach and activities;

◆ find ways to meet the specific interests and underlying needs of all stakeholders in the dispute;

◆ obtain commitment from the constituents of the groups;

◆ decide on how to monitor the agreements.

The parties pursue these objectives through a process of negotiation that may require one or more meetings and that uses a variety of possible fora. Although paths within negotiations sometimes meander, the process is characterized by three main stages marked by specific activities and milestones (see Table 5.1).
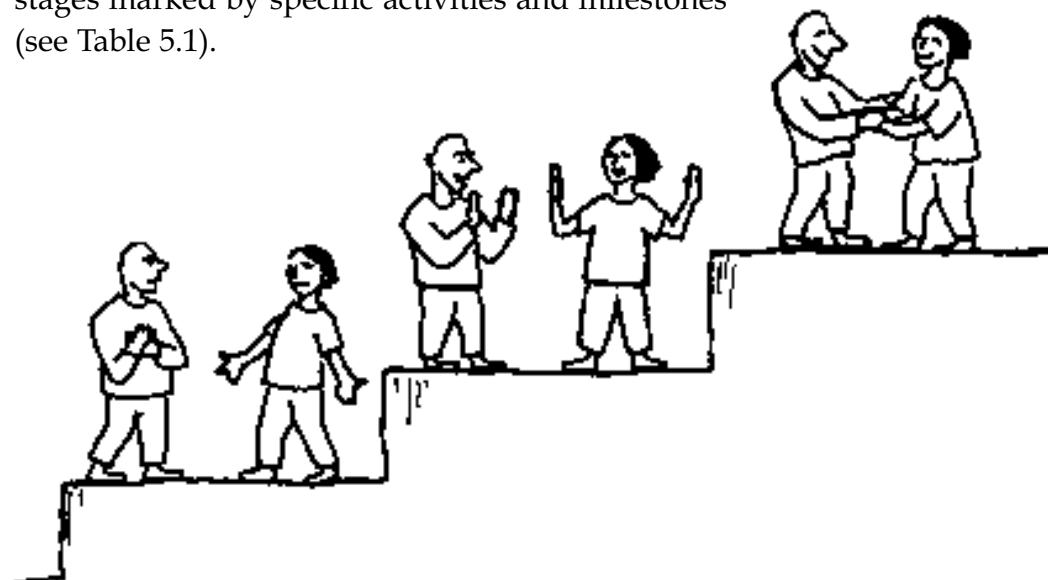
TABLE 5.1
MAJOR STAGES IN THE NEGOTIATION PROCESS

Stage and main activity	Milestones
1. Clarify and increase understanding of each group's interests.	Identify and agree on one or more shared interests on which to build collaboration.
2. Expand options that might provide mutual gain.	Develop a list of options to explore for feasibility.
3. Prioritize options and build consensus on acceptable options for managing critical issues.	Confirm a final agreement and plan for implementation and monitoring.

TRAINER'S NOTE # 33

PUTTING NEGOTIATIONS INTO CONTEXT

Negotiations of any form are not a mechanical process, nor are they necessarily easy. No matter how thoroughly or early you prepare, high levels of tension, frustration and emotion frequently prevail. People may enter the process with great fear and trepidation. There may be a lot of uncertainty and anger towards other parties, and this may only come to the forefront when groups meet face-to-face. Anger and resentment may be focused or unfocused, specific or generalized.

Similarly, those who are politically marginalized and highly dependent on the forest resource may feel that their group, or they themselves, are at immense risk. The negotiations may incorporate both their hopes and their fears regarding protecting their families, friends, livelihoods and culture.

While some people may display willingness and commitment, others may posture, deceive or test relationships. This may colour the entire proceedings, causing some people to reconsider their commitment or react negatively.

For all sides, the stakes are usually high and the outcomes significant. Understanding these realities is essential. Those supporting this process must understand how serious these negotiations are for the groups involved.

There are no set designs or recipes for this process. The process and substance of negotiations must conform to the needs and context of the situation at hand. Facilitators can provide a set of guidelines and encourage flexibility. In moving through negotiations, you should try to follow a series of logical steps, yet be sensitive to the dynamics of group interactions, issues and participation. Ultimately, facilitators or mediators in such processes will need to select the strategies and tools that fit their own personalities and the particular circumstances.

5.2 CONFIRMING THE PROCESS

The organization of consensus building processes can follow a number of formats. The resolution of disputes that involve only a single issue or two parties may require only a single meeting and a few hours. People from a common background may also move more quickly through the issues.

More complex issues involving multiple stakeholders may require a series of meetings. It may take many months to address all the issues. If complex value differences, relationship issues or underlying interests are involved, collecting additional information or reaching consensus may require more time and be less predictable.

Regardless of which meeting process is selected, facilitated negotiations or mediations need to be designed in ways that:
◆ build participants' ownership of the process, and their faith and trust that the process will work;
◆ allow the groups involved to be responsible for setting the number of meetings, finding suitable meeting places and defining the specific agenda items;
◆ are sensitive to culture, gender, power and other relevant social dimensions. This requires deliberately overcoming the biases that are inherent to power differences in order to provide a level playing field.

The design of negotiations must take into account the conflict issues and the number of stakeholder groups. You can estimate the number, types and timing of meetings by analysing the groups involved, the dynamics among groups, the number of issues that need to be covered and the potential difficulties that may arise in overcoming them.

BOX 5.1 **USEFUL QUESTIONS IN DESIGNING AN ALTERNATIVE CONFLICT MANAGEMENT PROCESS**

The following is a list of questions that can be helpful as stakeholders assess how best to address a conflict. These questions are not presented in any particular order of importance:

- What is the conflict?
- How long has the conflict been going on?
- How have the stakeholders tried to address the conflict in the past (if at all)?
- How many groups of stakeholders are involved? Who is involved?
- How will the stakeholders be represented?
- Are any stakeholders not represented who should be? (If so, how should they be integrated into the negotiations?)
- How far can people travel? (At what cost?)
- How much time do people have to attend meetings?
- Is an appropriate meeting place available?
- Are there any time limitations that may affect when the meetings are held (for example, farming or harvesting schedules, religious or other kinds of holidays, political or official deadlines)?
- Will private meetings, task committees, field trips and/or community meetings be needed?
- How do the different stakeholders want to present their differences?
- Can visual documentation (such as photos, drawings and pictorial maps) be made to aid stakeholders with lower literacy levels and to counterbalance formal information (such as printed maps and published materials)?
- What materials (if any) does the facilitator require?
- Will people need time between meetings to debrief the other members of their groups?

TRAINER'S NOTE # 34

DESIGNING THE NEGOTIATION PROCESS

In the case study of the Chiang Mai Highlands, Thailand (Section 8.6), a second conflict occurred when inadequate attention was given to many of the questions outlined in Box 5.1. This case highlights the specific problems associated with stakeholder representation, the support roles of various external groups, venue selection, the lack of a facilitator and the lack of clear procedures.

Training activities #34 to #41, #45 and #46 outline a number of role plays and experiential activities that are useful for building familiarity and skills in negotiation.

TRAINER'S NOTE # 35

DESIGNING THE NEGOTIATION PROCESS

Questions are commonly asked about the advantages and disadvantages of traditional versus introduced meeting settings in situations in which there are significant ethnic or cultural differences within or among communities.

Traditional meetings are normally held among people of a common culture for a specific purpose. They follow cultural rules of discussion and decision-making. There is often an element of consistency and reliability in traditional meetings. Local people are familiar with the process, know their roles and may be better able to predict how the meeting and decisions will evolve. At the same time, local inequities also come into play at traditional meetings. For example, the meeting may not allow the poor and women to speak or be represented.

In cross-cultural settings in which different groups do not share common procedures for holding meetings, nominated representatives commonly meet in a more neutral setting. People interacting among or across cultures must usually adapt or conform to new meeting contexts, unless there is a conflict in interest. In such cases, the meeting site may become very important.

In many settings, cultural diversity is less important than wealth or power diversity. Who convenes the meeting, where it is held and what is on the agenda determine who has the power to control the meeting.

The Thailand case study (Section 8.6) provides good examples of preferred meeting settings, based on the cultural composition of the groups involved in the dispute. For example, the Karen had their own systems of managing conflict that were said to be effective for dispute within their cultural group. To settle conflicts with others, however, more external settings and neutral third parties were selected.

Warner (2001) has outlined a checklist for systematically examining traditional or indigenous conflict management practices (Table 5.2). This checklist can assist the facilitator and stakeholders in determining the

appropriate type of negotiation, the status of the facilitator, the meeting format, the process of dialogue and procedures for reaching agreement. The questions and choices listed ask stakeholders to assess frequency of use, familiarity, cultural appropriateness and local acceptability. This information is compared with the needs of the current conflict situation and specific stakeholders in order to identify further the strengths and weaknesses of existing practices. It may also be used as a tool for assessing and adapting the local system, for example, in identifying possible ways to make resolution processes more equitable or effective.

TABLE 5.2 **CHECKLIST FOR ASSESSING AND ADAPTING EXISTING NEGOTIATION PRACTICES**		
Attribute	**Key questions**	**Possible choices**
1. Type of negotiation	a) Direct person-to-person? b) Third party?	◆ Stakeholder representatives ◆ All interested stakeholders ◆ Legal representative ◆ Government representative or officer ◆ Forest management committee ◆ Respected community member ◆ Council of elders ◆ Elected leaders ◆ Kinship-based leaders
2. Preferred status of facilitator/s	a) Neutral or impartial? b) Partial?	◆ Insider ◆ Outsider ◆ Insider ◆ Outsider
3. Meeting format	a) Individual negotiations with conflicting stakeholder groups? b) Individual negotiation followed by joint negotiations? c) Joint negotiations involving all conflicting stakeholders?	

Table 5.2 continued

4. *Process of dialogue*	a) Eligibility?	◆ Prioritized by status ◆ All eligible
	b) Structure?	◆ One person at a time ◆ Overlapping speakers ◆ Multiple small discussions
	c) Communication style?	◆ Direct and confrontational ◆ Indirect and non-confrontational
	d) Participation of stakeholders not involved in conflict?	◆ None ◆ Observers ◆ Advisers ◆ Process recorders ◆ Implementation monitors ◆ Implementation evaluators
5. *Reaching agreement*	a) Process?	◆ Judgement ◆ Consensus ◆ Arbitration ◆ Panel of peers
	b) Decision format?	◆ Verbal ◆ Third party verification ◆ Legally binding ◆ Written (e.g. Memorandum of Understanding [MOU])
	c) Enforcement?	◆ Legal enforcement ◆ MOU enforceable under contract law ◆ Constitutional fines and punishments ◆ Peer/social pressure

Adapted from: Warner, 2001.

5.3 STARTING NEGOTIATIONS

In supporting negotiations, the first major phase of work centres on improving the different groups' understanding of the conflict and the various interests and on points of common interest. From the beginning, it is essential to create a supportive, open and respectful atmosphere for the disclosure of feelings and information.

5.3.1 Agreeing on the ground rules

In order to assist the negotiating process, ground rules should be established that all parties agree to. Important elements of ground rules include:

◆ paying attention to introductions and roles;

◆ clarifying negotiation objectives;

◆ ensuring that all parties participate fully;

◆ clarifying confidentiality within the meeting;

◆ coming to agreement on rules for communications;

◆ refining the agenda to focus on the priority issues of the different groups;

◆ gaining a commitment to reach an agreement.

A risk of conflict management procedures is that they may allow a powerful stakeholder to capture the process and use it to coerce the other stakeholders to accept its position, under the guise of a democratic-looking procedure. This can only be prevented by creating conditions that are favourable to fair settlement as a precondition of the conflict management process. In particular, it is essential that stakeholders involved in a conflict resolution/consensus building process agree on the mandate of the group, identify issues that are on the table for discussion and those that are not, set clear ground rules (especially on the kinds of unilateral action that stakeholders can take away from the table during the process) and set clear decision rules (what happens of the group cannot reach consensus on an issue). (Rijsberman, ND)

Introductions and clarifying roles

From the outset, it is crucial to build rapport between the groups and the facilitator or mediator and confidence in the negotiation process. During introductions, the roles of the facilitator or mediator and the participants need to be discussed and clarified (see Table 5.3 and Box 5.2). In general, the facilitator or mediator will guide the meeting and keep participants focused on the agenda items. He or she periodically introduces collaborative activities to assist the participants in defining their issues and developing possible solutions.

TABLE 5.3
THE ROLES OF PARTICIPANTS AND THIRD PARTIES

The role of the participants is to:	The role of a third party is to:
◆ present their interests; ◆ share relevant information that pertains to their interests; ◆ be fully involved in the design of the final product of their work.	◆ assist the participants in meeting their objectives; ◆ help them to reach decisions on their agenda items; ◆ moderate the sharing of information.

BOX 5.2
INTRODUCTIONS TO NEGOTIATIONS: AN EXAMPLE

"Good morning. My name is Sadhana Yadav, and I will serve as your facilitator to assist you in discussing the issues that have brought you to mediation. I work with the Nepal Mediation Committee and have a background in helping people design their own solutions to situations that they would like to change."

"As I have explained to each of you separately, mediation is a voluntary process. You have elected to come here because you want to see if you can personally find solutions to issues about uses of

the forest that concern you. I have worked in similar situations where there are differences in the use of and access to forest areas. These differences are common. You have said that you would like to discuss your future relationship and ability to work and share management of the forest area. That you have agreed to come together to seek resolution of these issues is very encouraging."

"My role is only to assist you in meeting this goal. I do not have the authority to make decisions for you, nor will I attempt to do so. I will stay out of the specific substance and content of your discussions. My role is to guide you on procedures for how you may best talk through your issues."

"If you reach an agreement, we will document it. This agreement can become legally binding – for example forming a part of the forest management agreement – if it involves tenure issues covered by law. Or it may be left as an informal agreement. This is up to you. If you want to make your settlement legally binding, you may want to consult the forest officer or a lawyer at the end of mediation."

"If you do not reach a settlement, you are free to pursue other means that you feel are appropriate for resolving your conflict. You do not lose any of your rights to go to court if you use mediation and are unable to reach an agreement."

Specific guidelines on facilitation are presented in Section 6.

Help develop trust

People generally do not trust one another at the beginning of a conflict management process. A key role of a third party is to help to build trust – by clarifying interests and establishing a mutually defined system of accountability. In particular, the facilitator will work to foster trust among the parties by:

◆ clarifying assumptions: asking each side why a person did or said something; asking each to explain its stake; giving each party a sense of what motivates the other(s);

◆ opening up discussion on how to create trust in the negotiation process;

◆ establishing a series of checks to assure that trust endures throughout the negotiation process;

◆ asking participants to describe what connotes trustworthy behaviour and to identify where there has been trust in the past and what eroded it (at this point, any assumptions about trust in their past relationship can be explored fruitfully);

◆ building agreements steadily, and checking each person's confidence that individually or as part of a group he or she will be able to follow through with any changes;

◆ assessing the consequences of breaking trust (in the short and long terms) and reiterating – in the agreement – promises regarding future actions and the consequences if those promises are not kept and the trust is broken;

◆ reminding stakeholders that trust is a given, until it is broken, when it must be earned back.

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THE ONGOING JOB OF TRUST BUILDING

In training, remind those who will be supporting negotiations that building trust must continue throughout all phases of negotiation. *Training activity #34* addresses the issue of trust and how to improve communication and working relationships among groups.

Opening up paths of communication

The facilitator may need to work with the participants to generate a tool known as a *communications agreement*. This tool's function is to build cooperation among the parties in order to create and maintain a setting that is conducive to achieving agreements (see Box 5.3).

It should be made clear that all parties must be allowed to be heard. It is also important that threatening and intimidating statements and behaviour are contained. The moderator or facilitator must be sensitive to the complex ways in which threats are made. This is especially challenging when the facilitator comes from another cultural background, or simply does not understand local relationships. A mediator should pay close attention to what is happening outside the proceedings.

The facilitator should reinforce these guidelines as the meeting progresses.

BOX 5.3   **A COMMUNICATIONS AGREEMENT**

- Respect the other parties when they are speaking.
- Do not ask questions or make comments until the other person has finished.
- Focus on the issues, and be considerate of the people with whom you are negotiating.
- Private meetings may be held periodically for clarification and review.
- The goal is to formulate an integrative solution that is acceptable to all parties.

Refining the agenda

Although a broad agenda will have been prepared prior to the meeting, the parties should revisit it at the start and refine it to ensure that it includes all the issues that they want to discuss. Facilitators often encourage each person to introduce one issue at a time, until everyone has included everything that they wish to discuss. This approach gives everyone a chance to speak from the beginning. Since many people will have similar concerns, this may give people their first introduction to the similarities in their interests and allow all concerns to be presented.

5.4 FINDING COMMON GROUND

It is assumed that much of the analysis of the conflict and the stakeholders has used BATNA or similar tools prior to the negotiation (see Section 4). The facilitator may then explain that negotiations will expand this analysis of each group's interests. The aim is to develop a *common understanding* of the conflict, its origins and dynamics. The individual groups will present their analyses as issues are addressed. The facilitator may draw on any of the conflict analysis activities, whether they have been used previously or not, in order to assist participants in discussing their issues and interests.

Developing a *common goals statement* is an effective way of helping parties to focus on their interests, rather than their positions, and to explore similarities instead of differences. After individuals have presented issues and discussed their underlying interests in each, the facilitator will request the participants to focus on the list and combine the issues and interests into a few common categories. From each category, the participants may then begin working together to formulate a concise common goals statement that integrates all the central points (Kiser, 1998). This statement contains the objectives that they will pursue.

An example of a common goals statement is provided in Figure 5.1 (right-hand side). In this example, negotiations between two communities were facilitated in order to determine a mutually acceptable boundary. All the issues were merged into three categories: boundary, access and resource use issues (left-hand side). The group agreed that the common goals adequately addressed all of their common interests. Reaching agreement on how to achieve the common goals then became the focus of negotiations.

FIGURE 5.1 **AN EXAMPLE OF
DEVELOPING A COMMON GOALS STATEMENT**

Central interests/issues	Common goals
● Fear that a formal boundary will not be established fairly. Key question: should the boundary be measured from the middle of the river or from the riverbank?	1. We will develop an agreement that determines a formal boundary between our two communities, given the changing nature of the river.
● Both communities rely on access to a forest patch, one for grazing, the other for cultivating toxic plants used in religious ceremonies. Each group's use of the patch, however, detracts from the other's.	2. We agree that we must find a solution that allows both of our communities regular access to the forest patch, as it serves important functions in both communities.
● An upstream community has been overcutting its timber resources, which has contributed to floods that change the way the river flows.	3. We recognize that we must invite the upstream community to participate in some way, since its resource use practices are contributing to the problems that we are having today.

TRAINER'S NOTE # 37

MORE ON SHARED INTERESTS

Remember that in almost every negotiation stakeholders will have more than one interest. Most groups have multiple interests from which you can try to identify common interests on which to build collaboration. It may be helpful to remind stakeholders in negotiations that they need to understand the interests of the other groups, as well as their own.

Even when there are common interests, each group usually has a set of specific interests that it does not share with others. In some instances, there will be no shared interests at all. Specific interests must not be sidelined. Instead, stakeholders should identify them in the conflict analysis so that they can seek creative solutions in negotiations.

5.5 EXPANDING OPTIONS

Once points of common interest have been agreed, the focus shifts to identifying and exploring creative solutions to meet those interests. The aim here is to identify the widest range of possible solutions or actions.

TRAINER'S NOTE # 38

**THE FACILITATOR'S ROLE IN CREATING
A MORE OPEN ATMOSPHERE FOR FINDING NEW OPTIONS**

Conflict, intense emotions and frustration may result in a fixed and entrenched set of demands. In negotiations, however, the stakeholders must look hard for new solutions. An essential role of the facilitator is, therefore, to encourage wider perspectives. This can be helped by:

◆ encouraging stakeholders to consider all the options that come to mind, even if they may seem unreasonable, impractical or less than desirable on the surface;

◆ emphasizing that stakeholders will assess the desirability and feasibility of options at a later stage;

◆ clarifying that, at this stage, the different groups are in no way committed to any of the options put forward;

◆ reminding the groups that together they possess a greater capacity for creativity, and that tapping this creative power can change their rival positions into new opportunities for positive change.

For a variety of reasons, some participants may still have extreme difficulty in switching from a relatively narrow and fixed focus to thinking more creatively about solutions. If this is the case, *Training activities #42 and #43* can be valuable in helping to open up thought processes. *Training activity #42* encourages individuals to examine blocks in their creativity in a non-threatening way.

5.5.1 Strategies for developing options

Brainstorming is a method for generating potential solutions and encouraging creative thinking. Participants can imagine options either by focusing on one issue at a time or by combining several issues into groups of common themes.

Additionally, they can develop options by tapping into the different group dynamics and gaining support from outsiders. The following are some examples (see Box 5.4 for more ideas):

◆ All parties can work together as a large group to develop options.

◆ Smaller working groups of diverse stakeholders can develop options for specific issues.

◆ Smaller working groups, each composed of only one interest party, can develop options that address the interests of all stakeholders.

◆ Participants may invite others who have resolved similar issues to provide ideas for solutions.

◆ Outside resource people with relevant expertise may be invited to the table to suggest options. Ideally such people should be able to provide a full account of how options have faired in the past (PEC, 1999).

BOX 5.4 **MECHANISMS TO SUPPORT THE EXAMINATION AND ASSESSMENT OF OPTIONS**

Various processes can help address a particular conflict issue and identify and assess options for negotiations. These processes are often combined to increase the involvement of both primary and secondary stakeholders.

Focus group meetings: led by a skilled facilitator, a small number of people are brought together in a confidential setting to discuss an issue. The facilitator works through a series of questions and gets reactions from the group. Focus groups involve relatively low-cost, semi-structured and small but specific group consultations to explore issues, attitudes and preferred solutions to a conflict. For example, a forest user group may meet to discuss alternative solutions to a particular resource conflict.

Task force/working/advisory groups: a subset of citizens, committee members or representatives of one or more organizations have the specific task of investigating an issue, providing information or identifying possible solutions to a conflict. The task force or working group reports its findings to a plenary meeting of other members of the organization. These groups are generally useful when long-term involvement is needed or when complex information must be processed.

Accordion process: involves moving between a steering committee and a number of working groups or task forces addressing particular issues, geographic areas, interest groups, etc. Each of these smaller groups contains at least one member of the steering committee, who oversees the overall process. This type of process might be interspersed with open community meetings to increase public involvement.

Shuttle mediation: mediators go back and forth among opposing groups, assisting them in developing options in which they have an interest. Confirming agreements on specific issues may first require a significant number of separate meetings and the exchange of private messages between conflicting groups. Negotiations frequently rely on the mediator's capacity to identify shared interests or situations of mutual gain, and inform the various stakeholders of these opportunities.

Community meetings: can take many forms, depending on the need, and can apply to a range of contexts, from small villages to large urban settings. Facilitated well, they can be an excellent opportunity to obtain the viewpoints of the local community on a particular issue, or to gauge its acceptance or rejection of possible solutions. By creating a forum for two-way communication and incorporating participatory methods, the attitudes and perspectives of other members openly influence negotiations among conflicting stakeholder groups within this setting.

Charettes: the design or planning of charettes involves intensive visioning sessions, which often take place in a retreat setting, at which stakeholder groups address a particular issue or set of issues. Charettes are often used for design issues that need substantial illustration and so may involve input from graphic artists, architects or other design professionals.

Presentations and public hearings: a combination of information about the background, process and proposed solutions of the con-flict can be presented to influential people, policy-makers or other hard-to-reach individuals or organizations. Facilitators should obtain stakeholders' feedback on these options and, where possible, help identify concrete actions that the stakeholders can take to fur-ther resolution. Public hearings are formal presentations at which officials present statements of positions, opinions or facts. While hearings can help agencies meet legal requirements and provide a formal record of consultation, such meetings can be intimidating to marginalized groups.

Displays: visual and informative displays of the issue can be set up in public places such as community squares, markets or schools. The peo-ple who visit the display can be canvassed to obtain their views on both the impact of the conflict and the acceptability of proposed solutions.

Interviews and surveys: a variety of methods can be used, with interviews being either formal or semi-structured. This approach allows for a systematic sampling of diverse stakeholders. Depending on how they are structured, interviews and surveys can require skilled designers and organizers. A large amount of infor-

mation about an issue or solutions can be generated fairly quickly. The stakeholders involved must ensure that they have sufficient capability to handle and analyse the date collected. The information is generally kept confidential or anonymous.

Adapted from: Fisher *et al.*, 2000; PEC, 1999; Rijsberman, ND; Godschalk *et al.*, 1994.

5.6 THE ROLE OF INFORMATION

The availability, management and acceptance of information are significant issues in negotiations. Information plays a pivotal role in defining interests, clarifying shared goals and assessing the feasibility of solutions. Repeatedly in negotiations, there must be space to check explicitly for information needs.

For example, referring back to the two communities that were involved in a boundary dispute (Figure 5.1), their common goal statement number 1 was: "We will develop an agreement that determines a formal boundary between our two communities, given the changing nature of the river."

The parties had to answer a number of questions before they could make a decision:

◆ What is a "formal" boundary?

◆ How should the group derive the information that determines what "formal" means?

◆ What does "the changing nature of the river" mean? (Does it mean that the riverbanks change every year, every few months or only periodically? Does the river change completely?)

◆ What mechanisms do the groups have to accommodate the changing nature of the river?

Table 5.4 identifies common problems related to information gathering and analysis and suggests possible solutions.

TABLE 5.4
INFORMATION PROBLEMS AND POSSIBLE SOLUTIONS

Problem	Possible solution
Information is incomplete, inaccurate, or both, making it unreliable and of little use.	It is impossible to achieve complete information, but try to get enough valid, reliable, accurate and cross-checked data.
There is too much information.	Prioritize information needs and target the information that meets those needs.
The information is too complicated and difficult to understand.	Have a resource person interpret the information, translating it into lay terms or the appropriate language.
There are different or conflicting interpretations of the same information.	Obtain other independent views or interpretations of the information.
Different groups see their own information as most accurate. For example, professionals may have an "elitist perspective" in which technical information dominates over local or traditional knowledge systems.	Acceptance of opposing groups' information is frequently an issue. The facilitator should help the group to see the strengths and weaknesses of all systems of knowledge.
Information may be purposely biased to cover hidden agendas.	A certain level of transparency should be encouraged. The interests of individual groups and the common goals should be reviewed.
The costs (staffing, time, materials) of collecting the necessary information may be high or unrealizable.	Brainstorm possible ways to meet these needs with the overall group. If it is impossible to obtain adequate information, ask the parties to decide how they want to alter their common goals or negotiations accordingly.
Adapted from: PEC, 1999.	

There is a need to present information in a way that illuminates how it relates to the interests of the parties, and vice versa. At the same time, parties will always want to present information in a manner that makes their own case sympathetic and convincing. Stakeholders must agree on the relevance of their information and decide what is an acceptable balance of information. The facilitator can assist the participants in their discussions by returning to participatory activities that classify information issues or chart information needs (for example, see Box 5.5, or by using root cause analysis presented in Section 3.2). Other actions include:

◆ seeking outside/neutral technical expertise;

◆ making sure that all parties are involved in identifying information needs;

◆ working towards active participation of all in the gathering and analysis of information;

◆ ensuring that information is presented clearly and is easily understood by all groups.

BOX 5.5 MERGING INFORMATION FROM DIFFERENT KNOWLEDGE SYSTEMS

A forester and a community representative are negotiating small-scale timber extraction and replanting costs. They may agree to use a combination of the forester's State statistics and the community's traditional record-keeping practices for their region. Through discussions on their different methods of record keeping and analysis, and by agreeing to combine these two different sets of information, each party aims to understand better how the other side calculates the costs. This agreement also ensures that there will be a fairer balance of information.

5.7 ESTABLISHING AGREEMENT

The third stage of negotiation aims to help the disputing stakeholders move from a potentially long list of options to a set of realistic agreements that they will commit to. For this to happen, the following steps need to be taken:

◆ Develop a mutually acceptable set of criteria for assessing options.
◆ Prioritize options based on these criteria (it is assumed that the criteria will reflect the feasibility of the option and its acceptance by all parties).
◆ Confirm a level of consensus on acceptable options.
◆ Confirm arrangements for implementing and monitoring agreements.
◆ Draft a written agreement.
◆ Allow review by constituents.
◆ Reach final agreement.

In reaching agreements, the third party is critical in helping the negotiating groups to identify, and then build consensus around, the most promising options for mutually satisfying outcomes.

5.7.1 Evaluating and prioritizing options

Generating a set of criteria for prioritizing options can assist the process of deciding which alternatives are most likely to be satisfactory to all groups (see Box 5.6). The type of criteria may vary and can be:

◆ livelihood- or needs-based;
◆ technical;
◆ political;
◆ value-based.

The criteria should:

◆ cater to the desired outcomes of the negotiation process;
◆ be relevant to the identified interests;
◆ fit within the context of the issues being resolved.

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PRACTICE IN ASSESSING OPTIONS

In prioritizing options, alternative solutions are reviewed to highlight uncertainties, benefits, risks and assumptions. *Training activities #44, #45, #47 and #48* provide practice in identifying possible solutions to conflicts and discussing and identifying underlying values or stakeholder benefits and risks.

In complex negotiations, information plays a critical role in prioritizing options. Scientific and economic data may need to be reviewed. Options may need to be checked in terms of location, quantities, timing, costs, and so on. The technical, economic or political feasibility of options may also require further investigation. At times, the need to obtain further information in order to assess options may appear to some groups – rightly or wrongly – as the delaying tactics of others. If such suspicions arise, try as much as possible to establish from other sources the need for the information and its bearing on decision-making.

BOX 5.6
ESTABLISHING CRITERIA TO ASSESS OPTIONS

A government mandate to conserve a number of rare and endangered animal species led to the proclamation of a forest area as a protected area. Fear of human disturbance to the forest initially led the agency in charge of management to prohibit all use of the site by four neighbouring communities. All of these communities had traditionally used the forest area for the collection of plant material and hunting. After five years, the agency had found it impossible to enforce its guidelines and stop poaching and plant collection. Not only were the guidelines ineffective, but conflict and bad relations had also developed between the communities and the agency. These bad relations began to affect other activities inside the protected area (for example, the construction of needed tourism infrastructure, the obtaining of local government support).

An NGO was asked to facilitate negotiations between the communities and the agency. After discussing the interests of the different parties, it decided that a common goal was to revise the management rules that applied to the site. During brainstorming on management approaches, a number of existing and possible new management guidelines were listed. To assess these options, the stakeholders agreed to the following criteria for decisions on new management guidelines. They:

◆ will be fair to all groups;

◆ will be open and invite the opinions of all local stakeholders;

◆ will incorporate and build on traditional knowledge of the forest;

◆ will recognize local people's past use rights and patterns of harvest;

◆ will be based on sound ecological and forestry information;

◆ will provide protection for threatened, endangered and rare species;

◆ can be jointly monitored with the local communities;

◆ can be enforced.

5.7.2 Reaching agreement

At some point, when those participating in the negotiations are beginning to show some satisfaction with the information base and overall assessment of the options, consensus on the most promising solutions is sought. Again, there is no single way for agreement to be established. Different approaches to reaching agreement include (adapted from PEC, 1999):

◆ *obtaining agreement in principle,* by developing a generally acceptable framework, then gradually working through the specifics.

◆ *working towards incremental agreements,* by negotiating one issue at a time and integrating each agreement with those that have already been made;

◆ *development of agreement packages,* by combining issues in ways that provide balance and reaching agreement on several or all issues at one time.

The goal of consensus is to reach an agreement that all participants can support. Individual levels of enthusiasm will vary, but all groups must accept that the agreement is the best that they can achieve together.

5.7.3 Implementation considerations

Once there is agreement on a way forward, the parties must consider the details of implementing that agreement. Key questions that need to be discussed and confirmed include:

◆ How will the stakeholders ensure that the agreement will be acted on?

◆ How will they handle any unexpected results from the agreement?

◆ What monitoring mechanisms will be established to ensure compliance to the agreement?

A checklist for implemetation and monitoring of agreements is presented in Box 5.7.

TRAINER'S NOTE # 40

DEVELOPING AN IMPLEMENTATION PLAN

As part of their overall agreement, stakeholders must agree to the details of implementation, monitoring and assessment. Adequate attention needs to be given to the roles and responsibilities of groups or individuals, time frames, resources, transparency and communication processes. Practice in developing an implementation plan that considers these factors is provided in *Training activity #49.*

BOX 5.7
CHECKLIST FOR IMPLEMENTATION AND MONITORING

Roles and responsibilities of the various parties:
- Who will be responsible for implementing the various components of the agreement?
- What specific responsibilities will they have?
- How will we ensure that these roles and responsibilities are met?
- What backup support should be in place in case there is a problem, such as someone is unable to finish a task?
- Is there any legal backing?
- Are local or other authorities involved?

Processes of communication:
- How will we keep one another informed about the progress we are making?
- Will we schedule periodic meetings, telephone calls or something more formal, such as a newsletter or fact sheet?
- How will we handle other people's input and responses?
- What if someone disagrees with our approach?

Transparency and flexibility:
- What mechanisms or procedures need to be put in place to ensure that there is transparency in how our agreement is carried out?
- Would revolving duties among stakeholders be worthwhile?
- Should we consider having an independent person to serve periodically as an outside assessor?
- Are we willing to be flexible about certain components of our agreement? Are there any areas where flexibility has no role?

5.7.4 Areas of disagreement

The following are major obstacles that can emerge at any stage in the design of a collaborative agreement:

◆ *Reluctance to commit:* disputing groups or individuals may begin to express apprehension about having to commit to an agreed change, and may return to their original positions in order to avoid having to comply with some of the proposals.
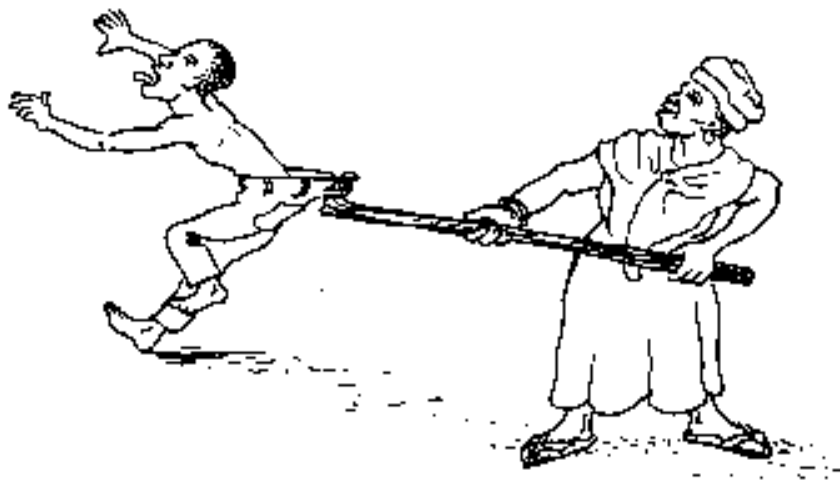
◆ *Surfacing differences:* people may start to differ over specific details. In this case, a facilitator may want to use guiding questions to bring hidden fears and perceived obstacles to the surface. Another helpful response is to allow time for the different groups to discuss how to accommodate resistance to agreements on certain issues.

◆ *Assumptions that there must be only one solution:* this is a natural tendency when people are accustomed to win-lose problem solving.

◆ *Time constraints on negotiations:* the time available to move the process forward may be cut, undermining crucial steps such as a more thorough exploration of the options.

◆ *Failure to consider the long term:* one group of stakeholders may focus on short-term interests and options and continually ignore the long-term impacts to the other groups.

Other outstanding issues may continue to be a source of disagreement among user groups. These issues can be placed on a separate list, and when agreements for the rest of the issues have been addressed, the facilitator may redirect the parties to that list and ask for a decision on how to handle their remaining issues. Options for handling remaining issues include the following:

◆ Participants work through the issues and decide on fair criteria for addressing each. For instance, the groups may decide that they need more information before they can make a final decision and, if so, they must agree on where to find that information.

◆ If people find that they are still having significant disagreements, the facilitator can request them to revisit their BATNAs.

◆ Participants agree that these are outstanding issues and, for the time being, they have no solution and are not going to address them.

The facilitator can explain each of these options as possible ways to deal with remaining issues, or he or she can ask stakeholders whether they have additional suggestions.

5.7.5 Drafting the final agreement

Now it is time to draft a final agreement! There are several methods to assist the parties in drafting their actual agreement. They may choose to:

◆ write the draft collaboratively;

◆ have a third party draft the preliminary agreement, then the various stakeholders will rewrite the final draft, either in a joint session or in turns;

◆ use a combination of these two options, whereby some components of the agreement are drafted by the disputants, others are drafted by the facilitator and all the sections are finalized by all the groups.

The final agreement usually consists of the following three parts:

1. an introduction and background to introduce the participants and the central issues that were being negotiated;

2. an outline of the resolutions that the groups created for each of the issues;

3. an implementation, monitoring and assessment plan.

Use the guidelines in Box 5.8 to check the agreement for honesty, acceptability and likely success.

BOX 5.8 CHARACTERISTICS OF A DURABLE AGREEMENT

Is it honest?

- Is it based on the best available and jointly developed information?
- Is it built on realistic considerations of capacity and costs?
- Do all stakeholders assure that they will implement their parts?
- Has it been developed with the full involvement of all key stakeholders?

Is it acceptable?

- Does it resolve the grievances that gave rise to the dispute?
- Does it acknowledge past problems and address them?
- Does it meet the underlying interests and needs of the primary stakeholders?
- Has it been arrived at by a process that was perceived as fair to all?

Is it workable?

- Does it provide benefits (incentives) for all the implementing parties?
- Does it avoid disadvantaging excluded parties?
- Does it recognize possible problems or changes in the future and include mechanisms to deal with future change, or acknowledge a need for renegotiation?
- Does it build working relationships among parties through its implementation?

Source: Godschalk *et al.,* 1994.

The following are two further tasks that need to be completed as part of finalizing the agreement

Confirming the agreement(s) with a larger constituency: in negotiations involving representatives of groups or organizations, the representatives need time to confirm the agreement and support of other members. If government or public officers have been involved, they may need the agreement of, and authority from, their superiors or agencies in order to act further, for example, in situations in which some change in policy and administrative practice is required. If negotiations are to be completed in one meeting, the facilitator can call a break to allow representatives to discuss the agreement with other group members who are not participating directly in the meeting. In negotiations that are ongoing over many days or months, discussion with constituents will probably occur continuously or at various critical points. Before final agreement, however, full member support and commitment need to be confirmed. If splinter groups have emerged, the document needs to clarify who is and who is not party to the agreement.

Making public the agreement: a final point of discussion for negotiations is to what extent the stakeholders want to make their agreement public. The final agreement may be enacted through a formal signing in front of witnesses. Alternatively, if the agreement affects many people, they may consider holding a more public forum. Some groups enter their agreements into the legal system in order to bind their decisions formally, while others elect to announce their agreements to the public at local council meetings or through the media.

TRAINER'S NOTE # 41

A MIXTURE OF THOUGHTS AND EMOTIONS

As an agreement reaches its conclusion, participants may experience a range of feelings: they may be satisfied with the work they have accomplished, or tired, frustrated, uncertain and still angry from the original dispute. It is important to be realistic. Although you are working for improved relations among stakeholders and the commitment to follow through on collaborative agreements, negotiations can leave behind a range of bad feelings. An array of associated actions may be needed to mend relationships.

On a more optimistic note, when negotiations have been effective, stakeholders may express appreciation for the conflict management process. Many groups or individuals will derive satisfaction from the management of differences that have been disrupting their lives and their achievement of other goals for too long. They may have improved their knowledge about how a range of issues affect them, and now have greater respect for one another's interests.

5.8 SECTION SUMMARY

Section 5 has provided a more detailed examination of the negotiation process. It has outlined how to assist stakeholders in moving through various stages of negotiations – from setting negotiation objectives and establishing shared goals, to finalizing and monitoring agreements. 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.

The negotiation process builds a series of agreements. Central to the negotiation process is the obtaining of a series of stakeholder agreements, with each agreement building on the outcomes of the previous one. Negotiation begins with stakeholders agreeing to negotiate. Once that has been achieved, stakeholders build agreements on issues of discussion, rules of communication, common interests and shared goals, criteria for assessing options, possible solutions and, then, final decisions. All the stakeholders also agree on and confirm the means of implementing, monitoring and evaluating conflict management actions.

Identify ways to strengthen existing negotiation practices. Strengthening local institutions and practices is a common thread throughout these training materials. Section 5 presents a checklist to assist facilitators and stakeholders to examine local or indigenous conflict management practices systematically. This checklist can assist in the evaluation of these practices in order to identify strengths and weaknesses, or to increase understanding of the practices by outside groups. It may also be used as a tool for assessing and adapting local systems, for example, by identifying possible ways to make resolution processes more equitable or effective.

Conflict management requires the building of trust among multiple and diverse stakeholders. A key role of a third party is to help build trust among stakeholders throughout all phases of negotiation. Clarifying interests, establishing a mutually defined system of accountability and checking to ensure that trust endures throughout the negotiation process are important. Building agreements steadily, and ensuring that each person has confidence in the agreements being made, are also crucial. As agreements are concluded, it can also be useful for all involved to consider the consequences of breaking the trust in the short and the long terms.

Agreements are built on common goals. Section 5 has provided guidelines on how to shift the focus of stakeholders from individual positions to identifying underlying needs and interests. In negotiations, the parties examine these interests further, and attempt to reach agreement on where they overlap and are shared. The shared interests can then be used to establish common goals. As these goals are agreed on, they will provide both direction and targets for negotiations.

Building agreements requires new and creative solutions. For many individuals, one of the most challenging aspects of negotiations is identifying workable and mutually beneficial solutions. To assist this, stakeholders are encouraged, initially, to try to identify the widest range of possible solutions or actions, without judging their desirability and feasibility. To help them in this creative process, groups are reminded that they are in no way committed to any of the options put forward; evaluation will come at a later stage, following a mutually agreed set of criteria.

The availability, management and acceptance of information are significant issues in negotiations. Information plays a pivotal role in defining interests, clarifying shared goals and assessing the feasibility of solutions. Identifying information needs is one of the first tasks in conflict analysis, and is instrumental in selecting an appropriate strategy for addressing conflict. Within negotiations, the relevance and validity of information will be carefully scrutinized; its usefulness will depend very much on its acceptability to all parties. Section 5 outlines a number of common problems related to information gathering, analysis and presentation, and suggests possible solutions.

Use agreed criteria to identify and prioritize options. To move from a list of possible options to a realistic agreement requires establishing criteria for assessing those options. Such criteria can be based on a range of needs, including livelihood needs, technical considerations, political mandates and values. Whatever the criteria, they need to be agreed on and relevant to stakeholders' interests and the context of the issues being resolved.

Reaching agreement is part of an ongoing process. If negotiations are successful, agreements will be established among the various stakeholders. Parties can reach agreements in principle, working out the specific details over time, incrementally and issue by issue, or as part of a larger package. Whatever form the agreements take, stakeholders will need to confirm how they will implement and monitor them. Furthermore, they must determine how to handle any additional issues that they have not been able to resolve.

SECTION

5

5.9 REFERENCES

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