

## MEDIATION:

Mediation is a process used to bring conflicting parties together for the purpose of fostering a mutually satisfactory settlement or agreement to the dispute.

The process is facilitated by a neutral intermediary, called the *mediator*, who helps the parties to develop their own solution to the dispute.

While the process is not legally binding, the agreed resolution can be put in writing and signed by participants, neighbors and other witnesses. Any agreement arrived at is therefore enforced and managed by the parties involved in a dispute.

## ATTRIBUTES OF A MEDIATOR:

- A good communicator who rightly relays information for and between parties.
- A good listener that paraphrases the stories for better understanding by the parties.
- A guide to lead the parties through an analysis of key issues.
- Ability to enforce ground rules set by the parties.
- Able to recognize and monitor emotions which could potentially lead to violence.
- Ability to set aside personal emotions and be bipartisan.
- Maintains confidentiality.

## Examples of people who can offer mediation:

Cultural leaders (Rwodi), LCII, Religious leaders, elders, other respected neutral community leaders, etc.

## V. Agreement Continued:

- Copies of the agreement should be given to both parties, witnesses, police, all structures working on land matters, cultural leaders, as well as the mediator and his/her committee.
- Observers must be present during the signing of the agreement by the conflicting parties and should also sign as witnesses.
- A sketch map of the area can be drawn according to what has been reached at/agreed upon and signed by the parties, mediators, and witnesses.
- The agreement form should contain the title, ie. 'Agreement between name1 and name2', date and time the agreement was signed, the venue, issues agreed upon, signatures of representatives of the conflicting parties, and signatures of witnesses.

## VI. Monitoring:

- The mediator or other selected individuals may monitor the progress of the settlement as agreed by the parties in their way forward to promote mutual relationships and a sustainable agreement.
- Some monitoring tools like the agreement form, stationary (books and pens, stamps), and a sketch map of the area under land conflict should be carried along with when going for monitoring visits.

# GUIDE TO LAND CONFLICT MEDIATION



*Land Conflict Mediation Team Listening to Conflicting Parties*



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## ADVANTAGES OF MEDIATION:

- Encourages mutual satisfaction for both parties (Win-Win solution).
- Empowers parties to make their own decisions and manage them. Parties have control over the issues and are responsible for results/outcomes.
- Restores and preserves relationships.
- It is economical and less expensive in terms of time, money as compared to court systems that can at times drag indefinitely.
- It is informal. Only those involved in the dispute attend mediation and the process is informal which helps the parties to better understand and more actively engage in the process.
- The process promotes communication and cooperation between the conflicting parties.
- It allows the parties, not the court, to make decisions affecting their future.
- It promotes positive family relationships by reducing conflict.
- It is confidential. There is no public disclosure of personal problems or finances, unlike litigation where both the trial proceedings, as well as all papers filed, are open to the public.

## DISADVANTAGES OF MEDIATION:

- One or both parties may withhold information or tell lies.
- One party may be stronger than the other and can manipulate or take advantage of the weaker party.
- Victims of physical abuse are not able to adequately express and protect their own interests if intimidated.
- If mediation does not succeed, the parties may have wasted time and money on the process and still face the expenses of a trial.
- Since the mediator is neutral, he or she cannot personally advise either party. Parties may instead refer to their own leaders for advice.
- It may be difficult or impossible to find a mediator that is fully bi-partisan.
- Since mediation is non-binding, if agreement is not implemented the agreement cannot enforce the judgment.

## THE MEDIATION PROCESS:

When acting as a mediator for land conflict, specific steps should be taken in order to maximize the potential for a successful resolution.

### **I. Pre-mediation:** Prior to the first mediation meeting.

- Initial contact is established between the mediator and the parties involved in the dispute.
- The mediator should seek consent of both parties in writing. While the letter is not legally binding since mediation is voluntary, it is useful for record purposes to ascertain participation.
- The mediator must clarify his roles to both parties and decide who will be responsible for costs/facilitation which may arise during the process.
- The parties may agree on a preliminary exchange of documents, if any. Both parties should also be asked to mobilise their witnesses to be present during the mediation.
- Meeting individual parties, organizing venue, time and other individuals to attend is decided and must be agreed upon by both parties.
- After consultation with both parties, the mediator will set up the date and time for the first meeting. Confirmation of participation of both parties must be made early enough before the set date for mediation.

### **II. Introduction:** During the first mediation meeting.

- The mediator welcomes the parties and allows them to introduce themselves, give greetings and select the seating arrangement. There is need to provide attendance list during the meeting for record purpose.
- The mediator states the goals of the mediation and emphasizes that mediation is voluntary and explains his/her's role.
- The mediator guides parties in developing ground rules and presents a tentative program/agenda for the meeting.
- The mediator also explains the roles of those invited to participate, i.e. Observers, Advisors, etc.
- The mediator may clarify any questions the conflicting parties may have about the process.

### **II. Introduction Continued:**

- The mediator or a person s/he delegates should sensitize the mediation participants about the basic laws that can help during the problem solving stage, i.e. Constitution, Land Acts, Customary Laws, etc.

### **III. Story Telling:**

- Parties A & B will agree on who starts talking (Usually the complainant).
- Each party will present their facts in the dispute.
- In story telling, emotions are inevitable; therefore the mediator has to be aware of such and know when to enforce a break to ensure the process is not derailed.

**IV. Problem Solving:** The mediator identifies the interests of both parties and helps parties explore possible solutions.

- The mediator summarizes the stories to ensure consensus by all involved.
- The mediator clarifies issues, and guides the parties in analyzing the common issues from their stories which are likely to lead to mutual agreement for both parties.
- The mediator helps generate options to resolve the conflict.
- The mediator helps the parties to evaluate and summarize the options chosen to resolve the conflict as agreed upon by the parties.

### **V. Agreement:**

- Once the parties have mutually agreed, an agreement will be reached and signed by both parties and witnessed by the mediator. A written agreement is recommended for land conflicts and other major conflicts. The terms of this agreement should be respected and acted on by the parties themselves.
- Fair terms and a sustainable agreement including how to deal with subsequent problems that may arise in the future is determined.
- Individuals who are trusted and respected may be selected by the parties to help monitor the implementation.