

Bulletin Scale Up Edition II/2011

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**Natural Resources Conflict and Sustainable Livelihoods**

Natural resources are extremely important to the livelihoods of numerous households in rural areas. Natural resource conflicts may serve a function in bringing to elucidating the necessities and proprietary rights of local communities, as well as help to resolve injustices or uneven distribution processes in the use of natural resources. However, many conflicts have the potential to become obstacles to sustained livelihoods and natural resource use if they are not handled properly. If conflict escalates, it may harm relations between parties involved by exacerbating existing distrust and suspicions. Moreover, conflict can engender violent confrontations and damage existing natural resources which constitute the basis of local communities' livelihoods.

Assets owned or accessed by households may include the following:

- Human model- skills, knowledge, welfare and professional abilities
  - Social model – social relations, both formal and informal, including mutual trust, how people rely on and adapt to each other
  - Nature model – natural resources that are owned, such as land, agricultural cultivation fields and trees, and which also provide environmental services such as shade, water quality and seed cultivation
  - Physical model - physical possessions and things that have been constructed, such as fences, houses, roads
- Activities that may allow households to make use of the assets above in order to satisfy their basic needs
- Different factors that may not be controlled directly by households themselves, but which are predisposed to influence them, such as climate change, natural disasters, economy and other long-term propensities
- Policies, institutions and processes that may help or conversely harm households – in achieving adequate livelihoods

Strategies that have been developed by households to ensure their livelihoods depend on:

- How they combine their livelihood assets
- The vulnerability of the locations where they reside
- Policies, institutions and processes that may influence them

Livelihood strategies may yield more sustainable outcomes for some rather than others. People who enjoy a large range of different choices regarding how they live (strategies that they can make active use of) are generally not as vulnerable compared to people whose choice of ownership limited. Approaches to sustainable livelihoods need to include ways of dealing with these problems. Tools for conflict management include negotiations on the basis of consensus or the involvement of other parties as mediators.

Ideally, an effective approach towards sustainable livelihoods requires the generation of greater income, the improvement of welfare, the reduction in vulnerability, the improvement of food availability and the realisation of sustainable natural resource use for resource users.

Access to natural resources is a key asset for households – particularly poor, or village households, since this affects their subsistence and food supplies. Conflict over natural resources may thus become a threat to these communities' livelihoods. It may indicate that different policies,

organisations and processes are not being operated or assigned well in terms of natural resource use, and may decrease the yield available to communities from these resources. Long-term conflicts may exacerbate the vulnerability of people and undermine their ability to respond immediately to other challenges, such as market fluctuations, drought, natural disasters and calamities.

In each community, there are instances where assets are not distributed fairly. Different levels of poverty can be identified, even among the poorest. Gender, age and other differences may influence access to these assets as well. For example, a tree may be considered as an asset for one household, but rights to it may differ for men and for men. The control of key assets by people may also change according to season and period, and in response to arising concerns and opportunities for their livelihoods.

Households' livelihoods and strategies used to develop their livelihoods are critical in terms of development. Because of this, the promotion of sustainable livelihoods can be said to feature:

- An objective to support and improve the welfare of the poor
- An operational framework which takes into consideration the situation of the poor
- An approach to eliminate poverty

### **Alternative Dispute Resolution (ADR)**

ADR is a procedure to achieve consensus in an informal way that is useful to parties involved in resolving legal disputes in an alternative manner that the litigation process (i.e. by means of a court trial). The procedure involved in this approach includes negotiation, conciliation, mediation, fact-finding, mini-trials, arbitration or a combination of the above (Yarn, DH. 1999: p.18).

Since the 1980s the trend of ADR has been one of rapid growth, particularly in the West. An institutionalisation process has led to greater expertise in ADR techniques. ADRs are also useful in complementing conflict resolution, where a court trial makes use of ADR processes in order to avoid an overload in trials, and to improve court processes in the resolution of cases.

In many places, ADR are part of the services made available in judicial proceedings (such as family-related court cases), but not all. For example, the “San Francisco Community Board” was founded in 1976. This organisation acts as an alternative model to resolve disputes over environmental issues among communities. Originally rooted in community conflict resolution, this model has now spread throughout the US and internationally.

The ADR approach is not a new phenomenon in conflict resolution as several conflict resolution mechanisms are already in place in different countries, such as China, Japan and Africa, as well as Asian countries, including Indonesia itself. What these mechanisms tend to have in common is the principle of an informal approach (ADR) and the preference for agreement and harmony rather than violence to resolve conflict.

The ADR approach has proved capable of resolving cases of conflict and has reduced the number of cases submitted to the courts in some instances. The San Francisco Community Board helps in up to 100 mediation processes every year.

#### **ADR and litigation**

To polarize ADR and the litigation approach is not productive. It is better to perceive both these approaches as constituting different and complementary means of conflict resolution. In the context of formulating alternative approaches to the settlement of disputes relating to the allocation of resources, the litigation approach can be referred to as the conventional approach while the ADR can be seen as an approach to achieve consensus.

#### **1. Negotiation**

This is the process, either bilateral or multilateral, by which the different parties involved seek to achieve consensus or compromise over the issues in question by means of communication. This negotiation process also involves a conciliation process whereby participating parties discuss back and forth in order to accommodate their differences.

#### **2. Mediation**

Mediation is the negotiation process executed with the help of a third party. Usually, the third party acts as a mediator with limited capacity or without the capacity to pass a judgment when intervening in the negotiation process.

#### **3. Arbitration**

This is the process whereby the neutral third party or panel, and the arbitrator or arbitrating panel, evaluate the facts and arguments presented by the parties in conflict. This third party then makes a decision that is either binding or not for the parties in conflict.

#### **4. Conciliation**

The role of conciliation involves a third party whereby the third party tries to encourage negotiations between the parties in dispute. This may involve a conciliator who acts as an intermediary in the communication between the parties, or provide a place for negotiations to take place.

#### **5. Fact-finding**

This is an independent process whereby the neutral third party, or fact-finder, investigates a legal dispute or issues in order to write up a report that brings out the relevant factors involved. The parties in dispute may arrange to engage in the legal process before or after the fact-finding process, depending on whether the facts in the report can act as foundations for conflict resolution or can be used as follow-up to the process.

#### **6. Mini-trial**

This is the product of the resolution process whereby the elements of conciliation and the process are merged as a formal legal procedure. Usually, the antagonistic parties involved get the opportunity to present their side of the case before beginning the negotiation process. A neutral third party may be involved as arbitrator in the presentation process or as facilitator, negotiator, mediator or evaluator to the cases adjudicated.

**Differences between ADR and litigation**

<b>Characteristics</b>	<b>Conventional approach (litigation/judicial)</b>	<b>Consensus approach (ADR/extra-judicial)</b>
Outcome	Win/lose; harms relations	Win-win; improves relations
Participation	Obligatory	Voluntary
Style of interaction	Indirect (via a legal expert or hired defense)	Parties deal directly with each other
Procedure	Same rules and procedures practiced for all cases	Rules and procedures designed for each respective case
Closure	Final verdict of disputes determined by a judge or an official	Final decision achieved voluntarily by both parties in conflict
Mediator role	Without assistance, no mediating role	Aided or unaided; there are various mediator roles
Costs	Low to moderate cost in the short term; potentially very high costs in the long term	Moderate to high costs for short periods; low costs for an extended period if successful
Representation	Selected for general purpose or officially designated	Adhoc; chosen specifically for each type of negotiation

Source: Susskind, L. and Cruikshank, J. 1987. P. 78.

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**Policies to support the practice of ADR in Indonesia**

The regulation of ADR can be achieved through the following laws:

- Law No. 30 (1999) on Arbitration and Alternative Dispute Resolution;
- Law No. 39 (1999) on Human Rights;
- Law No. 11 (2005) on Endorsement of International Convention on Economic, Social and Cultural Rights;
- Law No. 37 (2008) on Ombudsman of Republic of Indonesia;
- Law No. 13 (2003) on Labour and Law No. 2 (2004) on Resolution of Industrial Conflicts;
- Law No. 7 (1992) on Banking, completed through Law No. 10 (1999) on Banking;
- Law on Consumer Security No. 8 (1999) on Consumer Security;
- PP No. 54 (2000) on Organisations providing Services in Dispute Resolution relating to Environment and Livelihood out of the Jurisdiction

- High Judicial Court Regulation No.1 (2008) (changed to Perma No. 2 (2003)) on Mediation Procedures in Trials

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Picture Page 1: The mediator's role is critical to develop trust between parties in conflict prior to entering the negotiation phase (Source: Scale Up)

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