TIERRAS
Promoting Peaceful Solutions to Land Conflicts in Alta Verapaz

AN INTEGRATED MODEL FOR LAND CONFLICT RESOLUTION

Mercy Corps & JADE (Juristas Asociados Para el Desarrollo Legal)
Brian Atkinson
ACKNOWLEDGEMENTS

This model is a testament to members of the Mercy Corps and JADE TIERRAS team, and to their vision and commitment to resolving some of the most challenging land conflicts in Alta Verapaz, Guatemala. Their commendable work benefits hundreds of historically marginalized indigenous families, allowing them to move beyond entrenched conflict and improve their lives and livelihoods through legal accompaniment, land acquisition and agricultural and economic development.

It is necessary to thank the TIERRAS team members for their cooperation and active participation during the making of this document. In particular, Borys Chinchilla, Country Director, Mercy Corps Guatemala and Jose Reanda, Director of Juristas Asociados para el Desarrollo Legal (JADE), who facilitated access to the TIERRAS project team, beneficiary communities as well as important baseline information and documents.

DAVID EVANS/MERCY CORPS
# CONTENTS

1. INTRODUCTION ................................................................. 5
2. THE TIERRAS PROJECT HISTORY .............................................. 6
3. THE TIERRAS INTEGRATED APPROACH ................................. 8
4. THE LAND CONFLICT MEDIATION COMPONENT ....................... 9
   4.1 Context Analysis: The Right Place & Time? .......................... 9
   4.2 Multi-Sector Fora for Project Visibility & Buy-In .................. 10
   4.3 The TIERRAS Fora ...................................................... 11
   4.4 Lessons Learned: Multi-Sector Fora .................................. 12
   4.5 Strategic Partner Selection .............................................. 12
   4.6 Land Conflict Typologies: Property Rights, Occupations & Border Disputes ............................... 13
5. THE TIERRAS LAND CONFLICT METHOD .............................. 16
   5.1 The Land Conflict Mediation Component Structure ............... 17
   5.2 Primary Methods & Actors .............................................. 18
   5.3 Defining a Resolved Land Conflict Case ............................. 23
   5.4 Success Factors for ADR Processes in Marginalized Indigenous Communities ............................. 24
   5.5 Equal Investment in the Process ...................................... 25
   5.6 Neutrality, Confianza, Credibility & Communication .............. 25
6. SUCCESSFUL MEDIATION: IT’S ABOUT THE TEAM ................... 26
   6.1 Mediation Center Staff & Training ................................... 26
7. MUNICIPAL MEDIATION CENTERS & PARALEGALS ................... 27
   7.1 Lessons Learned .......................................................... 27
8. THE AGRICULTURE & ECONOMIC DEVELOPMENT COMPONENT ......... 28
   8.1 Community Response to New Land Ownership .................... 29
   8.2 Considerations for Mediation to Agriculture Component Transition ........................................ 29
   8.3 The Agriculture Team Capacity ........................................ 30
   8.4 Several Intervention Options: Pineapple, Bees & Integrated Farms ............................................. 31
   8.5 Lessons Learned .......................................................... 33
9. THE ADVOCACY COMPONENT .............................................. 35
   9.1 Multi-Stakeholder Alliances & Information Networks ............. 36
   9.2 Multi-Sector Fora & NGO Associations ............................... 36
   9.3 Capacity-Building, Public Education & Media Campaigns ......... 37
   9.4 National Level Advocacy Initiatives .................................. 37
   9.5 Lessons Learned .......................................................... 38
10. CONCLUSIONS & RECOMMENDATIONS ............................... 39
   10.1 Funding & Sustainability, Municipal Mediation Support .......... 39
11. HISTORICAL JUSTIFICATION: LAND CONFLICT RESOLUTION ....... 41
   11.1 Barriers to Land Tenure Reforms ..................................... 41
   11.2 Lack of Land Conflict Resolution Mechanisms ................. 42
   11.3 Alternative Land Conflict Resolution Initiatives .................. 42

Executive Summary .................................................................. 43
Appendices .............................................................................. 44
Recommended Resources & Methods ....................................... 57
Documents Consulted .............................................................. 59
End Notes ............................................................................... 60
<table>
<thead>
<tr>
<th>Acronym</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>ADR</td>
<td>Alternative Dispute Resolution</td>
</tr>
<tr>
<td>CMM</td>
<td>Office of Conflict Management and Mitigation (USAID)</td>
</tr>
<tr>
<td>CMTierras</td>
<td>Comisión Multi-Sectoral de Tierras (Multi-Sectoral Land Commission)</td>
</tr>
<tr>
<td>CONGAV</td>
<td>Coordinador de Organizaciones No-Gobernamentales de Alta Verapaz (Coordinator of Non-Governmental Organizations of Alta Verapaz)</td>
</tr>
<tr>
<td>CONTIERRAS</td>
<td>Dependencia Presidencial de Asistencia Legal y Resolución de Conflictos sobre la Tierra (Presidencial Agency for Legal Assistance and Resolution of Land Conflicts)</td>
</tr>
<tr>
<td>CRS</td>
<td>Catholic Relief Services</td>
</tr>
<tr>
<td>DCI</td>
<td>Development Cooperation Ireland</td>
</tr>
<tr>
<td>EU</td>
<td>European Union</td>
</tr>
<tr>
<td>FONTIERRAS</td>
<td>Fondo de Tierras (The Land Fund)</td>
</tr>
<tr>
<td>FUMDEMI-Talita Kumi</td>
<td>The Foundation for Indigenous Women's Development and Education</td>
</tr>
<tr>
<td>IDPs</td>
<td>Internally Displaced People</td>
</tr>
<tr>
<td>JADE</td>
<td>Juristas Asociados Para el Desarrollo Legal (Association of Jurors for Legal Development)</td>
</tr>
<tr>
<td>MAGA</td>
<td>Ministerio de Agricultura y Ganadería (The Ministry of Agriculture and Livestock)</td>
</tr>
<tr>
<td>MINUGUA</td>
<td>United Nations Verification Mission in Guatemala</td>
</tr>
<tr>
<td>NGO</td>
<td>Non-Governmental Organization</td>
</tr>
<tr>
<td>PROPAZ</td>
<td>Organization of American States funded post-conflict peace-building program</td>
</tr>
<tr>
<td>RIC</td>
<td>Registro de Información Cadastral (Cadastral Information Registry)</td>
</tr>
<tr>
<td>SUI</td>
<td>Sistema Único de Información (Information Clearinghouse)</td>
</tr>
<tr>
<td>TIERRAS</td>
<td>Spanish for “land” or “earth” (not an acronym)</td>
</tr>
<tr>
<td>USAID</td>
<td>United States Agency for International Development</td>
</tr>
<tr>
<td>UTJ</td>
<td>Unidad Técnica Jurídica (Judicial Technical Unit)</td>
</tr>
</tbody>
</table>
1. INTRODUCTION

The purpose of this model is to familiarize development practitioners with integrated land conflict mediation concepts and to explore new programming opportunities. It was created based on the recent success of the TIERRAS “Promoting Peaceful Solutions to Land Conflicts in Alta Verapaz” project as its primary source of inspiration. The TIERRAS project, implemented by Mercy Corps and its local partner JADE (Juristas Asociados para el Desarrollo Legal) since 2003, has proven to be a vital source of knowledge and lessons learned for tackling some of the most complex and intractable land conflicts in the Guatemalan highlands of Alta Verapaz.

The fruits of the TIERRAS project come at a crucial moment for land conflict mediation practitioners interested in new land conflict project development since there is continuing need for well-documented methods for resolving entrenched land conflicts. This model endeavors to help fill this knowledge and resource gap by outlining successful land conflict mediation methods based on ADR principles, and an integrated rights-based approach to rural development.

The information outlined in the proceeding sections provides a starting point for assessment of land conflict dynamics, primary actors and identification of root and proximate causes of land conflict. Most importantly, this model can serve as a practical tool to assist implementation of context appropriate land conflict mediation best practices, take stock of potential challenges and limitations, while also providing basic guidelines for new project design and start-up. At very least, this model establishes sign posts for navigating complex land conflict contexts using Alta Verapaz as a case study, and identifies feasible solutions and ensure, dignified lives and livelihoods.

No one model can offer a sure-fire formula for land conflict resolution. Land conflicts, like all conflicts, are exceedingly multi-faceted and multi-causal. They require humility and a careful eye for selecting appropriate methods according to the history and socio-economic dynamics of each conflict-affected community. It should also be made clear that land conflict mediation projects are not intended to supplant government responsibility for systemic agrarian reforms and transformation of inequitable land tenure regimes. But they can be an important catalyst to start movement forward in the right direction.

Innovative and integrated land conflict mediation programs like TIERRAS can play a vital role mediating land disputes and building coalitions to advocate agrarian policy reforms. At the local level, land conflict mediation can have transformative impacts on cultures of violence and dependence on vigilante justice by promoting dialogue and joint problem-solving among previously polarized parties.

Using This Document

This document is meant to act as part case study and part technical resource. Therefore, its structure and sub-sections are intended to give descriptions and analysis of the TIERRAS project, while also providing practical resources to use as starting points for assessments and integrated land conflict project design including: lessons learned, challenges, stakeholder testimonies and additional resources. These are outlined throughout the document in text boxes, highlighted text, diagrams and annexes. It is recommended to read the document in its entirety once to capture how the project components link and complement each other, and then return to delve into specific sections of interest. We hope that you find the document both interesting and useful.
2. THE TIERRAS PROJECT HISTORY

The colonial legacy of unequal land distribution in Guatemala between large land owners and indigenous laborers has continued largely unabated since the 1996 Peace Accords. Following the end of the 36-year civil war, largely fought over indigenous land tenure security, the Q’eqchi’, Pocomchi’ and Achi’ communities in Alta Verapaz continue to make up 88% of the population, over 73% of which are illiterate. Five centuries of discrimination and limited opportunities for autonomy outside of hard agricultural labor, have left 63% of the indigenous population in grinding poverty. An already desperate socio-economic situation for indigenous farmers was exacerbated by the world coffee market crash in 2000. It devastated many coffee growers financially, which led to widespread bankruptcy and farm abandonment. As a consequence, indigenous communities who were reliant on coffee plantations for employment lost their primary income source, further jeopardizing their already precarious livelihood security. Desperation often led to anger and distrust of government agencies over the lack of agrarian reforms and dignified economic opportunities for indigenous communities.

Protests and civil disobedience proliferated across rural Guatemala as communities demanded access to land and unpaid coffee wages and pensions. Many disaffected coffee laborers occupied their former farms en masse, and involved themselves in increasingly violent altercations with police and land owners.

Since 2001, Mercy Corps has maintained a presence in Alta Verapaz focusing on rights-based rural development and post-conflict indigenous rights initiatives. Since this time, field operations are based in the department capital of Coban reaching 16 outlying municipalities with maternal health, and indigenous civil society capacity-building for education, organizing and political advocacy. In 2002, alarmed by the escalating land conflict situation in Alta Verapaz, the Mercy Corps team executed needs assessments focused on finding just and sustainable solutions. Assessments identified pressing needs in indigenous communities for credible and affordable legal assistance to secure land rights protections and land conflict resolution.

As a first step, Mercy Corps forged a strategic partnership with the local NGO JADE (Juristas Associados para el Desarrollo Legal) to design a land conflict mediation project. In 2003 Mercy Corps and JADE designed the TIERRAS project, which focused on two initial primary objectives during its first year: 1) to facilitate peaceful resolution of 40 land conflicts through a mediation and legal support system, and 2) create and strengthen an advocacy network at the department and national levels to increase government and public support for peaceful resolution of land conflicts in Alta Verapaz.

The Mercy Corps-JADE team secured USAID funding for the first year of land conflict project operations. In support of the objectives, in 2003 the TIERRAS project established 10 municipal mediation centers attended by trained paralegals, and a central mediation center in the Alta Verapaz capital of Coban, staffed by lawyers and professional legal specialists in conflict mediation and ADR. In its initial stages, the TIERRAS project promoted conflict mediation with capacity-building in the region and sub-grant support to 5 partner NGOs, while

“Paz no tiene sentido con hambre”
“Peace has no meaning with hunger”
JADE worked in land conflict communities. TIERRAS convened, with the help of Alta Verapaz partners, a series of successful multi-sector fora to open dialogue, analyze and map land conflicts and brainstorm creative proposals for feasible solutions.

A concerted effort was made to enlist forum participation from a wide range of regional stakeholders, including government agrarian agencies, civil society and indigenous organizations, land owners and the private sector, the church, NGOs, and academia. During the first year the TIERRAS project resolved 40 land conflicts benefiting over 4,000 families. It established municipal mediation centers, trained local partners in conflict mediation and established a regional multi-sector coalition, “CMTierras” (Multi-Sector Land Commission) to advocate policy solutions to the land conflict crisis at the regional and national levels.

During 2004, the TIERRAS project grew in reputation and impact, solving over 85 additional challenging cases in Alta Verapaz. Mercy Corps’ funding base for the TIERRAS project expanded to include Development Cooperation Ireland and USAID extension grants, and grants from the European Union and the Irish NGO, TROCAIRE as sub-grants to JADE. JADE’s internal capacity and land conflict services package expanded to integrate land conflict mediation, legal accompaniment, land registry research, field technical studies and, in coordination with Mercy Corps, post-land conflict agricultural production assistance and agrarian reform advocacy. TIERRAS has since become a well-recognized land conflict mediation project in Guatemala with its success attributed to innovative services, impartiality, use of the Q’eqchi indigenous language, and a comprehensive approach offering both land conflict mediation and technical services.
3. THE TIERRAS INTEGRATED APPROACH

The TIERRAS experience shows that sustainable land conflict mediation that effectively addresses root causes requires a multi-component approach that integrates:

**Comprehensive land conflict mediation support:**
The land conflict mediation component links previously distinct steps in the land conflict mediation process usually handled by separate agencies into one complete method. The linking of the steps encourages clarity and continuity of communication with and between parties in conflict. It also calls for a neutral space for constructive dialogue and mediation, legal accompaniment for land registry research, and transparent technical support using rigorous surveying techniques and the new technologies (e.g. GPS, GIS, satellite mapping and AutoCAD).\(^{16}\)

**Agricultural development and technical assistance:**
The TIERRAS project developed a second complementary agricultural, economic and technical assistance component oriented toward poor indigenous families that are parties in resolved land conflicts. In cases where the mediated agreement includes land purchase, it is critical to address underlying causes of land conflict by increasing productive capacity, linking families to markets and augmenting cash incomes. Agricultural and economic assistance contributes to sustainability by ensuring families improve their livelihoods and can pay for their land, to prevent evictions and renewed conflict.

**Multi-level advocacy on land conflict issues and agrarian reform:** A comprehensive mediation package is not enough to address the root causes of land conflict. The TIERRAS experience demonstrates that a project should incorporate a regional and national advocacy strategy to address root causes such as incoherent or non-existent agrarian policy and deep structural inequalities. The advocacy component serves to bring visibility to land conflict as well as land rights of indigenous populations to the fore. Stakeholders\(^ {17}\) and the citizenry must grasp the complexity of the land conflict issue to garner support for policy change and financial and political commitment to alternative land conflict mediation interventions. Regional multi-sector fora involving actors with interests in agrarian issues have proven an excellent means for a new project to establish neutrality, build-rapport and identify partner organizations.

These three components: land conflict mediation, agricultural economic development assistance and agrarian advocacy - complement each other to comprise an integrated project. The removal of one component would hamper land conflict mediation success and long-term sustainability of outcomes. However, new land conflict mediation projects are not limited to these three components; rather they can function as important starting points. New components may be added as deemed appropriate in response to the exigencies of the project context.
4. THE LAND CONFLICT MEDIATION COMPONENT

The land conflict mediation component is the heart of TIERRAS, and any land conflict mediation project. The agriculture assistance and advocacy components, although extremely important, play supportive roles. Approaching land conflict requires special care in terms of an entrance strategy, identification of local partner organization(s) and alliances, mediation team selection and training, types of services needed, and sustainable funding sources.

It is crucial to be cognizant that in working with violent land conflicts, vulnerable lives and livelihoods are at stake. Hence, the land conflict component must be designed and implemented with the utmost awareness. Cavalier project design and implementation, hiring unfit staff, or forging alliances that jeopardize project neutrality, such as with agencies that lack credibility or favor one party over another, can inadvertently cause latent conflicts to resurge, and new ones to proliferate. Community level conflict volatility is common in post-war contexts that have unresolved historic inequalities, as is the case with Guatemala. Latent animosities lie close to the surface and can be easily provoked despite the existence of formal peace agreements.18

The mediation component is designed with this volatile and complex reality of land conflicts in mind. Based on the TIERRAS project’s lessons learned, the following section will assist in making informed decisions for flexible project design, appropriate basic mediation method selection, staffing, and how best to confront challenges and limitations that a land conflict mediation initiative can pose.

4.1 CONTEXT ANALYSIS:

Before initiating the land conflict design and development process, as is the case with any intervention, an exhaustive context analysis needs to be executed. This is important to first determine the appropriateness and feasibility of a project in the prospective region. In the case of TIERRAS, it was the opportune place and time in Guatemala's post-conflict transition in which overt conflict ceased, the central government was moderately stable, and entrance into land conflict areas was secure enough. Before initiating design and development, it is important to undertake exhaustive baseline research and analysis considering the following:
Considerations for Preliminary Land Conflict Context Analysis

1. What is the political context and type of governance (democracy, dictatorship, theocracy, transitional)?

2. What is the legal context, with special attention to agrarian and land tenure policy, like in the region, nationally and internationally?

3. What are the maps of power and influence in the region including actors from national and local government, the church, civil society organizations, and even black market actors?

4. What agencies and organizations are already engaged with land conflict mediation initiatives in the region, when did they start, in which communities do they work and using what methods?

5. What are the dominant positions and interests of parties and stakeholders in land conflicts?

6. What are the root and proximate causes of the land conflict at the local, regional, national and international levels?

7. What is the level of overt violence and risk for starting operations in the region?

[Mercy Corps Guatemala]

Thorough baseline research on prospective project context, history, conflict causes and scope will help assure proper programmatic model and geographical selection. Failure to carry out exhaustive research and analysis during the assessment phase can jeopardize a project in cases where the conflict is too escalated or an inappropriate entrance strategy is chosen.

One TIERRAS project experience provides a salient example of careful site selection:

In 2005, the Petén in Guatemala was selected as a potential region for land conflict project implementation. It is a department with a long history of land tenure insecurity and violent land conflict. After using similar guiding questions for analysis, the Petén was de-selected for security reasons as the region is controlled predominantly by drug lords with significant land interests for trafficking and profit laundering. Initiating a land conflict mediation project in the Petén could have proven foolhardy, dangerous and beyond the capabilities of an NGO.

Instead, TIERRAS consolidated its programming in Alta Verapaz where the coffee market crash caused property values to drop, lost productivity and subsequent land abandonment. Consequently, landless laborers and their families were in dire need of land to compensate for their lost incomes and for basic subsistence. This allowed TIERRAS to initiate the project in a context of lower land prices and greater land availability due to abandonment, which made the region favorable for land negotiation and purchase for indigenous farming families. What is more, demand for alternative land conflict mediation was high as there was a proliferation of violent land conflicts in greater numbers than the few existing mediation mechanisms were prepared to handle.

4.2 MULTI-SECTOR FORA FOR PROJECT VISIBILITY AND BUY-IN

Regions with land conflict often have histories of prolonged armed conflict, polarized positions and deep distrust between stakeholders. Mobilization on land conflict issues can be misunderstood and a cause for alarm in regions accustomed to violent protests. It is crucial to make clear publicly, and at a very early phase, that a mediation project is neutral and that its primary interest is in concrete solutions to land conflict enlisting peaceful multi-sector participation of civil society and the public and private spheres, rather than violent protest.
In this case, multi-sector fora are an excellent tool for establishing project neutrality, and to cut through entrenched positions between landowning interests. Fora also allow landless indigenous farmers to move beyond confrontations and forced evictions to find just solutions. To this end, multi-sector fora provide an effective medium for launching a land conflict project.

The exercise identified 464 land conflicts in Alta Verapaz at different stages of escalation, litigation in the judicial system or mediation using ADR methods. The participants in the multi-sector fora concluded that civil society and the landless sector needed closer involvement with the agrarian reform process, and that new integrated initiatives using ADR were crucial for resolving the land conflict crisis. Fora participants created a permanent “Multi-Sector Land Commission” or CMTierras, as a regional coordinating body for land conflict mediation programming and advocacy across Alta Verapaz department.

4.3 THE TIERRAS FORA

The TIERRAS project used the forum process as a smart strategy for gaining entry into the conflict area. Prior to the forum process, land conflicts sparked by the coffee crisis were common. They were manifest in violent confrontations between land owners, often with police and thug support, and indigenous laborers and their families armed with machetes. At this time there were 64 orders for forced evictions, and 360 land conflicts reported by the government land agency “CONTIERRA” in Alta Verapaz. In response to the crisis, the governor established a departmental Conflict Resolution Commission. Soon after, he enlisted the support of Mercy Corps, PROPAZ and land conflict Alta Verapaz stakeholders to organize three multi-sector forums to analyze the crisis and elicit solutions.

The first forum was a success with 33 organizations and institutions from multiple sectors in attendance. The proceedings were facilitated by a respected multi-sector panel dedicated to analyzing the root and proximate causes of the land conflicts. Two fora soon followed during which participants submitted 57 proposals for viable solutions. As an essential starting point, one proposal recommended the creation of a comprehensive land conflict map of Alta Verapaz. During the third forum, the conflict map was disseminated and 17 final proposals were chosen and prioritized by levels of urgency into short, medium and long-term implementation timeframes.

“At the beginning there were initial fears at the local and department levels that advocacy would mean mobilization and violent protest.”

Klemen Gamboa, Mercy Corps, TIERRAS Advocacy

A Multi-Sector Forum Process Can:

1. Establish project neutrality and credibility in the region of prospective implementation.

2. Foster constructive working relationships and open lines of communication with the full gamut of stakeholders such as local and regional government, rights groups, NGOs, land owners and experts on land conflict.

3. Create strategic alliances and identify potential partner organizations with complementary mandates and technical resources and/or skills (e.g. land surveying, ADR, logistics, funding).
4. Provide an opportunity for a public launch of the land conflict project to garner support and buy-in from important stakeholders, and increase project visibility to potential donors.

5. Reconstruct and map the conflict history and trends at the local and regional levels from multiple stakeholder perspectives that reflects their positions and interests.

6. Create a constructive space to jointly identify root causes of land conflict and identify solutions based on broad multi-stakeholder participation.

7. Be a source of lessons learned, and after time, an information clearing house on pressing land tenure security issues, innovative land conflict mediation methods and land conflict and relevant agrarian legislation.

9. Utilize the forum process to establish a lasting multi-sector regional coordinating commission on land conflict (such as CMTierras).

4.4 LESSONS LEARNED: MULTI-SECTOR FORA

When using the forum process it is important to keep three goals in mind to ensure positive impact:

- **First**, the multi-sector forum should establish and maintain strict norms of communication to ensure all participants have equal voice. If historically dominant groups, such as land owners, appropriate the process to validate their own interests, marginalized group participation has the danger of being ‘tokenistic’, rather than having equal weight in the process.

- **Second**, it is necessary to establish an effective documentation system that captures the fruits of the forum process. Careful codification of the proceedings from project start will ensure a more complete organizational memory, important baseline information and lessons learned to guide land conflict initiatives at the local, regional and national levels.

- **Third**, the forum process must ensure true multi-sector attendance: government, the private sector and land owners, civil society and indigenous organizations, the church and academia. This is particularly true for proper and equal representation of landowners and indigenous rights organizations. To overlook a crucial stakeholder or sector can undermine the credibility of the forum process as it could be construed to be biased towards certain interests.

4.5 STRATEGIC PARTNER SELECTION

The TIERRAS project’s success is built on its strong strategic partnership with the local NGO, JADE or “Juristas Asociados para el Desarrollo Legal”. When the partnership was formed early in 2003, JADE was a loosely knit association of lawyers that focused on promoting rule of law in Guatemala, resolving land and domestic conflicts, environmental and labor disputes, as well as advocacy with the judicial system for indigenous rights and land access. JADE already possessed considerable internal capacity in terms of formal legal training and practical experience with ADR. However, in preparation for the land conflict interventions in Alta Verapaz, Mercy Corps built on JADE’s foundation with an intensive capacity-building program. Content included: land conflict dynamics, land tenure and agrarian law, and intensive training on ADR methods to fortify their knowledge base. Mercy Corps and partner organizations imparted additional courses with JADE on management systems and leadership to increase internal administrative capacity.
From the outset, JADE and the TIERRAS project were instilled with an ethos of pro-active organizational learning and personnel skill and knowledge acquisition. Strong emphasis is put on open communication between employees regarding lessons learned and areas in need of capacity strengthening and knowledge development.25

A strategic lesson to be learned regarding TIERRAS selection of a local partner NGO

It is advantageous for a land conflict mediation project to select a local partner that is well-established and has reached an organizational growth equilibrium point between stability and flux. Mercy Corps chose JADE as it had reached the right point in its evolution to forge a healthy strategic partnership. JADE was well-established and connected, yet not too rigid or resistant to change and new skill acquisition. Conversely, JADE was also not too unstable in terms of clarity of mandate or in danger for its survival for lack of internal capacity or resources.

[Borys Chinchilla, Mercy Corps, Guatemala]

The wise strategic selection of a local partner allowed Mercy Corps and JADE to work in synergy and capitalize on complementary areas of expertise and resources such as legal training, proposal development, project management and substantive field experience in indigenous Q’eqchi communities.

The following section outlines a basic overview of land conflict typologies and lays the groundwork for understanding the TIERRAS land conflict mediation component and methods. An exhaustive list of land typologies is also provided in appendix 1.

4.6 LAND CONFLICT TYPOLOGIES: PROPERTY RIGHTS, OCCUPATIONS AND BORDER DISPUTES

Root causes of land conflicts are complex, overlapping and embedded in the context and history.

Roots of land conflicts are often linked to vestiges of discriminatory land ownership regimes, government failure to implement coherent agrarian policies and mismanagement of the land registry systems.

It is difficult to denominate a land conflict into a single category or typology26 as they often have multiple causes and can be decades, or even centuries old.27 In this case, the use of typologies serves to classify the land conflicts by basic common characteristics and primary causes. Legal interpretation of a case and its typology determination depends on access to legal documentation, which in many cases is incomplete, lost or dated, or include titles that were acquired through corrupt means (e.g. lands obtained by usurpation during the civil war or by political favors).

The true nature of a land conflict case is clarified and determined during the mediation process by reconstructing the conflict history in detail, including an analysis of root causes and identification of information/documentation gaps. This is accomplished using joint problem-solving sessions28 with the conflict parties, careful land registry research and analysis, and field investigations. The process can only advance to design a mediation intervention once root causes and the typology(ies) are determined.
Correct identification of conflict root causes is also crucial to prevent the re-escalation of a conflict once the case has been resolved. This is important because, historically, government agrarian agencies resort to very cursory research to resolve conflicts, making it more likely to mis-classify a case or discount crucial contributing factors. Government agency analysis tends to be limited to the interpretation and enforcement of agrarian law according to readily accessible legal documents and chains of title alone. In such cases, agencies “resolve” disputes with mere identification of the current title-holder, without considering if the title was obtained justly or not, such as in cases of usurpation of refugee lands during displacement.

In contrast, the TIERRAS model addresses the root causes of conflicts such as family or community rights to land for basic subsistence or payment of back wages. In this sense, the TIERRAS project maintains a high level of success because it focuses on the root party needs and interests in addition to legal property determinations.

Land conflicts where the TIERRAS project operates fall into three general categories: 1) disputes over property rights, 2) land occupations, and 3) border disputes. Each category can be broken down into sub-categories; however, for the purpose of grasping fundamental elements of the TIERRAS project it is sufficient to focus on three most common conflict types.

I. DISPUTES OVER PROPERTY RIGHTS

Disputes over property rights and ‘perceived property rights’ are the most common conflict type in Alta Verapaz. Disputes over property rights can occur between communities and private landowners, between communities and the state, between communities and internally between community members. The causes of property rights disputes can be attributed to government mismanagement of land registry and titling systems typified by land registry titling errors and/or poor record keeping in the form of lost, disorganized or incomplete documents. The shortcomings of government management have been greatly exacerbated by a culture of discrimination and corruption. The upper strata and state interests appropriate the land tenure system through favors and dubious transactions that are legally and politically sanctioned. In Guatemala, this situation has left only 16% of arable lands to indigenous farmers.

### Dispute Over Property Rights Case

A large scale dispute over property rights arose in two communities of Guaxac Coyocte County, Tucurú Alta Verapaz, involving 186 Q’eqchi indigenous families. The dispute dates back to the first issuance of land titles in 1889. Over time, families and land owners have died or abandoned parcels. During the last century, the state continued surveying and issuing new titles for the same parcels, which led to unclear land registry records and multiple party possession of property titles for the same land. Violent conflicts arose between community members who desperately wanted to plant subsistence crops, but could not due to the chronic property ownership disputes.

II. LAND OCCUPATION

Land occupation is a land conflict type that is particularly prevalent in Alta Verapaz. Land occupations have historically served as the means for landless indigenous communities to call government and land owner attention to their needs for arable lands, and compel recognition of their historical and cultural rights. Also, since the global coffee market crash in 2000, former coffee laborers have used land occupations as a strategy for demanding unpaid wages and pensions (prestaciones) from land owners who are either unwilling or unable to pay. Former coffee laborers and their supporters sometimes occupy owner’s lands for multiple years, demanding cash or land for services previously rendered, which in turn interrupts agricultural activities.
until their demands are met. Violent confrontations often ensue when land owners file orders with local authorities for eviction from their property by police force.

**Land Occupation Case**

In the community of Chitocàn, 25 former coffee laborers and their families occupied the central fertile parcel of their former employer’s land to demand back wages and gain access to new land for subsistence. The occupiers were soon joined by neighboring community members in both solidarity and hope of receiving land themselves. The conflict continued for over two years during which time the occupiers demands became violent against the land owners resorting kidnappings and destruction of property.

**III. BORDER DISPUTES**

Border disputes are a third cause of land conflict that can arise due to unclear and/or contended property lines. These disputes can occur between land owners, land owners and communities or between two or more communities. Parties in border disputes can initiate violent confrontations or call for forced evictions when one party claims the other has overrun a common property line. This is seen as appropriated land that is not rightfully possessed according to the land title and cadastral property documents.

Border disputes are a serious flash point for localized violence with machetes or small arms, and can escalate rapidly when one farmer or community members plant and harvests crops across their property line. Confusion over property lines can be caused by inaccurate and poor government cadastral records or measurements taken using outdated and poorly calibrated equipment. It is also not uncommon for property markers to be destroyed intentionally or by changing topography (e.g. due to floods and other natural disasters that significantly change land contours and landmarks).

**Border Dispute Case**

In the county of Panzos, two communities contested the same section of prime agricultural land bordering a river. A conflict broke out between them in 1998 after Hurricane Mitch caused major flooding, and the river to change its course, washing out property markers and cutting through the community lands. One community threatened violence and filed a petition for forced removal of members of a second, who they perceived to have surpassed their legal property line with corn crops. The property lines were no longer clear due to the washed out property markers and the river's changed course from the severe flooding.

Countries that have predominant land titling irregularities run the danger of sparking widespread property border disputes when they implement land regularization programs. In Guatemala, under a national law for land registration and cadastral regularization (RIC 2005), the government will implement a nationwide land regularization program with the assistance of the World Bank. This land regularization program has the potential to create new border disputes because when property lines are defined and registered, many farmers will lose lands they believed were theirs, a contention based on previous inaccurate property measurements and records.
5. THE TIERRAS LAND CONFLICT METHOD

Why has the TIERRAS land conflict mediation project had such success? The answer lies in fact that the project and method are built on a holistic approach to addressing land conflict, its root causes and best resolution strategies. Instead of a ‘one-tool approach’ of piecemeal services that address single aspects of the land conflict, such as mediation, legal registry research or field surveying, the TIERRAS project uses a three pronged approach with legal, technical, and equity and equality aspects.

I. LEGAL ASPECT

The TIERRAS project interventions are founded on exhaustive contextual research on the land conflict history, professional legal expertise and accompaniment with parties in conflict so they can effectively navigate the government legal, land registry and cadastre systems. The TIERRAS team provides impartial analysis, and assembles case information to negotiate a mutually favorable agreement between parties.

Legal accompaniment is important for indigenous communities to understand the mediation process and agrarian law terms and information in their own language (in Alta Verpaz, Q’eqchi Pocomchi and Achí). Accompaniment balances the asymmetry of power and advantage between these economically poor indigenous communities and land holders, of which most are formally educated and can have resources to hire expert legal advice.

II. TECHNICAL ASPECT

Over the course of mediation processes, particularly for border dispute cases, the TIERRAS team provides technical services to cross-reference the cadastral records and maps with existing property lines and markers in the field. In cases where land owners and laborers reach agreements to exchange land for owed wages, the technical team will survey new parcels, verify property markers and triangulate survey measurements using GPS, GIS and AutoCAD programs for mapping. The TIERRAS team then interprets and presents the results in full detail to both parties in Spanish and the parties’ native language.

III. EQUITABLE TREATMENT & ASPECT

An overarching concern with the TIERRAS land conflict component is how the mediation and resolution process is implemented. Several norms are necessary to work with land conflict parties successfully: maintenance of neutrality at all costs and clear and methodical communication with the parties in their native languages in which each stage of the mediation process is explained and transparent.

In addition to comprehensive legal, technical and equitable aspects, the TIERRAS project interventions are low cost and relatively streamlined. In this sense, TIERRAS interventions avoid – as much as possible – the bureaucratic bottlenecks that are characteristic of government agrarian policy agencies. As a local NGO that is neither from the private sector, nor linked...
to government, TIERRAS wins trust and credibility with local stakeholders at large and the parties in conflict. Impartiality is priceless as parties to the conflict, such as post-conflict indigenous communities, distrust government and are wary of corruption and being manipulated or taken advantage of. The TIERRAS project’s ability to win credibility, trust and assure impartiality as facilitators of the mediation process is the key to convincing very polarized parties to come to the table.

5.1 THE LAND CONFLICT MEDIATION COMPONENT STRUCTURE

The TIERRAS land conflict mediation project “Promoting Peaceful Solutions to Land Conflicts in Alta Verapaz”, is built on the strong Mercy Corps - JADE partnership. Mercy Corps provided initial funding, capacity-building, strategic planning and administrative support for project start up. The initial indicators were to resolve 40 conflicts in Alta Verapaz, benefiting nearly 4,000 indigenous farming families. In order to best reach this goal, the project was structured in three levels:

1. The Mercy Corps country headquarters office in Coban as the core stable support system and center of administration, management and ongoing capacity development.

2. The JADE Coban office as the primary regional land conflict mediation coordination center staffed by native lawyers, mediators, technicians and administrators.

3. Establishment of 12 municipal mediation centers in 9 counties, manned by paralegals selected and trained from the local communities. These municipal mediation centers were supported in part by local government funds for paralegal salaries and in-kind provision of office space.

The impetus for establishing municipal mediation centers was to ensure local government buy-in into the conflict mediation project, and achieve a stable presence in order to mediate land conflicts at the community level before escalation and overt violence.

Support beyond paralegal case intake and initial mediation is coordinated through the JADE Coban office.

![Figure 3](image-url)
Contingent on the type of land conflict case (e.g. dispute over rights, land occupation or boundary dispute), the JADE team prescribes an appropriate course of action. Logically, more entrenched land conflicts with extended histories and complicated land registry antecedents (multiple titles, gaps in property records, for example) require a greater number of steps in the mediation process.

Each case is unique, and requires an equally unique intervention to resolve it based on the case attributes. To ensure systematic procedures, the JADE team developed a flowchart to map the possible steps and trajectories for land conflict case intake, mediation and resolution.

An exhaustive account of land conflict mediation procedures and basic steps can be found in appendix 4. What follows is a description of the key steps in the life of a land conflict case, ADR concepts, primary actors and TIERRAS model best practices to consider when designing a land conflict mediation project.

### 5.2 PRIMARY METHODS AND ACTORS

#### I. CASE INTAKE

Land conflict cases are received by paralegals in one of the municipal mediation centers or in the Coban Central Mediation center. During the first year of operation, nearly all cases were received at one of the pilot municipal mediation centers in Alta Verapaz. Contingent on initial paralegal capacity and the extent of municipal support, it is not uncommon for case intake to require central mediation center involvement.

To initiate the land conflict mediation process, one or both parties (e.g. land owners or indigenous community representatives) must request services of their own volition. The case cannot be admitted unless both parties are willing to seek a mediated solution. One of the primary means of attracting conflict parties to the table is to ensure that the mediation project and its services are perceived as impartial and credible, and that both parties stand to gain from the process.

The first responsibility of the paralegal is to brief the parties about the land conflict services, the norms that will be followed during mediation process, and the necessary documentation to proceed. The paralegal utilizes an intake form to document pertinent data on the conflict type, history and any other legal processes that are

---

**Figure 4**

Primary Steps for Land Conflict Mediation

1. Case Intake
2. Conflict Background Research & Case Preparation
3. Convening First Mediation
4. Legal Research & Information Solicitation
5. Technical Field Study
6. Presentation of Results & Final Mediated Agreement
pending on the case. This paperwork is then submitted as a case file to the regional mediation office where it is approved and entered into the land conflict case database.

II. CONFLICT BACKGROUND RESEARCH AND CASE PREPARATION

After initial intake process, the central office mediator assigned to the region of the case in question executes a systematic investigation into the case history and the circumstances of the conflict. The mediator is concerned with primary perceived causes, the recent conflict developments and important contextual influences (e.g. impacts of the coffee market crash, previous armed conflicts and indigenous land tenure insecurity). The mediator also takes note of the primary actors and their interests as well as security considerations that impact the feasibility of TIERRAS involvement with the parties. This detailed information helps the mediator complete a preliminary analysis of the primary characteristics of the case and subsequently the kind of interventions required.

The TIERRAS team has determined that full completion of this preparatory phase prior to convening the parties is extremely important as it allows the mediator to develop as balanced an understanding of the conflict and its context as possible with the information available before entering the field. When the parties are convened for the first time, the mediator’s strong early grasp of all aspects of the conflict is important for security and to win credibility and trust with the parties.

III. CONVENING THE FIRST MEDIATION

Once the parties are notified that their case has been approved to proceed with mediation, the first session is held with the parties, the paralegal and the mediator at the community mediation center. The first mediation is expected to establish a neutral space for dialogue and joint-problem solving and to clarify the rules of communication. The activities are designed to reconstruct versions of the land conflict from both party perspectives, allowing ample time for clarifications.

“The from the beginning we set the ground rules for the mediation: this means no aggressive tones of voice, no pointing at each other, each party must raise their hand to speak, no arms are allowed in the mediation space, and each person must introduce him or herself and explain their role in the community and the conflict.”

– Mediator, JADE

The mediator employs proven ADR methods throughout the process which are founded in practices of facilitation, conciliation and interest based negotiation (these and other ADR basic concepts used by JADE at the mediation centers can be found as appendix 2). The first mediation sessions use active listening and respectful communication to verify:

1. The primary conflict typologies and symptoms (occupations, forced evictions, violent confrontations between parties).
2. The root causes (non-payment of wages, unclear property lines, lack of land access for subsistence).
3. The possible solutions (payment of back wages, commission a field study to determine property lines), decide on mutually agreeable steps to jointly resolve the conflict (choose a course of action).
This initial process has the power to break down deep hostilities and antagonisms between the parties by creating a safe and unbiased forum for communication. In many land conflict cases this is an emotive event, as it is often the first time the parties sit face to face at the same table and communicate in a dignified manner after multiple generations of violent altercations. The preliminary conflict analysis activities are performed simultaneously in both Spanish and Q’eqchi. The provision of bi-lingual services plays a central role in the mediation process in indigenous communities. Well-developed mediator and paralegal language abilities and clear communication skills act as the bridge to gain conflict party trust and buy-in into the process, without which mediation is more likely to fail.

The first mediation session and the norms of communication adhered to have the power to set the tone for the entire mediation, and can determine the eventual conflict resolution, or the collapse of the process. Additionally, throughout the mediation sessions the proceedings should be systematically documented, including maintenance of a running record of party positions and possible courses of action to resolve the conflict. Clear communication and documentation...
allows for continuity between mediation sessions, can hold parties accountable and provides an official and irrefutable record of the process.

Once the first mediation session is complete, the mediator and the paralegal determine the next steps in the process whether land registry and cadastral research, technical field GPS surveys, or both. These next steps and the rationale for each are then explained fully and transparently to the parties. In some instances, although uncommon, occupations over owed wages and pensions in cases concerning ex-coffee laborers, for example, are settled after the first mediation session. This occurs if the land owner concedes to the payment of debts or gives parcels of land as a form of payment. If the case continues, as is most likely, the mediator and the TIERRAS team proceed with registry research and/or technical field studies.

In cases regarding property rights and multiple titles for the same parcel, the Registro Nacional (National Registry) provides access to titles and the “chain of title”, or history of land possession. The TIERRAS team accesses additional information from online databases, as available. The legal research phase requires close coordination and positive rapport with government agencies and institutions involved with land conflict issues. The Sistema Único de Información - SUI (Land Information Database), which was developed as a fruit of the TIERRAS forum process, is an important resource for regional land tenure information for the TIERRAS team. The SUI is a central clearinghouse for sharing land conflict data between institutions, NGOS and civil society actors working on land conflict. The two government land tenure agencies, CONTIERRA and FONTIERRA, are also important resources during the legal research phase.

IV. LEGAL RESEARCH AND INFORMATION SOLICITATION

The next phase is to reconstruct the land ownership history and fill information gaps on present land ownership. The mediator and the legal team, based out of the JADE Coban mediation center, request official documents from the archives of the government agrarian and land tenure agencies. In cases of boundary rights conflicts where discrepancies appear between official cadastral property maps and the location of property lines in the field, the TIERRAS team arranges consultations with the Registro de Información Catastral (Registry of Cadastral Information). The legal research process, if executed adequately, is rigorous and can often be time consuming. JADE’s trained lawyers and mediators (some are trained as both) must have a working knowledge of how to navigate bureaucratic government agencies to leverage the land tenure information they need. This is where rapport with fellow agencies and a sophisticated understanding of the legal landscape are indispensable for successful case analysis. When legal, registry and cadastral research cannot clarify rights of ownership or property boundaries, the TIERRAS team proceeds with a technical field study.

“Imagine if I went to an office where everyone only spoke English... I’d feel excluded and I wouldn’t want to go back - I’d be outside of the process, even as a beneficiary.”

~ Mediator, JADE

“Also there are cases where the parties have been dishonest due to corrupt leadership. They try and manipulate the process. There are always parties that benefit from conflict - land owning and poor farmers alike.”

~ Miguel Balan, JADE
V. TECHNICAL FIELD STUDY

Nearly half of land conflicts in Alta Verapaz are rooted in faulty government property survey and documentation practices. Old, poor quality or incorrectly calibrated survey equipment and surveyor miscalculations are primary causes for property line confusions and subsequent violent conflict.

A factor for TIERRAS team’s success lies in the time and expense taken to execute accurate and credible technical field work. This is reflected in their use of the latest technologies available such as GPS, GIS, and AutoCAD programs. Innovative use of these technologies is of utmost importance when designing and implementing a new land conflict mediation project. Technological surveying and mapping tools, although expensive, are worth the investment as they are the means of assuring accurate field studies, and in turn, better quality mediation results.

Land owners and indigenous community members are invited to observe each stage of the field survey and GPS studies and are informed on the process in both Spanish and their native language. In particularly escalated cases, external consultants are contracted for technical field studies to assure that the parties perceive the study execution and findings as neutral. External consultants are identified based on their credibility and quality of work, knowledge of the region, the indigenous culture and language. Once the field research and survey phases are complete, the TIERRAS team debriefs both the legal and field research results to the parties in the community mediation center.

VI. PRESENTATION OF RESULTS AND FINAL MEDIATED AGREEMENT

Presentation of results and codification of the final agreement is a significant moment in the life of the land conflict case. This final session in the community mediation center with the TIERRAS mediator, the paralegal and conflict parties present, is the culmination point of the preceding phases, and an important opportunity to forge a lasting solution to the conflict.

Legal research, registry analysis, cadastral records and field study results are all formally presented to the parties and a final determination of the conflict provided. Care is taken to clearly interpret the topographical and cadastral maps together with the field study results. Visual aids such as maps and property plans act as important instruments to consolidate agreements. If parties can visualize the results of the mediation process and the more esoteric aspects of the land conflict on maps and

“The parties to the conflict can see their land geographically referenced on topographic maps that are either printed or appear on electronic media, and they can thus base their discussions on the natural limits or borders that can be located on the map. This working technique is vital, because the parties can visually recognize the agreements”.

– Manuel Morales Feijoo, Consultant
diagrams, they are more likely to comprehend the results and thereby agree to the mediation final result.

Finally, the parties then collaborate closely with the mediator to negotiate a mutually agreeable solution that honors conventions of legal property and indigenous rights to land and dignified livelihoods. Final outcomes vary based on the type of land conflict and the histories and depth of latent animosities of the parties involved.48

Successful agreements are often closed with a handshake, the presentation of updated property maps and the signing of a notarized documentation outlining the terms of agreement.

5.3 DEFINING A RESOLVED LAND CONFLICT CASE

At what point is a case resolved? ‘Successfully’ mediated land conflicts can still leave the latent needs and interests of parties unmet, causing the conflict to later resurge or displace elsewhere.49 In cases of land purchase, a title cannot be obtained until the last payment has been made, commonly 4-5 years after the mediated agreement is finalized. The funding and capacity limitations of a relatively small project like TIERRAS do not permit a ‘resolved case’ to be determined by the issuance of a land title over such a protracted time frame. Instead a ‘solved case’ is defined as the moment in which a documented agreement is reached and overt, violent conflict stops between the parties, and arrangements are made for land purchase or another end agreeable to both parties.

Now that the TIERRAS method and process has been explained in some detail, it is important to explore factors for its success in Alta Verapaz, a region once thought untouchable for land conflict work.

A Complex Case Study:
Finca Chitocàn

There were 36 ex-coffee workers and their families occupying a farm in Chitocàn. In addition to the 36, others came from surrounding communities to support the occupiers and to get land. The two groups of occupiers made an agreement with the landowners to vacate the land and negotiate for parcels. However, two days before signing the agreement, they re-occupied the lands. The owners then offered to give them parcels of flat land and coffee plants but they refused. At that time the group divided: some of the occupiers left and went to department capital city of Coban, others occupied neighboring farms, while 26 families remained on the Chitocàn farm. The owners then called the authorities and had the remaining 26 families forcibly removed. Both the ex-coffee workers and the outside occupiers returned two days later with a member of the regional human rights commission and the TIERRAS project mediator. The landowners then proposed negotiation for the purchase of an annex parcel to the Chitocàn farm. After over a year of mediations and technical field studies with the TIERRAS team, the 26 families negotiated the final agreement, while the remaining families left in hopes of acquiring land elsewhere.

“People have the perception that a resolved case is when [in the case of land purchase] the land is paid for five or seven years later. We don’t have the money for that. We’re not FONTIERRA. It always starts with a solicitation of our involvement and ends with an agreement”

– Luis Guay, JADE
Long-Term Phases of Land Conflict Resolution

The following diagram captures three primary phases of a land conflict during the resolution process. At present, the TIERRAS project considers a case to be “resolved” at phase II. However, the land conflict mediation and agriculture components should contribute to the final resolution by ensuring the durability of the agreement, and new income to facilitate land registration and acquisition of the land title over the long-term, to achieve phase III.

Figure 6
Levels of Conflict and Phases of Intervention

<table>
<thead>
<tr>
<th>TIME FRAME</th>
<th>CONFLICT LEVEL</th>
<th>INTERVENTION PHASES</th>
</tr>
</thead>
<tbody>
<tr>
<td>1-7 Months</td>
<td>Active Conflict</td>
<td>Phase I Information Gathering &amp; Initial Mediation</td>
</tr>
<tr>
<td>1-3 Years</td>
<td>Mitigated Conflict</td>
<td>Phase II Agreements, Field Studies</td>
</tr>
<tr>
<td>1-5 Years</td>
<td>Resolved Conflict</td>
<td>Phase III Land Regularization &amp; Title Acquisition</td>
</tr>
</tbody>
</table>

5.4 SUCCESS FACTORS FOR ADR PROCESSES IN MARGINALIZED INDIGENOUS COMMUNITIES

A very important characteristic that sets the TIERRAS project apart from other land conflict mediation initiative is its emphasis on the provision of culturally relevant services to marginalized indigenous communities. The fact that all services are available in the native language, alleviates the asymmetrical power dynamics between communities and land owners. In this sense, the TIERRAS model is particularly powerful as a tool for reconciliation and progress in the post-conflict contexts with skewed power and class relationships.

The land conflict mediation process provides a rare opportunity for indigenous communities to converse and negotiate in their language as equals with landowners. This is often the first time these community members have the opportunity to express their needs, interests and concerns in a neutral and dignified space. The experience is cathartic as they have the opportunity to voice latent traumas of the civil war and experiences of exclusion. The TIERRAS land conflict mediation method also respects the indigenous cosmo-vision and engages traditional communal decision-making processes to support the mediation work as appropriate. For instance, mediators integrate the mediation process with community assemblies and they hold regular consultations with community elders.
5.5 PAYMENT FOR MEDIATION SERVICES AS AN EQUAL INVESTMENT IN THE PROCESS

The TIERRAS project requires that both parties contribute up to 25% each to the financial costs of the land conflict mediation process. The project commonly covers the remaining 50% using grant funds. At first glance, one might be concerned that economically poor families cannot afford to pay their contribution. However, the TIERRAS project experience has shown that shared cost schemes for the mediation costs have had positive results. The reason for this is that families and community members take pride in their contribution at par with the land owners as it demonstrates they are an equal party with the same importance and stake in the process.

The contribution also ensures the parties are invested financially, formalizing their commitment and reducing the likelihood of withdrawal in mid-process. The shared costs scheme wins both parties’ support as the cost is still nearly three times less than hiring a private lawyer (2,500 Quetzales or USD$360 vs. 7000Q or USD$1,000). The TIERRAS mediator deposits the two parties’ contributions into a neutral bank account, where it is accessed during the mediation process to cover costs as well as contribute to the costs of other cases. The contribution and neutral account have symbolic value to the parties and the income contributes, at least in part, to the sustainability of services.

5.6 NEUTRALITY, CONFIANZA, CREDIBILITY AND COMMUNICATION

As illustrated in the six basic phases of the land conflict mediation process, neutrality, transparency and clear communication are indispensable to reach a lasting agreement between parties. Both in the mediation center and in the field, the paralegals and the project staff are careful to explain each step of the process as it is executed, and its rationale in a way that is fully understood by the stakeholders in the mediation. Mediators are extremely careful to consider how their actions and words might be interpreted or misinterpreted by either party. For example, an invitation to a dinner with a landowner in gratitude for services rendered can create the illusion of favoritism or under the table compensation, jeopardizing neutrality and creating distrust. Such an action by a mediator can derail the entire process, even after a case has already been resolved.

Neutrality has the power to contribute to credibility. However, maintenance of neutrality during the mediation process alone is not enough to guarantee credibility as the mediation process includes fallible technical aspects. Credibility can be compromised by technical mistakes (e.g. survey miscalculations) or misinterpretation of documents (e.g. cadastral records, property lines and land titles). Any mistake that inadvertently favors one party over another undermines the process and can permanently impact the project’s credibility in a community, or even the entire region of operation. The TIERRAS team has made errors of this kind, but they are kept to minimum by quality technical equipment, strong staff capacity and an institutional commitment to iterative learning from their work.
6.1 MEDIATION CENTER STAFF AND TRAINING

A successful land conflict project such as TIERRAS, requires a team of well-trained legal specialists with high cultural literacy and indigenous language ability. The TIERRAS staff members are well-educated as trained lawyers and specialists in conflict mediation and ADR methods. Senior mediators and technicians are hired with 5-10+ years monitoring and evaluation and rural development experience in post-conflict communities of Alta Verapaz. In addition to staff members’ existing skill and capacity, the TIERRAS project emphasizes a proactive culture of learning.

New staff members receive intensive conflict mediation trainings on ADR methods. They also shadow seasoned staff for up to four months before taking on their own land conflict case load. Newly trained recruits generally become motivated and engaged after successfully resolving their first case. They enjoy the challenge of resolving difficult cases that were once not thought possible to resolve. All staff members are encouraged to take part in several land conflict trainings and regional conferences for experience interchange per year.

Regional knowledge and extensive experience is a second vital characteristic of TIERRAS staff profile. The legal and technical staff was selected from Alta Verapaz and the region of operation with intention. The nature of the conflict work requires an intimate knowledge of the dynamics and histories of land conflicts, substantive experience working with civil society and indigenous groups for capacity-building and rights-based rural development. Indigenous language fluency and a deep commitment to the land conflict work are non-negotiable requirements.

Without passion for the work and personal investment in the communities and the process, a new staff member is unlikely to succeed. This holds true to a lesser extent for office staff and administration. Particularly for hiring processes, it is beneficial for administrative and human resources staff to understand the exigencies of working with land conflict. Coban mediation center administrative staff has, on occasion, accompanied mediators to the field, which gives them a basic conception of the skills and demeanor required for new mediator recruits.

“The secret [to TIERRAS’ success] can’t be reduced to a methodology, because it’s based in human capacity and experience, it’s based in the team.”

– Luis Guay, Mediator, JADE
7. MUNICIPAL MEDIATION CENTERS & PARALEGALS

The municipal mediation centers and the attending paralegals are the face of the land conflict project in the communities of operation. However, sustainability of the centers has proven to be a challenge. At the close of 2004, the project was operating with 21 trained male and female paralegals in 12 mediation centers in nine counties across Alta Verapaz. The initial enthusiasm among paralegal recruits was high. The training program was comprehensive and rigorous including sessions on conflict analysis, mediation and negotiation techniques, leadership, and orientation in legal concept. Paralegal recruits are also selected for their local land conflict knowledge and indigenous language skills. Paralegals have a steep learning curve in which the longer they stay engaged with the mediation center, the more they expand their responsibilities over the mediation process. However, municipal support for the centers has proven limited to the provision of office space and utilities, leaving TIERRAS to foot salaries from allocated grant funding.

7.1 LESSONS LEARNED

By 2006, the project consolidated to seven mediation centers with seven part-time paralegals, and one community mediation center with full municipal support. High paralegal turn-over was common due to limited salaries and perceived security risks, particularly in the case of female paralegals. Additionally, the high level of JADE mediator staff capacity at times undercut the paralegal caseloads by re-routing cases from the municipal mediation centers to the central Coban center. Despite these expected growth challenges, veteran paralegals are committed and have done commendable work with case intake, basic mediation and legal accompaniment with land conflict parties. Despite these surmountable limitations, the mediation component has proven successful in resolving land conflicts during its three years of operation. The forum process, establishment of CMTierras, nurturing of project credibility and rapport with the main stakeholders in the land conflict mediation has contributed to the project’s success.

The learning process of the land conflict mediation component is a rich resource and can serve as an initial frame of reference for new projects. To this end, a compendium of lessons learned, positive and negative externalities and project limitations for conflict mediation, agricultural development and agrarian advocacy can be found in appendix 3.

The TIERRAS project is designed to take into account long-term sustainability of mediated conflicts with an Agriculture and Economic Development component. Communities that purchase land as part of agreements receive technical agricultural assistance to establish cash crops and market links for income generation to ensure payment for their newly acquired land.
After three years of successful land conflict mediation interventions in 16 counties of Alta Verapaz, the TIERRAS project staff made the determination that a mediated agreement did not suffice to secure a lasting resolved land conflict over the long-term. It was apparent that the land conflict component cannot be the end goal of the project alone; land conflict resolution must be the means of securing land access, thereby increasing livelihood opportunities and overall quality of life. But land conflict mediation could not achieve its quality of life goals if the new land-owning communities who made financial commitments could not successfully pay for the new land in compliance with the negotiated agreements, much less simultaneously provide for their basic family subsistence needs.

The limiting economic reality of beneficiary communities in Alta Verapaz, such as Chitocán and Nuevo Amanecer, are demonstrate of the land payment conundrum. The fact that beneficiaries arranged for land payment over a 4-5 year timeframe compounded their dire economic situation. In the case of Nuevo Amanecer, over two years had transpired since signing the land purchase agreement, which left 1-2 years to repay the land debt in full. The communities were not on schedule to make the payments as they had limited levels of agricultural production and cash for inputs.

Failure to generate immediate, medium and long-term income threatened to jeopardize the sustainability of the mediated land conflict and the well-being of community members. Community fears were exacerbated by the perception that the obligation to make large payments would leave minimal cash for family basic needs such as clothing, medical services and payment of school fees. Without sufficient livelihood stability and funds to make timely land payments, communities would default on their loans and be forcibly evicted, initiating the cycle of landlessness and conflict once again.

In response to this challenge, the Agriculture and Economic (Ag/Econ) component was amended to the TIERRAS land conflict project initially funded by Irish Aid (DCI), the European Union and a Mercy Corps’ new entrepreneur grant. The Ag/Econ components objectives were to encourage new land owning families to diversify and expand production on their parcels to include non-traditional subsistence and commercial crops, provide essential inputs and establish direct market linkages.

8. THE AGRICULTURAL AND ECONOMIC DEVELOPMENT COMPONENT
These objectives not only aimed to facilitate the payment of outstanding land debt, but to also ensure a long-term, sustainable increase in economic stability, cash flow, and quality of life over subsequent years.

The Ag/Econ component was launched under the Mercy Corps TIERRAS management as a separate yet complementary entity to JADE’s land conflict mediation operations. By mid 2006 the EU, DCI and agency grant financed projects extended its reach to 50 post-land-conflict communities with three trained agricultural technicians and an Ag/Econ component coordinator. Local partner NGO ‘FUNDEMI Tali Takumi” now provides additional support with two field agriculture technicians. In this sense, strategic partnerships outside TIERRAS play a role in expanding the Ag/Econ team’s technical support coverage to additional post-land-conflict communities they would normally not be able to reach.

8.1 COMMUNITY RESPONSE TO NEW LAND OWNERSHIP

The TIERRAS agriculture team discovered that most beneficiaries are empowered by the successful conflict resolution and the new land ownership opportunities. There is a newfound sense of pride that encourages them to pay off their land debt, and obtain land titles as soon as possible, thereby closing the book on the years of uncertainty, transience and energy expended on the land conflict. The TIERRAS agriculture team noted that post-land-conflict communities are also less likely to seasonally migrate as they prefer to invest time and energy establishing their families and developing new housing and diversified agricultural plots on their new land.

It is common for families and communities to arrange for land payment in exchange for agricultural labor on the land owners’ property, payment by turning over portions of their harvest, cash payment, or a combination thereof. These flexible payment schemes are particularly beneficial as they give families a range of options according to the particular resources they have available.

8.2 CONSIDERATIONS FOR MEDIATION TO AGRICULTURE COMPONENT TRANSITION

The TIERRAS project highlighted the need for careful transition between conflict mediation and Ag/Econ components in post-land-conflict communities. Entering still traumatized and unsettled communities with the intent to “do agriculture” as with more conventional rural development interventions, usually is not appropriate. In those instances in which the Ag/Econ team has entered a post-conflict community prematurely, their work can be hindered by continuing processes to survey and finalize individual intra-property boundaries within the community, and distribute the newly delineated parcels.

In other instances, intra-group or community conflicts may temporarily arise as the mediation agreement is executed. This is particularly relevant for cases in which a divide exists during the mediation process itself between those community members who accept the agreement (e.g. for land purchase or land in exchange for owed wages), and those who refuse the terms of the agreement that subsequently remain outside of the mediation process. Also, communities who do agree to purchase land still must divide parcels among their members, which in turn can spark internal conflicts over rights to the most level and fertile soils.

I. TRANSITION BETWEEN LAND CONFLICT AND AGRICULTURE COMPONENTS

With these challenges in mind, it was decided to institute a transition phase between the mediation and agriculture team interventions in response to numerous cases in which beneficiary community members were unclear over the role of the TIERRAS agriculture team. Presently, prior to entering a post-land-conflict community, the TIERRAS agriculture team is required to receive a
briefing from the mediator and paralegal responsible for the case that encapsulates the conflict history, potential flashpoints to avoid, and the present state of resolution. The agriculture team is also expected to review antecedents and mediation case documents for pertinent contextual information.

II. AGRICULTURE TEAM INTRODUCTION

As an important step to gaining trust with the community entering to start the Ag/Econ activities, the mediator and the paralegal introduce the agriculture team to the community, and clearly explain that the purpose of the agriculture component is to assist them diversify crops, connect to markets and increase incomes to pay for their land. This agriculture team accompaniment process has proven to be an indispensable step to build community rapport to initiate the agriculture projects.

“A common example of agriculture team members engaged in informal mediation activities centers around those instances in which some groups splinter from the community at large, and refuse the mediated agreement, but then later return requesting integration into the post-agreement agriculture projects. The agricultural activities with the groups that eventually decide to re-unite can facilitate the restoration of community relations and smooth tensions to then move forward to more cohesive economic development.

8.3 THE AGRICULTURE TEAM CAPACITY

As part of their preparation for engaging post-land-conflict communities, the TIERRAS agriculture team now trains in basic conflict mediation and ADR concepts and practice together with the JADE professional mediators. The cross-training policy was instituted to smooth this transition between the mediation and Ag/Econ components, and prepare the agriculture team to identify warning signs and refer unresolved or latent conflicts with potential for flare-up to the mediation team as a preventative step. In this capacity, the agriculture team has the power to play a vital role on the ground providing informal early warning monitoring for new land conflict start, or old conflict resurgence.
8.4 SEVERAL INTERVENTION OPTIONS: PINEAPPLE, BEES AND INTEGRATED FARMS

The DCI and EU-funded agricultural component aims to encourage post-land-conflict community cash and subsistence crop diversification, thereby augmenting food security and outputs by 80% and beneficiary incomes by 10%. What is more, the Ag/Econ component emphasizes sustainable agricultural practices in which women’s participation is fundamental, with special initiatives created with women’s producer associations.

The TIERRAS team has found the work is challenging since many beneficiary communities are situated in remote indigenous enclaves of Alta Verapaz, requiring travel by truck on roads subject to flooding and landslides. Vehicle travel is not uncommonly followed by multiple hour walks on footpaths. Remoteness and difficult logistics pose daunting challenges for market access as transporting harvests under these conditions can prove costly and time-consuming. Additionally, product quality and volume is often limited by poor soils with steep topography.

To address these challenges, non-traditional crops can be promoted in the most remote communities which are light weight, easier to transport and can survive harsh soils, such as hibiscus and other crops of similar transportability. Another potential solution is to facilitate establishment of cooperative agreements between small producer communities to share crop transportation costs, and consider road improvement projects as part of the agriculture activities and market linking.

I. MERCY CORPS’ NEW ENTREPRENEUR FUND PROJECT

A Mercy Corps-funded pilot project was initiated with the two post-land-conflict communities of Chitocán and Nuevo Amanecer. This project’s objectives are to diversify short-cycle crops for immediate food security, and medium and long-cycle crops for...

“The Nuevo Amanecer community also initiated a poultry project with 27 members of the women’s committee choosing to raise hens for eggs. The community contributed 75% of the resources for building the hen house and individual cages while Mercy Corps complemented the project with the purchase of 200 hens. We estimate producing 152 crates of eggs (1 crate contains 360 eggs) generating a profit of around Q17,000 quetzales or US$ 2,266”.

– Amy English, Ag/Econ Project Advisor
commercial production and income generation. In Chitocán, the TIERRAS agriculture team continues to train and provide technical and logistical support to post-conflict community members for citrus, pineapple and cardamom production as well as beekeeping and chicken-raising. The project has started 20 apiaries with community women’s groups who receive capacity-building on safe bee-handling, technical support and access to credit through coordination with a local NGO “Proyecto Lechua”. Proyecto Lechua also facilitates project beneficiary access to a raw honey collection center, equipment for processing, and a guaranteed local market for their honey together with other small scale producers. Nuevo Amanecer has in turn benefited significantly from native Cobanero chili, cardamom, chicken-raising with women’s groups, and an expansive pineapple project.

It will produce nearly 190,000 canning pineapples in its first harvests. The TIERRAS project team was instrumental in locating and negotiating with a reputable wholesale pineapple buyer and soliciting a favorable purchase contract. This will allow Nuevo Amanecer community members to transport and sell the harvest en masse instead of having a large portion of their profits lost to local middlemen or attempting to negotiate terms of sale independently.

Independent sale can expose the communities’ relative lack of knowledge about the mechanics and obligations of large purchase contracts to exploitation by wholesale buyers. Thus initial capacity-building activities in contract negotiation and communication skills as well as basic financial management are areas which beneficiaries will appreciate empowerment during initial stages of the project. As levels of capacity increase, direct oversight and capacity-building can be tapered off allowing the technical support staff to move increasingly towards monitoring and accompaniment roles. The projected profits for the first pineapple harvest have potential to eliminate 50% of the land debt for Nuevo Amanecer.

“It’s the first in the area [to buy from indigenous growers] since buyers don’t traditionally create business relationships with the indigenous communities. These communities usually lack exposure to entrepreneurial thinking in terms of life improvement and ideas for new kinds of produce”.
– Amy English, Ag/Econ Project Advisor

II. INTRODUCING NON-TRADITIONAL CROPS TO POST-LAND-CONFLICT COMMUNITIES

Like most new projects, the pineapple initiative presented its share of challenges. Attaining full buy-in from community members can be difficult, and this becomes challenging when the project introduces a crop at a scale of production entirely unknown to the target community. In the case of the pineapple cash crop, the project was outside of the realm of experience of the Nuevo Amanecer community leaders as they had never dealt with agricultural production on such a large scale.
The agriculture component plays an increasingly vital role in the TIERRAS project as new conflicts are resolved, agricultural economic production will be needed for sustainability of the mediated land conflicts and for livelihood security. The TIERRAS agriculture component has had considerable success despite expected initial challenges. In addition to the pineapple success, women beneficiaries have been empowered and organized through micro-credit associations and management of the chili harvest and chicken production.

The component is new and is developing the full capacity needed to provide follow up with support to every community that has resolved a land conflict. Future agriculture components based on this model will have the luxury of putting to use the TIERRAS learning curve to introduce the Ag/Econ component simultaneously with the land conflict mediation and advocacy components.

Additional considerations for future similar projects

8.5 LESSONS LEARNED

There were reservations regarding the sale price under the contract because community members were unfamiliar with the norms and mechanisms of bulk sale. Many were concerned that they were selling their harvest at 14 centavos (5 cents) per pineapple rather than the 4 Quetzales (65 cents) they were accustomed to receiving within their communities. This confusion was countered with careful explanation of the bulk sale concepts in accessible language.

Support for the project and the contract terms were consolidated with a beneficiary tour to the buyer’s pineapple plant where technicians explained quality control and processing concepts in detail. It was valuable for the community beneficiaries to visualize the production process and macro-economic concepts in action. This contributed to continued buy-in and gave the community real and valuable market knowledge, which will help sustain the communication linkages between the farmers and wholesalers in future growing seasons.

The pineapple project is one of few agriculture ventures in the region that successfully links indigenous community producers with a major international buyer. These market linkages were made with the assistance of TIERRAS staff making investigatory visits to the capital to execute market research and negotiate purchase agreements.

The objective of the trip was to show participating farmers what a processing plant looks like and watch the entire chain that the product passes through on route to export to Mexico and the US. For these farmers, this was one of the first times they have traveled outside their communities, let alone a once in a lifetime experience for them to learn where their hard work is going, and that it is possible to become independent, organized suppliers to a private company. Many of the farmers consider these companies either non-existent or out of reach for small rural producers.

— Amy English, Ag/Econ Project Advisor
should center on the provision of sufficient mechanisms for ready access to low interest credit for agricultural inputs necessary for initiating and maintaining production. As it stands, most post-conflict communities are unable to access small loans as they have yet to obtain land titles to borrow against as collateral. TIERRAS has noted this deficiency and is expanding the Ag/Econ component to provide beneficiary communities access to credit for purchase of essential agricultural inputs through partner NGOs and future in-house initiatives.

Inclusion of adjacent communities with capacity-building and technical support as well as linking to markets is quite important. Making the Ag/Econ opportunities available to both groups help to diminish jealousies and prevent land conflict or inter-community conflict. Perhaps most importantly, inclusion provides the opportunity to tie in nearby small producers into local producer networks, give them greater negotiating power with direct buyers, and help promote a larger regional sustainable economic development strategy.

The successful pineapple pilot project can serve as valuable example for new Ag/Econ components of land conflict projects that are interested in introducing or expanding and diversifying cash crops elsewhere. However, any new Ag/Econ component must temper cash crop promotion with safeguard activities such as integrated farming practices that include vegetable, fruit, and animal production in addition to cash crops. Integrated farming practices greatly improve the odds that beneficiary families can count on cash income and food security despite market fluctuations.

“There is new women’s empowerment and involvement. Many have gone from no involvement to attending meetings and then organizing their own. You can see new happiness and new cash in their pockets.”

– Ag/Econ team staff member
Land conflict mediation and agricultural and economic development interventions at the community level must be counter-balanced by local, regional and national level advocacy for agrarian policy creation, reform, and public education. The TIERRAS project recognizes that if the structural causes of land conflicts are not properly addressed, such as inequitable land distribution and incoherent government agrarian policy, land conflict mediation will only temporarily mitigate symptoms. To address this challenge, the TIERRAS project aims to work proactively on the structural causes using a three level strategy:

1. Formation and strengthening of local and regional multi-stakeholder alliances and information networks on land conflict and tenure.

2. Local and regional capacity-building and education campaigns on land conflict and ADR practices targeting key stakeholders and the public.

3. Advocacy with the national government for macro agrarian policy creation or change.
9.1 MULTI-STAKEHOLDER ALLIANCES & INFORMATION NETWORKS

Since inception, the TIERRAS project identified multi-stakeholder alliances and information networks at the local and regional levels as valuable entry points for advocacy on land conflict. The reasoning is to constructively engage a wide range of land conflict stakeholders to exchange information, dialogue and design solutions with multi-sector participation (e.g. government, civil society, indigenous farmers’ associations, academia, ecclesiastical organizations, NGOs, land owners and the private sector). The advocacy components’ initial strategic goals were to create a department-level coordinating body on land conflict that would expand on the previous agrarian reform advocacy work accomplished by La Comisión de Tierras to create a local and regional support base for agrarian policy change.

A valuable product of the multi-sector dialogue was the creation of the Land Information Database (SUI - Sistema Único de Información) as a central information clearinghouse on land conflicts in Alta Verapaz. Since, the SUI has grown in utility through the concerted efforts of the TIERRAS advocacy team and CMTierras members. The SUI has evolved to play an early warning and preventative role, helping to identify emerging land conflicts to the local mediation centers, thereby reducing the likelihood of escalation and violence.

CMTierras has also leveraged influence with the national government promoting legislation for a land regularization act (RIC 2005), which, with World Bank funding will regularize land titles and property boundaries. The TIERRAS project will work with the RIC implementers to ensure subsistence farmers are informed about regularization and versed in their rights to redress during the process.

Regarding similar initiatives, the TIERRAS advocacy team and CMTierras expanded their land conflict and ADR information dissemination and regional advocacy coordination efforts with NGO consortia such as La Coordinación de Organizaciones No-Gobernamentales de Alta Verapaz (The Commission of Non-Governmental Organizations of Alta Verapaz), or CONGAV. CONGAV is the departmental coordinating body for development organizations that work at the local, municipal, departmental and regional levels. Alliances, such as with CONGAV, have proven indispensable for the expansion of TIERRAS’ land conflict mediation efforts by consolidating resources and capacity, and for gaining legitimacy as a serious and effective program in the eyes of civil society leadership, development actors and the local population.

“As people’s awareness increases, our ability to detect potential conflicts increases and our data management improves, we will continue to uncover more and more conflicts needing to be resolved. The positive side of this is that we are detecting potential problems early on and are resolving cases in the initial stages so that they are dealt with efficiently and effectively and don’t explode into life-threatening situations.”

– Romeo Euler, Tierras Project Coordinator
9.3 CAPACITY-BUILDING, PUBLIC EDUCATION & MEDIA CAMPAIGNS

The TIERRAS project has maintained a strong focus on local stakeholder capacity-building at the local and regional levels. Initiatives have included capacity-building workshop series with stakeholders on ADR principles and methods, strategic planning and practical lobbying techniques. Most recently, CMTierras coordinated a training series with local NGO staff on lobbying and grassroots campaign design for agrarian policy reform. CMTierras is now moving forward with an academic training certificate in agrarian conflict analysis and mediation for local leaders. The advocacy component has also been effective in increasing public knowledge regarding land conflict mediation and tenure security at the community and department levels.

The TIERRAS advocacy team has expanded its efforts to include creative media campaigns to increase the visibility of successful land conflict mediation work, and to raise public interest in land conflict and mediated solutions. TIERRAS has aired documentaries and news magazines on major Guatemalan television networks as a means to reach ever larger numbers and wider demographics.

To reach citizens that lack access to television in rural communities, TIERRAS uses discussion fora, weekly radio programming and dissemination of educational materials such as posters, stickers and brochures in Spanish and Q’eqchi on land tenure rights and mechanisms and services for peaceful land conflict mediation.

9.4 NATIONAL LEVEL ADVOCACY INITIATIVES

The TIERRAS advocacy team, with members of CMTierras, lobby the national congress and department officials to reform agrarian codes, cultivate alliances, and bring needed attention to land tenure insecurity of marginalized indigenous communities. In particular, the TIERRAS advocacy team, together with CMTierras and local partners, advocate the passage and reform agrarian law with the Ministry of Agriculture (MAGA) including: the Regimen of Indigenous Community Land Tenancy, the General Law for the Regularization and Land Tenancy, and the Law on Cadastral Information Registry.

The TIERRAS advocacy component has shown that advocacy locally and regionally can eventually affect changes to agrarian policy. In its very simplest form, advocacy fosters a greater cross-demographic awareness of land conflict, which can eventually coalesce to influence national policy through political pressure.

“...The main lesson is that there is a constant learning process for the advocacy staff. We are always evaluating our organizational capacity and pro-actively seeking out activities to build new advocacy skills”.

– Klemen Gamboa, TIERRAS Advocacy Coordinator

“We keep a wide vision of the macro land policy issues such as forgiveness of land purchase taxes for poor communities. Through CMTierras, JADE is making proposals and taking concrete actions not just protests. Lastly, a problem is that there are many great land reform laws in the Peace Accords, but they have yet to be implemented”.

– Miguel Balan JADE
9.5 LESSONS LEARNED

The advocacy component will always be limited by available funding and staff. However, TIERRAS partially circumvents this limitation by capitalizing on regional and national media such as radio and television as well as wide dissemination of audience-specific educational materials. Thus a relatively small advocacy team can have a nationwide impact on land conflict policy and public awareness if it leverages media as part of its advocacy strategies. Reaching remote indigenous communities and land owners with capacity and information on ADR and alternative mediation resources early can help to mitigate land conflicts before they start.

Responsibility-sharing and rotating leadership is important to ensure that one facilitating organization is not left to carry the group, and that there is collective responsibility for advocacy initiative outcomes. Proper systematization and documentation of land conflict and agrarian policy advocacy activities are valuable, particularly since impacts are difficult to quantify as some initiatives entail esoteric indicators such as public awareness and political opinions.

Advocacy components must also consider ever-present factors such as election cycles, local politics and power relationships, which are always present in the project contexts. Securing cross-spectrum support from leaders of diverse political stripe for land conflict mediation and agrarian policy will help ensure advocacy objectives can weather elections and party changes.

The TIERRAS advocacy component has proven to be an all important support link to the land conflict mediation work. The advocacy component facilitated multi-party dialogue in a polarized post-conflict setting of deep distrust between land owners, indigenous communities, government agencies, the church and other stakeholders. The forum process, CMTierras and the public education campaigns have been, and continue to be, indispensable for raising the visibility of the land conflict issue and changing agrarian policy for the better.

“Advocacy should provoke positive and peaceful structural changes that facilitate and accelerate territorial legislation. For this reason our political advocacy activities must become stronger, more organized, more strategic and be agreed upon by all the institutions that work with us on the agrarian challenge.”

– Advocacy team

In the case of multi-sector commissions, ensuring member commitment can be challenging. As with most multi-sector initiatives, it is difficult to stimulate and maintain consistent member involvement over time because they (e.g. government officials, NGO staff, land owners and indigenous leaders), have outside responsibilities and time constraints; therefore, members can have the propensity to send representatives in their place that may or may not be entirely invested in the advocacy activities. This limitation can be overcome by delegating responsibilities between commission members according to time availability and areas of expertise, and by ensuring representatives are engaged and abreast the advocacy initiatives.
10. CONCLUSIONS & RECOMMENDATIONS

10.1 FUNDING & SUSTAINABILITY, MUNICIPAL MEDIATION SUPPORT

Funding and project quality: When adapting the TIERRAS integrated model to new contexts, it is important to avoid omitting components or “cutting corners” as it can undermine the efficacy of the project, or, exacerbate existing conflicts and spark new ones by providing weak accompaniment once a case is opened. Thus, proper funding is fundamental if the project components are to be effective. Ample funding arrangements exist that meet the profile for land conflict mediation work under post-conflict development, land tenure security, indigenous human and land rights, food and livelihood security, agrarian reforms and regularization.

Sufficient funding is particularly key as mediation and technical services are costly when taking into account staff training and paid hours required for field studies, land registry research or investment in the latest mapping and survey technologies (GPS and GIS). Staff capacity and the latest technologies are worthy investments. The extent to which a project invests in these will determine quality and the success or failure of mediation.

Accountability: Land conflict mediation is a delicate business: livelihoods, lives and security lie in the balance, so few mistakes can be made. And implementers must be accountable for the impacts of project activities, whether surveying land parcels or bringing parties in conflict to the mediation table. As the TIERRAS model illustrates, it is critical to maintain project integration and establish clear communication strategies between component staff to ensure coordination between land conflict, agriculture and advocacy components during everyday and long-term project implementation. Professionalism and a well-integrated project will go a long way in ensuring credibility, impartiality and minimal errors, whether technical or procedural.

Targeted relationship and alliance-building: with land conflict stakeholders at the village, municipal, department and national levels are essential. Multi-sector alliances and land conflict mediation campaigns are important for forging strategic partnerships and increasing project visibility. However, it is important to be vigilant of the company a project and its staff keep, and conscious of how interactions can be perceived by conflict parties.

Loss of credibility can ultimately contribute to land conflict re-escalation if parties perceive the process has been compromised. This is all important when mediating conflicts involving indigenous post-conflict communities who may be skeptical of outside interventions due to previous experiences with war and government corruption over land tenure policy.

Sustained impacts and Mediation Center support: Sustainability of long-term project impacts and proper support to the mediation centers is contingent on the following factors:

1. The reach and inclusiveness of the multi-sector forum process: the multi-sector forum process is a powerful tool to prepare the context for the ensuing land conflict mediation project by building a basic ADR knowledge base across the target population, while also creating prospective beneficiary awareness of mediation services.

2. Any land conflict component can best operate on a vision beyond mediated land conflict and cessation of violence; land conflict resolution should be viewed also as the means to the end of improving the rights, lives and livelihoods of marginalized populations.

3. The synergy of incisive legal research, rigorous technical field work, and skillful and dignified mediation between parties can assure successful land conflict mediation. This depends to a large extent on the project staff and its social commitment, cultural literacy and lingual skills.
4. **Sustainability of the project and the municipal mediation centers in particular, will depend on durable strategic partnerships with municipal government and leaders that will weather election cycles and the ebbs and flows of local politics.** This can be accomplished by securing signed institutional agreements with municipal government for unconditional support to the community land conflict mediation centers by providing physical office space, basic utilities, and even *per diem* for transportation and administrative costs. Municipal mediation center support can also be formalized by completing joint strategic planning with the municipalities. Financial sustainability of municipal mediation centers and the mediation component can be secured by selling land conflict and technical and legal services to state land regularization agencies, provided credibility and impartiality of services can be maintained.

The TIERRAS “Promoting Peaceful Solutions to Land Conflicts in Alta Verapaz” project experience has much to offer new land conflict and land tenure insecurity programming outside Guatemala. Beyond aspects of project design that are context-specific, the three component model forms a strong approach for resolving entrenched land conflicts, and helping to consolidate peaceful development in regions with marginalized landless populations.

The use of the full package of services that successfully meshes community-based mediation, professional field surveying, legal accompaniment, cadastral analyses and agricultural technical assistance for income generation is one of the primary factors for the TIERRAS project’s success. Beyond “what” the project does in the operational sense, the factors of “how” TIERRAS implements and runs the project are important. These include offering land conflict services that cater to local cultural and lingual groups like the Q’eqchi Maya as well as neutrality, and the use of ADR over adversarial dispute resolution methods.

A final success factor worthy of mention is that the TIERRAS project arose through a flexible and iterative process between the project, stakeholders and the exigencies of the project context since little experience with integrated land conflict programming had not yet existed in Guatemala. In concrete terms, this meant adding activities and components in response to new needs, and “jettisoning” aspects that proved ineffective. A relevant example is the addition of the agriculture and economic development components that allow new land owners to generate income and pay off new parcels acquired through mediated resolutions. As land conflict contexts can be fluid and unforeseen cultural, political, and practical barriers can unexpectedly surface, it is recommendable that new land conflict initiatives modeled after the Guatemala TIERRAS project maintain this same spirit of innovation and adaptability.

The replication of the TIERRAS project can play a unique role in ending long-standing land conflict, and pave the way for dignified life and livelihood development with new historically land tenure-insecure populations.

*Please see the following compendium of resources and lessons learned for further reference.*
Land tenure insecurity is a significant cause of violent conflict, chronic instability and subsequent rural development stagnation. Nations that are unable or unwilling to institute land reforms and find alternatives to adversarial dispute resolution mechanisms continue to fall into cycles of violence. Land conflicts are driven by unmet needs and interests, such as needs for arable land for basic subsistence and cash income, disputes over property lines, possession of duplicate titles or owed wages for services rendered.

Violence and instability continue as long as structural inequalities persist between land-holding interests and marginalized subsistence farming populations. Land conflicts tend to proliferate in post-conflict nations with colonial histories much like Guatemala, in which former refugees and IDPs (internally displaced persons) lose their lands during forced displacement and/or lack land access for re-settlement. The earliest roots of land conflict often date back centuries in which the institutions such as the church and unstable governments have left a legacy of competing land rights, usurpations and corrupt or asymmetrical agrarian policy.

11.1 BARRIERS TO LAND TENURE REFORMS

Post-conflict nations that incorporate land reform regimes as components of peace accords face multiple challenges. The real impacts of land reforms are determined by the level to which they address the needs of historically marginalized populations and indigenous agriculturalist rights to subsistence. In most cases, deep reforms are derailed by the entrenched economic and land-holding interests that benefit from the current land distribution, and thus favor superficial reforms that offer little structural transformation. This means the latent root causes of land conflicts remain unaddressed. In the few cases where significant land reform initiatives are implemented, the cost and complexity of putting these initiatives into practice frequently exceed the level of political will and resources available.

In Guatemala, land reform initiatives have been implemented as outlined in 1996 Peace Accords for which government agencies were created to implement new agrarian policy, (although they have proven more symbolic and assuasive than effective). Nonetheless, violent land conflicts have proliferated in the department of Alta Verapaz during the post-conflict period. Most recently, many disputes were sparked or re-kindled by the global coffee market crash, which increased unemployment among indigenous coffee workers and bankrupted land owners leaving them no means to pay back wages and pensions.

Increasingly, conflicts involve land occupations and forced removals, which often result in violent confrontations and rights violations between farmers, national police and land owners. By the early 2000s land conflicts threatened to destabilize Alta Verapaz. Conflicts continued unabated as government initiatives for land conflict mediation that focused on credit and technical assistance, were often piecemeal, uncoordinated or left unimplemented. Most land access initiatives continue to be hampered by bureaucracy, while credit programs offer prohibitively high interest rates and tend to purchase land for landless groups at inflated prices.
11.2 LACK OF LAND CONFLICT RESOLUTION MECHANISMS

In Guatemala, as elsewhere in the developing world, there are few readily available and effective mechanisms outside the conventional judicial system for resolving land conflicts. Article 91 of the Guatemalan Agrarian Code calls for the establishment of agrarian courts to arbitrate land conflict cases. However, agrarian courts have yet to be established, leaving a vacuum in adjudication and non-adversarial agrarian mediation services. Without constructive mechanisms to redress grievances, parties utilize conflictive means of redressing land disputes.

The lack of a coherent agrarian policy forces parties in conflict to use the backlogged civil court systems, call authorities to use force, or resort to vigilantism. Approaching the court system is often counter productive because it deepens hostilities between parties. Moneyed land owners can afford to hire “first rate” attorneys while cash-strapped subsistence farmers cannot afford representation. What is more, the adversarial methods used in civil courts result in zero-sum decisions with “winners” and “losers”, which can lead to conflict propagation outside the courtroom (e.g. land owners who hire thugs or police to intimidate and/or forcibly remove occupiers, while some occupiers destroy property and resort to kidnapping).

The economic and human costs of violent land conflict continue to rise in Guatemala. Land conflict parties who commit time fighting their cases lose livelihood security due to destroyed crops and lost days of work. At the meso level, chronic cycles of land conflict propagate local and regional instability, distrust of government agencies and continued stagnation of rural development.

11.3 ALTERNATIVE LAND CONFLICT RESOLUTION INITIATIVES

Most government agency initiatives for land conflict mediation and agrarian reforms are well conceived. However, they are often under-funded and inefficiently divide the issue into sub-themes of land registry, mapping and cadastral functions, agricultural mediation, technical support and credit, among others. NGOs and the private sector also address the land tenure and conflict in a piecemeal fashion, if at all. Actors find themselves intimidated by complex and protracted land conflicts that seem impossible to resolve. A cardinal reason for the limited impact of many land conflict projects is that government agencies and NGO initiatives often fail to offer a complete package of services and long-term support to the land conflict parties. Additionally, existing initiatives rarely supply a neutral space in which an impartial party can facilitate mediation, conciliation and joint-problem solving for mutually favorable outcomes.

The TIERRAS method, created through applied field experience of the TIERRAS project in Alta Verapaz, provides constructive alternatives to piecemeal approaches, adversarial win-lose litigation, and asymmetrical power relationships between land owners and subsistence farmers. This document outlines the integrated model and its three components which blend ADR, land title research, legal accompaniment, agricultural and economic development, and advocacy to address root causes of land conflicts.
Historically land conflicts in Guatemala and the department of Alta Verapaz have proliferated due to the government’s legacy of ineffective and corrupt agrarian policy. This has been compounded by the global coffee market crash in the early 2000s that left many indigenous community members without cash incomes, arable land, and contributed to widespread land conflict. Unfortunately, no comprehensive mediation package existed to address the root causes of land conflicts. In response to the need, the TIERRAS project completed an initial assessment in Alta Verapaz that identified the pressing need in indigenous communities for credible and affordable legal rights protection and innovative land conflict resolution.

To design solutions, the TIERRAS project organized a series of multi-sector fora to create a neutral space for dialogue among parties in conflict and important stakeholders including: indigenous communities, civil society, land owners, the business sector and government. The forums provided a neutral space for constructive dialogue and exploration of creative solutions to land conflict by identifying the root causes. At this time, the TIERRAS land conflict mediation project was created through a strategic partnership with a local partner JADE (Juristas Asociados para el Desarrollo Legal). In its initial stages, TIERRAS found that land conflicts fit into three categories: property rights, land occupations and border disputes. To address the complex problem, the project designed a three component integrated approach using: 1) Conflict mediation and alternative dispute resolution methods, 2) Agriculture and economic development, 3) Agrarian policy advocacy.

Conflict mediation was focused at the regional level with a central mediation center staffed by legal and technical professionals, and satellite community municipal mediation centers run by trained local “paralegals”. The method TIERRAS developed innovatively incorporated legal, technical and social change aspects of the land conflict mediation process. This process integrates: case intake, legal research, mediation using Alternative Dispute Resolution (ADR) methods, and technical field studies using GPS and GIS in a transparent and impartial process. To date, the TIERRAS project has successfully resolved nearly 200 land conflicts in which agreements were brokered and violence stopped.

The TIERRAS method has won credibility among indigenous communities because the project uses trained mediators with substantive local rural development experience, cultural literacy and indigenous language ability. After the successful land conflict resolution, an agricultural and economic development component was established to encourage new land owners to diversify their parcels with non-traditional crops, and provide income to pay for lands purchased as part of the mediated agreements. Despite logistical challenges of reaching remote beneficiary communities, the TIERRAS agriculture and economic development components successfully initiated new entrepreneur projects for large scale pineapple production as well as beekeeping, chicken-raising and women’s micro-credit.

A third advocacy component was added to work on the root structural causes of land conflicts, in particular, inequitable land distribution and the lack of a coherent government agrarian policy. The advocacy component focuses its work in three key areas including: multi-stake-holder alliances and forums, education and capacity-building on ADR, and regional and national lobbying for agrarian policy reforms. To this end, the TIERRAS project utilizes a regional multi-sector fora process to create an open space for dialogue and to increase project visibility. The TIERRAS project utilizes the media and wide dissemination of land conflict mediation information to target audiences.

After three years of operation and despite expected challenges, the TIERRAS project has become a strong and culturally appropriate replicable model for integrated land conflict mediation programming. This document was created to capture the lessons learned from the TIERRAS integrated land conflict mediation project, and to offer development practitioners basic information on land conflict mediation concepts and methods to explore new programming opportunities. The Guatemala-based project provides an excellent starting point to assess land conflict dynamics, actors, causes and innovative solutions. Most importantly, the integrated method outlined here provides practical information and lessons learned that can be harnessed to help remove roadblocks to economic development and lasting peace in marginalized communities impacted by land conflict.
I. Disputes over Competing Property Rights and Perceived Property Rights

1. Between more than one title for the same land.
2. Between a title versus some form of private document for the same land.
3. Between more than one private document for the same land.
4. Between use/possession based on a real or perceived authorization from the owner versus some form of public or private document.
5. Between a possession that has been public, peaceful and in good faith versus some public or private document.
6. Where an individual private ‘landowner’ has inappropriately registered state land (either vacant land or a national farm) in his name (these are often ‘bad faith’ registrations).
7. Between an indigenous community that registered its communal land in the name of a municipality to protect it versus: a) supplementary titles acquired to this land; b) titles granted to this land by the municipality or mayor; and c) environmental reserves and biospheres declared by the state on this land.
8. Between an indigenous community making a historical claim to land versus: a) another indigenous community claiming the same land; b) a private landowner with a public or private document; the state as a landowner.
9. Between communities living within the nuclear zones of environmentally protected areas and the state.
10. Between communities living within buffer and multiple-use zones of environmentally protected areas and the state.

II. Occupations of Property Legally Owned by Another

1. Private farm occupied because labor services have not been paid.
2. Private farm occupied because long-term agricultural ‘servants’ (mozos colonos) have been dismissed/‘fired’.
3. Private farm occupied to acquire the specific plot of land in question.
4. Private farm occupied because of a need to access land in general (rather than the specific plot in question).
5. State land occupied (either vacant land/tierras baldias or a national farm) by campesinos.
6. State land occupied (either vacant land/tierras baldias or a national farm) by an individual (claiming to be the private landowner).
III. Boundary Disputes

1. Between townships (municipios)
2. Between departments
3. Between communities
4. Between communities and private individuals
5. Between private individuals

1. Arbitration is one of the oldest forms of ADR. Arbitration involves a formal adversarial hearing before a neutral, called the arbitrator, with a relaxed evidentiary standard. The arbitrator is usually a subject matter expert. An arbitrator or an arbitration panel of two or more arbitrators serves as a “private judge” to render a decision based on the merits of the dispute. Arbitration decisions can be binding or non-binding.

2. Conciliation is a process in which a third party, called a conciliator, restores damaged relationships between disputing parties by bringing them together, clarifying perceptions, and pointing out misperceptions. The conciliator may or may not be totally neutral to the interests of the parties. Successful conciliation reduces inflammatory rhetoric and tension, opens channels of communication and facilitates continued negotiations. Frequently, conciliation is used to restore the parties to a pre-dispute status quo, after which other ADR techniques may be applied. Conciliation is also used when parties are unwilling, unable, or unprepared to come to the bargaining table.

3. Convening serves primarily to identify the issues and individuals with an interest in a specific controversy. The neutral, called a convener, is tasked with bringing the parties together to negotiate an acceptable solution. This technique is helpful where the identity of interested parties and the nature of issues are uncertain. Once the parties are identified and have had an opportunity to meet, other ADR techniques may be used to resolve the issues.

4. Facilitation improves the flow of information within a group or among disputing parties. The neutral, called a facilitator, provides procedural direction to enable the group to effectively move through negotiation towards agreement. The facilitator’s focus is on the procedural assistance to conflict resolution, compared to a mediator who is more likely to be involved with substantive issues. Consequently, it is common for a mediator to become a facilitator, but not the reverse.
5. **Interest-Based Negotiation or Interest-Based Bargaining** is an established negotiating technique through which the parties meet to identify and discuss the issues at hand to arrive at a mutually acceptable solution. It is a positive effort by the parties to collaborate, rather than compete, to resolve a joint dispute. The focus of negotiations is on common interests of the parties rather than their relative power or position. The goal is to reduce the importance of how the dispute occurred and create options that satisfy both mutual and individual interests. Interest based negotiations are also referred to as “principled” or “win-win” negotiations. This informal process is one of the most fundamental methods of dispute resolution, offering parties maximum control over the process. It does not necessarily require the use of neutrals.

---

### AVANTAGES OF ADR OVER THE JUDICIAL PROCESS

#### Comparisons between ADR and the judicial process:

**ADR - Alternative Dispute Resolution**

1. Lower cost
2. Subjective and object analysis of the problem (integrated approach)
3. Mutual solutions build on mutual agreement and satisfaction (the parties to the conflict propose solutions)

**The Judicial Process**

1. More expensive
2. Purely objective analysis (the majority of times the cases are partial)
3. Imposed solutions that generally satisfy one party over the other (based on the judge's sentence)

**ADR**

1. Greater possibility for reconciliation between the conflict parties
2. The mediator or facilitator understands the conflict at a greater depth
3. The solutions can be just and longer lasting
4. The resolution of the land conflict contributes to the reconciliation between the parties; therefore, contributing to the consolidation of the peace
5. More special attention is paid to the relations between the parties
The Judicial Process
1. General disagreements between the parties (hatreds stay latent)
2. The judge generally does not recognize the important case circumstances
3. The solution to the conflict many times will end in unjust determinations
4. The solution of the conflict does not always contribute to the reconstruction of social well-being nor the consolidation of the peace
5. The judicial process is not concerned with land conflict party inter and intra relationships

Active Listening to Facilitate Effective Mediation

Do
1. Demonstrate interest
2. Be understanding and empathetic with the other party
3. Listen actively in order to isolate the conflict causes
4. Help the other to relate the problem to the causes
5. Remain calm and collected

Avoid
1. Argue and discuss
2. Interrupt
3. Judge
4. Give advice
5. Let the emotions of the other party effect the process

I. The Land Conflict Mediation Component

Lessons Learned: Considerations for Project Success

• The land conflict project must have consistent and sufficient funding to maintain high quality services and credibility.

• There can be positive secondary impacts of the ADR land conflict mediation process on beneficiary lives (e.g. mediation of intra and inter-familiar disputes).

• Many land owners want to be part of the rural development process and support subsistence farmers to improve their lives and livelihoods; therefore, we should not take polarized views of the actors, there exists a diversity of positions and interests within each group (landowners and subsistence farmers), this must be taken into account in each case.
• **There are different kinds of land rights leaders:** some gain from the land conflicts and occupations and have vested interest in ensuring that land conflicts continue.

• **In cases negotiated for voluntary removal/relocation of land occupiers, owners must allow farmers time to harvest crops on usurped land to ensure food security until resettlement elsewhere.**

• **The project must ensure continued mediator and paralegal development and training to complement existing skills and be prepared for the exigencies of fluid conflict contexts and be pro-active and flexible.**

• **Native languages and cultural literacy is crucial to win trust and work with marginalized groups.**

• **Neutrality and clear communication at all costs** in the mediation centers for free flow of information between parties about each stage of the process.

• **Make as few technical mistakes as possible and be well prepared by knowing conflict history in and out before going into the field to execute field studies.**

• **Use of the latest technologies and proper training in its use is important for greater accuracy such as GPS/GIS, as it can cut field expenses and time. Technical staff must use functional and well-calibrated field survey instruments and be up to speed on their proper use.**

• **Triple check field surveys to ensure that the measurements are accurate and that there is no confusion over property measurements.**

• **Mediator skills and full knowledge of the case are the best means to ensure field staff security and win conflict party trust.**

**Positive Externalities**

• **The projects should meet immediate and pressing needs where there was a vacuum in ADR land conflict mediation services and a great lack of conflict party trust in the credibility in government agencies.**

• **Fall of coffee prices and land values makes owners more apt to sell lands at lower prices.**

• **Previous mediation and post-conflict peace-building work in the region, by the UN Mission to Guatemala, the Pastoral Social and the Mesa de Coban contribute to receptivity of ADR projects.**

• **The Mayan Cosmo-vision supports traditional dialogue processes, land conflict projects should make consultations with community elders to incorporate participation and engage their clout.**
Negative Externalities & Limitations

- There are dangers of attribution of the land conflict mediation success; projects must take into consideration other mediation projects that may contribute to the resolution of land conflicts in the region.

- A limitation of the TIERRAS method is that mediation is only possible with willing parties; mediation is not a coercive process but a voluntary one.

- Other challenges that can hamper success: Local, regional and national election cycles can make it a challenge to ensure consistent municipal support (physical space, utilities and funds).

- Pressures from fellow landowners on land owners who participate in mediation processes not to enter into dialogue with land occupiers or other conflict parties, as it can set the precedents of land negotiation and sale for lower prices, and that the economically poor indigenous communities can win.

- Limited women’s involvement: more women must be recruited as paralegals.

- Difficulty of ensuring long-term monitoring and follow-up to determine how many resolved conflicts resurge. Projects need long-term follow up activities to ensure lasting resolution.

- Need for an information system and systematization within the mediation centers and the center for dossier filing, check-out and the establishment of a case library.

Sustainability of the Land Conflict Mediation Component

- Charge fees for mediation services, sell ADR land conflict mediation capacity-building services to government agencies.

- Prepare for staff turn-over and project change: create an organizational memory, systematize methods and work, keep detailed records from project start-up.

- Need to disburse funding in trimesters to ensure consistent funding as the land conflict mediation services entail a substantial amount of activities that require variable projected costs.

- Need to have clear contact and negotiation with the government agencies – a clear strategy not just for information sharing but to sell the method – convince government agencies to adopt the integrated model to land conflict and reforms to the agrarian code.

- The project must have a defined public relations plan to promote the project and its success, to go directly to the donor community with a marketing strategy.

- Proposal crafting should be sure to make sufficient allocations for initial paralegal support, equipment and administrative costs until long-term municipal support is secured.
2. The Agriculture & Economic Development Component

Lessons Learned: Considerations for Project Success

- Some land owners want to contribute to the rural development process as they stand to benefit in terms of regional economic development, market links and stability.

- Details of the land payment terms should be secured with the parties during the final mediation phase, payment booklets are an effective way to organize payments.

- Community members often require capacity-building on basic marketing concepts, particularly in relation to market links and basic accounting.

- Accompaniment and introduction of the agriculture team by the mediator is absolutely critical to gain community entry and initiate agricultural projects.

- Sufficient funding is needed for proper land conflict case follow-up and monitoring.

- Ensure that the terms of land payment are defined between the new land owning communities and the land owners. The communities must be assured that they will receive direct payment for their cash crops (e.g. pineapple) as some land owners may try and circumvent the communities by trying to appropriate the crop payment, instead of allowing communities to administer their own profits and determine what % they wish to put towards land payments.

- Use multiple and creative modes of communication such as phone, email, field and strategic planning meetings, as agricultural technical staff is in the field the majority of the time.

- Form strategic partnerships with other agriculture NGOs/organizations to expand the project to reach more communities with post-land-conflict agriculture support.

- Ensure the agriculture team is trained in basic conflict analysis, mediation and ADR methods.

- Be sure to secure markets for cash crops before planting if possible!

Positive Externalities

- High levels of pre-existing agricultural technical capacity: local soil and pest management knowledge due to beneficiary involvement in previous capacity-building and rural development projects, traditional knowledge.

- Beneficiary parcels’ close access to well-maintained roads leading to urban centers/agricultural product buyers.

- High quality soils and close vicinity to water, sources for irrigation.

- High level of community or beneficiary group cohesion/organization to meet collective goals, share crop maintenance duties.
Negative Externalities & Limitations

- Exclusion of land conflict resolution beneficiaries from access to credit for agricultural inputs as many have yet to receive land titles to use as collateral.
- Danger that poor parties to mediated land conflicts will sell newly acquired land for quick cash, rather than investing in productive capacity and crop diversification.
- Logistical limitations of reaching the most remote beneficiary communities giving them a disadvantage for reaching markets and receiving consistent technical assistance. These can be the communities in need of the most support. It is necessary to research light weight alternative crops.

Sustainability of the Agriculture & Economic Development Component

- Secure long-term grants and funding and establish strong cooperative partnerships with other agriculture and marketing programs to expand the project’s reach.
- Empower and train community members to take on greater responsibility for establishing market links and negotiating contracts for their crops.
- Invest in integrated farms and similar projects that have a multiplier effects, thereby expanding project impacts to more community members and contributing to long-term sustainability.

3. The Advocacy Component

Lessons Learned: Considerations for Project Success

- It is crucial to work with advocacy at multiple levels (e.g. local, regional and national) with the full gamut of stakeholders to create clear proposals for concrete actions and achievable time-bound goals.
- It is important for the advocacy component to have targeted media strategies and clear goals using creative means of reaching stakeholders and disseminating information according to the target audience: by email, cell/telephone, messages on bicycle, community radio and national television.
- There should be a constant advocacy staff learning process in order to evaluate organizational capacity and be pro-active about new skill development.
- Create, cultivate and maintain strategic partnerships with government and NGO land conflict organizations and the media at the local, regional and national levels.
Positive Externalities

• Relatively favorable level of organization and receptivity to land conflict issues and agrarian reforms at the local and regional levels due to previous and continuing work on the subject by civil society coalitions, INGOs, NGOs and others as part of the post conflict transitional initiatives.

• Favorable interest and disposition of the national, regional and local print, radio and television media for promoting innovative land conflict project experiences.

• Strong civil society, indigenous and community organization sector that can facilitate community access.

Negative Externalities & Limitations

• Power and economic interests that stand to lose from agrarian reforms tend to quash moves at the governmental (national and local) level for systemic agrarian policy change.

• Advocacy is hard to measure and generally has intangible/esoteric results (e.g. public opinion, increased public knowledge of land conflict issues).

• In post-conflict settings, and where there has been considerable social upheaval, advocacy programming can be viewed with apprehension as it may be thought to foster unrest and protest.

• Inter-institution jealousy and competition for organization recognition for successful initiatives.

• Need to have direct indigenous community participation in the advocacy process to capture their voice and interests on the land tenure and access issue.

• Lack of consistent participation of state agencies due to time constraints and competing responsibilities (even though they are generally interested and supportive of the advocacy initiatives).

Sustainability of the Advocacy Component

• Integrated programming and strong strategic partnerships with land conflict projects.

• Create a central fund to which each organization within multi-sector commissions (e.g. CMTierras) can allocate funds for advocacy purposes. If administered transparently, the collective funds can be allocated to education campaigns on ADR and land conflict related issues.

• Create and implement mechanisms for capturing advocacy component lessons learned, measurement of impacts and continued staff capacity-building in new advocacy methods.
APPENDIX 4.

BASIC STEPS FOR LAND CONFLICT CASE RECEPTION & RESOLUTION

1. Paralegal reception of the conflict case and preliminary background information at the community mediation center.

2. Admit of case to the Central Mediation Center (JADE Coban).

3. Fill-out intake forms on the land conflict, enter background information in the database, create a case file.

4. Receive of legal documents (property plans, registry certifications of land ownership, titles or other pertinent documents).

5. Preliminary legal analysis and case approval for mediation.

6. Complete preliminary report outlining the initial legal analysis to define first activities.

7. Create and send out invitation to the parties in conflict for a first mediation encounter.

8. Establish communication with pertinent institutions and government land tenure agencies (registry, cadastre) to acquire necessary records and documentation for the case.

9. First mediation meeting and documentation of conflict party first agreements.

10. Widen analysis and land registry and cadastral research including electronic databases (if available).

11. Document completed land registry and cadastral research results.

12. Analyze it if necessary to proceed with a geopositional field study (GPS) of the property(ies) in question.

13. Execute geopositional field study, if the case requires it.

14. Write field post-geopositional field study report.

15. Write the technical and legal proceedings of the obtained results.

16. Create and send out invitations to conflict parties to present the field study results.

17. Present the technical geopositional field study results to the conflict parties, mediate and document of second agreements.

18. Certify of the mediation agreement.

19. Execute topographical field study and create certified documentation.

20. Verify and supervise field surveying.

21. Preliminary presentation of obtained survey results to the project team.

22. Final presentation of obtained survey results to the conflict parties.

23. Present final property plans to the conflict parties.

24. Monitor conflict party observance of the mediated agreement over the long-term.
1. Case intake form.
2. Land conflict party documents, which may include: land parcel maps or plans, property titles, recent certificates of registry, among others.
3. Case approval form contingent on determination of case validity.
4. Preliminary legal and technical analysis report based on the party documents and outlining first activities to be executed in the case.
5. Copies of the invitations/summons presented to the conflict parties to realize the first dialogue.
6. Document whether there are other accompanying institutions in the mediation process in order to establish strategic coordination.
7. Documentation of the preliminary accords/agreements of the conflict parties.
8. Documents form Registry and Cadastral research executed to obtain the most up to date information.
9. Documented analysis results of the registry and cadastral research.
10. Documented determination of the necessity for a geopositional study (GPS) as the case requires.
11. If the GPS study is required, execute a post field study report.
12. Documented technical and legal determination that defines the results of the executed study.
13. Copies of invitations/summons presented to the conflict parties for the second meeting to present the GPS study results.
14. Documentation of the final accords/agreements between parties, which includes a preliminary survey and land registration costs (if the case merits).
15. Official certification documents of the final accords/agreements between the conflict parties with witnesses’ signatures.
16. The Bidding process:
   • Copies of the Terms of Reference
   • Copy of bidding invitation
   • Copies of technical and economic consultant proposals received
   • Selection of consultant
   • Note directed to the conflict parties outlining the final survey and field study costs
   • Consultant notification letter of selection for the contract
   • Copy of the consultant’s contract documents and its approval
   • Copy of the final consultancy report in hard copy and digital form
17. Copy of the invitations/summons presented to the conflict parties for the presentation of the survey and field study results.
18. Copy of the invitations/summons to the conflict parties for the final property plan, map and registry documents.
19. Final case determination in which the case is resolved.
20. Final conflict party conflict resolution agreement form.

GUIDING QUESTIONS FOR PROJECT DESIGN AND START-UP

1. What is the political context: is it favorable and secure enough to start a land conflict project?
2. What kind of legislation exists on agrarian issues at the national and regional/international levels that improves or worsens land tenure security for marginalized groups?
3. What kind of government is in control (democratic, dictatorship, transitional or other)?
4. What are the maps of power, both symbolic and by title, in the proposed region(s) of project implementation?
5. What actors (government agencies, NGOs, INGOs, ecclesiastical and civil society organizations) are already working on land conflicts in the region?
6. What kind of activities are they implementing and where?
7. Which of these actors seem promising for a) partnering b) coordinating c) associating with?
8. Which of these actors could be detractors or inhibitors of land conflict project implementation?
9. What are the opinions, positions and interests of parties in land conflict? What are their histories (particularly in cases of post-conflict)?

SAMPLE MEDIATOR PROFILE & TRAINING

Considerations for land conflict mediator selection:
The TIERRAS land conflict mediators come from a diversity of backgrounds and walks of life, however, all were selected for the following common characteristics:

1. Significant previous rural development field experience in the region that required rapport-building as well as diplomatic and clear communication with community members.
2. Rural poverty and livelihood security assessment/diagnostic experience in the region.

3. Intimate knowledge of the geography, demographics, history and cultural norms of the region. This should encompass a sophisticated grasp of conflict history and its relationship to the post-conflict context in terms of community internal divisions, politics, latent traumas and land conflict dynamics in the region.

4. Excellent written and spoken language skills in local dialect(s)/languages. This is absolutely essential in regions with large indigenous populations.

5. Energy and demonstrated long-term commitment to the challenging mediation work and solidarity/empathy with the target populations’ experience and condition.

EXAMPLE PROFILE

Education: Technical degree in administration

Experience: 8 years of rural community development experience in Alta Verapaz with micro-credit and community banking, capacity-building and indigenous community organizing initiatives. Extensive participation with community diagnostics and assessments in land conflict communities. Direct work for coordination with a diversity of development actors such as Christian Children’s Fund, SHARE, government agencies and civil society NGOs and coalitions.

Mediation training: Intensive Mercy Corps-funded 5-day training with government agency PROPAZ in ADR, including theory and practice of conflict transformation, conciliation and mediation. Before assuming a case load, the mediator was required to complete a 4 month ‘apprenticeship’ shadowing veteran mediators in the agency headquarters, and in the field during which open communication and creative feedback allowed him to refine his skills.

Once the mediator resolved his first case, he felt challenged and motivated to continue taking on land conflict cases. He continues to develop his ADR knowledge and skill base by attending TIERRAS land conflict workshops and capacity-building events. This has allowed the mediator to refine his grasp of ADR methods, acquire professional resources on important developments in the mediation field, and exchange experiences and lessons learned with fellow mediators from other Central American Countries and Mexico.
RECOMMENDED RESOURCES

- **Alternative Dispute Resolution: A Practitioner’s Guide**  
  USAID OFFICE OF DEMOCRACY AND GOVERNANCE March 1998  
  Available at: http://www.usaid.gov/our_work/democracy_and_governance/publications/pdfs/pnacp335.pdf
- **Do No Harm, How Ad Can Support Peace - or War**  
- **Getting to Yes: Negotiating Agreement Without Giving In**  
- **Land and Conflict: A Toolkit for Intervention**  
  USAID Office of Conflict Management and Mitigation, 2005  
- See recommended resources outlined in the USAID-CMM Land Conflict Toolkit.

**Methods**

This TIERRAS model document was created using a mixed methods approach focused on the following:

I. 30 Semi-structured interviews with land conflict mediation, agriculture and economic development and advocacy component staff from TIERRAS (Mercy Corps & JADE), community members, land owners, local leaders and paralegals, among others.

II. Field visits to beneficiary communities and stakeholders:

- **Panzos**: visits to the municipal mediation center, interviews with the mayor, TIERRAS’ paralegal, and parties to a land conflict resolution over a border dispute.

- **Nuevo Amanecer**: interviews with community leaders and Mercy Corps entrepreneur fund beneficiaries, visits to pineapple, Coban chile and chicken projects.

- **Chitocan**: interviews within a women’s group and their families who are beneficiaries, visited chicken projects.
III. **Internal TIERRAS Baseline Document Review:**

Review of internal TIERRAS Documents including internal and external evaluations and reports (2003-2006), log frames, ADR pedagogical materials, land conflict case studies and dossiers, maps and property plans, PowerPoint presentations, funding proposals (AED, USAID, EC among others), The World Bank, Organization of American States reports, academic dissertations on post-conflict Guatemala and land tenure insecurity, among others.

IV. **Write-up and cross-checking:**

Compilation and analysis of field notes, internal documents, outside studies, transcribed audio recordings, document creation and cross-check of form and content with Guatemala TIERRAS field staff and partners, Mercy Corps Programming Operations, Organizational Learning and Technical Services Unit staff.

---

**RECOMMENDED RESOURCES**


“Negotiation Round Table for Land Conflicts in Alta Verapaz, La Mesa de Coban”. Report, The Organization of American States (OAS), (date unknown).


END NOTES

1 According to the Office of the United Nations High Commissioner for Human Rights, a “rights-based approach to development” is a conceptual framework for the process of human development that is normatively based on international human rights standards and operationally directed to promoting and protecting human rights.

2 USAID Conflict Management and Mitigation Land Conflict Tool Kit, pg. 3.


4 Land ownership inequalities most often are vestiges of colonial economic and power arrangements in which elites continue to stymie efforts for agrarian reforms.

5 UTJ-RIC (Cadastral Information Registry) FONTIERRA for access to agrarian credit, and CONTIERRA for mediating land conflicts.

6 FONTIERRA has lost the confidence of subsistence agriculturalist communities because during post-conflict land distribution programs, they have been known to purchase lands for distribution at inflated prices.

7 Política Agraria, del Gobierno de Guatemala 2006, Pg. 34.

8 UNDP World Bank Poverty Map.


11 Stated by indigenous community members protesting the lack of land reforms.

12 Mercy Corps –TIERRAS internal documents.

13 JADE began as private, non-profit, non-religious association of lawyers and professionals dedicated to the consolidation of the rule of law in Guatemala and the growth of a healthy civil society. The associates provide legal, technical assistance and consulting conscious of gender equity, and diversity of ethnic identities and languages. JADE’s initial organizational goals were to: 1) provide legal advice and consulting in conflict transformation in the areas of: land ownership conflicts, family conflicts, labor disputes and environmental issues, and, 2) Advocacy efforts aimed at the judicial and social sectors.


15 CMTierras was formed as a result of the forum process using multi-sector representation and is now a strong coordinating body on land conflict mediation issues in Alta Verapaz.; “Antecedentes de CMTierras”, Mercy Corps/TIERRAS internal document.

16 GPS (Global Positioning System) is a hand held device using satellite assisted geo-referencing for surveying and map reading; GIS (Global Information System) is a satellite assisted digital mapping system; AutoCAD is a Microsoft software package for drafting that can also be used for plotting property lines.

17 Stakeholder refers to actors in the project context that have direct interests, are impacted by or impact the land conflict project. These include government agrarian agencies, the privates sector, land owners and indigenous families, among others.


19 Forced evictions occur when landless families who occupy private or public properties out of protest or for subsistence needs, are forcibly removed by police or other government authorities.

20 CMTierras promotional materials.

21 PROPAZ is an initiative of the Organization of American States (OAS), the Government of Guatemala and various social sectors in Guatemala. The goal of the program is to contribute to the creation of conditions and processes that enable the transition from confrontation toward a “culture of dialogue”. The Program provides training in communication and conflict resolution skills, negotiation, mediation and conciliation to a variety of Guatemalan actors working at different levels of society. Accessed on 10/05/06 (http://www.sap.oas.org/oprc/PROPAZ/default.htm).
Forum participants included: government agrarian policy agencies - CONTIERRA, FONTIERRA, and UTJ, cadastre, justice, civil society and indigenous rights organizations, NGOs, academia, the church, land owner associations, and the business sector, among others.

“Antecedentes de CMTierras”, Mercy Corps/TIERRAS internal document.

This can be in the form of session minutes, documented group processes, land conflict mapping and written land conflict resolution proposals.

E.g. the use of new technologies, GPS, new mediation methods, land conflict case documentation or new agrarian laws.

A typology is defined as “the study or systematic classification of types that have characteristics or traits in common” (American Heritage Dictionary); in the case of land conflicts typologies we refer the groupings of kinds of conflicts that have primary common causes.


Chains of title are created by establishing the history of property ownership by putting existing land titles in chronological order.

Communities or individuals who do not have a legal title, but claim land ownership based on long-term possession and occupation.

According to JADE, field staff state that the number of disputes over property rights is over 50% in Alta Verapaz; in 2004 FONTIERRA put the number nationwide at 64%.


In accordance with the 1996 Peace Accords and the UN Convention on Indigenous Peoples.

Occupations often involve a combination of former laborers and landless families from other communities or regions.

Land regularization refers to the entire process of updating land registration, titling and checking property lines. Under a national law for land registration and cadastral regularization (RIC 2005), the Guatemalan government, with the help of World Bank contactors, will implement a comprehensive national land regularization program.

Projects like TIERRAS can play a vital role preventing and mitigating land conflicts caused by land regularization programs.


Early challenges of high paralegal turn-over, limited capacity and inconsistent municipal support for the mediation centers, forced the program to consolidate the project to 7 primary mediation centers, and coordinate much of the case intake and procedures from the JADE central office in Coban.

This is a major limitation of the TIERRAS and other Alternative Dispute Resolution approaches; it can only address those cases in which both parties agree to mediation. This can leave unaddressed some escalated cases in which parties are too hostile to come to the table.

For example, if the case is already in process in civil court, the case cannot be admitted until these processes are stopped or completed.

Effective electronic and hard copy filing systems are crucial, particularly as the project grows and case documentation, organization systemas and accessibility become important.


Personal interview, Juan Carlos Chaverria, JADE office, Coban, 09/19/2006.

According to Romeo Euler, TIERRAS Project Coordinator, personal interview 09/20/’06.
This scenario is possible, but rare; there are many cases in which demanding ex-coffee worker groups or communities split over whether to accept land for owed wages or to continue to demand cash to buy better quality land of their choosing.

TIERRAS has found it challenging to access information from other member agencies of the SUI as some organizations are cautious about making information available due to rivalries and inter-institutional competition.

According to JADE veteran mediation staff.

Often more favorable outcomes for communities are negotiated with resident owners as many times they have they have forged long-term personal and economic relationships with the indigenous communities and are, therefore, more likely to give favorable concessions than absentee landowners.

E.g. when an indigenous community splits over whether to accept land in payment for owed wages, and one part accepts, and the remaining community members refuse the offer, causing them to become landless and occupy farms elsewhere.

These asymmetrical power dynamics have been used historically to manipulate the lingual and cultural divide to keep indigenous communities marginalized.

Many land conflict indigenous communities that are sites of land conflicts have also borne witness to massacres during the Guatemalan civil war.

According to Juan Carlos Chaverria, former JADE field technician and mediator.

Confianza translates as ‘trust’ or ‘confidence’ in Spanish.


The initiative focuses on the multiplier effect in which two farmer leaders per community are selected to establish model farms with TIERRAS technical and financial support. The agriculture team provides leadership and capacity-building on new crops, integrated pest management, and farm planning based on elevation, soil types and proximity to water sources. The trained farmer leaders, once they have established their well-organized and diversified model farms, are expected to impart their knowledge neighboring Post-land-conflict community members.

This is not an entirely sustainable arrangement as the communities depend on the TIERRAS staff to make the market links and negotiate contracts. This is where a new land conflict project could find ways of building local capacity so community leaders can eventually negotiate contracts themselves.

La Comisión de Tierras was created with funding support from Catholic Relief Services as part of the post-conflict peace initiatives and advocacy efforts for agrarian reforms, land regularization and reduction of land regularization fees for economically poor indigenous communities.

At this point the advocacy component was shoulder by the Mercy Corps and JADE TIERRAS team with two full time staff.

Morales, 2005.


67 JADE internal documents.

68 JADE internal documents.

69 JADE internal documents.

70 The author, with input from Borys Chinchilla, Director, Mercy Corps Guatemala.
THE TIERRAS MODEL FOR LAND CONFLICT MEDIATION