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All views, interpretations, recommendations, and conclusions expressed in this paper are those of the authors and not necessarily those of the supporting or cooperating institutions.

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ABSTRACT

In Norway land consolidation is organized entirely within the judicial system. This paper describes how land consolidation courts work, and examines mediation activities in the courts. Questionnaires were used to get data on 727 cases in 1996, and in-depth interviews with 23 judges were used to get information on mediation behavior. The results indicate that mediation is a frequent activity. Many cases are settled through mediation rather than by verdicts. Mediation activities vary with case type, complexity, significance and conflict level. Mediation activities reduce conflicts even in those cases where final decisions are made through verdicts. Cases that have a mediated settlement are generally less complex, less significant and have lower conflict levels than cases ending with verdicts. Judges use a large number of mediation techniques, and there are large variations in mediation styles between judges. The results are discussed in terms of future research needs and in terms of the practice of mediation in land disputes.

MEDIATION IN THE NORWEGIAN LAND CONSOLIDATION COURTS[1]

by

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1. INTRODUCTION

Mediation is gaining popularity as dispute resolution technique in general (Kressel and Pruitt, 1989), and in planning and land use disputes in particular (Rubino and Jacobs 1990). Mediation, it is argued, can be efficient (Wall and Rude 1991) and can produce high quality settlements (see Galanter 1985; Moore 1996). There is, however, limited knowledge about the practice of mediation in land use disputes. We need to know when mediation is used, the results achieved and how mediation activities are carried out.

The land consolidation court in Norway is a particular useful setting for studying mediation with regard to land issues. Land consolidation is organized within the judicial system. The jurisdiction includes both land consolidation planning and solving of boundary disputes. Any disputes concerning boundaries, right of ownership, right of user, or other matters, shall be decided by the judgment of the land consolidation court if it is necessary for the purpose of land consolidation. There was no research prior to this study regarding mediation activity in the land consolidation courts in Norway. We hypothesized, however, that mediation played a dominant role in judges' activities during the average court session.

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Our discussion is organized as follows: first, we give a short overview of the functions of land consolidation courts in Norway. Second, we discuss relevant theory on mediation. Third, we present our study and results. Finally, we discuss implications for practice and research on mediation in land disputes.

2. LAND CONSOLIDATION IN NORWAY

In Norway land consolidation is carried out by a permanent public institution, entirely within the framework of the judicial system. The institution is called *The Land Consolidation Service* and has 275 employees. The jurisdiction is divided into 41 land consolidation court districts and 5 land consolidation court of appeal districts. As far as we know, Norway is the only European country that has organized its land consolidation process completely within the framework of its judicial system. The first legislation based on land consolidation was as early as 1821. Sevatdal (1986) writes that this early legislation relied on existing legal structures to supervise and carry out land reallocation. No specific land consolidation services were established by the government until after the 1857 Land Consolidation Act, when the Land Consolidation Service was established in 1859. By virtue of the 1857 Land Consolidation Act, the decision-making body regarding land consolidation was modeled on the traditional court. From 1950 onward, these courts have been referred to as land consolidation courts. The current version of the Act has been in effect since 1979.[2] One can say, therefore, that Norway has had a relatively long history of land consolidation and currently has well-developed land consolidation services.[3]

In 1996 the land consolidation courts concluded 992 cases. On average there were 7.5 participants in each case. The largest case handled involved 260 parties. The average time span of cases in the land consolidation court was 2.7 years. The land consolidation court of appeal concluded 61 cases. The land consolidation court had a backlog of 2406 cases waiting to be handled at the end of 1996. These cases had been in the system for an average of 2.4 years.[4]

In each particular case the land consolidation court is composed of one land consolidation judge acting as a president and two duly appointed lay judges. The decisions are reached by a vote among the judges present.

To practice as a land consolidation judge one must have a degree from the Agricultural University of Norway after a course of study comprised of a variety of relevant subjects, including surveying, mapping, cadastre, law, and land consolidation. It is also expected that a prospective candidate for a judgeship in the land consolidation courts will have gained some

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[2] The Land Consolidation Act, No. 77, December 21, 1979. The Act is currently under revision and the revised Act will most likely take effect by January 1, 1999.

[3] See Kain and Baigent (1984: 98-119) for a historical overview of cadastral mapping and enclosure in Norway and Sevatdal (1986) for an introduction to land consolidation in Norway.

[4] At the end of 1996 one land consolidation court showed 4.8 years as the mean age for the cases which were waiting to be handled (East-Telemark land consolidation court). The court with the shortest waiting time was the Lista land consolidation court, whose cases averaged 0.7 years.

practical experience as a surveyor in the Land Consolidation Services before appointment. The King of Norway appoints the land consolidation judges.

What is land consolidation? The term "jordskifte", which is the official name of the court and its activities in Norwegian, is normally translated as "land consolidation" in English or "Flurbereinigung" in German. A more precise translation of *jordskifte* in English would be "reallocation of holdings by pooling and redistribution." This more accurate translation would express the fact that many land parcels are pooled or put together, and from this pool the same numbers of holdings emerge but in new physical and legally-recognizable shapes. At the same time, these new parcels retain their old values, broadly conceived. Land consolidation is normally carried out for all the holdings in a specific, geographically limited—but defined—area. The size and scope of land consolidation varies from minor adjustments of boundaries between two holdings, to complete rearrangement of hundreds of holdings with planning and investments in new infrastructure (Sevatdal 1986). At a fundamental level, the land consolidation process is intended to restructure outdated, or unsatisfactory ownership patterns. Any landed property that is considered difficult to utilize efficiently under existing circumstances may be subjected to land consolidation under the terms of the Land Consolidation Act. The same applies when circumstances become unfavorable as a result of building, improvement, maintenance, and the operation of public roads, including the closing down of private railways (Land Consolidation Act, § 1).[5]

It is necessary to provide in some detail the specific subject matter that land consolidation may comprise (§ 2), since the questionnaire that formed the basis of this study was drawn directly from different articles in this section. Land consolidation may comprise:

§ 2a) dissolving a system of joint ownership under which land or rights are jointly owned by estates;

§ 2b) reallocating landed property through the exchange of land;

§ 2c) prescribing rules relating to the use of any area that is subject to joint use by estates or prescribing rules relating to the use of any area that is not subject to joint use by estates when the land consolidation court finds that the attendant circumstances make such use particularly difficult;

§ 2d) eliminating outdated rights of use, and assigning compensation;[6]

§ 2e) organizing such joint measures as mentioned in chapter 10 of Land Act No. 23 of May 12, 1995 (measuring for agricultural purposes), and § 31 of Act No. 3 of March 15, 1940 relating to water resources (measuring for draining);

[5] Hereinafter referred to by section number.

[6] Such perpetual outdated rights of use are mentioned in § 36 of the Land Consolidation Act: rights of way; grazing; hay-making; making wells and aqueducts; felling and all other production of timber in forests; taking peat for fuel, turf, heather, moss, humus, clay, sand, and stones, seaweed; beaches for boats, mooring, and landing places; sites for boathouses and boat sheds; drying and stocking places; places for laying out nets and seines; millraces and water-wheels with damming and aqueduct rights pertaining thereto; and fresh-water fishing with exception of salmon and sea-trout fishing.

- § 2f) reallocating landed properties when land and rights are to be disposed of in accordance with the purpose of Land Act;
- § 2g) dividing a landed property with the rights pertaining to it in accordance with a specific scale of values;
- § 2h) clarifying and determining conditions relating to property and rights of use under joint ownership and in other areas that are subject to joint use by estates when this is necessary with a view to a rational use of the area.

The land consolidation service also takes into consideration four types of cases that have been assorted and investigated as one group, hereinafter referred to by section §§ 4/5472/83. First, cases (§ 4) that include decisions made pursuant to § 43 (roads in fields), § 44 (drains) and § 52 (fences). These types of decisions may make the subject of new proceedings in the land consolidation court ten years after the conclusion of the first proceeding. Second, if the danger of flood, landslide, sand drift, etc., has not has been taken into consideration in the original land consolidation plan, the court shall prescribe regulations in the event that damage occurs, particularly as to how the damage shall be apportioned (§ 54). Third, if any party has applied for an appellate review of the case because of errors regarding maps, calculations, or surveying, and the land consolidation court of appeal finds that errors have significantly influenced the first decision, then the appellate judge can order the land consolidation court to correct the errors (§ 72). Finally, in cases where the parties have amicably agreed to the terms of a land consolidation decision, the court issues a certification that the case fulfills the requirements of a public land consolidation (§ 83).

Another type of case that can be handled in the land consolidation court covers the delimitation of boundaries (§ 88). An owner may request the land consolidation court in a specific case to clarify, mark, and describe the boundaries of his property and the boundaries for perpetual rights of use. This type of case represents approximately 42 % of all cases handled in the court. The owner has the right to choose to bring these types of cases to the ordinary courts or to the land consolidation court. Most often these cases are brought to the latter for the following reasons (Sevatdal 1986): the case has not developed into a real dispute in the legal sense, such that it should be brought to the ordinary court; the legal situation regarding the land is obscure, and one of the owners wants an independent institution to investigate the matter; the land consolidation court procedure has the benefit that that parties need not be represented by a lawyer; finally, the land consolidation court has the technical equipment and competence that is needed for all the cadastral work that typically follows upon a verdict of the court. This is not true of the ordinary courts.[7]

In short; the land consolidation courts follow a normal court procedure in all kinds of decisions. Even in matters like valuation and physical planning. This procedure is well known and generally accepted. The land consolidation process can be outlined in the following main stages: applying for land consolidation; decision whether the case shall proceed; clarifying the boundaries and mapping the consolidation area; valuation of anything that is subject to the exchange; preparation of a draft consolidation plan; presentation of the plan to the parties for discussion; comments from the parties; alteration on the basis of comments on the plan that

[7] After a verdict in a boundary dispute in the ordinary courts the parties have to request a survey from the surveying department in the municipality.

the court deems right and proper; formal adoption of the plan; marking out of all new boundaries in the fields; formal conclusion of the land consolidation proceeding in court. As can be expected, land consolidation cannot be effective if the costs and disadvantages involved exceed the benefits accruing to each individual property (§ 3a).[8]

The overall aim for land consolidation, if boundary disputes or land disputes (§ 88 and § 2h) are left out of account, is to increase the net income from the holding. Roughly, this may be obtained by increasing the volume of production or by lowering the cost of production. Mediation is a very important activity during the phase in the process in which the land consolidation court draws up the draft consolidation plan for presentation to, and discussion with, the parties. This is also emphasized in the Land Consolidation Act (§ 20) that the court shall draw up a draft consolidation plan which shall be presented for the parties for discussion. The land consolidation court shall also consult with the public authorities if the consolidation plan is likely to affect matters within their jurisdiction. The Land Consolidation Act emphasizes among other things that the court should first utilize *mediation* (§ 17) in the case of boundary disputes before a prospective trail. The court may, in unusual cases, decide that the parties will submit the dispute to arbitration, but arbitration is seldom used and therefore will not be discussed further here.

3. MEDIATION

In contrast to most judges the land consolidation judge is an expert on the substantive issues of the disputes, and in contrast to most mediators the land consolidation judge can adjudicate decisions if needed. Therefore, based on his knowledge and experience the judge must decide (a) when and how intensively to mediate the case, and (b) how to behave as a mediator. We discuss theory related to each of the challenges in turn.

3.1. WHEN TO MEDIATE

To understand mediation in land consolidation proceedings, the studies of judicial decision-making processes, particularly those which investigate the judge's role as a mediator in court is a good starting point. About 90% of all civil cases in US are disposed of without a trial.[9] A substantial number of them are settled with the judge acting as mediator (Wall and Rude 1989). The literature on judicial mediation[10] is generally enthusiastic for mediation by the courts because it reduces backlog, and the mediated decisions are often perceived as more satisfying than a judicial decree.[11] Mediated settlement yields many benefits for the disputing

[8] In general, a fundamental principle underpinning different types of land consolidation programs is that no farmer should lose in the exchange process (Oldenburg 1990: 183).

[9] Will, Merhige and Rubin (1977) estimate that 90% of civil cases are disposed of before trial, and several other authors (e.g., Lacey 1977) give approximately the same estimate.

[10] See, generally, Cooley 1986; Galanter 1985, 1986; Gifford 1989; Lacey 1977; Luban 1988; Schiller and Wall 1981; Wall and Rude 1989, 1991; Wall, Rude and Schiller 1984; Will, Merhige and Rubin 1977.

[11] As Lacey (1977: 25-26 explains, "[a] dispute resolved through settlement rather than trial, where both sides believe a fair results has been reached, furthers the ends of justice and good judicial administration."

parties, including reduced costs compared to a full trial, the potential for better relationships between the parties in the future, and the fact that the parties have greater control over the course of the case. But Tomasic (1980: 11-49) makes a critical comparison of mediation and court processing. He uses the findings from the Vera Institute in Brooklyn, where they found that the difference in "experienced fairness" between a mediation and trial was smaller than might have been expected. 88% of the mediated complainants thought that mediation was fair, but 76 % of the control group thought that the judge was fair (44-45). Furthermore, the parties to a dispute may sometime want an outside agency to make a decision for them. A critical issue for land consolidation judges is therefore when to put in effort in mediation and when to primarily serve in an adjudicative function.

In choosing decision making procedure the judge can mediate, adjudicate or combine the two procedures. Combination of the two procedures can either be in a mediation-adjudication process where he first mediates and then adjudicates if mediation is unsuccessful, or the judge can mediate some issues and adjudicate some issues. The latter form of combination is probably most likely to take place in complex land-use planning cases.

The parties' knowledge that the court has the power to render a final decision influences the mediation process (Pruitt and Kressel 1985). Unlike most third parties, judges who mediate are more powerful than either of the two disputants; for this reason they are free to employ as many techniques and be as assertive as they wish (Wall and Rude 1991). However, Resnik (1982) is critical of the judge's attempt to become actively involved in settling cases before trial. She argues that if the judge does not succeed in mediation, and therefore has to try the case, his impartiality could be threatened. Furthermore, since mediation processes may require different behaviors (for example, openness) than an adjudication process (Kovach 1994), the third party must be careful not to conduct mediation processes that potentially can hurt the parties, or his own impartiality, in a trial.

The power and the freedom in choosing decision making process may make the judge a very active and creative mediator. But the focus on neutrality, the parties rights to have a third party decision, and the challenges associated with the same person both mediating and judging may hinder willingness to mediate. How the mediator balance these opposing forces should be reflected in behavioral variations across different type of cases.

Wall, Rude and Schiller (1984) analyzed judges' attempts to settle simple and complex cases. They matched case size with case complexity to form four, 2-variable pairings: *small and simple, small and complex,* large and simple, *large and complex*. In three of the four of these pairings (in italics), the judge actively facilitated settlement. Wall, et al., give the following explanation:

> Consider that when the case is simple and small, the judge wants to resolve it instead of tying up valuable court time on minor issue. The small, complex case is strongly targeted for settlement by the judge because he does not wish to tie up court time with a minor case and feels that the complexity would overwhelm the jury. Likewise in a complex, large case, the complexity induces the judge to facilitate settlement of the

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Will, et al., argue that "[o]ne of the fundamental principles of judicial administration is that, in most cases, the absolute result of a trial is not as high a quality of justice as in freely negotiated, give a little, take a little settlement" (Will, Merhige and Rubin 1977: 1).

> case. We only expect the judge to refrain from participating in settlement in large, simple cases. Here the case is simple so that the jury can understand it, and it is large enough to merit court resources (p. 42).

Vidmar (1985) uses statistics gathered from a Canadian small claims court to argue that the apparent success of mediation—in comparison with adjudication—is at least partly due to preexisting differences in admitted liability between the parties that submit to each procedure. Thus, based on Wall et. al. (1984) and Vidmar (1985) we may expect judges to mediate in all disputes expect for large conflictive cases.

3.2. MEDIATION BEHAVIOR

Mediation is a generic term covering a wide range of behavioral styles and techniques (Kressel and Pruitt 1989). In general mediation is facilitated negotiation (Kovach 1994), where the mediator assists the disputing parties in trying to voluntarily reach a settlement (Moore 1996). It is a highly adaptive and responsive process (Kolb 1997) where the mediators vary their tactics with the nature of the conflict (Shapiro, Drieghe and Brett 1985). In general, however, mediation typically goes through the following stages (Kressel and Pruitt 1989; Moore 1996): (a) an introductory stage where ground rules are set out, climate established and information gathered, (b) a problem solving stage where issues are discussed and tentative agreements are tested out, and (c) a final stage where the details of the agreement is crafted and commitment to the settlement established.

In enacting the various stages the mediator can use several techniques. Schiller and Wall (1981) identified 71 different techniques used by state judges and federal trial judges. In a later study, Wall and Schiller (1982) determined how frequently each technique was employed, and Wall, Schiller, and Ebert (1984) analyzed the perceived appropriateness of each technique. Wall and Rude (1989: 97-198) divide the mediation techniques into four strategic styles: logical strategies; aggressive strategies; paternalistic strategies; and client-oriented strategies. A logical strategy may involve analyzing the case and to develop and present alternative proposals. An aggressive strategy involves pressuring the parties, talk to them separately and downgrading the merits of the strongest case. A paternalistic strategy may involve recommending compromises, inform about risks going to a trial and channel discussion towards manageable issues. Finally, a client-oriented strategy involves educating the parties and speaking personally to them.

Given that judges in land consolidation courts are highly skilled experts on the conflictive issues we expect them in general to use logical strategies. It is difficult to predict how active the judges will be in proposing specific settlements to the parties. The Federal Judicial Center has published in their Education and Training Series materials on mediation and negotiation in order to provide a framework for newly appointed judges (Will, Merhige and Rubin 1977; Lacey 1977). There are differences of opinions as to whether the judge should actively promote settlements, and we expect to find differences in behavior across judges also in the Norwegian context. Finally, given that there are a variety of available techniques for mediation, and that the land consolidation judges have no formal training in mediation we expect to find a considerable amount of variations both in preferences for mediation and in behavioral strategies.

4. THE STUDY

The empirical study had two major parts: a survey of cases handled in the court in 1996, and in depth interviews with judges regarding mediation behavior.

4.1. THE SURVEY

An important part of our research material is comprised of responses from judges in the land consolidation courts to a questionnaire related to mediation activity in all cases closed in 1996. We mailed the questionnaire to all land consolidation district courts and asked if they would distribute the questionnaire to all the judges in the various courts. There are usually no more than 1-3 judges in each district court. We received answers for 727 cases out of 992 possible (73 %) from 91 judges[12] in the land consolidation courts, and 44 cases out of 61 possible (72 %) from 5 judges in the land consolidation court of appeal. The questionnaire contained eight questions for each case, and had to be returned together with official statistics[13] for each case.

In question No. 1 we asked about the intensity of the controversy between the parties in the case. The question had to be answered by checking one of five possibilities on a scale ranging from "not to a very large degree" to "very large degree." The other possibilities were "not to a large degree," "to some degree," and "to a large degree." In the statistical analysis we transformed the answers into a five-point bipolar scale, where "not to a very large degree" = 1 and "to a very large degree" = 5. Question 2 had four sub questions related to how decisions were reached. We asked (a) how many verdicts were given in the case, (b) how many mediated settlements were reached, (c) how many agreements reached outside the court, and (d) whether there was "formless agreement" in the court. A "formless agreement" means that the parties agreed on the issues in the case and the judge, therefore, writes in the court protocol that the parties have agreed in this way. In question No. 3 we asked how many times the land consolidation plan was presented to the parties. In questions No. 4 and No. 5 we asked to what degree the parties had objected to the plan the first and the last time, respectively, it was presented. The scale used for this question was the same as for question 1. In question No. 6 we asked if one or several parties were represented by a lawyer in the court. The question had to be answered yes or no. Question No. 7 was in three parts: were all the parties represented by a lawyer? (all/some); did the lawyer represent one or several parties? (one/several); and how many parties were represented by a lawyer. Finally, in question No. 8 we asked if the judge could estimate how much time was spent on mediation in the case. The possible answers were: "no mediation", "less than two hours", "two-five hours", "five-eight hours" and "more than eight hours". In the statistical analysis we transformed the answers into a five-point bipolar scale, where "no mediation or negotiation" = 1 and "more than eight hours" = 5. The answers from the land consolidation courts and the court of appeal were

[12] There are approximately 100-110 practicing land consolidation judges. The exact number is difficult to fix precisely because the courts often use retired judges.

[13] The Land Consolidation Services collect and store data for each of the cases handled by the courts. They collect data, for example, on the type of case, information about the judge, the number of parties, area covered, length of the boundaries, etc. The information is used for evaluation and historical purposes.

treated separately. The data are analyzed simply by comparing means, and by using t-tests and correlation's as statistical tests for differences and relationships. We first examined differences between types of cases, and then investigated variations in mediation activities. Finally, we compared cases that are resolved through a trial with those cases settled through mediation.

Differences between types of cases

Every land consolidation case has one *main means*, after one of the sections described earlier (§§ 2a to 2h, 4/54/72/83 or 88). In table 1 we have classified the judges' answers according to the main means.[14] There are considerable differences in the amount of controversy across case types.

Table 1. Type of case in the land consolidation court, number of cases, mean controversy between the parties and standard deviations.

Type of case	Number of cases[15]	Mean [16]	Std dev.
§ 2 a	36	3.00	1,15
§ 2 b	76	2.12	1.35
§ 2 c	43	3.88	1.07
§ 2 d	20	3.30	1.34
§ 2 e	66	3.80	1.04
§ 2 f	53	1.75	1.02
§ 2 g	75	1.96	1.19
§ 2 h	46	4.04	0.87
§§ 4/54/72/83	15	2.27	1.53
§ 88	277	3.36	1.28

Most controversies were found in cases dealing with clarifying and determining the conditions relating to property and the rights of the use under joint ownership and in other areas that are subject to joint use by estates (§ 2h). Cases that prescribe rules relating to the use of any areas that are subject to joint use by estates or prescribe rules to the use of any area that is not subject to joint use by estates when the court finds that the attendant circumstances

[14] We should mention that a case can include several means; for example, in cases where the plots of the farms are fragmented the judges often use § 2b for the consolidation of the plots, and § 88 if there are any disputes about the boundaries of the plots that are going to be consolidated. In one of the cases in our questionnaire seven means had been used.

[15] The number of cases varies a little among the different questions because of missing values in the questionnaire.

[16] The scale is ranging from " not to a very large degree" = 1 to " very large degree" = 5.

make such use particularly difficult (§ 2c), and joint measures (§ 2e), also have a high mean of controversy between the parties. All of these types of cases comprise activities of joint use, - measure or - ownership. Cases with individual property ownership have less controversy.

Throughout a land consolidation case drafts of the plan are presented for the parties' consideration. We used *number of presentations* as a study variable. Presenting and redrafting of plans are important mediation activities, and indicate an interactive process between mediator and the parties. In our material, 545 presentations had in fact been made, and we measured the frequency of these presentations across cases (table 2). We found that in cases of organizing joint measures (§ 2e), the frequency of presentations was highest, with 1.58 presentations in average per case. Second highest were cases of dissolving joint ownership (§ 2a), with 1.39 presentations per case on average. Cases organizing joint measures are often cases with investments. In considering whether the investments shall be made, the land consolidation court shall attach importance to the future utilization of the properties. That could be one of the reasons for the high frequency of presentations.

Table 2. Mean frequencies and standard deviations of presentations of land consolidation plans sorted by different types of cases in the land consolidation court.

	PRESENTATIONS OF PLAN	
Type of case	Mean frequency	Std. dev.
§ 2 a	1.39	0.92
§ 2 b	1.21	0.95
§ 2 c	1.12	1.14
§ 2 d	1.24	1.00
§ 2 e	1.58	1.02
§ 2 f	0.83	0.67
§ 2 g	0.80	0.72
§ 2 h	0.53	0.94
§§ 4/54/72/83	0.78	0.88
§ 88	0.24	0.55

In connection with our interviews, some judges' comments indicated an increased use of lawyers in the courts, but still the majority of cases are resolved without lawyers. There were one or more lawyers in 23.8% of the cases concluded in 1996. They represented 471 parties out of a total of 6003. Parties represented by lawyers were primarily in cases of joint use or cases with a particularly difficult use of an area, and joint measures (§ 2c, § 2e, and § 2h), and in boundary disputes (§ 88).

One judge said in an interview that "the land consolidation planning process is mostly mediation." We asked the judges if they could estimate the amount of time used on mediation in different type of cases (table 3).

Table 3. The extent of mediation sorted by type of case and standard deviation.

Type of case	Number of cases	Mean [17]	Std dev.
§ 2 a	37	3.22	1.32
§ 2 b	74	2.62	1.44
§ 2 c	40	3.48	1.22
§ 2 d	21	2.95	1.32
§ 2 e	67	3.52	1.21
§ 2 f	53	2.30	1.44
§ 2 g	75	2.05	1.14
§ 2 h	46	3.02	1.32
§§ 4/54/72/83	17	2.35	1.22
§ 88	277	2.70	1.09

Table 3 shows three types of cases that have more mediation activity than others: dissolving joint ownership (§ 2a); prescription of rules relating to joint use of an area, or if the use of any area is particularly difficult (§ 2c); and the organization of joint measures (§ 2e). All three cases mentioned often have many parties and a comprehensive valuation process. On average, § 2a cases have 10.5 parties, § 2c cases have 19.5 parties, and § 2e cases have 14.4 parties. Each instance is greater than the average case, which was calculated to feature 8.3 parties. These cases were also found to be above average concerning the dollar amount of the controversy. § 2e cases are often cases with investments (for example, in the building of roads). The average investment was $16,500 and the case with the largest investment involved $175,000.

Data from the judges in the land consolidation court of appeal are analyzed separately. There was a high percentage of response among the land consolidation appeal judges, but compared with the land consolidation courts, the total number of respondents was numerically small. Table 4 shows the case types and level of controversy in the court of appeal.

Table 4. Number of cases sorted by type, mean controversy, and standard deviations in the land consolidation court of appeal.

Type of case	Number of cases	Mean[18]	Std. dev.
§ 2 a	10	3.50	1.08
§ 2 b	3	4.00	1.00
§ 2 c	3	2.00	1.73
§ 2 d	6	4.00	0
§ 2 e	13	3.62	0.87
§ 2 f	1	4.00	—
§ 2 g	—	—	—
§ 2 h	2	5.00	0
§§ 4/54/73/83	—	—	—
§ 88	3	4.33	0.58

There is a higher amount of controversy in the court of appeal. The average for all cases is 3.68 (std. dev. = 1.04). The corresponding result in the land consolidation courts is 3.03 (std. dev. = 1.41). The difference is significant ($t = 3.88$, $df = 746$, $p < 0.001$). The high amount of controversy in the court of appeal could be one of the reasons why the case had been appealed in the first place. The frequency of lawyers in the court of appeal also indicates a high degree of controversy. In the court of appeal as many as 69% of the cases had one or more lawyers representing the parties. The corresponding figure for the land consolidation courts is 23.8 %.

Finally, we examined the extent to which mediation took place in the court of appeal (table 5). The court of appeal judges spent approximately the same amount of time on mediation (mean = 2.88, std. 1.29) as the judges in the land consolidation courts (mean = 2.76, std. 1.28). The land consolidation court of appeal shall first simply examine the grounds of appeal put forward, and then investigate the land consolidation as far as the court finds necessary. It is often only a part of the case that was initially submitted to the land consolidation court that reaches the court of appeal. It may be surprising that the court of appeal keeps trying to mediate on cases that were not resolved in the ordinary court. But given the reduction in complexity of the case, and a new mediator, the judges find it appropriate to mediate.

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[17] The scale is ranging from "no mediation and negotiation" = 1, "less than two hours" = 2, "two-five hours" = 3, "five-eight hours" = 4 and "more than eight hours" = 5.

[18] See footnote no. 16.

Table 5. The extent of mediation sorted by type of case and standard deviations in the land consolidation court of appeal.

Type of case	Number of cases	Mean[19]	Std dev.
§ 2 a	10	3.60	1.35
§ 2 b	3	3.00	2.00
§ 2 c	3	2.67	1.53
§ 2 d	6	2.83	0.75
§ 2 e	12	2.83	1.19
§ 2 f	1	1.00	—
§ 2 g	—	—	—
§ 2 h	2	2.50	0.71
§§ 4/54/72/83	—	—	—
§ 88	3	1.67	1.15

In summary, the analyses related to case types revealed the following pattern. Most controversies were found in cases comprises activities of joint use or joint measures. The frequency of presentations of plans was highest in cases with joint measures. Three types of cases had more mediation activity than others; dissolving joint ownership, prescription of rules relating to joint use of an area, or an area of particularly difficult use, and cases organizing joint measures. There is a higher amount of controversy in the land consolidation court of appeal, and a considerable amount of mediation takes place there.

Other causes of mediation activity

Above we have shown that mediation activity varies with case type. In addition, correlational analysis showed that when there was high amount of controversy, the parties had many objections to the first plan presented by the judge ($r = 0.80$; $p < 0.0001$), and it triggered the judge to develop several new drafts of the consolidation plan for presentation to the parties ($r = 0.44$; $p < 0.0001$). Thus, comments and controversy trigger high mediation activity in land planning disputes. The judge had some success in mediation because the parties had considerable fewer objections to the final plan presented, than to the initial plan (means are 2.02 and 2.49, respectively, $t = 4.21$; $p < 0.001$). In cases with high degree of controversy, however, the parties often had objections to the final plan ($r = 0.50$; $p < 0.0001$), even if objections were fewer than for the first plan. The results also show that the parties more often

[19] See footnote no. 16.

were represented by a lawyer in high controversy cases (mean = 4.12) than in low controversy cases (2.71). The difference is significant ($t = 15.50$, $df = 690$, $p < 0.001$).

In table 6 the relationship between the number of parties and mediation activities are presented. We divided the cases into six groups based on number of parties: 1-2, 3-4, 5-6, 7-8, 9-10, and over 11 parties. As can be seen in table 6, the trend in the data is that the time used on mediation and negotiation increases with the number of parties in the case. The correlation analysis also shows a positive relation between the number of parties and the extent of mediation ($r = 0.26$; $p < 0.0001$). The reason for the increase in mediation activity may be the complexity that multiparty cases represent.

Table 6. The extent of mediation for different sizes of groups of parties and standard deviations.

Number of parties	Number of cases	Mean [20]	Std. dev.
1 - 2	199	2.24	1.00
3 - 4	193	2.59	1.18
5 - 6	81	2.83	1.28
7 - 8	57	2.75	1.35
9 - 10	46	3.46	1.29
11 -	131	3.54	1.31

21 of 91 judges that respond to the questionnaire are land consolidation surveyors who have been given the general power to deal with land consolidation cases and particular court proceedings. They have the power to act as the judge in the cases they are given from the administrator of the land consolidation court.[21] They often spend 25-75% of their working hours as judges, the rest as surveyors. We were looking for differences between the judges and the surveyors who practiced as judges (referred to here simply as surveyors). The surveyor had more cases concerning boundary disputes (§ 88). This type of case constituted over 53% of all the cases for the surveyors, but only 37% for the judges. The difference can be explained by the administrators' distribution of cases among the available judges. Often these cases are less time consuming and they are easier to fit into the surveyors' time schedules. We found that there also was a slightly higher extent of controversy in the judges' caseload as compared with the surveyors (3.05 to 2.91). The permanent judges spend more time on mediation and negotiation than the surveyors (2.79 to 2.57).

[20] See footnote no. 17.

[21] This group has two main types of officials: the younger land consolidation surveyors, who have just started to practice in the court, and the more experienced senior surveyors, who have practiced for several years.

How does the size of the consolidated area affect mediation? The correlation analysis showed that there was a positive relation ($r = 0.22$; $p < 0.0001$) between the size of the consolidated area and the controversy. There was also a positive correlation ($r = 0.18$; $p < 0.0009$) between the size of the area and the time spent on mediation (see table 7).

Table 7. Different sizes of area, number of cases, time spent on mediation, and standard deviations.

Size of area (decare)	Number of cases	Mean[22]	Std. dev.
1 – 99	160	2.34	1.45
100 - 499	77	2.39	1.29
500 - 999	21	2.81	1.50
1000 - 4999	41	3.10	1.32
5000 - 9999	10	3.20	1.23
10000 -	13	3.77	1.09

In summary, the results show that mediation activities increases with degree of controversy in the case, with size of land under consideration, and with number of parties involved. Experienced judges mediate more than surveyors do.

Mediated settlements versus verdicts

Out of 786 decisions in the court, 42% involved verdicts and 58% were mediated settlements or agreements reached outside the court (in both land consolidation cases and boundary disputes). 49% of the verdicts were in cases where the main means were boundary disputes**.** If we divide the numbers of verdicts by the number of cases of different types, we can measure the frequency of verdicts in each group.

[22] See footnote no. 17.

Table 8. Mean frequencies and standard deviations of verdicts sorted by different types of cases in the land consolidation court.

	VERDICTS	
Type of case	Mean frequency	Std. dev.
§ 2 a	0.47	0.86
§ 2 b	0.32	0.85
§ 2 c	1.26	2.56
§ 2 d	0.48	0.98
§ 2 e	0.20	0.88
§ 2 f	0.02	0.14
§ 2 g	0.08	0.32
§ 2 h	0.83	0.83
§§ 4/54/72/83	0.11	0.32
§ 88	0.57	1.02

Table 8 shows cases that prescribe rules relating to the use of any areas that are subject to joint use by estates, or if the use of any area is particularly difficult (§ 2c), which has the highest mean frequency of verdicts. We have noticed earlier that this type of case has high mean of controversy. In average § 2c cases have greater average of parties in each case compared to the average (means are 19.5 and 8.3 respectively). This is often a type of case where the use of any area is particularly difficult. The court may decide that rules may be established by a majority decision. The court may also settle matters between owners and holders of rights of user, and between such holders mutually. The court may, inter alia, restrict the area available for the exercising of a right of user, and shift the right of user from one place to another or from one property to another (§ 33). This could be the reasons for the high frequency of verdicts. Above (table 1) we have also shown that cases with one form of joint ownership, -use or -measure have a high level of controversy and high level (table 8) of verdicts per case.

Table 8 also shows that § 2f- and § 2g- cases nearly have no verdicts. § 2f is a type of case where land and rights are to be disposed of in accordance with then purpose of the Land Act. The distribution of the land is done by the agricultural authorities. The land consolidation court is mostly only responsible for the surveying and cadastral work. § 2g is cases where a landed property is divided and it is also mostly technical work for the court. This type of division is dependent on an agreement from the agricultural authorities. Cases of organizing joint measures (§ 2e) often include large investments and the parties will have a continuing relationship in the future. In such cases the judge typically search for mediated settlement

(recall from table 2 that plans were frequently redrafted and presented to the parties), and achieve it.

In order to examine relationships between decision type (verdicts versus mediated settlement) and case characteristics we looked more closely at cases under section § 2h and § 88. There were 58 cases settled through mediation and 110 cases with a trial and verdict. Mean level of controversy was significantly lower in cases with mediated outcome than in those with verdicts (mean level of controversy 3.66 and 4.25, respectively; $t = 2.04$ ($df = 164$), $p < 0.05$). In cases settled through mediation the judge used marginally more time on mediation activities than on cases that ended with a verdict (means are 3.02 and 2.73 respectively; $t = 1.76$ ($df = 165$), $p < 0.10$). Furthermore cases settled through mediation had fewer parties (on average 4.3 versus 7.8) and were smaller (in terms of length of boundary) then those that ended with verdicts. Finally, the parties were less frequently represented by lawyers (13.7% versus 22.3%).

Thus, the results show that mediated results are most often achieved in cases with limited amount of controversy, low complexity (in terms of parties) and low significance (size of area and length of boundary). The judges spent only marginally more time on mediated in those cases ending with a mediated settlement than those ending with a verdict.

4.2 INTERVIEWS ABOUT MEDIATION BEHAVIOR

The second part of the study involved in-depth interviews with 23 land consolidation judges concerning their experiences in mediation in the courts. We wanted to find out which mediation strategies the judges employed, what role lawyers played in the courts, the types of cases they considered appropriate for settlement by mediation, what advice the judges would give regarding mediation, and, finally, their evaluation of how active they could be as mediators without threatening their potential role as judge in the case. We examined mediation behavior separately for boundary disputes and land consolidation planning cases.

A general finding was a considerable difference between judges in mediation activity. This is not a surprise given that the act recommend mediation in boundary disputes and require it in planning issues, but does not specify mediation techniques. Neither is there any formal training in mediation for judges. Their choice of behavior is therefore up to their own discretion given the general boundary of the judicial system. We found some judges to act intensively as deal makers in the court, using an extensive number of tactics and vary their techniques across cases. Other judges were more careful, taking on a passive mediation role and only propose mediated settlement when stakes were low. The passive mediators argued that it was inappropriate to mediate extensively given their role as judge if mediated settlement was not reached.

Judicial pressure, of course, tends to call the judge's impartiality into question.[23] Some judges in the Norwegian land consolidation system expressed their concern regarding playing an active role during mediation, because of the fact that their impartiality could be questioned. To avoid this, some judges—but not many—describe their conduct as passive, particularly in

[23] See Schiller and Wall (1981: 53-58).

cases were they felt that mediated settlements were unlikely. The more active judges informed the parties directly that their suggestions were an attempt to help the parties reach an agreement which resolved the parties' disputes in more creative ways than a verdict allowed for. In a verdict the judge has to decide based on the demands put forward by the parties. In mediation there is more freedom. Judges also argued that the lay judges in the court went further towards mediation than the judges did. Some judges stated that they found this discrepancy problematic.

Recall that Wall and Rude (1989: 97-198) divide mediation strategies into four groups: logical strategies; aggressive strategies; paternalistic strategies; and client-oriented strategies. We observed strategies from all four groups, but few involved aggressive tactics. In general, though, the judges used logical strategies. This is not a surprise given their considerable expertise in the issues at hand, and their dual role as judge and mediator. The more active judges would, however, use aspects of paternalistic strategies when they found it appropriate in specific situations.

The judge's mediation activity can be divided in mediation of boundary disputes and mediation of a land consolidation plan. Mediation of land consolidation plan is a different situation compared with the mediation of boundary disputes. The judge is very much involved in the process and work closely with the parties. In mediation of a boundary dispute the judge act more like a judge in an ordinary court. However, if the legal situation regarding the land or its boundaries is obscure, the judges tend to act more informally than otherwise.

In the following, we will briefly touch on four aspects of our interview data: mediation techniques used, perception of lawyers in the land consolidation court, cases suitable for mediation and recommendation for mediation behavior.

Techniques observed in mediation of boundary disputes

Judges reported on a total of 35 different mediation techniques used. Nineteen of them were earlier identified by Schiller and Wall (1981) and are marked in table 9 with an asterisk.

Table 9. Mediation techniques - boundary disputes.

1. Asks questions or interview the parties.
2. Brings in external issues.
3. Reads the document (or the part of it) in which the parties have plead.
4. Mediates during the survey.
5. Starts to write the settlement agreement together with the parties.
6. Point out in the field were the proposed boundaries will go.
7. Outline the factors that are important for the parties.
8. Informs the parties what the verdict will be.
9. Establish a suitable environment for mediation and negotiation.
10. Arranges a court session and mails out a settlement proposal to the parties.

11. Argues for a practical boundary as a solution.
12. Encourages the parties to settle.
13. Encourages the parties to have meetings in groups.
14. Tries to get the parties to see the case from the other's point of view.
15. Invites the parties to think ahead.
16. Outlines the parties' assertions in the form of a map, and then mediates.
17. Informs the parties about facts.*
18. Leaves the parties/clients together by themselves.*
19. Raises the settlement issue, but nothing more assertive.*
20. Channels discussion into areas which have highest possibility of settlement.*
21. Continues to bring up settlement during the case.*
22. Informs the parties about missing facts or documents.*
23. Reminds the parties that a verdict will not solve the problem.*
24. Talks to each party separately about a settlement.*
25. Reminds the parties about the high cost of going to trial.*
26. Suggests settlement with or without asking for parties' input.*
27. Suggests a specific settlement for the parties.*
28. States what the case is worth for the parties.*
29. Suggests parties split the difference.*
30. Has one party pay the other party's costs.*
31. Argues logically for concessions.*
32. Offers alternative proposals not thought of by the parties.*
33. Coerces or pressures parties to settle.*
34. Requires settlement talks.*
35. Tells the parties to concentrate on the relevant issues.*

Some of the techniques are specific to the nature of land disputes such as mediation during the survey (No. 4), point out in the field were the proposed boundary will go (No. 6), argue for a practical boundary as a solution (No. 11), and present the parties position on a map (No. 16). The other mediation techniques are of a more general nature. Some of the more controversial techniques for a judge to use (e.g. No. 24: talk to each party separately), was used only by few judges in very specific situations. Only the most active judges frequently used very settlement oriented strategies where they proposed solutions (e.g. No. 31 and 32), and reminded the parties that a traditional trial verdict may not solve their problems (No. 23). The passive judges often did no more than raise the settlement issue (No. 19) and did no

additional mediation efforts. In general the judges spent much time on information sharing (e.g. No. 17), and on clarifying the nature of the dispute.

Wall and Rude 1989: 194-195) found several techniques in judicial mediation that potentially could be used in land consolidation courts, but were not described by our judges. Examples are: evaluation of one or both cases for the lawyers/parties[24]; try to convince a lawyer/party[25] that he has a distorted view of the case; talking with the client emphasizes the fairness of a solution; asks amount (or area) that each would concede, going back and forth on issues to break the settlement into small parts; inform the lawyers/parties about how similar cases have been settled; call a certain figure reasonable; tell the lawyers/parties not to stall; subtly approving lawyers' concessions, and ask both lawyers to compromise.

Mediation regarding the land consolidation plan

This is a different situation compared with the mediation of boundary disputes. The reallocation of land holdings is often an emotional process for the parties involved. An otherwise effective planning program nevertheless results in conflict due to the tremendous personal and social changes resulting from land consolidation. Judges must take in to consideration the parties' different, and complex, relationships to the property in question (see Sevatdal 1989; Sky 1992). The argument that the respective parties need time to get used to the "new" arrangement is frequently made by land consolidation planners. A land consolidation plan cannot just be imposed from on high, without due consideration to these complex relationships. It is fundamentally important that the parties meaningfully contribute to the land consolidation *planning* process. Judges must never lose sight of the fact that the parties will be the ones using the land and living with the consequences of the new layout.

The judge or the land consolidation planner is very much involved in the process. We found that in most of the cases the judge or the land consolidation court was directly involved in planning. After a plenary court session with all the parties, several judges had informal[26] meetings with one party or a group of parties. Other judges did not recommend splitting up the parties during the case because they wanted all the parties to be able to hear what the others said to the judge. As can be seen from table 10, the judges employed many different techniques. They also used a variety of methods for presenting a draft land consolidation plan. By using geographical information systems (GIS) to make draft plans, the court was able to present a large number of alternative plans during the process.[27] It must be emphasized that it is important that the parties contribute information early in the process, because then the final result can be more easily impacted.

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[24] Wall, Schiller, and Ebert (1984: 99) use "attorneys" instead of lawyer or party.

[25] Wall, Schiller, and Ebert (1984: 99) use "lawyer" instead of lawyer/party.

[26] One judge told us that he preferred to have this type of meeting in the afternoon. The parties did not have to be away from work.

[27] Almost half of the land consolidation courts have geographical information systems available and can, therefore, produce cost-effective drafts of the plan.

Table 10. Mediation techniques - land consolidation planning.

1. Presentation of several drafts after input from the parties.
2. Presentation of draft without input from the parties to show how land consolidation applies to the land tenure in the actual area.
3. Consensus over progress of the planning process and the making of time schedules.
4. Consensus over different planning methods, valuation methods, etc. (principles).
5. Emphasis on information about the planning process.
6. Talk with parties in groups or alone.
7. Establish temporary regulations, which could change during the planning process,
8. or during the course of land consolidation.
9. Motivate the parties to make suggestions.
10. Activate the parties by using “sandwich paper” and maps to get input on layout of plots and holdings.
11. Use of preliminary oral proceedings.
12. Analyzes the problems in the land consolidation field (area).
13. Analyzes the parties’ needs and relations to their property.
14. Zone out elements which not will be subject to exchange.
15. Concentrate on the important issues.
16. Arrange informal meetings with one or more parties.
17. Negotiate with the owners of properties for sale in the land consolidation area.

The techniques used in land consolidation planning focus on establishing consensus over methods and progress in the planning process (No. 3 and 4). The judge often talks to the parties in smaller groups or individually (No. 6), or have informal meetings with the parties (No.15).

In summary, information gathering and sharing is emphasized in both boundary disputes and in planning.. In land consolidation planning the judges often motivate the parties to make suggestions and sketches (No. 8 and 9) and focus’ on making draft plans (No. 1 and 2). The methods used in land consolidation planning are considerably more active and solution-oriented than those employed in boundary disputes. The judge is also more involved with the parties in the process of developing plans.

Lawyers in the land consolidation court

Nearly all judges responded that they would prefer it if the parties were represented by lawyers. The effects on mediation seems to be mixed. Some judges became more active in their attempt to get a mediated agreement, while others were more passive. Most of the judges said they changed their conduct in some way when there were lawyers in the court. It seems

that the process became more formal and more similar to the procedures in the ordinary courts. One judge commented that the land consolidation court session became more time consuming when lawyers were representing the parties. They were also more confident that all necessary proofs were fully presented to the court. In cases where there are big differences between the parties (economic or otherwise), the judges would prefer the weaker parties in particular to be represented by lawyers.

Cases suitable and unsuitable for mediation

The following cases were mentioned as particularly suitable for mediation: cases with few parties, small boundary disputes with minimal economic value, cases with uncertain proof and with wide range between the parties' respective assertions, and cases with no clear facts. Thus, when the case is small and/or when it is difficult to hand down a verdict, the judges strongly prefer mediation.

Mediation is not seen as suitable when the parties bring an inherited quarrel to court. Furthermore, in cases with many parties is it often difficult to get all the parties to sign a potential agreement. It is also unsuitable to mediate cases, according to the judges, when it is obvious that one of the parties has certain rights. Judges are also skeptical to mediation in cases with many issues because the mediation process becomes to complex. Finally, if the parties do not want mediation, the judge will not press for it.

Advice regarding mediation given by judges

The judges were requested to give advice on mediation in the land consolidation court. Several commented that they themselves need education, particularly in relation to the social and psychological aspects of the controversy. Specific advises are listed in table 11.

Table 11. Advice given by the land consolidation judges.

1. Several judges mentioned that experience was needed before becoming an active mediator.
2. Knowledge about human reactions in different situations.
3. Time to learn from another, more experienced, judge.
4. Be humble towards the parties and their property and take the parties seriously.
5. Be a good listener.
6. Make the parties feel confident.
7. Try to gain confidence from the parties.
8. Let the parties speak out.
9. Be prepared before the mediation starts.[28]

[28] There was a difference of opinion as to whether the judge should prepare; for example, read and analyze the documents in the case, before the first court session. But there were as far as we could tell no judges who did not want to be prepared before the mediation started.

10.The facts in the case must be presented. If one finds that important documents are missing (for instance old descriptions of the boundaries, etc.) one should not start mediation.

11. Try to map the parties' interests and facts of the case.

12. Make sketches of potential settlements.

13. Try to achieve consensus on the facts before mediation.

14. Active mediators achieve better final results.

15. If it is noticed that it will not be possible to settle the case, be careful not to get disqualified from reaching a verdict later in the case.

16. If one is not able to control the mediation session, take a break.

In summary, this short discussion based on in depth interviews with judges indicates that (a) a large set of mediation techniques are used, (b) there are high variation between judges with regard to how active they are as judges, (c) in general they mediate more actively and solution oriented in planning cases than in boundary disputes, (d) their behavior is affected by the presence of lawyers in the case, (e) they find in general cases with few parties, low significance, uncertainty about rights and low conflict most suitable for mediation, and (f) finally, they are concerned with behavioral aspects of mediation when asked what is important for success.

5. CONCLUSION

Our study of the Norwegian land consolidation courts confirms that mediation is an integral part of the judges' work on land issues. The judges mediate frequently and they intensify mediation when there are many parties, the size of land is significant, and when there is a high level of conflict. In particular, cases with joint ownership and/or investment were found to have a high level of controversy and mediation activities. Mediation was also an important aspect of the work in the court of appeal.

Mediation does not always lead to mediated settlements. But even when final verdicts have to be made, the mediation process had positive results. Mediation through presentation and continuously redrafting of plans reduced the conflict level among the parties. Cases with mediated settlements had generally fewer parties, lower conflict level and were smaller than those decided through verdicts. Recall that judges in general used more time mediating in cases that had the opposite characteristics. Therefore, it does not seem that judges discriminate in their mediation activity between cases based on their likelihood of achieving a mediated settlement. The reason may be that mediation has value in its own right (e.g. reducing conflicts). Our results confirm Wall, Rude and Schillers (1984) suggestion that judges will mediate in most cases except for large simple cases. Mediated settlements, however, are achieved mostly in small and simple cases. Future research on mediation in land disputes should go into more depth in analyzing why mediators do not settle the more complex cases, and also explore the characteristics of cases and mediation behavior in the relatively few complex cases where settlements were reached.

Our results also indicate that there are considerable variation among judges both in preference for mediation and in techniques used in the mediation process. Some judges are extremely active and settlement oriented, especially in planning disputes. Other judges hardly mediate except for in the most simple cases. Several of the mediation techniques described by Schiller and Wall (1981) were found among Norwegian land consolidation judges. In addition we found several techniques that are more specific to land disputes. More research should go into examining the variation among judges and the effectiveness of specific mediation techniques in land issues.

The study indicates that judges are in need of mediation training. The training need has become evident through our results that show high behavioral variations between judges, and limited settlement success in more complex cases. The outcome of land consolidation process depends largely on the behavior of the judge during the proceedings.

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