



# MANAGING LAND-RELATED DISPUTES IN THE LAND RIGHTS FORMALIZATION PROCESS

INCLUDING A REVIEW OF LAND-RELATED DISPUTES IN  
THE USAID LAND TENURE STRENGTHENING PROJECT  
PILOT AREAS IN HUAMBO AND KATCHIUNGO



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Photo Credit: Market sellers in Katchiungo Market, Huambo Province, Angola, by Nigel Thomson, ARD, June 2007.

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## **DISCLAIMER**

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# ABBREVIATIONS AND ACRONYMS

<b>ADRA</b>	Association for Rural Development and the Environment
<b>ADR</b>	Alternative Dispute Resolution
<b>APS</b>	Annual Program Statement
<b>CAAPI2</b>	Coordination for Assistance with Agriculture, Fisheries, Industry and Social Action
<b>DW</b>	Development Workshop (Angolan NGO)
<b>DMRP</b>	Dispute Mitigation and Resolution Process
<b>FAO</b>	Food and Agriculture Organization of the United Nations
<b>GoA</b>	Government of Angola
<b>GCSR</b>	Group of Seminaries from Roman Catholic Church
<b>IDP</b>	Internally Displaced Person
<b>IQC</b>	Indefinite Quantity Contract
<b>LRFP</b>	Land Rights Formalization Process
<b>MAARD</b>	Modified Acquisition and Assistance Request Document
<b>MINUA</b>	Ministry of Urbanism and Environment
<b>MINADER</b>	Ministry of Agriculture and Rural Development
<b>NGO</b>	Nongovernmental Organization
<b>ODG</b>	Other Disadvantaged Groups
<b>Project</b>	USAID/Angola Land Tenure Strengthening Project implemented by ARD, Development Workshop and the Rural Development Institute
<b>Project Areas</b>	Pilot project sites in Huambo Province
<b>RAISE</b>	Rural and Agricultural Incomes with a Sustainable Environment
<b>RDI</b>	Rural Development Institute
<b>SfCG</b>	Search for Common Ground
<b>UN</b>	United Nations
<b>UNHCR</b>	United Nations High Commissioner for Refugees
<b>USAID</b>	United States Agency for International Development
<b>World Bank</b>	International Bank for Reconstruction and Development

# PREFACE

The USAID/Angola's *Land Tenure Strengthening Project* is managed by ARD with implementation assistance from its partners, Development Workshop (DW) and the Rural Development Institute (RDI). The Project continues USAID/Angola's support to land reform and land rights strengthening begun in 2004 as part of its assistance to the Government of Angola.

The Project grew out of the need to strengthen land tenure and property rights in Angola following the passage of the Land Law and Territory Law (August 2004) and the transfer of the Land Law implementing Regulations to the Government of Angola Cabinet for review and approval (August 2006). These draft Regulations were approved in late August 2007.

The present set of activities and investments support Program Element 7.4 of USAID's Operational Plan for Economic Growth.

## **7.4 Inclusive Economic Law and Property Rights**

Ensure that poor people, women, and other disadvantaged groups have equal legal rights and protection in economic matters

### **Program sub-element 7.4.2: Property Rights for the Poor**

Strengthen and protect property rights of poor households, including titling of urban and rural land held under informal or traditional ownership; and registration of property to allow it to be pledged as collateral.

### **Program sub-element 7.4.1: Equal Economic Rights for Women and Other Disadvantaged Groups**

Eliminate sources of legal discrimination against women, ethnic and religious minorities, and other disadvantaged groups in economic matters. (It includes *de facto*, as well as *de jure*, discrimination. It includes efforts to ensure equal rights for women in key economic areas such as land ownership and inheritance).

These objectives will be met through a series of interventions during the current phase that:

- Strengthen land tenure rights in two pilot areas in Huambo Province and formalize a process that can be expanded upon by the Government of Angola (GoA).
- Improve livelihoods and encourage equitable economic growth in the project areas through linking improved land tenure rights with private sector investment opportunities.
- Use the experience gained in implementation to identify constraints in the legal framework (including implementing regulations), particularly for women and disadvantaged groups, and help shape a more realistic time frame for the formalization process.

The Project interventions comprise five components:

1. *Land Legislation and Policy Development.* Provide advice/suggestion to the GoA for the improvement/development of land laws and regulations on the basis of project activities.
2. *Land Rights Formalization Pilots.* Develop a process by which land rights of poor and disadvantaged groups can be formalized in two areas;

3. *Private Sector Opportunities for Economic Growth.* Facilitate the connection of new land rights holders with increased economic opportunities (e.g., connecting them with investors or investment opportunities).
4. *Gender and Other Disadvantaged Groups: Access to Land.* Develop and implement activities and strategies that support access to land for women and other disadvantaged groups.
5. *Capture Lessons Learned.* Capture important lessons in strategy and implementation that contribute to expansion of activities and bring more newly acquired rights into economic growth opportunities, particularly in rural areas.

Two areas have been targeted for piloting the Project and both are in Huambo Province. One area is peri-urban (Bom Pastor in Huambo City) and the other is rural (Mombolo Village in Ombala Bongo).

This Project combines two sources of USAID/Angola funding: (1) a MAARD from USAID/Angola through the Rural and Agricultural Incomes with a Sustainable Environment (RAISE) IQC task order mechanism. The task order is entitled *Lessons Learned: Property Rights and Natural Resources Management Task Order* (Contract No. PCE-1-00-99-00001-00, Task Order No. 13); and (2) and a subcontract, originally awarded as a grant under the APS for M/OAA/DCHA/DOFDA-06-948, Reconciliation Program Funds. The grant was moved to a subcontract under (1) above for reasons of efficiency, continuity and synergy between project partners, components and funding. The current project is supervised by USAID/EGAT/NRM/Land Tenure Specialist, Dr. G. Myers in close coordination with the USAID/Angola Mission. The Project expires in May 2008.

# EXECUTIVE SUMMARY

## BACKGROUND

This report outlines a process for land dispute resolution in support of USAID/Angola's Land Tenure Strengthening Project (Project), which is being implemented by ARD with support of its partners, DW and RDI. The process will be included in the Land Rights Formalization Process manuals being drafted for the Project's rural and peri-urban land formalization pilot sites. The land rights formalization process (LRFP) underway in the Huambo province pilot sites requires the inclusion of a land dispute resolution procedure that includes both an appreciation of local practices and is in accordance with the law, as land rights formalization can both aggravate disputes and/or create new ones. The process adopted needs to be relevant to communities, and should be structured, transparent, fair and lawful. The process needs to address dispute prevention as a first step.

This report documents findings from field research conducted between May and September of 2007. The results of the research highlight two important points. First, the project pilot areas exist in a pluralistic legal/governance environment that draws on traditional (unwritten) and state (written) laws and institutional structures. In rural areas, traditional leaders (*sobas*) appear to be respected and listened to as community governance institutions, and yet government legal structures and rules increasingly apply as communities approach urban areas. Second, numerous land-related disputes occur in the project pilot areas, but they are generally small and often within families. Violent land-related disputes appear to be rare.

Despite the pluralistic system, it appears that land-related disputes in and around the pilot project areas are well managed by *sobas* and local administrators who have the support of the communities in which they operate. They apply conciliatory approaches to property and land dispute management and have strong ties with traditional community values. Having said this, it is uncertain whether these systems are able to adequately deal with evolving concepts of anti-discrimination such as land-related disputes involving disenfranchised women or other disadvantaged groups.

Women do not often seek redress from *sobas* in land disputes because they appear to be largely unaware of their rights under statutory law and are only familiar with customary laws that grant them very limited land rights. The rare cases of women approaching *sobas* regarding land rights involves widows, usually with children, who have been evicted or denied land access by their in-laws and/or birth family.

Local government administrators are occasionally involved in dealing with land-related disputes, but they regularly leave local-level disputes to *sobas*. Exceptions can include circumstances that involve the occupation of "traditional" large farms (*fazendas*) with overlapping claims of local communities or border disputes between communities. In these cases, local administrators have intervened to resolve the disputes arising from competing land claims.

## DISPUTE MANAGEMENT AND RESOLUTION PROCESS (DMRP)

The DMRP for inclusion in the LRFP Manual should incorporate a methodology for dispute prevention and mitigation, as well as dispute resolution.

### Element I: Dispute prevention and mitigation process

#### *Activity 1. Public Information and Awareness*

The Public Information Campaign Strategy in support of the LRF must include dispute prevention and mitigation processes and it must be linked to a land rights and responsibilities campaign that emphasizes the following elements:

- What land rights and responsibilities are embraced under the new land legislation, who is responsible for implementing this law, and where can information about the law be accessed?
- Anticorruption. How does the law protect your rights, and what recourse do you have in the event that these rights need to be heard and/or defended?
- Land-related Disputes Processes. What is the methodology that will be observed to accommodate land disputes? Who is empowered to lead this process, and what are your responsibilities under this system of disputes airing/hearing?
- “Respect the Rights.” What provisions are made in the law for the recognition of boundaries, the rights of women, the rights of all individuals in the community, and the rights of the community? How do these rights get publicly recognized and defended?

To be effective for dispute prevention, these campaigns must be held before participatory land and/or plot demarcation activities are started within communities.

### ***Activity 2. Institutional Support/Capacity Building***

Most evidence collected in the field from observations and interviews suggests that most rural government staff, the judiciary, and land administrators know little about the new land law. An important part of the DMRP must include awareness building and training for distinct target groups who can affect the land formalization and DMRP process. These are:

- *Sobas*;
- Local government administrators—particularly land administration, agriculture and natural resources staff;
- Municipal and peri-urban government representatives; and
- The judiciary—civil court.

### **Element 2: Dispute resolution**

The dispute management processes proposed for this project apply to both peri-urban and rural (community) land:

1. Parties should attempt to resolve disputes between themselves first before taking those disputes further.
2. Failing this, the parties are encouraged to make use of local resolution procedures, e.g., assistance from *sobas* (traditional leaders).
3. Failing this, the parties will be referred to the dispute resolution process envisaged under the 2004 Land Law and its Regulations. These provisions refer disputes to institutions such as a “Justice Provider” and, ultimately, the Civil Court system.

In some circumstances the Project may link a disadvantaged disputant with an advocate (traditional leader, elder, legal aide) to ensure greater equity in the negotiation process (e.g., where one party to a dispute, such as a politically connected person, has significantly enhanced bargaining power). This may figure as an important tool in helping disenfranchised women and other disadvantaged groups gain access to land rights, as well as to assistance with helping them lodge these claims, raise these disputes and seek mediation and resolution.



# I.0 OBJECTIVES METHODOLOGY AND OVERVIEW

## I.1 OBJECTIVES

This report relates to Component 2 of the Project from the perspective of land dispute prevention and mitigation. The objectives of this report are twofold. First, the lead writer was to assess land-related dispute processes and legal/governance mechanisms in the two Project pilot areas in Huambo province, Angola: Bom Pastor (a peri-urban area within Huambo City) and Mombolo (a rural area in the Chiumbo Communa, near Kachiungo). Second, drawing from the assessment of written and unwritten law (and existing governance structures), the writer was to develop a land-related Dispute Management and Resolution Process (DMRP) that can be incorporated within the broader Land Rights Formalization Process (LRFP) manuals, which are currently in development.

Ultimately, the objective of the Project is to produce a process for land rights formalization in peri-urban and rural areas that can be adopted and replicated by the Government of Angola (GOA).

## I.2 METHODOLOGY AND OVERVIEW

The approach taken in the collection of data and the opinions expressed here by the authors has been as follows:

- Review of recent relevant literature on the subject (outlined in the Bibliography);
- Consideration of primary legal instruments; in particular, the *Land Law* and draft *Regulations* as usefully described in the earlier USAID publication under this Project: *Strengthening Land Tenure and Property Rights in Angola - Land Law and Policy: Overview of Legal Framework*, prepared for ARD by Robin Nielsen of RDI; and
- Conversations with knowledgeable persons on the subject matter (including land experts, NGOs, local administrators and *sobas* (traditional leaders) and land occupants.

In the latter point, conversations and meetings took place over a period of two months. First, Nigel Thomson undertook visits to the pilot project areas in May 2007. Then Robin Nielsen (RDI) visited the project areas in June 2007 in preparation for the development of LRFP manuals.

During Mr. Thomson's visits, respondents were all asked a series of questions in order to elicit answers to the following primary questions:

1. Are there any land-related disputes in your area?
2. What is the nature of the land-related disputes (what are they about)?
3. Who are the parties to the land-related disputes?
4. Are the disputes very serious (e.g., are they violent)?

5. How are disputes ordinarily resolved?
6. Who is responsible for resolving the disputes? (And is this person accepted as a person with authority to facilitate the resolution of disputes?)

Subsequently, in August 2007, ARD's Gender Specialist, Safia Aggarwal, visited the pilot project areas for the purposes of conducting an assessment of gender and other disadvantaged groups (ODG) land rights in the pilot sites. In the course of that research, Dr. Aggarwal conducted further interviews with *sobas*, local administrators, land occupants and local NGOs—particularly in respect to land-related disputes related to gender (especially women) and ODG (e.g., excombatants and orphans). During that process, Dr. Aggarwal followed up on the questions noted above (in addition to a more comprehensive set of questions dealing with gender and ODG issues in general that are to be outlined in a subsequent report) and confirmed earlier data results.

In addition to the interviews related to these questions, Development Workshop (DW) conducted a “benchmarking survey” which, among other things, asked respondents the following general questions in relation to land-related disputes:

1. In your opinion, who or what are the causes of land disputes in your area?
2. If you have a dispute in relation to your land, to whom do you go to solve the problem?
3. Are you involved in a land dispute?

The results of the benchmarking survey are still being collated and will form a separate report to be delivered in October 2007.

In addition to all those who contributed information for this report, the lead writer is particularly indebted to the co-authors and the Project representatives from DW who provided valuable logistical and technical assistance, data collection and idea formulation. In particular, these include Pacheco Illinga, Moises Festo and Beat Weber.

## **1.4 LIMITATIONS AND QUALIFICATIONS**

The findings from site visits that are the subject of this report must necessarily be qualified. First, the limited time for discussions with the communities involved makes it difficult to ensure that all information has been gathered in relation to the sites. There is at least one example (mentioned in the report) that indicates that those interviewed were specially selected and that their comments were monitored. Also, it seems reasonable to conclude that not all information will be provided to ‘strangers’ like the authors.

In addition, it should be noted that the ideas presented in this report are for *trial* in the pilot project. It is anticipated that there will need to be changes to processes to correspond with on-the-ground realities.

## **1.5 REPORT STRUCTURE**

This report is in two main parts. The first part (comprising Section 2) is an assessment. It does two main things. First, it outlines the written and unwritten legal framework relating to land disputes and their resolution that applies in the pilot project areas. While time constraints did not allow the authors to describe a complete picture of customary laws and traditions (especially in the rural pilot area in Mombolo), this section broadly identifies the traditional legal structures at work in Angola. Secondly, it describes the pilot project areas and, in particular, the results of investigations in those areas in respect to land-related disputes. An outline of persons met and the results of discussions with them is provided in this section, as well as land-related disputes and those responsible within the community for facilitating their resolution. Section 2 also analyses the findings and notes the implications for the proposed DMRP.

The second part of this report (comprising Sections 3, 4, Bibliography and Annexes) outlines the principles and guidelines by which a DMRP might operate in the broader context of a Land Rights Formalization Process (LRFP). Section 3 discusses the development of a DMRP. It sets out an explanation of the elements required in a DMRP, the principles that are to be applied and a detailed explanation of how the suggested DMRP would work.

Section 4 sets out the next anticipated steps in the development of a DMRP within a LTRP framework. The Bibliography provides a list of selected references followed by the annexes, which include a set of *Draft Guidelines* to be applied by Project teams in undertaking Project activities.

# 2.0 ASSESSMENT OF LAND-RELATED DISPUTES IN THE PROJECT AREAS

## 2.1 INTRODUCTION

As noted above, the first component of this report relates to the assessment of land-related disputes broadly in Angola and, more specifically, in the Project areas, Bom Pastor and Mombolo. The assessments included visits to those areas in June 2007 and were necessarily brief (refer to the limitations mentioned in Section 1). Follow-up work by ARD's Gender Specialist in August and September 2007 also contributed to the findings.

This section also attempts to describe the circumstances in the areas with particular reference to real and potential land-related disputes as well as analyzing those circumstances for the purposes of identifying relevant processes to be applied in a DMRP.

## 2.2 BACKGROUND TO LAND-RELATED DISPUTE RESOLUTION IN ANGOLA: LEGAL AND INSTITUTIONAL FRAMEWORK<sup>1</sup>

Angola's land dispute resolution framework includes both adjudicatory and conciliatory systems. Traditional village-based systems applying customary law generally offer participatory, conciliatory methods of dispute resolution. The adjudicatory system resides in the courts, which apply formal law and established procedures. There are limited links between the two systems and the populations served by each are distinct.<sup>2</sup>

### 2.2.1 Traditional Land-related Dispute Resolution

Historically, Angola's *sobas* (traditional leaders) governed the people within the *soba's* established jurisdiction (usually a village). *Sobas*, in conjunction with village elders and local councils, known as *njangos*, traditionally handle a multitude of local governance matters, land matters and conflict resolution. In peri-urban and urban areas, *sobas* are often not present or may have limited power, and *bairro* coordinators and *comissoes de moradores* (residential committees) often fill the *soba's* role.<sup>3</sup> Particularly in areas where the capacity and resources of local government are limited, these customary and community institutions may carry more authority than formal governmental institutions.<sup>4</sup>

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<sup>1</sup> Section 2.2 was developed by Robin Nielsen of RDI and draws on information presented in Clover, Jenny. 2005. *Land Reform in Angola: Establishing the Ground Rules* in FROM THE GROUND UP: LAND RIGHTS, CONFLICT, AND PEACE IN SUB-SAHARAN AFRICA, Chris Higgins and Jenny Clover, eds. (Pretoria: Institute for Security Studies); Filipe, Paulo. 2005. *The Right to Land and a Livelihood: Kuanza Sul* (Oslo: Norwegian People's Aid); and Norwegian People's Aid. 2006. *The Land and Us: Rights and Obligations* (draft training manual on land law, on file with RDI); Development Workshop. 2005. *Terra*; and Terrafirma, 2005. *Land Rights and Tenure Security in Kilamba Kixi*. CARE International, Angola (draft).

<sup>2</sup> One link is evident in Huambo, where, if a *soba* is unable to resolve a dispute, the parties take the matter to the *communa* or municipal administrator.

<sup>3</sup> Terrafirma, 2005, p. 19.

<sup>4</sup> In answer to questions regarding land tenure security, excombatants stated they believed their land rights more secure if they had gone through a process of conferring with the *soba* regarding their land rights (Development Workshop, 2005, pp. 53-54, and 87).

The social legitimacy of the traditional and community institutions allow them to manage conflicts within their jurisdictions. *Sobas* and their assistants mediate and resolve disputes. Public spaces known as *ondjangos* provide areas in which a village may hold informal courts, a process that lends transparency to matters of public concern. The procedures followed by *sobas* in resolving matters vary among locations, but in general they apply settled principles of customary law and their approach is highly conciliatory.<sup>5</sup>

The dispute resolution processes adopted by the *sobas* and governing councils focus in large measure on the relationship between the parties; the process and any result and attendant remedies are designed to preserve the relationships at issue and the functioning of the community. Parties (or the leaders themselves) may challenge the status quo within the traditional dispute resolution system. *Sobas* have authority to impose new standards,<sup>6</sup> and such decisions can ultimately create a momentum that results in an evolution in customary law. However, any evolution is necessarily slow and ultimately depends on the vision and commitment of the *sobas* and other village elites—a group that is often least likely to be motivated to change the status quo.

The traditional system also suffers from several potential limitations of alternate dispute resolution (ADR) processes. First, to the extent that the process employed by the *soba* seeks consensus, the process reinforces accepted standards of behavior and existing hierarchies and social structures. Conciliation and mediation can trivialize disputes by putting current grievances in context of past behavior, history and family status. Thus, to the extent that a party to a dispute seeks application of a new standard—such as equality of land access regardless of gender—she may need to pursue her claim under formal law in a civil court to obtain the desired decision.

Second, there are often very limited possible solutions to many disputes regarding land. Boundary disputants may reach a compromise. A plot may be divided among competing claims. Land may be awarded to one party at the expense of another. However, beyond these types of remedies, few options exist. One of the most common remedies in the formal legal system—the payment of compensation or damages—is often unavailable because people have limited resources and few assets.

Third, as currently conceived and practiced, the traditional system of dispute resolution is not designed to handle claims brought by outsiders under formal law. While a few provisions of the 2004 Land Law and proposed Regulations recognize customary law or traditional practices, the ambit of customary law is highly circumscribed and always subject to formal law. While a court will likely seek evidence from a *soba* regarding a land case within the *soba's* jurisdiction and will treat any evidence offered with respect, the *soba's* own ruling on the controversy may carry little weight with the court. Therefore, a *soba's* legal authority will probably be trumped by the written law.

### 2.2.2 Formal Law and Institutions<sup>7</sup>

In contrast to some systems of customary law, which when unchecked and isolated from natural processes of social change can reinforce entrenched rural hierarchies and power structures, formal systems potentially provide a welcome neutrality. Formal systems are often based on constitutional proclamations of equal rights, principles of fair treatment and the rule of law. The laws in formal systems are codified, public and are usually

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<sup>5</sup> Note that in some peri-urban and urban areas, there is some evidence that the residents, who almost uniformly take their disputes to the *bairro* coordinators and residential commissions, offer informal payments to those groups as part of the process and in an effort to ensure a favorable result (TerraFirma, 2005, p. 19).

<sup>6</sup> An example is the *sobas* who support women's rights, such as a widow's right to retain her deceased husband's land and a divorced daughter's right to return to her natal home and claim a share of her father's land.

<sup>7</sup> The information in this section is drawn from Filipe, 2005, and personal interviews with Carolina Matheus (Gomes), a Lunada-based Angolan lawyer (and member of the non-profit *Associação Maos Livres*), Helena Lowe Zefanias with Norwegian People's Aid in Luanda, and the staff of Development Workshop and CARE in January 2007.

applicable to all persons—regardless of economic status, ethnic group, gender or other classification.<sup>8</sup> As such, the formal legal system can be a source of principles that guide social change.

Angola's formal legal system is based on a statutory or code system imposed by the Portuguese during the colonial period and revised multiple times following independence. Angola's judicial system is structured around a central Supreme Tribunal, which operates primarily as an appellate court (although can exercise some original jurisdiction). Trial courts with original jurisdiction are provided for at the provincial and municipal levels.<sup>9</sup> The President appoints Supreme Court (without confirmation by the National Assembly) and provincial judges, who in turn appoint municipal judges. Judges need not be licensed lawyers and are often lay persons. The Constitution provides for a Constitutional Court (which has not yet been established), administers justice on legal and constitutional matters, rules on constitutionality of the laws and takes appeals on constitutional questions.<sup>10</sup>

Under the Civil Code, land disputes can be brought at the provincial or municipal level. As a practical matter, almost all are heard in provincial courts: as of 2000, all 18 provinces had functioning provincial courts; municipal courts were operating in 12 of 140 municipalities.

The Constitution, Civil Code, and 2004 Land Law and Proposed Regulations provide three different avenues for resolution of disputes, available in various circumstances:

- Civil court procedure,
- Mediation and arbitration (ADR), and
- Traditional dispute resolution (limited).

### *Civil court procedure*

Under the 2004 Land Law and Proposed Regulations,<sup>11</sup> land rights holders can enforce their rights in the Provincial Tribunal Civil and Administration Hall and have a right of appeal to Supreme Tribunal. An action for nullification of government action taken under the Land Law can proceed in a summary fashion and is exempt from fees.<sup>12</sup>

Various parties—including rural communities, environmental groups and associations of economic interests—have standing to bring an action against the relevant ministry to declare the actions of a government authority to be contrary to law and void.<sup>13</sup> Tribunals hearing actions under this section have 30 days from judgment to provide the registry with a copy of the decision.<sup>14</sup> Note, however, that these provisions relate almost entirely to action advanced with the government as a party; private litigants will likely proceed under standard civil court practices.

Land cases brought in a civil court in Angola are long and costly. An average case initiated at the provincial court level may run two years, and twice that time is not unusual. Appeal of the trial court's decision is a

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<sup>8</sup> Carothers, Thomas. 1998. *The Rule of Law Revival*, 77 FOREIGN AFFAIRS, March-April 1998, p. 95.

<sup>9</sup> Constitution, Article 125.

<sup>10</sup> *Id.*, Articles 134-35.

<sup>11</sup> At the time of writing, the *Regulations* had but be published.

<sup>12</sup> *Land Law*, Articles. 71-74. The section does not state whether the party bringing the action is entitled to legal counsel at no cost, or if only the court fees are waived.

<sup>13</sup> *Land Law* Articles 70 and 71.

<sup>14</sup> *Land Law* Article 75.

matter of right, and the case may take several years to be heard. The status quo relating the land will be maintained during term of the case, absent extraordinary circumstances.

At every stage of the trial court proceedings, the lawyer must be diligent or the case will languish. Lawyers are often required to perform administrative tasks and duties that are rightly the courts', such as obtaining papers and signatures, delivering evidence and moving papers through the system.

In regular (non-*pro bono*) cases, the Angolan Bar Association has minimum fee schedules that the lawyers must follow. Lawyers can (and most do) charge much more than the minimum, setting their fees for disputes based on the value of the case, the client's availability to pay, the time the case will require and the firm's practices. Many firms charge a fee of \$100 to discuss the case with a lawyer, whether or not the lawyer takes the case.<sup>15</sup> If the case involves land, the lawyer's fee will take into account the value of the land; in title disputes, the lawyer may charge 10 percent or more of the land value.

Attorney's fees are non-refundable. Clients must pay 35 percent of the total charge in advance of any work. The client must pay the balance of the fee before any settlement, the close of trial and any verdict. Fees are not dependent on results obtained; taking cases on contingency is not practiced in Angola.

### ***Legal Aid***

Angola's Bar Association has the foundation for a *pro bono* representation system. The Bar Association requires all registered lawyers to donate a certain amount of time each year to providing legal services to the poor. A person desiring an attorney under the program applies to the Bar Association, which in turn applies some basic eligibility criteria, including verifying the person's need for free services. The Bar Association assigns eligible applicants for free legal aid to a lawyer or law firm. The Bar pays the expenses of the case and gives a small stipend to the lawyer.

The system is criticized because lawyers routinely avoid service, or the cases are assigned within firms to the most junior lawyers. Where the poor are lucky enough to receive an experienced lawyer, the lawyer often has little incentive to spend the time necessary to provide the best representation.

### ***Mandatory mediation and arbitration***

The 2004 Land Law includes an ADR system; the law mandates mediation and conciliation and requires nonbinding arbitration before a provincial level tribunal.<sup>16</sup> The law gives a few details—the provincial government is responsible for organizing arbitration panels. The panels will conduct proceedings in Portuguese and must reach a decision within six months of the date it is empanelled.<sup>17</sup>

The proposed Regulations add further time limits to the process; mediators must be assigned by a "Justice Provider" within five days of the notice of the dispute, a hearing held within five days thereafter and a decision handed down within 10 days of the hearing. The mediators shall make a proposal that the parties must both accept within five days of receipt, or it will be deemed refused.<sup>18</sup> The mandatory mediation procedures do not apply to actions for nullification of government action under the Land Law.<sup>19</sup>

The section is brief and leaves a number of issues unstated:

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<sup>15</sup> In Luanda, average hourly fees for a lawyer are between \$100-200.

<sup>16</sup> *Land Law* Articles 77-78.

<sup>17</sup> Article 80. Law 16/03, July 25, 2003 governs the process of voluntary arbitration and is referenced as a framework for this mandatory provision.

<sup>18</sup> *Draft Regulation* Articles 209-212.

<sup>19</sup> *Land Law* Article 77.

- **Mediation.** What procedures govern the conciliation and mediation process? Is there a neutral third party in attendance? What safeguards are there against inappropriate pressure placed on a party? How is the decision memorialized? Where is the decision filed? Does the process conclude any pending claim? How is that documented? What are the fees and costs of the procedure? Can the decision be binding on parties not present? Are the proceedings confidential? Is a party to a successful mediation precluded from reasserting a claim?
- **Arbitration.** If the matter proceeds to arbitration, who are indispensable parties to the proceedings? Can attendance be compelled? What procedural rules, including rules of evidence, apply? Are the proceedings confidential? Can the mediator be called as a witness? Is there a transcript? Can the parties bring representatives? If one side has a lawyer, must the other side be represented? What are the fees involved? Is the decision binding on persons not present? Are the parties prohibited from filing another action following the arbitration?
- **Civil court.** If the parties do not accept the decision of the arbitrator and proceed to civil court, can the parties (or court) call the mediator and arbitrators as witnesses at trial? If so, what weight does the court give the testimony of the arbitrators, or evidence supplied in that forum?

According to local practitioners, Angola has no experience with ADR, except in the context of commercial contracts where provisions are drafted to meet international standards and the parties are usually sophisticated business interests who are well represented by legal counsel. Trial attorneys are familiar with the process of negotiation and settlement as a required pre-trial activity in Angola, but the process occurs before a trial judge and does not involve mediation. ADR has yet to be institutionalized within the court system and the vast majority of lawyers (and persons managing ADR procedures) are unfamiliar with the processes involved.<sup>20</sup> In these circumstances, it seems likely that any “formalized” ADR processes will take considerable time and institutional formation and capacity resources before becoming effective.

#### ***Permissible use of traditional dispute resolution process.***

The Land Law provides that where rural communities have conflicts related to the rights of possession, management, use and production of rural community land, or issues related to the useful domain of rural community lands, those communities shall use their customary methods of deciding the dispute. Anyone aggrieved by the decision reached has a right to appeal to the mandatory mediation, conciliation and arbitration process outlined in the law<sup>21</sup> and described in Section 3.2.2, below.

The Land Law, however, is silent on several key points:

- Are the *sobas* or other traditional authorities free to apply principles of customary law, even if they conflict with formal law?
- Are third parties (non-community members) bound by the traditional procedure?
- If so, will the enforcement procedures under formal law apply to enforce the *soba's* decision?
- What law will be applied if the dispute is taken to arbitration? Will the proceedings be translated into the local language? What rules apply regarding evidence? Procedures? Can the arbitration panel compel the attendance of witnesses, for example?

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<sup>20</sup> The lack of capacity within the formal judicial system has led civil society to fill the void, and some NGOs have undertaken capacity building in the area of ADR techniques. See, for example, Development Workshop, 2006, p. 94. However, while civil society can play a vital role in filling the current void and is certainly better qualified and better positioned than the government to handle many garden variety disputes at this point, the country's long-term interests will be best served by building capacity within its formal institutions.

<sup>21</sup> Land Law Article 82.

- Is arbitration binding or is there a right of appeal to civil court? If so, what law applies?
- Is a community or community member required to pay the court and lawyer fees to pursue a case in civil court?

These questions will be answered only as disputes are heard and the relative strengths and weaknesses of the system become more apparent. A specific approach to dealing with land-related disputes in the context of the USAID pilot project areas in Bom Pastor and Mombolo, however, is considered below.

## 2.3 SHORT DESCRIPTION OF THE PROJECT AREAS

### 2.3.1 Rural: Mombolo (Chiumbo Communa) General

#### *Chiumbo Communa Discussion*

The rural communa of Chiumbo lies close to Kachiungo. Kachiungo is on the main road to Huambo City. Chiumbo is about a 30-minute drive from Kachiungo, although the road is quite poor. Apparently, this road was one of the best in the region, during the civil war, when it was seldom used due to fighting in the area. Now, with an enduring peace and increasingly heavy use, the road has quickly deteriorated.

The author visited the Chiumbo administration twice to discuss land issues. The first time was with the Deputy Administrator and the second time was with the Administrator and three hand-picked *sobas* from within the communa.

In the first meeting, the Deputy Administrator (Bento Paulino Chingangala) said that he was not aware of land-related disputes within particular communities in Chiumbo. He indicated that these are usually resolved internally by *sobas*. The only disputes he was aware of included outsiders buying old Portuguese-era *fazendas* (large farms). In one important example, an outsider got signatures for the acquisition of a *fazenda*. The ‘purchaser’ got all the requisite signatures but communities were using some of the land. (Presumably, the purchaser either jumped steps in the process or must have had the signature of the relevant *soba*—raising the issue of whether the right was obtained corruptly). In this case, the new ‘owner’ tried to enforce his rights and the community apparently responded violently and broke his leg. Later, with intervention of the *soba*, the community agreed that the owner would continue to permit the community to work on the land of the *fazenda* until the purchaser was able to work the entire land. The Deputy Administrator considered this dispute to be solved (although the ambiguity associated with the agreement leaves many questions unanswered).

In another example, the Administrator facilitated the process between cattlemen and communities. Cattle apparently escaped from unfenced neighboring land parcel and caused damage to neighboring crops. The issue of compensation has not been resolved in relation to this case.

In the second meeting at Chiumbo, with the Administrator (Estevao Balaca) and three local *sobas* (Jose Zamaria Calumbi, *soba* of Sede Chiombo; Cipriano Chitali, *soba* of Asomba; and Albino Cicade, *soba* of Chamanga), more discussions were held about land issues in the area.

In all cases there was a consensus that there were no major land disputes although it was acknowledged that the occupation of old *fazendas* could pose problems.<sup>22</sup>

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<sup>22</sup> It should be underscored that the Administrator remained in most meetings with the *sobas* (who were interviewed separately and not as a group). Despite the fact that the Administrator handpicked the *sobas* for interview, he indicated to the DW representative that he wanted to be sure that they did not say the wrong thing.



**Gateway to one of the old *fazendas* that line some of the roads in Chiumbo Communa and other areas in Kachiungo. The boundaries of these old farms can still be found. Some communities have expanded onto these properties, causing disputes, at least one of which became violent.**

The Administrator produced a number of documents (and associated maps) relating to the occupation of new *fazendas* but said that, in a number of cases, the land was not actually being used, and promises of employment for those within local communities were not being fulfilled by *fazenda* “owners”. It seemed to the author that some of these new occupations were speculative rather than for *bona fide* farming purposes.<sup>23</sup> Nevertheless, the Administrator indicated that many of the boundaries of the old *fazendas* still exist and could be readily identified.

### ***Mombolo***

Mombolo is a small village about 45kms (1 hour’s drive) from Katchiungo. It resides in the Chiumbo Communa. The road from Kachiungo to Mombolo is poor and, in the wet season, likely to be difficult to travel for ordinary vehicles.

<sup>23</sup> He showed the team *croquis* of two of the *fazendas* at a scale of 1:100,000. Each of the *fazendas* was about 500 hectares that were supposedly for livestock.



**The road between Mombolo and Kachiungo is in poor condition. This is the section between Chiumbo and Kachiungo. The connecting road between Mombolo and Chiumbo is worse and travel is difficult during the wet season.**

Mombolo village is composed of 215 families comprising about 1,075 persons. The primary language is Umbundu. DW has worked in Mombolo before; they built a school and installed a community water pump in 2003.<sup>24</sup> Electricity is not supplied to the village.

This rural village has irrigation from a stream further up the hill and water runs constantly by gravity down the main village track to be diverted along the way to irrigate the various farming plots. Most families grow bananas here; indeed, the village is quite dense with banana plants (eating and cooking varieties). They also grow potatoes, tomatoes, mangoes, avocados, corn, mandioca and peanuts (and other crops). During the banana season, excess bananas (and sometimes tomatoes) are sold by the roadside up from the village. Villagers would also like to sell potatoes and onions.

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<sup>24</sup> Personal email correspondence from Moises Festo dated 21 September 2007. This updates information provided by the *soba* in June 2007.



**Mombolo church is reportedly about 100 years old. It is surrounded by banana plantations. There are irrigation channels running past this building.**



**Banana plantations running along irrigation channels on the 'main' road in Mombolo.**

The Mombolo *soba* indicated that in the 1970s, the village was a model for growing crops and the farmers at that time were invited to share their expertise with neighboring areas. The *soba* stated that local agriculture is now limited by a lack of fertilizers.

There are old *fazendas* in the general area but these are not close to the main village (one is near the main road and another is about 15 kilometers away). These *fazendas* are unlikely to pose problems for any mapping associated with this village. But it should be noted that, to avoid the potential for conflict, formal demarcation teams should not map areas within the apparent boundaries of the former *fazendas*. Aside from these Portuguese-era rights to land, the rest of the land appears to be held in a customary tenure with individual and group rights to various parcels of land. The *soba* indicated that it was important that the community had their land rights formalized because it would protect them against other claims for the land. He saw the result of the formalization process (i.e., a document conferring land rights) as clear evidence of a legal occupation.

### ***Overview of Land-related Disputes***

Further interviews in August and September of 2007 revealed a multitude of ongoing land-related disputes in the pilot sites. In addition, Dr. Aggarwal had an opportunity to visit the village of Lumandi in Caala district where the local NGO, Association for Rural Development and the Environment (ADRA), is implementing several project activities. Interviews in Lumandi regarding land disputes provide a broader picture on the issue

than what was visible in the pilot sites. Finally, interviews with three NGOs (Luanda-based Search for Common Ground; Huambo-based Coordination for Assistance with Agriculture, Fisheries, Industry and Social Action [CAAPI2] and Huambo-based group of seminaries from the Roman Catholic Church [GCSR] that work on dispute resolution including those related to land and property) serve to provide a yet fuller picture of land-related disputes in the region. A snapshot of land-related disputes is presented in Table 1.

In the rural areas of Mombolo, Lumandi and greater Katchiungo, numerous disputes were noted but it seems that most were of a relatively minor nature. Most disputes could be categorized as either intra-family or inter-family although disputes involving those outside the community were noted in Lumandi and Greater Katchiungo (outside land grabs and community encroachments upon old *fazenda* land respectively). In terms of land-related disputes, the men claimed that there were few although those that did exist were mainly intra-familial and related to boundary issues. The limited time did not allow for further investigation of the issues. Importantly from a land administration perspective, *sobas* and an NGO indicated that *sobas* were sometimes called upon to facilitate the resolution of disputes in relation to land (e.g., ‘sales’ and ‘leases’) where the *soba* had not been a witness to the original transaction. For the purposes of pilot project activities and the process described in the draft manual for a Land Rights Formalization Process, it may be advisable for pilot project teams to encourage *sobas* to record transactions within the community. Furthermore, project teams could also encourage community members to have the *soba* witness their transactions and potentially avoid disputes in the future. Outside the *soba* level, local administrators indicated generally that land-related disputes seldom came to them. They almost never went through the courts system.

The lead writer<sup>25</sup>, through an Umbundo interpreter, spoke to men about rights to land in Mombolo. Women were not included in this discussion. The men (primarily the *soba* and one other) indicated that rights to land were handed down to sons and not to daughters.<sup>26</sup> This is because it is expected that daughters will marry and be entitled to occupy their husband’s land. If a woman came from another village (i.e., married a local man) it would be expected that upon the death of, or divorce from, her husband she would leave the area and return to her own family. During her stay in the village, however, the *soba* may grant her the use of certain land for farming purposes. Subsequent discussions with ARD’s Gender Specialist,<sup>27</sup> however, have indicated that *sobas* may still intervene in relation to land access of widows although this appears to happen on a case-by-case basis rather than as a matter of custom.

From the information gathered, it seems that women rarely bring land-related disputes to *sobas* or to the courts. Interviews with *sobas*, NGOs and the Judge’s Assistant in Katchiungo,<sup>28</sup> indicated that most cases received from women relate to domestic violence. The only mention of women approaching a *soba* on land-related issues was widows asking *sobas* for land access. *Sobas may* work with the family of the widow’s husband to help a widow gain access to land, and in other cases find a plot of community land for the widow to farm.<sup>29</sup> The main reason for women not bringing land-related cases (with the exception of the widows), is

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<sup>25</sup> Nigel Thomson.

<sup>26</sup> In her Desk Study, *Angola, Women and Land Issues* (2007), Renee Giovarelli, drawing on other sociological studies, states: “Traditionally, descent groups in Angola are matrilineal; that is, they include all persons descended from a common female ancestor through females, although the individuals holding authority are, with rare exceptions, males.” But this does not appear to be the case in Mombolo. Subsequent work by ARD’s Gender Specialist, Safia Aggarwal, also supports the view that, now, the process is dominated by the male lineage. Whether this is a result of colonial, post-conflict circumstances or simply circumstances peculiar to Mombolo is uncertain at this stage.

<sup>27</sup> ARD’s Gender Specialist, Safia Aggarwal, visited the pilot project areas in August-September 2007 to undertake an assessment of land access of women and ODG.

<sup>28</sup> Undertaken by Safia Aggarwal, with assistance from DW staff Janneth Longuenda and Cezar Katimba.

<sup>29</sup> The plots received by these widows are apparently not of good quality. Both in Mombolo and Lumandi village, *sobas* mentioned the need for fertilizer when discussing the situation of the widows and their need for land.

largely because most women in the rural (and peri-urban areas) are not aware of land rights accorded to them by statutory law, and hence, rarely pursue a case of eviction (if divorced/separated, widowed, or because of polygamy).

The rights of married woman, of course, will be an important issue to be considered in the LRF. While the Angolan Constitution speaks of equality,<sup>30</sup> it is not clear if equality would apply to all rights (depending on their source and type). Furthermore, it needs to be clearly established what rights will be granted in the process. For example, where there is a temporary allocation of land (like the situation where a woman joins the community),<sup>31</sup> should it be treated differently from, say, land that has been held in a family for generations? In other words, should all rights in the pilot area be recorded and should they all be recorded as the same right? It is clearly arguable that all rights of occupation are *not* intended to be the same. Therefore, recording them as the same right may be the wrong thing to do; especially if a right recorded is a greater right than what was originally granted. These are questions to be answered in the development of the overall LRF by the Project's Land Law and Policy Specialist.

Despite the noting of land-related disputes in and around the project area, they appeared to be limited in number and degree of severity. If there are limited disputes, this may be attributed to the fact that there is potentially a lot of land available and/or that many landholdings have been within the same families for generations and, 'everyone' knows about these rights.

### ***Disputes Process in Mombolo***

In this community, it is the *soba* who helps to resolve disputes. There is little direct access to the Administrator (Chiumbo). The role of the *soba* in this village seems to be in accordance with traditional processes and these seem to be in the nature of mediator/facilitator. In the course of Project activities, this will need to be studied and reviewed. If there is dissatisfaction with that process (e.g., the *soba* in fact acts as an arbitrator, there may be a need to consider mediation training activities as a capacity-building exercise). If it is the case that women are not taking their land-related disputes to the *soba*, then the implications for project activities need to be carefully considered for causation. If the causes are (1) women are resigned to customary practices that work to maintain the customary status quo; and/or (2) women (especially) and men (including *sobas*/local administrators) are unaware of their respective land rights under the written law then the Project will need to focus on the legal aspects of equality under the Constitution and the Land Law during any Public Information and Awareness (PIA) campaign.

### **2.3.2 Huambo Peri-urban: Bom Pastor**

Bom Pastor, Bairro das Cacilhas and, more particularly, the project pilot area, is home to 360 families comprising about 1,798 persons. It comprises approximately 200 land parcels. The primary languages spoken are Umbundu and Portuguese. Some residents have access to electricity for generators but there is no piped water connected to the site. It is a rapidly expanding peri-urban area which has changed dramatically since the lead writer visited the site less than six months ago.

The author visited this site with an Umbundu interpreter and Local Project Manager from DW, Moises Festo, and ARD's Enterprise Specialist, Jeff Dorsey, to discuss land issues with the community. During a previous trip to the area in January 2007, the Local Administrator indicated his enthusiasm for the project. At that time there appeared to be a lot of 'open land', much of which has now been occupied by new residents.

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<sup>30</sup> Article 18(1) of the Constitution states: All citizens shall be equal under the law and shall enjoy the same rights and be subject to the same duties, without distinction as to color, race, ethnic group, sex, place of birth, religion, ideology, level of education or economic or social status.

<sup>31</sup> See generally the overview of Nielsen, R. 31 May 2007. *Land Law and Policy: Overview of Legal Framework* (Project Report, RDI), p. 12.

Bom Pastor Pilot area  
in January 2007.



NIGEL THOMPSON, ARD, INC.

The same area in June  
2007.



NIGEL THOMPSON, ARD, INC.

***Overview of land-related Disputes (much of this section repeats contents of Section 2.4)***

A *soba* also has traditional authority in this peri-urban area. The local Communa Administrator (responsible for 22 area *barrios*) also has an active interest in the area. Because of the time of day of the visit (mid-afternoon), most interviews were conducted with women (most men were working at this time). During those interviews, all persons indicated that they had purchased the land from the Administrator. There seemed, therefore, to be little “community” land as such (the current occupants came from different areas and not necessarily Bom Pastor—a number were from the former Huambo City rental market and moved to the area when given the opportunity to purchase their land rights from the Administrator).



The woman to the left had no boundary demarcation problems because she was at home everyday.



On the other hand, a neighbor's building encroached on this woman's land (January 2007). She was interviewed a second time during this visit to the site by the author.

The people interviewed all indicated that it was important for them to have their land rights formalized because it would protect them against other claims for their land. They saw the threat primarily from the state. Again, they thought that the result of the formalization process (i.e., a document) was clear evidence of a land right that would prevent disputes.

In the quickly expanding urban sprawl, it seemed that land issues primarily related to boundary demarcations. One woman interviewed noted that she had no problems because she was at home every day so there were likely to be no boundary issues. Another, however, indicated that a neighbor's building had encroached on her land.

Other issues related to the activities of a past administrator. The owner of a small cinema indicated that there were previously disputes because the former Administrator had corruptly given the same land to more than one person. He said that that Administrator had been removed because of this corrupt activity. A review of the general nature of disputes in Bom Pastor indicated a narrower range of land-related dispute categories; namely, intra-household and inter-household (refer to Table 1, below).

As noted above in relation to rural land, and more specifically Mombolo, disputes did not seem to be major within the peri-urban pilot project area. Also as noted above, women rarely seemed to raise land-related disputes with *sobas* and/or local administrators (for the same reasons). Again, the main issues raised by women related to domestic violence. Even with the relative proximity of more formal legal mechanisms, land holders in these areas, it appears, rarely take their disputes to court.

**TABLE 1. NATURE OF DISPUTES AND PROJECT IMPLICATIONS**

Nature of Dispute	Location					Source	Project Implications
	Bom Pastor	Mombolo	Katchiungo	Lumandi	Other (Huambo)		
<b>I. Intra-household Disputes</b>							
1. One family member selling land without consulting others in family	x		x			Soba; Assistant to the Judge	True rights holder to be determined (slowing formalization)
2. Widows (access to land)		x		x		Soba; Soba	Maybe none
3. Orphans (extended family laying claims to orphan's land)	x			x	x	Soba; Soba; CAAPI2	The true rights holder to be determined (slowing formalization)
<b>II. Inter-household Disputes</b>							
4. Boundary disputes (between neighbors)	x	x				Local Administrator & land occupant; Soba	Boundary "adjudication" will be problematical (slowing survey & mapping)
5. Double sale of land	x					Local Administrator	The true rights holder to be determined (slowing formalization)
6. Leases (soba was not asked to serve as witness, but asked to resolve a dispute regarding non-payment)	x	x		x		Soba; Soba; soba	Maybe no implications Issues to be determined depending on the lease terms
7. Sale (disputes originated after sale of land, and soba not informed of the sale)	x	x			x	Soba; Soba; CAAPI2	True rights holder to be determined Other issues to be determined depending on the sale terms
8. Owners residing in city (lands taken by others)					x	SfCG	The true rights holder to be determined (slowing formalization)
<b>III. Conflicts with Outsiders</b>							
9. Orphans (outsiders taking land of orphans)						Soba	The true rights holder to be determined (slowing formalization)
10. Returning Portuguese settler					x	GCSR	The true rights holder to be determined (slowing formalization)
11. Outsiders encroaching on community lands (land grabs)				x		Soba	The true rights holder to be determined Land boundaries (slowing formalization)
12. Political leaders taking land for fazendas					x	CAAPI2	Will not affect pilots if fazenda areas are avoided
13. Encroachment on fazendas			x			Local Admin & Assistant to the Judge	Will not affect pilots if fazenda areas are avoided
<b>IV. Others</b>							
14. Returnees (with no land records); poor quality of land allocations					x	GCSR; SfCG; CAAPI2	The true rights holder to be determined

As noted above in relation to Mombolo, it appears that the issue of women's land rights is something that the Project needs to pay particular attention to in the context of a PIA strategy and in terms of recording land rights during project activities.

### ***Disputes Process***

While the local Communa Administrator takes an active interest in the activities in the area, it seems that the *soba* is largely responsible for dealing with disputes within the community. The community members interviewed seemed to agree with this process and, if there was a dispute, they would take the dispute to him. As with the rural areas in Chiumbo, it seems that resolutions are arrived at by consensus. If, however, the *soba* finds a particularly difficult dispute, he may consider it with the other 22 *sobas* in the municipality.<sup>32</sup> This process seems to have the support of the community.

## **2.4 CONCLUSIONS IN RELATION TO LAND RIGHTS FORMALIZATION AND LAND-RELATED DISPUTES GENERALLY IN ALL PROPOSED PROJECT AREAS**

### **2.4.1 Demand for Formalized Rights**

In a discussion with Luis Hernandez of USAID on 4 July 2006, he indicated that a draft World Bank report (unspecified at the time of the meeting) said that the obtaining of land titles was *not* a priority for people. This was not the experience of the authors in interviews for this report. Indeed, quite the opposite was the case. There was a strong desire within the populations visited to obtain evidence of their occupation of land. This did not appear to be for reasons of borrowing power of land (for investment/economic opportunities, *per se*) rather because it was seen as protection against interference with the land rights of the occupant. This was felt strongly in rural areas, perhaps because of recent problems arising with purchases of old Portuguese-era *fazendas* which, in some cases, locals had occupied and from which they were now being excluded.

In peri-urban areas, the 'protecting power' of a formal document was seen as a foil against potential state confiscations.

### **2.4.2 Corruption**

Corruption is still generally apparent when dealing with land rights. In rural areas, the granting of *fazenda* rights seems to be lacking transparency. The fact that approvals are given to new *fazenda* occupiers without consideration for current occupiers suggests that either steps are being neglected in the approval process and/or that those involved in the approval process are not following the correct procedures (certainly not considering the implications for their communities). One explanation for this is corruption.

In the peri-urban area under consideration, there was evidence that a former Administrator was not only taking money for land allocations but that he was often allocating the same land to different persons. Money exchanges for land allocations clearly open the allocation process to corruption if it is not transparent. It was not clear where the payments for land allocations actually went except to the Administrator.

### **2.4.3 Nature and Extent of Land-Related Disputes and Their Resolution**

Overall, in both the peri-urban and rural pilot project areas, there appeared to be remarkably few land-related disputes. In rural areas where there are relatively few people for the land available, this is not too surprising. While there were a variety of disputes, none appeared to be very serious or violent with the exception of one particular dispute in relation to a *fazenda* in Chiumbo (not near the pilot project area). Also, 'Agreements'

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<sup>32</sup> Discussion with Safia Aggarwal, 18 September 2007.

between *fazenda* owners and community members, such as they were, seemed weak and there remains the potential for ‘resolved’ disputes to be reignited in those areas.

Each “class” of dispute identified in Table 1 potentially has implications for the LRFP but, as noted earlier, only in rare cases do the disputes seem to fall into the category of “serious” or “violent”. Nevertheless, disputes relating to entitlement to occupy land will raise important issues of the potential rights to be ascribed to the land parcel in question and who holds the entitlement. These include the following categories of land-related disputes noted above in Table 1.

1. One family member sells land without consulting others in family
3. Orphans (extended family laying claims to orphan’s land)
5. Double sale of land
7. Sale (disputes originated after sale of land, and *soba* not informed of the sale)
8. Owners residing in city (lands taken by others)
9. Orphans (outsiders taking land of orphans)
10. Returning Portuguese settlers
11. Outsiders encroaching on community lands (land grabs)
14. Returnees (with no land records); poor quality of land allocations

Where these disputes cannot be resolved expeditiously, it is likely to have implications for the timing of the LRFP—failure to agree a resolution to a dispute means that the process will be held up (although survey and mapping could still take place, in theory). As noted in the second half of this report, however, this type of issue can be dealt with by LRFP teams simply refusing to complete the process until a suitable resolution is found, encouraging the parties to apply the dispute process.

There were not many boundary disputes in rural areas although it was noted by community members that such disputes sometimes arose in the context of intra-family disputes. In rural areas, the main threat was seen as reestablished *fazendas* and the potential for clashes between new ‘owners’ and community members who had moved to occupy portions of old *fazenda* land that had remained unused for years. Disputes involving encroachments on *fazenda* lands are not likely to impact the current project because there are no *fazendas* near the project areas. In any event, it would be unwise for the LRFP to undertake any project activities near *fazenda* boundaries. But should there be an expansion of the project area that brings local community mapping close to *fazendas*, it would seem prudent that project activities avoid the mapping of individual and community areas that encroach on former *fazendas*.

In the case of boundary disputes pending resolution, as with disputes concerning entitlement to rights (noted above), any LRFP cannot be completed. In this case, LRFP teams can bypass these parcels until a resolution is reached. The parties can then be referred to the DMRP outlined in the following section.

#### **2.4.4 Land-Related Disputes and Gender**

While noting that land-related disputes seemed reasonably few and benign, there is a question mark over the real nature of land disputes (or their potential, at least) in respect to women, in particular. The preliminary gender assessment<sup>33</sup> found that women (and men, for that matter) were largely ignorant of land and related rights under the Constitution, Civil Code and Family Code. Furthermore, in the context of traditional societies, women often did not raise land-related disputes. Domestic violence against women was reportedly

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<sup>33</sup> Undertaken by Safia Aggarwal of ARD in August and September 2007.

high and, in cases of the death or divorce, the former wife was often sent back to her family—effectively meaning that her land tenure security was quite low. It also seems that, despite the written law, the fate of rural wives especially lies in the hands of their former husbands’ families and, sometimes, the *soba*. It may be the case, therefore, that in the shadow of any legal rights PIA campaign associated with the Project, there can be a potential rising in the level of land-related disputes affecting women. The implications for the LRF at this time are uncertain and will need to be monitored over the course of project activities. On the basis of that monitoring, the LRF will need to be reviewed and amended accordingly.

#### **2.4.5 Written and Unwritten laws: Implications for the DMRP**

It is clear that, especially in rural areas like Mombolo, traditional legal/governance systems apply. Indeed, in these areas it is probably the case that unwritten processes (as distinct from the written laws) govern most of ordinary day-to-day conduct within the communities. The situation is different (although not entirely so) as one moves toward urban areas where more formal, written laws and governance tends to take priority. But written laws are likely to take on more and more importance in rural areas as Angola transitions from its recent history of conflict (especially in the Huambo area, the center of Jonas Savimbi and UNITA) and uniform laws reach out across the country. In rural areas in particular, legal pluralism exists and this needs to be embraced in the development of a DMRP. It is only by embracing this pluralistic legal environment that any DMRP can be relevant and effective. Therefore, it is suggested that any DMRP must take into account the importance that traditional leaders (*sobas*) and laws carry in society—especially in rural areas where traditions are still very strong—while also taking into account written legal norms appearing under the formal legal instruments like the Constitution, Land Law and associated draft Regulations, and international agreements to which the Republic of Angola is a party. This will be a challenge, and as noted above in relation to the implications for women, there is an expectation of more disputes as the significance of written laws grows.

# 3.0 THE PROCESS FOR MANAGING LAND-RELATED DISPUTES IN THE PROJECT AREAS

## 3.1 INTRODUCTION

It is important to note that no matter the cause of existing disputes, the very act of land rights formalization has the potential either to

1. Exacerbate existing disputes;
2. Uncover previously latent disputes; or even
3. Create new disputes.

The last two of these, in particular, can be especially damaging to any LRFP as a whole because that process can then be seen as illegitimate or the *cause* of problems. Therefore, any process of ‘dispute resolution’ should necessarily include within it a dispute *prevention* and dispute *mitigation* strategy. From this perspective, the process suggested here comprises two main elements:

1. Dispute prevention and mitigation process, and
2. Dispute resolution process.

Having noted the need for a process to deal with these two elements, the following caveat must be made. Just because there is a process in place does not mean that all disputes will or must be resolved in the course of land rights formalization. There may be some circumstances where the parties to a dispute simply cannot find agreement. Similarly, if a process is in place and a party or parties to a dispute choose not to follow a dispute resolution process, there is little the project can do about it other than to direct those persons back to the process. Again, if the parties cannot find agreement or refuse to be a part of the process, then an agreement cannot be enforced upon one or more of them. Only a court has this power (and it may be the case that even a court order may not be followed). In these circumstances, it is suggested that the LRFP must proceed without including the purported rights of the disputants in the hope that demonstrable results for others in the pilot areas will put pressure on them to resolve their differences and join the others. An outline of the process framework is set out in Figure 1. Dispute Mitigation and Resolution Process Framework, below.

## 3.2 ELEMENTS OF THE LAND DISPUTE RESOLUTION PROCESS (AN EXPLANATION)

### 3.2.1 Process Element I: Dispute prevention and mitigation

Prevention is better than cure. For that reason, a dispute prevention and mitigation process is a critical element within an overall DMRP. In this case, this element itself comprises three sub-elements:

- Public information and awareness (PIA),
- Administrative/institutional support, and
- Participatory boundary demarcation.

Each of these sub-elements has an important role to play in preventing or mitigating disputes during the LRFPP.

### ***Public information and awareness***

Public information and awareness is the cornerstone of any administrative process affecting peoples' rights in general. This is especially true in the case of land rights issues which are always politically charged and often of social, economic, cultural and spiritual significance (depending on the location of the land, its inhabitants and their culture). The purpose of this section, however, is *not* to articulate a complete PIA strategy for the Project. That is to be undertaken separately and more comprehensively. Instead, and because of the crosscutting nature of dispute prevention and management approaches, this section will state how a PIA approach to land-related disputes can be incorporated in a broader PIA strategy (which itself will be incorporated within the LRFPP manuals).

A community understanding of land rights and the Land Law is one way in which land-related disputes can be prevented. Public information and awareness provides individuals and communities with the knowledge that can enable them to assert their rights and potentially resist those who may try a 'land grab' or otherwise unlawfully interfere with the land rights of others. Also, awareness of a person's or community's knowledge of land rights may act as a deterrent to unlawful activities. On this basis, a "*know your land rights and responsibilities*" type PIA campaign will be important, among other things, as a dispute prevention and mitigation strategy.

An understanding of the LRFPP is also critical to the success of the Project. Well before the actual process of formalization takes place, the Project must visit the pilot project areas and convene meetings with members of the community to describe the process and to ensure that the community supports it. Again, aspects of the process could be described in pictograms in the style of those mentioned below. This aspect of the dispute prevention strategy will be articulated further in the development of the LRFPP manual (because it has a dual role of explaining the process and thereby potentially preventing disputes).

As part of the PIA campaign, it is suggested that there should be included components related specifically to dispute resolution process (articulated below) and also to anticorruption (corruption being a big problem in Angola, as noted above). For the moment, this campaign would be applied at a local (project area) level.

To this end, it should be noted that DW has been working with funding from the Ministry of Urbanism and Environment (MINUA) to development of a public information campaign in the context of a train-the-trainer (TOT) process for public officials with an interest in land rights issues (i.e., those from MINUA). This process, noted in more detail below under "Administrative/institutional support", has been developed by Hildegard Kusche-Uebber, a consultant to DW. Some of her work has been reproduced in Annex A as an example of a useful approach to a public information campaign on these topics. This approach includes pictograms especially useful for illiterate members of the communities. These pictograms would be supported by a commentary, ideally from GoA representatives but, at least initially, by Project staff. These could be expanded, however, to include additional pictograms related to "responsibilities" associated with land rights. These could include themes of "respect"; for example, "respect for boundaries", "respect for proper use of land", "respect for community processes in relation to land", "respect for women's rights and the rights of other disadvantaged groups". In this case, "other disadvantaged groups" means displaced persons, resettled

persons, returnees, disabled citizens (including those who are sick), orphans and former soldiers.<sup>34</sup> Themes of *respect* could work toward preventing disputes by emphasizing fairness, tolerance and understanding.

Because of the special disadvantage of women in land rights in Angola (especially in rural areas where traditional rules may apply), it is suggested that any PIA campaign especially target women (perhaps in separate meetings) so as to ensure that “*know your land rights...*” and “*respect*” campaigns can be as effective as possible. Also, land rights of ODG, in particular orphans and demobilized soldiers (including girls/women), will need to be addressed. The implementation of these campaigns, however, must work within an overall PIA strategy.<sup>35</sup>

### ***Administrative/institutional support (capacity building)***

A Land Rights Formalization Process (and the DMRP within it) is not particularly useful if the government officials responsible for land rights issues (MINUA and Ministry of Agriculture and Rural Development [MINADER]) do not know the Land Law and any related processes themselves. This also applies to local traditional leaders (*soba*) and local administrators. A failure by these persons/institutions to understand the laws and processes that they are purporting to apply can only lead to disputes within and *with* the community and its individual inhabitants. By providing legal training, the capacity of the relevant institutions can be raised and, hopefully, this will flow through to communities who will have greater confidence in government and its processes. Therefore, it is important for the dispute resolution process not only to provide PIA campaigns but also support government capacity building and decision making.

Anecdotal evidence suggests that government knowledge of the Land Law and related issues at a regional level (in Huambo) is not much higher than the understanding of the larger community; that is, their knowledge is small and perhaps even nonexistent in places.

The institutional support in this case is critical in this part of the process especially as it relates to providing public education to communities and also in the development of an understanding of principles to be applied in the mediation/arbitration of disputes at a local level by community leaders who may be inclined to apply rules that may not be consistent either with the law and/or international human rights law.

As noted above, DW’s project funding from MINUA to develop a PIA TOT process could be useful for the process here, especially if it can be adapted for rural areas. These activities must start before formalization activities (project mapping teams) start.

### ***Participatory boundary demarcation***<sup>36</sup>

Participatory boundary demarcation is a useful tool in developing sustainability in the mapping process, and placing the emphasis on determining boundaries on the communities in question and not on the project mapping teams. Community-agreed boundaries are more likely to survive the test of time than those enforced during a formal demarcation process. Disputes and differences that arise during the participatory boundary demarcation can be dealt with locally and in accordance with, generally speaking, traditional dispute resolution mechanisms (discussed in more detail below). Participatory boundary demarcation means that communities buy in to the process and are responsible for the outcomes. Having said this, it does not mean that the process will be free from disputes. Nor does it mean that those disputes will necessarily be solved. But it does

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<sup>34</sup> The specific ODG in the pilot project areas would be identified in the benchmarking survey being conducted by DW at the time of writing.

<sup>35</sup> For example, as noted earlier in Section 2, women rarely seemed to take land-related disputes either to *sobas* or local administrators. If this is a result of a lack of land rights understanding, it may be expected that an effective PIA strategy would potentially increase the number of land-related disputes in target areas. This possibly needs to be taken into account in capacity building activities (e.g., for *sobas* and local administrators) during the LRFP itself.

<sup>36</sup> This section is not meant as a complete outline of the participatory boundary demarcation process, rather an explanation of how this process can help to limit land-related disputes in the land rights formalization process.

mean that the process has a better likelihood of being sustainable because the result comprises, generally, the will of the community.

Again, the sequencing of the process is important here. This process should not take place until appropriate PIA and institutional support processes have been completed, thereby potentially reducing the number of disputes because:

- Communities better understand their rights,
- Authorities and traditional leaders also understand land rights under the law, and
- Traditional authorities and others are better armed (through training) to facilitate the resolution of disputes.

As a preliminary exercise in the participatory boundary demarcation process, community leaders can be given notebooks to make notes of land occupation and rights. They may also describe land disputes that exist in respect to land. Before formalization of boundaries is undertaken, these notebooks could be reviewed by Project members to highlight any potential problems in the formal mapping process. Indeed, DW is currently using such an approach in its other land-related activities.

Also, disputes that arise during this preliminary process could be dealt with in accordance with traditional and/or accepted local methods of dispute resolution (with ADR methodologies applied where they have been accepted by local authorities).

### **3.2.2 Process Element 2: Dispute resolution**

The second element of a DMRP is dispute resolution. By definition, this element assumes that the dispute in question has not already been prevented or otherwise managed or resolved under Element 1 (dispute prevention and mitigation).

#### ***General process overview***

Land-related dispute resolution processes are formally set out in Part IV of the Land Law and associated draft Regulations.<sup>37</sup> The process requires, in rural areas, for disputes to be dealt with initially at a local level in accordance with local customs.<sup>38</sup> Failing resolution, the dispute is referred to mediation and conciliation by an organ that is to be set out under Regulations 209 -212: a “Justice Provider”.<sup>39</sup> At the time of writing, the Regulations have not been published and, therefore, the institution of Justice Provider has not yet been established. In any event, it would seem unlikely in the short term that, even if such institutions were established, the institution would become practically operational.

Likewise, the provisions in the Land Law and draft Regulations establish *new* institutions with very rudimentary procedures. It is questionable whether these institutions and the processes they envisage will

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<sup>37</sup> Law Number 9/04 of 9 November. These provisions are also discussed by Nielsen, *op. cit.*, at 35. The draft Regulations have not yet been published and, therefore, do not have the force of law. They are mentioned here as the basis for government thinking when the Council of Ministers apparently agree on their terms in 2006.

<sup>38</sup> Article 82 (*Litigation in Internal Rural Communities*) states:

1. Those litigations relative to collective rights of possessions, of management, of use and fruition, and of common useful domain of rural community lands will be decided in the interior of rural communities, in harmony with the respective community's effective customs.
2. If one of the parties does not agree with the resolution of the litigation under the terms stated in the previous number, the same will be decided by the tribunals, being applicable, in this case, that which is stated in section II of the present chapter. [NB this translation was provided by RDI].

<sup>39</sup> *General Regulations on Land Concessions 209(2)* [NB this translation was provided by RDI].

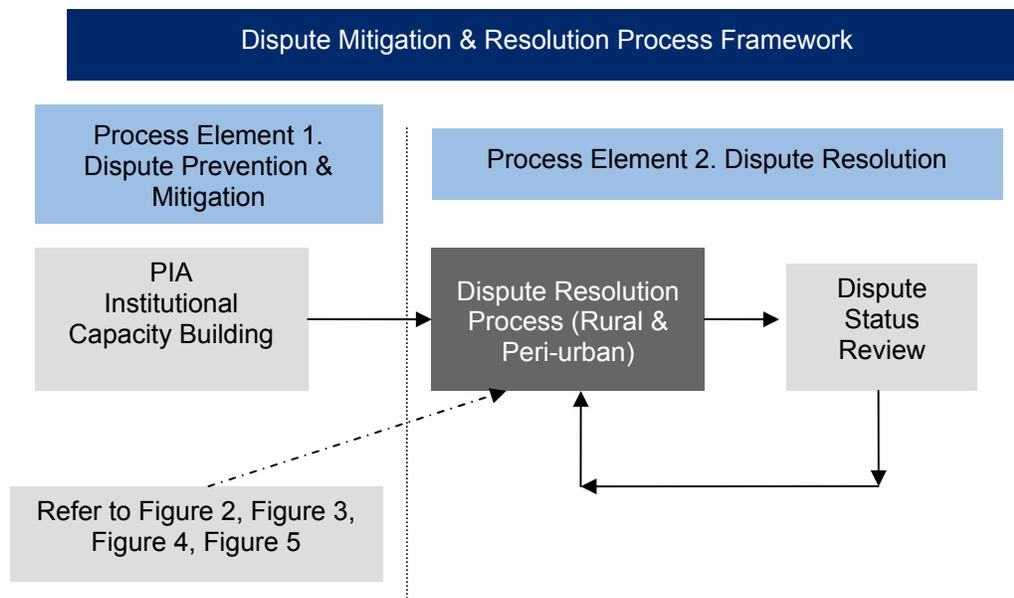
have relevance for ordinary Angolans, especially those in rural areas where customary principles may apply. Of course, this is the reason that customary resolution principles are prescribed in the Land Law in relation to rural areas. But, if there is discord about the result of the customary process, then there may be practical difficulties in undertaking the alternative processes established under the Land Law.

It should be noted that, in the peri-urban Project area, many residents also preferred to take their issues to the local administrator.<sup>40</sup> So, at a local level (in the Project areas, at least), it seems that there is general preference in the communities to try to address land-related disputes locally notwithstanding the legislation. While most persons spoken to had little knowledge of the new Land Law, encouragement to resolve disputes before more formal processes are undertaken seems sensible.

All this is consistent with a relatively clear policy direction of this legislation; namely, resolution of disputes in relation to land should be attempted at a local level before being referred to a formal legal process through the courts system. This is an admirable policy and it is the basis of the DMRP suggested in this report.

The process proposed here is closely allied to that suggested in the Land Law. In terms of peri-urban and rural land, disputes arising in the participatory boundary demarcation process should be dealt with first by the parties in an attempt, informally, to resolve the matter. Failing that, the matter should be dealt with in a local and/or customary way. This will require the local administrator (if willing) and *soba* to undertake local forms of mediation and ADR processes. The specific process should not be articulated beyond these general terms because of the potential for differing local methodologies to apply. By trying to articulate a process in detail, it potentially detracts from the flexibility required in a general practice that can be replicated with the necessary flexibility to take into account local situations. The DMRP should be robust, and this approach supports that objective.

**FIGURE 1. DISPUTE MITIGATION AND RESOLUTION PROCESS FRAMEWORK**



***Land-related disputes with elements external to the LRFP***

Land-related disputes between communities (inter-community disputes)

<sup>40</sup> Note the earlier observation, however, that women seemed not to take land-related disputes to traditional or municipal leaders.

Particularly in rural areas of the project where community boundaries are being demarcated, there is a possibility that disputes may arise. They could take the form of an argument over the correct boundaries of the respective communities or even disputes as to the use of, say, a common resource (e.g., access to water resources, firewood etc.).

An alternative process for dispute resolution will need to be applied in these circumstances as it is not an intra-community dispute. Inter-community disputes, nevertheless, can apply the same general principle; that is, the dispute can be attempted to be resolved at a local level between the two communities or, where individuals of two different communities are involved, community representatives (e.g., neighboring *sobas* or other traditional mechanisms/institutions) can be used to help resolve the problem. In these circumstances, the LRFPP would facilitate the following process:

- Encourage the community *sobas*/traditional leaders to resolve the dispute in a mutually beneficial way;
- Failing this, the *sobas* will be encouraged to refer the dispute to the local Communa Administrator to facilitate the resolution in a mutually beneficial way; and
- Failing this, the communities will be referred to the process envisaged by the Land Law.

A failure to resolve the dispute will mean that the demarcation process cannot proceed. It is imperative, therefore, that the LRFPP assist the communities to exhaust all possibilities before referring the matter to the other mechanisms envisaged under the Land Law and Regulations. Refer to Figure 3.

#### Land-related disputes between *individuals* of two adjoining communities

Land-related disputes can also potentially arise where individual land rights claimants occupy land abutting the land of a neighboring community. As noted above, such disputes could involve arguments about the boundaries of the individual land parcels or, again, the use of a common resource.

In such cases, the LRFPP is likely to be interested in demarcating only one of the parcels (unless the two communities in question are being demarcated together). As noted above, however, the nature of the dispute has an inter-community element and, for that reason, it should be dealt with differently. In these circumstances, the LRFPP would facilitate the following process:

- Encourage the parties to the dispute to resolve the dispute themselves;
- Failing this, encourage respective *sobas*/traditional leaders to facilitate the resolution of the dispute; and
- Failing this, the parties will be referred to the dispute resolution process envisaged under the Land Law and its Regulations.

A failure to resolve the dispute will mean that the demarcation process cannot proceed in respect to the land parcel under consideration by the LRFPP. Refer to Figure 4.

#### Land-related disputes involving third parties outside the community (and not an adjoining community landholder)

There have been and will continue to be land-related disputes involving third parties who reside outside the community and members of a community or the community itself. An example, as noted earlier, is where expanding local communities have encroached on the land of formerly abandoned Portuguese-era *fazendas*. It is suggested that potential conflict of boundaries be avoided completely by assessing what parts of communities extend over old *fazenda* boundaries and *not* demarcating those areas until such time as there is developed a policy by the GoA for dealing with these potentially contradictory rights.

Despite this, there is the potential for external parties to create problems with local communities. This does not necessarily fit within the ambit of the LRFPP; it is separate from it. The author was told by the

Administrator of Chiumbo Communa that, although 14 *fazendas* had been newly reoccupied in 2006, no more had been in 2007. It may be the case that the pressure on local community expansion is, therefore, reducing. This remains to be seen. What is apparent, however, is that there is a potential power imbalance between powerfully connected *fazenda*-holders and local communities in terms of negotiation strength. Depending on developments, a future project could consider ways to redress the power imbalance in *fazenda* holder/ community negotiations. There is no doubt that ‘fuzzy’ agreements suit *fazenda* holders because agreed-upon terms can be so ambiguous as to be ineffective and unenforceable. In circumstances where it appears that the third party to the community is in a more powerful bargaining position (e.g., the third party has strong political or military connections, is wealthy, or is otherwise in a stronger position than the community or individuals within it), the LRFPP may consider linking the community (or individuals within it) to a community advocate who may provide support. (Refer to Figure 5.)

In case of such imbalances, communities could benefit from the following interventions:

- Advocacy support (e.g., from a local NGO specializing in legal/land rights advocacy<sup>41</sup>), or
- Training in negotiation skills.

Despite the potential for such disputes to fall outside the ambit of the LRFPP, it is suggested that a dispute resolution process would include the following:

- Encourage the parties to the dispute to resolve the dispute themselves (with the community perhaps making use of a land rights advocate);
- Failing this, encourage *sobas*/traditional leaders to facilitate the resolution of the dispute;
- Failing this, encourage the Communa Administrator to facilitate the resolution of the dispute; and
- Failing this, the parties will be referred to the dispute resolution process envisaged under the Land Law and its Regulations.

### ***Alternative Dispute Resolution***

ADR is often proposed as an opportunity or even an additional “tool” for decision makers to apply in trying to facilitate the resolution of disputes. It is a useful additional course of action where the existing process can be viewed as limited—for example, where the decision maker is, by definition, an arbitrator as distinct from a facilitator.

In general terms, the author’s rapid assessment of the Project areas suggested that mediation-and-reconciliation-type approaches to land-related disputes already apply. Furthermore, the formal process articulated in the Land Law confirms that such a process should apply. Assuming that *sobas* and administrators are in fact facilitators of dispute resolution, there may be little need for further training on this issue beyond the proposed PIA activities set out above. It is likely that ADR needs to be assessed on a case-by-case basis depending on general community satisfaction with the ‘resolution’ of local land-related disputes. This must be reviewed in the context of ongoing project activities and can happen in Months 6 and 12 after the completion of the formal boundary demarcation at the same time that the dispute review process is taking place (see below). If necessary, this potential activity could be explored more deeply in the context of Project expansion.

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<sup>41</sup> One such advocacy NGO is ADRA.

### 3.3 PRINCIPLES TO APPLY IN DEVELOPING A PROCESS FOR MANAGING LAND-RELATED DISPUTES IN THE LAND RIGHTS FORMALIZATION PROCESS

As noted above, it is important to acknowledge the DMRP in the context of land rights formalization comprises a dispute prevention and mitigation component in addition to a bare disputes resolution component. Without the former, the dispute resolution component will only ever treat the symptoms and never the potential causes; thus, placing added strains on institutions (State and traditional) otherwise dedicated to resolving disputes. The greater the percentage of disputes that can be avoided in the first place, the more sustainable the process can become in terms of dealing with unresolved disputes.

With this in mind, in developing a DMRP, it is suggested that the following general principles should be applied.

#### 3.3.1 General

1. *Sustainable.* The DMRP must be sustainable. This means that the process should draw upon existing and accepted local land-related dispute resolution mechanisms and institutions (subject to some important qualifications<sup>42</sup>). Furthermore, this also means avoiding the creation of new institutions that may have little or no relevance for local communities who have used traditional methods to resolve disputes in the past. New institutions take substantial resources to establish and may, ultimately, be rejected by the local communities who understand better the former, traditional processes.
2. *Transparent.* The DMRP should be transparent. Notwithstanding principle 1, the process should be open and transparent to those participating in it. Where this may not have ordinarily been a traditional approach, it is suggested that new ‘tools’ and education can be provided to traditional and other authorities to facilitate this principle. These ‘tools’ can be in the form of providing skills education in dispute resolution (e.g., training in mediation techniques) and training in basic human rights and legal issues pertaining to land laws and inheritance issues. These are addressed in more detail below.
3. *Consistent with the Law.* The DMRP must be consistent with the law and principles of justice, fairness, equality and international human rights.<sup>43</sup> This is a general exception to principle 1, above. Unless the decisions made by community leaders are consistent with the law and other basic principles of human rights, ingrained discrimination can be perpetuated within communities often to the detriment of women, children and ODG.
4. *Flexible and Robust.* The DMRP must be flexible and robust because existing local dispute resolution mechanisms are not homogeneous. Like principle 1, this principle relates also to sustainability. Because local dispute mechanisms are not homogenous, a complete DMRP must necessarily have an element of flexibility within it or it will only have very local application and be irrelevant for other areas. By containing a component that relates to the use of local mechanisms (whatever they may be) an overall process can be maintained that is consistent throughout yet permits for local variations.

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<sup>42</sup> In addition, it should be noted that traditional mechanisms may not be appropriate where those mechanisms no longer have the support of the communities to which they are said to apply. A case in point is the situation in some areas in Rwanda where research has shown that communities prefer more recent institutions to deal with land-related disputes because they have lost confidence in traditional mechanisms (either because they are seen as inadequate for dealing with current tenure issues or the traditional leaders are seen as corrupt or not prepared to listen). See Daly, E. 16 February 2007. *Results of Participatory Field Consultations in Four trial Districts March – October 2006* (final draft). p. 87. This does not appear to be the case in the areas under this Project, insofar as traditional mechanisms apply in those areas.

<sup>43</sup> *Universal Declaration of Human Rights* (1948), *International Covenant on Economic, Social and Cultural Rights* (10 April 1992), *International Covenant of Civil and Political Rights* (and its Optional Protocol - 10 April 1992), *Convention on the Elimination of all Forms of Discrimination against Women* (17 October 1986) and *Convention on the Rights of the Child* (4 January 1991).

5. *Consistent with the LRFP.* The DMRP must sit within a consistent land rights formalization process. This stands to reason because the DMRP is essentially a subset of the LRFP. The DMRP must be integrated within an overall LRFP to allow both to work effectively.

### 3.3.2 Public Information Awareness and Training

6. *Public Education is Critical.* Public education in respect to their rights and responsibilities relating to land must be a critical element in the process (and this process must include an element relating to anticorruption in both the LRFP and the DMRP). This must be part of any preliminary LRFP. In terms of sequencing, ideally, it should happen at the ‘front end’ of the process; that is, before any formal mapping or property demarcation process is undertaken and in concert with other LRFP education and training procedures (e.g., explaining the communities about the LRFP itself).
7. *Institutional Training and Capacity Building is Critical.* Local dispute resolution institutions (formal and informal) must be supported in terms of working with disputants to resolve disputes (e.g., they should be supported in developing independence, impartiality and an understanding of the law). This is the second prong of a training and educational awareness campaign. While the first prong (principle 6, above) focuses on public information awareness, this prong focuses on capacity building/training for institutional decision makers (formal and informal). There will likely be a degree of overlap between the two approaches but the institutional support suggested here will also support the addition of ‘tools’ to assist those decision makers to make better decisions that are in accordance with the law and international human rights principles, as well as potentially taking the pressure off institutions and building respect for decisions, within the respective communities.

### 3.3.3 The DMRP

8. *Understand Local Disputes.* The Project personnel must have an understanding of existing and latent disputes within the area in which land rights formalization processes apply and those disputes (so far as possible) must be identified and assessed before formal mapping (i.e., identified during the participatory mapping process) begins. This can be done in two ways. First, community leaders, as part of the preparation for participatory boundary demarcation processes, can ask community leaders to, among other things, log known disputes in his or her area.<sup>44</sup> In addition, demarcation teams can also undertake a rapid assessment of the areas to be mapped in advance of formal mapping so that they may better understand the situation on the ground and confirm (or not) the assessments undertaken by community leaders.
9. *Participatory Process Needed.* The LRFP must be a participatory one (this is associated with community-based participatory mapping processes) and leaves it to communities, primarily, to resolve their own disputes at a local level where appropriate. Again, this relates to sustainability issues noted in principle 1, above. Unless the LRFP is participatory, it could lead to disputes and even the failure of the process as a whole.
10. *LRFP Teams Must be Impartial.* LRFP teams must be seen as impartial in the DMRP and, therefore, they should not be a part any formal mediation, arbitration or other process associated with a dispute (except in terms of providing community information and education about rights and responsibilities). Unless this is seen to be the case, problems in dealing with disputes may be attributed to the Project rather than other causes (e.g., corruption or misinterpretation of the law by community decision makers). By remaining impartial, the integrity of the LRFP can be maintained despite problems in the local dispute mechanisms.

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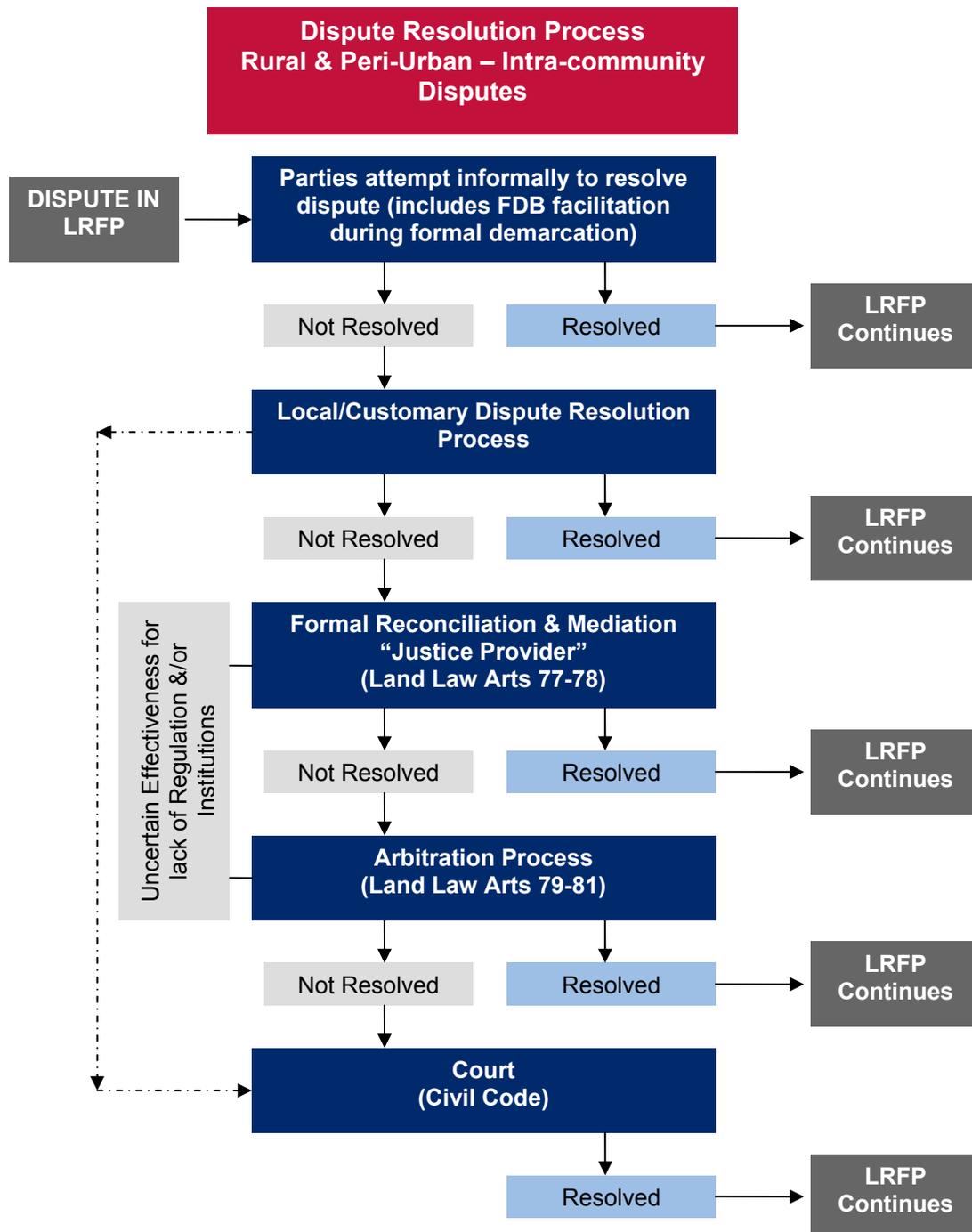
<sup>44</sup> DW is currently undertaking this process by distributing note books to community leaders (*sobas*) in relation to identifying rights to land. By also requesting that *sobas* identify known disputes, the Project property demarcation teams can obtain a snapshot of potential disputes in an area.

11. *Do Not Perpetuate Injustice.* Despite principles of support of local decision making, Project teams must not record or perpetuate a manifest injustice in respect to land rights even where it may appear on the surface that there is agreement (e.g., where the recording would manifestly violate a person's human rights, in particular, the rights of disadvantaged groups such as women and orphans). To do so can potentially jeopardize the LRF process and cause it to run against legal principles. Again, this relates to the exceptions to principle 1, above.
12. *Equal Rights Acknowledgement Must be Part of the LRF.* The legal acknowledgment of the equal rights of women must be noted when recording rights (e.g., where there is a husband and wife claiming a right, both should be recorded as rights holders and not just the husband or 'head of household'). This is consistent with principle 2 noted above. This should override any 'local' rules that may purport to apply. However, it should be noted that all rights may not be created equally. In the development of the LRF, the nature of rights that are to be recorded should be clearly articulated.
13. *Rights Related to Unresolved Disputes will not be Formally Recorded.* Where disputes are not resolved either before, during or after the formal mapping process, the allotment(s) in question will remain without a formal 'rights holder' having been recorded. Project teams can refer the disputants to the DMRP. It is hoped that by leaving unresolved disputes in this way (while neighbors obtain formal rights) the parties may be pressured into resolving their disputes in due course. Ultimately, however, if disputants cannot agree, they will only have the DMRP to turn to (the ultimate result of a failure to resolve a dispute is to refer it to the process articulated in the Land Law and set out below—ultimately, a formal court process).
14. *Disputes Must be Logged.* Disputes in respect to the land in question (occurring either before or during the rights formalization process) must be logged and described by Project teams for future reference. This provides important information about the nature of disputes and can be used for refining and targeting future PIA campaigns.
15. *Disputes Must be Reviewed.* The results of the process (e.g., disputes logged as resolved) must be reviewed after every six- and 12-month period (for the first 12 months after allotments and rights are recorded) to determine whether disputes remain resolved. Again, this process of review helps to provide valuable information about the process and the sustainability of land-related disputes. Disputes logged but not resolved must be reviewed after every six- and 12-month period (for the first 12 months after allotments and rights are recorded) to determine whether the status of the dispute has changed (e.g., resolved, unresolved/unchanged, unresolved/worse). Again, this permits the collection of valuable data about dispute resolution sustainability and how disputes can be resolved or not (refer to Annex B).

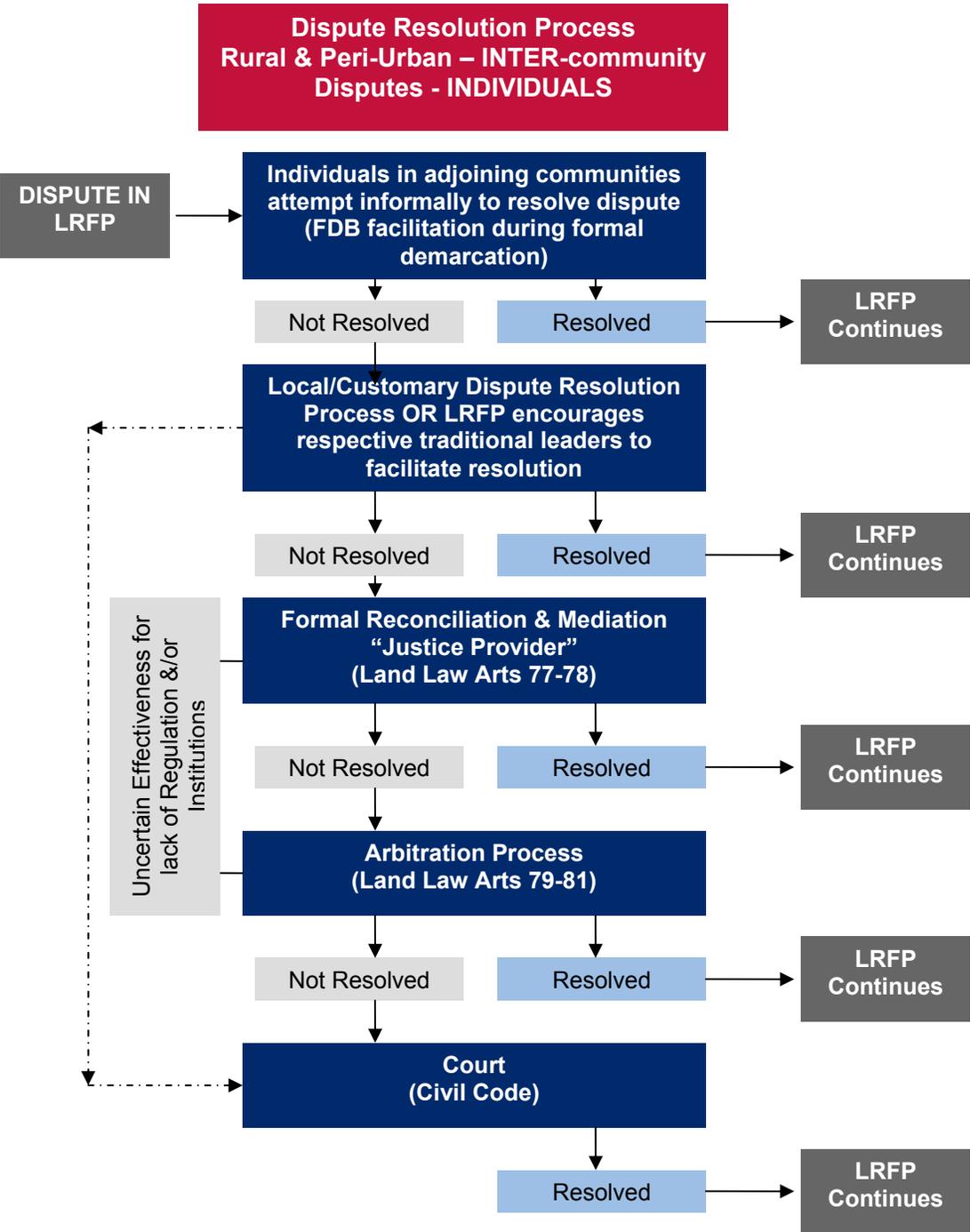
On the basis of the principles noted above, and the process set out in Section 3.2, guidelines have been developed and are set out in Annex B. The guidelines also include "Explanatory Notes" for Project teams that are designed to provide background to the process.

In undertaking Project activities, teams (responsible for working with communities in the formalization process) should be guided by the LRF manuals for dealing with disputes. Again, since these guidelines will form only a small part of LRF manuals, they will need to be integrated within them. The suggested guidelines for dealing with disputes in the LRF are contained within (refer to Annex B).

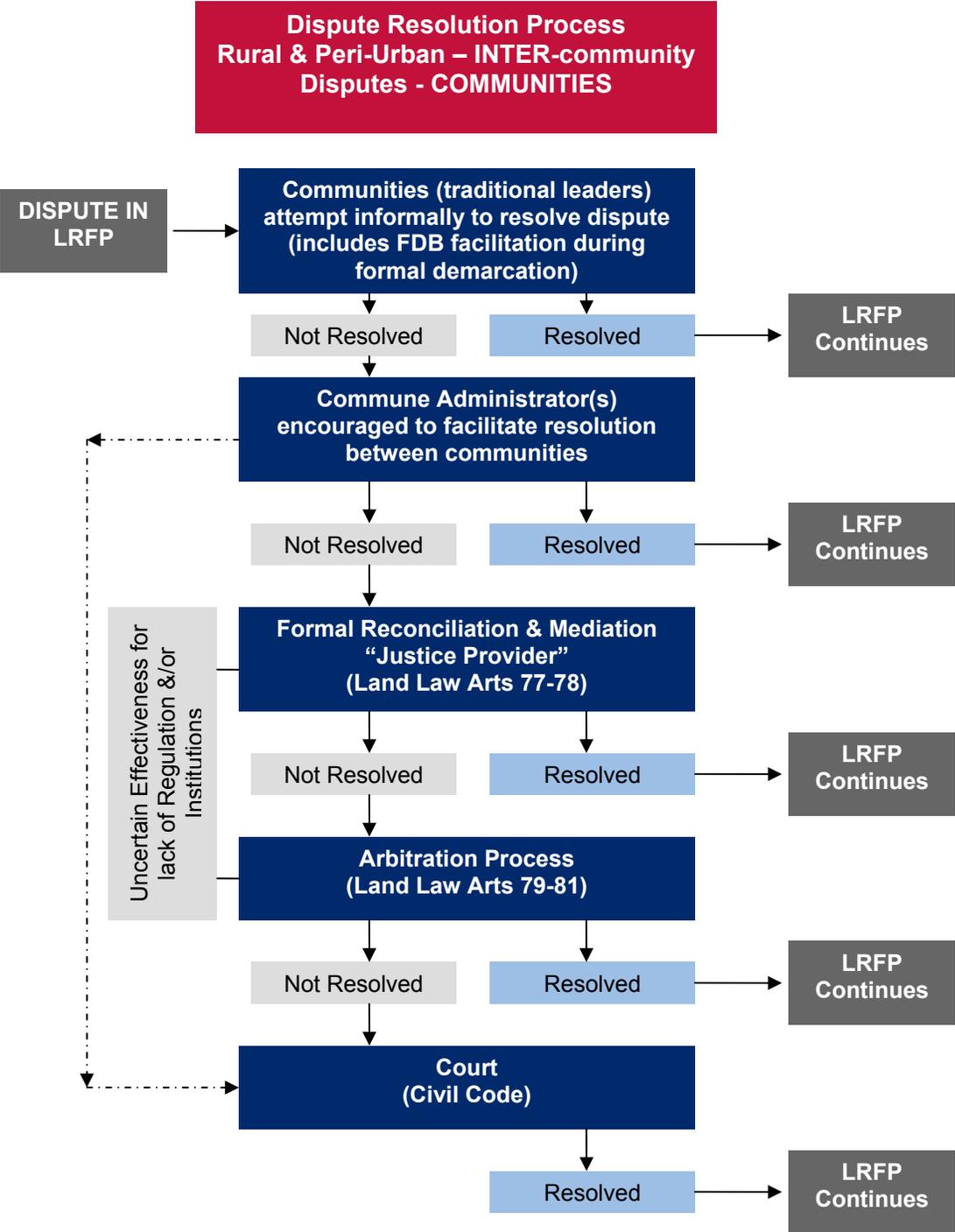
**FIGURE 2. DETAIL OF DISPUTE RESOLUTION PROCESS (INTRA-COMMUNITY DISPUTES)**



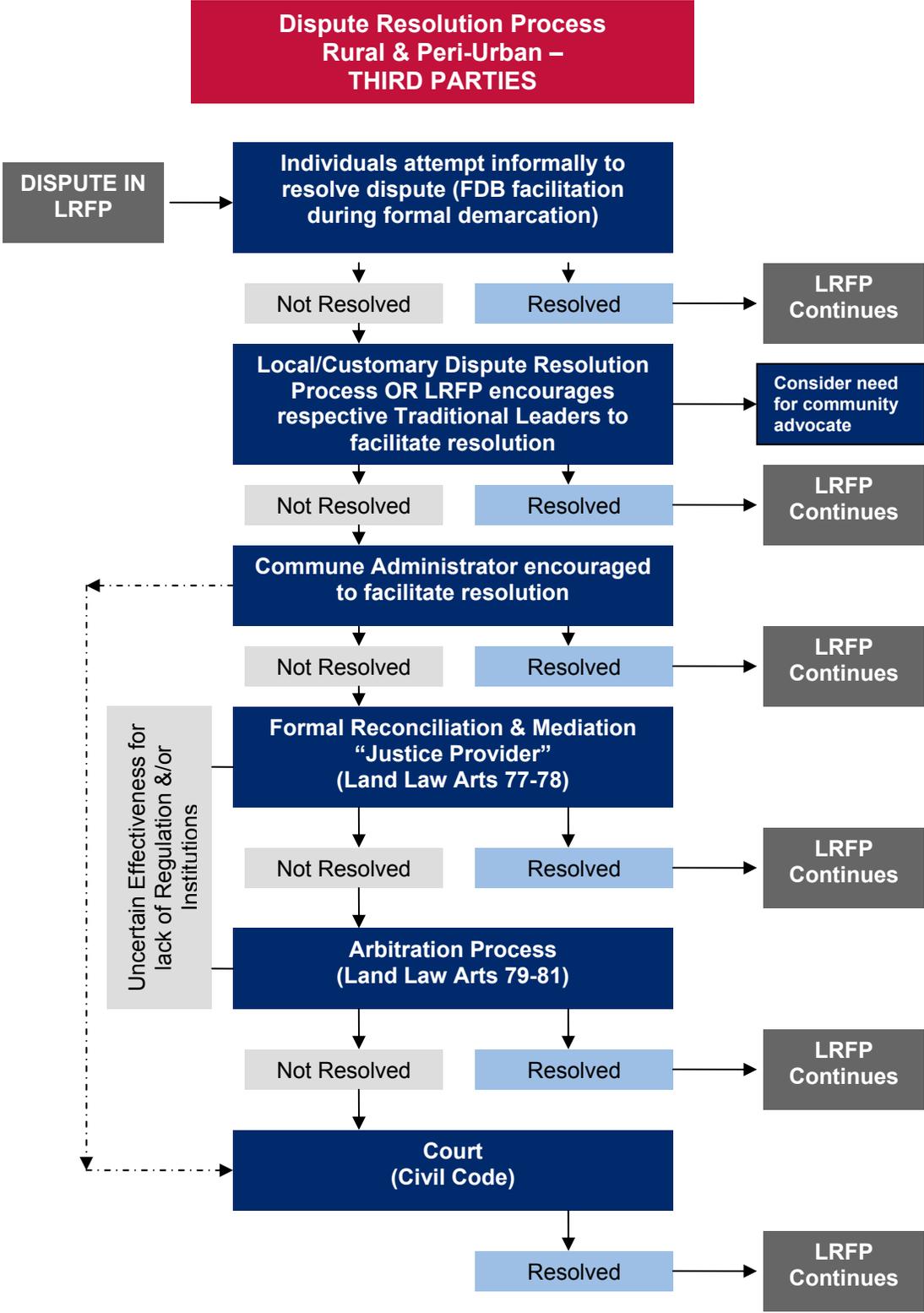
**FIGURE 3. DETAIL OF DISPUTE RESOLUTION PROCESS (INTER-COMMUNITY DISPUTES - INDIVIDUALS)**



**FIGURE 4. DETAIL OF DISPUTE RESOLUTION PROCESS (INTER-COMMUNITY DISPUTES - COMMUNITIES)**



**FIGURE 5. DETAIL OF DISPUTE RESOLUTION PROCESS (DISPUTES INVOLVING THIRD PARTIES)**



# 4.0 NEXT STEPS

## 4.1 INTEGRATION INTO LAND RIGHTS FORMALIZATION PROCESS

As noted earlier, the DMRP is one component of an overall LRFP. Its general principles must also be considered by DW's Project implementation team for review and consideration. This will occur by emailing a draft report to DW for comment). Upon receipt of those comments, a report with comments will be forwarded to RDI's Land Law and Policy Specialist who is responsible for finalizing the LRFP.

Therefore, the next steps in this process require the draft guidelines (refer to Annex B) to be incorporated within that LRFP. However, because that LRFP has yet to be articulated in detail, it is expected that there will be some amendments required on the basis of streamlining ideas that may overlap with broader LRFP details as well as the unification of terminology and some processes.

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# ANNEX A. PUBLIC INFORMATION AWARENESS AND LOCAL ADMINISTRATION TRAIN-THE-TRAINER APPROACHES (LAND-RELATED DISPUTE MITIGATION AND RESOLUTION PROCESS ELEMENT 1: DISPUTE PREVENTION & MITIGATION)

## 8. Como podem ser resolvidos conflitos de terra?



# ANNEX B. PROJECT TEAM GUIDELINES FOR DEALING WITH DISPUTES (AND THEIR RESOLUTION) IN THE LRFP

*These Guidelines for Project Teams dealing with Land-related Disputes on the LRFP are to be integrated within a larger LRFP framework. These Guidelines must also form the basis of Project Team training before formal demarcation commences.*

## **Pre-participatory Boundary Demarcation Activities**

1. Project Teams must not start formal boundary demarcation until:
  - a. Public Information Campaigns;
  - b. local institutional support processes (e.g., Capacity Building Activities with local leaders); and
  - c. community participatory boundary demarcation activities
  - d. any other necessary activities set out in the guidelines have been completed.
2. The activities of Project Teams must be impartial and must be seen as such (subject to some of the issues mentioned below).
3. Project Teams, in undertaking their activities, must comply with the law.
4. Project Teams must uphold the highest standards of fairness and must not accept any gift or promise from any person involved in the LRFP (including community members, *sobas*, local administrators etc.)

## ***EXPLANATORY NOTE FOR LRFP TEAMS:***

### ***Pre-participatory Boundary Demarcation Activities***

#### *Public Information and Awareness (PIA)*

PIA activities should start in the context of community mobilization. The timing of these general activities must accord with the LRFP currently under development. Yet it is suggested here that local PIA activities in the form of community understanding include the following elements:

- “Know your rights and responsibilities”
- Anticorruption
- Land-related Disputes Processes<sup>45</sup>
- “Respect” (including respect for boundaries, the rights of women and other disadvantaged groups)

For the purposes of contributing effectively to dispute prevention, these campaigns (whether together or separately depending on community needs/wishes) must be held before participatory demarcation activities are started within communities. These activities must be coordinated with the process set out by the Public Information Awareness Strategy.

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<sup>45</sup> Refer to the examples set out in Annex 0.

### *Institutional Support (Capacity Building)*

Given anecdotal evidence that many administrators know as little about the new *Land Law* as their communities, it makes sense that Institutional support for decision-makers/facilitators will take much the same form. In this way, all stakeholders in the process will get the same information. Again, the process should be coordinated with that set out by the Public Information Awareness Strategy.

### ***Participatory Boundary Demarcation Activities***

Communities will be responsible for the demarcation of their only land parcels. (The description of this activity will be undertaken under the LRFP still in development.) As part of the community preparation for this process, communities and traditional authorities (Soba) shall be provided with suggestions from Project Teams as to how this can be undertaken. Ultimately, however, the communities may decide to undertake the process how they choose and, if necessary, in accordance with traditional boundary demarcation processes. For the purposes of formal demarcation activities, however, it is advisable that communities be encouraged to clearly mark boundaries to ease the burden of formal demarcation.

If a dispute arises in the context of community participatory boundary demarcation, the parties should either follow the following steps (Also refer to Figure 2. Detail of Dispute Resolution Process):

1. attempt to resolve the issue on the spot and informally;
2. failing this, the parties may refer the matter to the traditional authority (e.g., Soba/Administrator) in accordance with local/traditional methods of land-related dispute resolution (and the *Land Law* for rural areas); or
3. failing this, seek the appointment of mediators by a “Justice Provider”, if that institution exists (Land Law Arts 77-78 and draft Regulations 209-212)
4. failing this, the parties may be referred to the Arbitration process set out under Articles 79-81 of the *Land Law*, if the institution exists.
5. failing this, the parties may be referred to the formal Court System in accordance with the *Civil Code*.

Indeed, this process should be consistent across all boundary demarcation and other activities relating to the demarcation and recording of rights (subject to Formal Demarcation Body facilitation, below, as if part of step 1 during formal demarcation).

### **Formal Boundary Demarcation Activities**

5. Project Teams must meet with traditional leaders (e.g., Soba) or elected committees (**FDB**) to determine participatory boundary demarcation – depending on the process actually selected for the overall LRFP, before undertaking formal boundary demarcation in order to determine the nature and severity of potentially unresolved land-related disputes in the pilot area. On the basis of this dispute assessment, Project Teams must visit the disputants to explain the LRFP (including the fact that the Project will not be deciding disputes and will only be ascribing details of land parcel occupation to those parcels that are not in dispute). Project Teams may encourage the disputants to resolve their disputes amicably and otherwise refer them to the process identified here. *[TO BE COORDINATED WITH THE LRFP]*
6. The dispute resolution process is a guide. At any time during the dispute resolution process, the parties are to be free to withdraw from the process articulated here and arrive at their own solution to a dispute so long as that solution is peaceful, fair and lawful. This principle is paramount.
7. Parties to a dispute are not required to resolve their dispute. They are merely encouraged to do so as to participate in the LRFP.

8. Project Teams may only give advice to disputants that direct those persons to the process of dealing with disputes and encouraging resolution (Refer to Figure 2. Detail of Dispute Resolution Process).
9. During the formal demarcation process, Project Teams must obtain the signatures of the rights holders of all neighbouring land parcels to the map confirming boundaries (where there is a husband and wife occupying neighbouring land parcels, the rights holders are considered to be BOTH the husband and the wife and, therefore, the signatures of ALL must be obtained). *[TO BE COORDINATED WITH THE LRF]*
10. Subject to these Guidelines, disputes occurring at any time during the LRF should be referred to the dispute resolution process in Figure 2. Detail of Dispute Resolution Process.
11. If a dispute remains from the community participatory demarcation process or if a dispute arises in the context of formal boundary demarcation, then the following process will apply:
  - a. Where the dispute centers around the location of a boundary only, and/or
  - b. Where the dispute centers around an entitlement to rights in respect of the land in question, the Formal Demarcation Body will attempt to facilitate the resolution of the dispute between the parties on the spot. In undertaking these activities, at all times, the Formal Demarcation Body (**FDB**) will act as a facilitator of dispute resolution and NOT as an arbiter of the dispute.
12. If, in the view of the parties to the dispute and the FDB, the dispute cannot be resolved, the parties must otherwise be referred to the dispute process steps noted above (and reproduced in Figure 2. Detail of Dispute Resolution Process).
13. Where land-related disputes are not resolved before formal boundary demarcation (by Project Teams) starts, the rights associated with those land parcels will not be entered on any formal records. Nevertheless, the parties to the dispute will be recorded. *[TO BE COORDINATED WITH THE LRF]*
14. Project teams must not record property rights in accordance with the LRF where there is a manifest:
  - a. Dispute in existence
  - b. Injustice in the rights to be recorded (e.g., there is a husband and wife occupying the land but there is insistence that only the husband's name be recorded as the rights holder).
15. Where an institution noted in the dispute resolution process does not exist (e.g., for lack of a Regulation to provide that institution with procedures) that institution (process step) is by-passed and the next step is followed (refer to Figure 2. Detail of Dispute Resolution Process).

***EXPLANATORY NOTE FOR LRF TEAMS:***

***Formal Boundary Demarcation Activities***

Before formal boundary demarcation starts, there must be an assessment by the Formal Demarcation Body (a body established in the LRF to determine boundaries with the neighboring rights claimants<sup>46</sup>) of the nature of any outstanding disputes in relation to land parcels, arising from the community participatory demarcation process. If it is considered beneficial by the Formal Demarcation Body in resolving the outstanding disputes, that body may request that the Project undertake a new round of Public Information Awareness pertinent to

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<sup>46</sup> This is simply a suggested name. What that body will be and how it will be composed will be determined by the Land Law & Policy Specialist in consultation with DW and local communities.

the nature of unresolved disputes in an endeavor to assist disputants to resolve outstanding issues. In this case, the Formal Demarcation Body must ask the Project and the Project must provide a date to make the necessary presentations (within a reasonable time to prepare the necessary presentations). In undertaking this process, those in the Project responsible for the presentation must ensure impartiality of the presentation and not be seen to side with any particular party to a dispute. Presenter should avoid being drawn into the particulars of a dispute and approach the general topic objectively and in accordance with the law).

If a dispute remains from the community participatory demarcation process or if a dispute arises in the context of formal boundary demarcation, then the following process will apply:

1. Where the dispute centers around the location of a boundary only, and/or
2. Where the dispute centers around an entitlement to rights in respect of the land in question,

the Formal Demarcation Body will attempt to facilitate the resolution of the dispute between the parties on the spot. In undertaking these activities, at all times, the Formal Demarcation Body (FDB) will act as a facilitator of dispute resolution and NOT as an arbiter of the dispute.

If, in the view of the parties to the dispute and the FDB, the dispute cannot be resolved, the parties must otherwise be referred to the dispute process steps noted above (and reproduced respectively in Figure 2. Detail of Dispute Resolution Process, Figure 3. Detail of Dispute Resolution Process (Inter-community Disputes - Individuals) Figure 4. Detail of Dispute Resolution Process (Inter-community Disputes - Communities) Figure 5. Detail of Dispute Resolution Process (Disputes Involving Third Parties)).

If all alternative methods of dispute resolution have been exhausted and a dispute is still not resolved, the parties can be referred to the steps set out above should they choose to use it.

Even where a traditional or other agreed authority claims that a dispute is resolved, if it is obvious to the FDB that the dispute is in fact *not* resolved, the FDB will not note any rights in respect of the land parcel(s) in question. Instead, that parcel(s), so far as possible, will be generally delineated but no rights will be ascribed to the parcel(s).

The only exception to the rule that rights will not be ascribed to still-disputed land is where one of the parties to the dispute holds an Order from a Court that confirms his or her rights to the parcel.

If a dispute remains unresolved (except for a Court Order as noted above) no rights will be ascribed to the disputed land parcel(s).

No matter the outcome of the dispute, the fact that there is/was a dispute in relation to the land parcel must be recorded on the Prescribed Form (refer to Annex C). The general details of the dispute must be noted on that Form. Where the dispute is resolved, the parties to the dispute must be asked to provide a signature or, alternatively, a mark on the Prescribed Form indicating that the dispute has been fully resolved.

Where there is a Court Order (in writing) pertaining to a right/entitlement for the land parcel, in addition to completing the Prescribed Form, the Formal Demarcation Body must either attach a copy of the Court Order to the Prescribed Form, or provide sufficient details of the Court Order on the Prescribed Form (e.g., the name of the Court, the name of the Judge, the date of the Order, any number or other identifying feature of the Order) that enables the Order's authenticity to be independently verified by the Project Team.

Until the authenticity of the Court Order is dependently verified by the Project, any notation made on LRFPS forms that purports to ascribe rights to the disputed land will remain provisional and subject to removal.

Where a party to a dispute produces an Order of a Court that is higher than an earlier Order previously produced and verified by Project, that higher Order will prevail (subject to independent verification by the Project). Otherwise, the same rules will apply to the Order as noted above.

It should be noted, however, that the dispute resolution process is not intended to be a ‘straight-jacket’. At any time, the parties to a dispute can be encouraged to resolve it peacefully, fairly, lawfully and informally.

### **Post-Formalization**

16. Where a dispute arises after the formal demarcation process has been completed (e.g., there may be a return to the area by a former occupant – returnee refugee or former IDP), the claim must be lodged in accordance with any notice period and process prescribed under the LRF. If the counter-claim/dispute cannot be resolved between the parties then the parties must be referred (either Formal Demarcation Body or the Project) to the dispute resolution process noted above and in Figure 2. Detail of Dispute Resolution Process. Any claim awaiting formal registration by the relevant Government authority responsible for the registration of land rights, shall be either:
  - a. withheld from presentation to the relevant government authority; or
  - b. withdrawn from the registration process pending resolution of the dispute. If the dispute is resolved, the recording methodology mentioned above will also apply to this situation.

### **Logging Disputes/Resolutions & Reviews**

17. Known disputes (either before or during the demarcation process) must be logged by Project Teams in the Prescribed Form (refer to Annex C).
18. In cases where a dispute in relation to a land parcel has been resolved by the parties to the dispute, the Project Teams must record that the dispute has been resolved on the Prescribed Form (refer to Annex C) and obtain the signatures or mark of the parties on that Form.
19. Representatives of Project Teams must review land-parcels that were (before formal demarcation started) or, at the time of formal demarcation, were still in dispute, must be reviewed 6 months and again 12 months after the completion of formal demarcation. The results must be logged on the Prescribed Form (refer to Annex C). Where a dispute appears subsequently to have been resolved, the Project Teams (or representatives) must record the parties’ agreement on the Prescribed Form (refer to Annex C)
20. Where a land-related dispute is resolved during the process noted above (whether it occurs during the LRF or after), the signatures or mark of the former disputants must be added to the Prescribed Form (where indicated) as a confirmation of the resolution of all land-related disputes concerning the land parcel. Before the parties affix their marks recorders must:
  - a. Note the details of the agreement and re-confirm them, verbally, with the parties (and permit the parties to read the record if they are literate). An illiterate person *must* be informed by Project Teams that he or she is permitted to have a trusted person who is literate, read the record on his or her behalf so as to affirm the recorder’s notes.
  - b. Explain clearly to the parties that the document the recorder is completing is a record of the agreement and by signing it, the parties are agreeing that the dispute has been resolved in the terms recorded.
  - c. Have the Prescribed Form witnessed (eg by a Soba or Local Administrator)
  - d. The document will be kept on file for future reference if necessary
21. The Prescribed Form must be completed in the field in the presence of the parties unless otherwise agreed by them or their Authorised Representatives (e.g., if the parties agree to meet the recorders at another place). In any event, the record must be completed in the presence of the parties or their Authorized Representatives.

22. If one or more parties declines to sign or affix a mark on the Prescribed Form but appears from the Project Teams otherwise to acknowledge the resolution of the agreement, the fact that the party or parties refused to affix a mark should be noted and the terms of the agreement, as understood by the Project Teams, recorded on the Prescribed Forms. Parties cannot be coerced into signing the Prescribed Form.
23. An “Authorized Representative” for the purposes of the activities set out in these Guidelines is a person who provides to the Project Teams/Recorders an **Authorization** which must:
  - a. be in writing
  - b. be an original document and *not* a copy
  - c. be signed or marked by the land occupant;
  - d. be dated within 2 months of the meeting with the Project Team;
  - e. authorize the Representation by name;
  - f. be accompanied by a form of identification of the person making the Authorization (e.g., Electoral Registration Card, Passport or other formal document necessary to identify the authorizing party to the reasonable satisfaction of the Project Manager in advance of recording and *not* the Project Teams)
  - g. be accompanied by a formal identification document (e.g., Electoral Registration Card, Passport or other formal document necessary to identify the Representative to the reasonable satisfaction of the Project Manager in advance of recording and *not* the Project Teams)
24. A Power of Attorney or similar document permitted by law may also suffice for identification purposes in these Guidelines. Such a document is limited only by its terms and not by time limits in these Guidelines.
25. Aside from the basic details required in the Authorization noted above, it may be in any form.
26. The original Authorization (but not a Power of Attorney) must be taken by Project Teams and kept on file. In the case of a Power of Attorney, the document must be copied and returned to the person holding the Power.
27. An Authorized Representative cannot be the Soba, Administrator or other persons having a formal or informal administrative role within the community unless that person is dealing with family property. *[it is suggested that Representatives would ordinarily be a member of the family.]*
28. The Project Team must record the form of identification produced in relation to any Authorization (both the authorizer and the Representative). Usually, this will happen by the taking of a photocopy. In this case, the Project Teams will take the documents to be copied and return them to the Representative within 2 business days. If, in extraordinary circumstances, the form of identifications cannot be copied, Project Teams will record the type of identification produced and any relevant serial numbers or other form of unique identification on the documents produced, on the Prescribed Form. In this Guideline, “extraordinary circumstances” means
  - a. any highly unusual or unexpected circumstance that prevents an ordinarily acceptable form of identification from being copied; and
  - b. a circumstance is determined by the Project Manager (and *not* the Project Teams) to be an “extraordinary circumstance”.

## ***EXPLANATORY NOTE FOR LRFP TEAMS:***

### ***Post-Formalization***

Disputes may arise after the formal demarcation process has been completed (e.g., there may be a return to the area by a former occupant – returnee refugee or former IDP). In such cases, the claim must be lodged in accordance with any notice period and process prescribed under the LRFP.

If the counter-claim/dispute cannot be resolved between the parties then the parties must be referred (either Formal Demarcation Body or the Project) to the dispute resolution process noted above and in Figure 4. Any claim awaiting formal registration by the relevant Government authority responsible for the registration of land rights, shall be either:

1. withheld from presentation to the relevant government authority; or
2. withdrawn from the registration process
3. pending resolution of the dispute. If the dispute is resolved, the recording methodology mentioned above will also apply to this situation.

### ***Dispute Review Process (General)***

Representatives of Project Teams must review land-parcels that were (before formal demarcation started) or, at the time of formal demarcation, were still in dispute, must be reviewed 6 months and again 12 months after the completion of formal demarcation. The results must be logged on the Prescribed Form (refer to Annex C). Where a dispute appears subsequently to have been resolved, the Project Teams (or representatives) must try to record the parties' agreement on the Prescribed Form (refer to Annex C)

Where a land-related dispute is resolved during the process noted above (whether it occurs during the LRFP or after), the signatures or mark of the former disputants must be added to the Prescribed Form (where indicated) as a confirmation of the resolution of all land-related disputes concerning the land parcel. Before the parties affix their marks recorders must:

- a. Note the details of the agreement and re-confirm them, verbally, with the parties (and permit the parties to read the record if they are literate). An illiterate person *must* be informed by Project Teams that he or she is permitted to have a trusted person who is literate, read the record on his or her behalf so as to affirm the recorder's notes.
- b. Explain clearly to the parties that the document the recorder is completing is a record of the agreement and by signing it, the parties are agreeing that the dispute has been resolved in the terms recorded
- c. The document will be kept on file for future reference if necessary

The Prescribed Form must be completed in the field in the presence of the parties unless otherwise agreed by them or their Authorized Representatives (e.g., if the parties agree to meet the recorders at another place). In any event, the record must be completed in the presence of the parties or their Authorized Representatives.

If one or more parties declines to sign or affix a mark on the Prescribed Form but appears from the Project Teams otherwise to acknowledge the resolution of the agreement, the fact that the party or parties refused to affix a mark should be noted and the terms of the agreement, as understood by the Project Teams, recorded on the Prescribed Forms. Parties cannot be coerced into signing the Prescribed Form.

### ***Dispute Review Process (Representation and Identification)***

It is permitted for a person applying for a right to be represented by another person *or organization*<sup>47</sup> throughout the process. Such a representative should be known as an “Authorized Representative”. An Authorized Representative is appointed by the authorizing party in a written document that authorizes the person to make certain statements on behalf of the rights applicant (refer to the Guidelines in Annex B). It should be noted that, where a person in making an application (as distinct from helping in the completion of a Review Form (Prescribed Form) the rules applying under the *Civil Code* or *Land Law*, as appropriate, in relation to proper authorization/notarization should apply (and not the process suggested here). A “power of attorney” or other formal document permitted by law will also be a satisfactory authorization for these purposes. Such a document will only be limited by its terms. This means that it will not be limited by a time limits set out in the Guidelines (i.e. a 2-month limit on other written authorizations).

Aside from the basic details required in the Authorizations noted above, it may be in any form and a copy should be kept on file.

An Authorized Representative cannot be the Soba, Administrator or other persons having a formal or informal administrative role within the community unless that person is dealing with family property. [*it is suggested that Representatives would ordinarily be a member of the family.*]

The Project Team must record the form of identification produced in relation to any Authorization (both the authorizer and the Representative). Usually, this will happen by the taking of a photocopy. In this case, the Project Teams will take the documents to be copied and return them to the Representative within 2 business days. If, in extraordinary circumstances, the form of identifications cannot be copied, Project Teams will record the type of identification produced and any relevant serial numbers or other form of unique identification on the documents produced, on the Prescribed Form. In this Guideline, “extraordinary circumstances” means:

- a. any highly unusual or unexpected circumstance that prevents an ordinarily acceptable form of identification from being copied; and
- b. the circumstance is determined by the Project Manager (and *not* the Project Teams) to be an “extraordinary circumstance”.

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<sup>47</sup> For example, a claimant may authorize an advocacy organization or lawyer to provide support in relation to a land-related dispute.

# ANNEX C. LAND-RELATED DISPUTE REVIEW PROCESS (WITHIN ADMINISTRATION FORM FOR THE LRFP) – PRESCRIBED FORM

## QUESTIONS PERTAINING TO LAND-RELATED DISPUTES

*(These questions are to be asked during the formal demarcation process and during the review process months 6 and 12 after completion of the formal demarcation process. Only land which was the subject of a dispute up until rights registration are the subject to review unless a dispute is otherwise brought to the attention of the Project Review Team)*

### **Land Parcel Description:**

*[insert unique parcel identifier here]*

1. Was there or is there currently a known dispute in relation to this land? Y/N

**DO NOT COMPLETE THE REST OF THIS FORM IF THERE WAS NOT AND CONTINUES NOT TO BE A DISPUTE RELATING TO THIS LAND**

2. Was the land identified as being subject to a dispute *before* the participatory demarcation process? Y/N

a. If yes to 2,

- i. what was the nature of the dispute? (e.g., boundary dispute, intra-family dispute, ownership/occupation-right dispute, other).....

- ii. was the dispute resolved *before* the participatory mapping process? Y/N

1. If Yes, how? (e.g., local process, third party mediation, court process, other) .....

3. Was the land identified as being the subject of a dispute *during* (but not before) the participatory demarcation process? Y/N

a. If yes to 3,

- i. what was the nature of the dispute? (e.g., boundary dispute, intra-family dispute, ownership/occupation-right dispute, other).....

ii. was the dispute resolved *during* the participatory mapping process? Y/N

1. If Yes, how? (e.g., local process, third party mediation, court process, other) .....

4. Was the land identified as being the subject of a dispute *during* (but not before) the formal demarcation process? Y/N

a. If yes to 4,

i. what was the nature of the dispute? (e.g., boundary dispute, intra-family dispute, ownership/occupation-right dispute, other).....

ii. was the dispute resolved during the formal mapping? Y/N

1. If Yes, how? (e.g., local process, third party mediation, court process, other) .....

5. Was the land identified as being the subject of a dispute *after* (but not before) the formal demarcation process was completed? Y/N

a. If yes to 5,

i. what was the nature of the dispute? (e.g., boundary dispute, intra-family dispute, ownership/occupation-right dispute, other).....

ii. was the dispute resolved *after* the formal mapping? Y/N

1. If Yes, how? (e.g., local process, third party mediation, court process, other) .....

### Agreement for Dispute Resolution

*Where a land-related dispute is resolved during the process noted above (whether it occurs during the LRFP or after), the signatures or mark of the former disputants must be added here as a confirmation of the resolution of all land-related disputes concerning the land parcel. Before the parties affix their marks recorders must:*

- *Note the details of the dispute resolution below and confirm them with the parties*
- *Explain clearly to the parties that this document is a record of their agreement and by signing it, they are agreeing that the dispute has been resolved in the terms set out below*
- *Have the Prescribed Form witnessed (eg by a Soba or Local Administrator)*
- *This document will be kept on file for future reference if necessary*

**We AGREE that all land-related disputes concerning this land parcel are now fully resolved in accordance with the following terms:**

**Signatures / Marks of parties to the former disputed land:**

*[where this document is signed under an Authorization, a copy of the Authorization and Identification Documents must be copied and held with this Form. In extraordinary circumstances where identification documents cannot be copied, their details must be recorded here – include the original Authorization for the file, type of identification document, name on the document and any unique number or other identification on the Identification documents]*

**DATE**

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