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LAND REFORM IN AFGHANISTAN (LARA)

LAND DISPUTES, JUSTICE AND DISPUTE RESOLUTION
IN JALALABAD CITY

APRIL 19, 2012

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ACRONYMS

AGCHO	Afghan Geodesy and Cartography Head Office
ARAZI	Formerly the Afghan Land Agency (ALA)
COP	Chief of Party
COTR	Contracting Officer’s Technical Representative (USAID)
DCOP	Deputy Chief of Party
GIRoA	Government of the Islamic Republic of Afghanistan
ILS	International Land Systems (Tetra Tech ARD International Subcontractor)
LARA	USAID’s Land Reform in Afghanistan Project managed by Tetra Tech ARD
M&E	Monitoring and Evaluation
MUDA	Ministry of Urban Development Affairs
NGO	Nongovernment Organization
PMP	Performance Monitoring Plan
SOW	Scope of Work
STTA	Short-Term Technical Advisor
USAID	United States Agency for International Development

PREFACE

The United States Agency for International Development (USAID) Land Reform in Afghanistan Project (LARA) is managed by Tetra Tech ARD under USAID Contract No. 306-C-00-11-00514-00, with implementation assistance from its partners Tetra Tech DPK, International Land Systems (ILS), Development & Training Services Inc. (dTS), and Landesa (formerly the Rural Development Institute). LARA's primary government partners are ARAZI (formerly the Afghan Land Agency), the Ministry of Urban Development Affairs (MUDA), the Independent Directorate of Local Governance (IDLG), as well as the Supreme Court and selected local municipalities.

The purpose of the LARA project is to develop a robust, enduring, and Afghan-owned and-managed land market framework that encourages investment and productivity growth, resolves/mitigates land-based conflict, and builds confidence in government's legitimacy, thereby enhancing stability in Afghan society.

The Project continues USAID/Afghanistan's support for land reform and land rights strengthening that began through the earlier LTERA Project. The LARA Project currently comprises an 18-month Base Period and an 18-month Option Period, with a contract amount of \$41.8 million. This Work Plan, however, contemplates a single project term ending in January 2014.

LARA is designed to contribute to USAID's AO and Afghanistan National Development Strategy. Three influences will help shape LARA's contributions to this Objective: (1) the foundations provided by the former USAID Land Tenure and Economic Restructuring in Afghanistan (LTERA) project that provides a starting point and methods that can be adapted; (2) USAID/Afghanistan management objectives including Afghanization and conflict mitigation; and (3) the following major LARA objectives:

1. Improve property rights delivery (land administration and formalization);
2. Enable all citizens (women, minorities, and vulnerable populations) to exercise their rights through public information awareness (PIA);
3. Strengthen land dispute resolution processes to reduce conflict and promote peace and stability;
4. Promote economic development through clear and enforceable property rights, PIA, land rights delivery, and land dispute resolution; and
5. Strengthen institutional, policy, and legal reform to secure property rights for Afghan citizens;
6. Provide assistance in the cross-cutting areas of gender, training, PIA, and private sector development.

These objectives are supported by three components that provide the over-arching structure for programming activities and tasks in the work plan are as follows:

1. **“Strengthen Land Tenure Security through Formalization and Upgrading of Informal Settlements”** - Support MUDA, Supreme Court, AGCHO, IDLG, Arazi, Communities and the Municipality of Jalalabad with informal settlements upgrading, formalization, cadastral mapping, women's inheritance and land rights law, community based dispute resolution, laws for urban planning and land use regulation, and training in planning and enforcement (related to SOW Activities 1, 2, 3, 4 & 5).

2. “**Legal Framework**” - Provide limited assistance to Arazi to identify, manage, lease, and obtain revenue from Afghan government lands and provide targeted technical assistance (related to SOW Activities 6 & 7).
3. “**Capacity Building**” - Build capacity of public (AGCHO, Arazi, IDLG, MUDA, Supreme Court) and private sector service providers to improve and streamline land tenure processes to Afghan private and public sectors (related to SOW Activity 8).

1.0 INTRODUCTION, AIMS, AND METHODOLOGY

As a consequence of over three decades continued conflict, competing economic ideologies of different governments and their land reforms, the displacement of millions of people inside and outside Afghanistan as well as drought, the situation of land-ownership and management in the country has become extremely complicated (Giovacchini 2011, Wily 2003). Moreover, widespread land grabbing, weak rule of law, corruption, and forgery of legal documents in the post-Taliban era have further added to this complication. All these have resulted in widespread land disputes throughout Afghanistan (Wily 2005; Wily 2003), which have in turn become a major obstacle to the economic development, large-scale investment, planned urbanisation and political stabilisation of the country.

The current Afghan state justice system, which suffers from endemic corruption, professional incompetence and low public trust is ill-equipped to provide justice transparently and effectively (Asia Foundation 2011, Wardak 2011, Wardak et al 2007, Wardak 2004, Johnson et al 2003). The complex nature of land disputes in Afghanistan particularly makes it very difficult for the state justice system to deal with them effectively as Wily (2003:3) has observed: ‘Many disputes will not be satisfactorily removed through the winner-loser approach of the court medium. This is especially so where there are overlapping claimants to the same land, all of whom hold some historical or other legitimate claims.’ Because of the inability of the Afghan state justice system to deal with land disputes effectively, they are mainly resolved through non-state local dispute resolution mechanisms – jirga and shura. However, the outcomes of non-state local dispute resolution mechanisms are not always desirable: such decisions often exclude women, not recognised officially, and sometimes result in the violation of Afghan law and human rights principles (Wardak 2011, Coburn and Dempsey 2010, Wardak et al 2007, Wardak 2004, Wardak 2002).

The Land Reform in Afghanistan (LARA) project, which addresses key problems relating to land-ownership and management, focuses on key dimensions of land reform in the country. One key dimension of LARA’s work involves the issue of land disputes in Afghanistan. And this field study focuses on land disputes and their resolution in Jalalabad City. Thus, within the context of LARA’s vision and key objectives, the main aims of this research are to:

1. Design and co-facilitate a forum to identify the most prudent and effective Community Based Dispute Resolution (CBDR) customary practices relating to land disputes in the greater Jalalabad area;
2. Conduct original field research that involves members of the planned forum and all other key stakeholders as key respondents;
3. Develop an integrated land dispute resolution model for Jalalabad that renders selected CBDR practices inclusive of women and in line with current Afghan laws, human rights principles and Islamic Shari’a.
4. Devise a train-the-trainer course on alternative dispute resolution techniques (including necessary training materials based on adult education principles), for the purposes of the trainees providing training to District Commissioners and Shura and Jirga officials on: alternative dispute resolution techniques in other part of the world.

5. Assist the local Dispute Resolution Specialist to develop a strategy and work plan to provide CBDR technical support to government agency counterparts.

In order to achieve the above mentioned aims a field study based on 28 unstructured interviews and 7 ‘focus group’ discussions was conducted between 17 December 2011 – 07 January 2012 in Kabul and Jalalabad. Participants in Kabul included: Key staff of LARA’s legal unit; Key staff of CHECCHI’s Afghanistan Rule of Law Stabilization Program (Informal Component), head and key staff of *Arazi* Land Dispute Resolution Directorate, Deputy Director of *taqnin* (legislation) at the Ministry of Justice, the head and one judge of Kabul’s Court of Documentation, and key members of LARA’s Women Task Force. Participants in Jalalabad included: head of CHECCHI’s Afghanistan Rule of Law Stabilization Program (Jalalabad Office) deputy Governor of Nangarhar Province, deputy mayor of Jalalabad City, head of Building department at Jalalabad City’s municipality, head of provincial Court of Appeal, head of the Civil Law Department at the provincial Court of Appeal and his deputy, head of Documentation department of the provincial Court of Appeal, head of Jalalabad City Primary Court and its key judicial staff, heads and key staff of Afghanistan Independent Human Rights Commission’s (AIHRC) and of the Ministry of Women Affairs (MOWA) in Jalalabad, head and deputy head of *Nahia* 5 police station, dean and a lecturer of Shari’a Faculty at Nangarhar University, selected elders/*Jirgamaran*, *imams*, and *wakils* of *guzars*, (neighborhoods) from each of Jalalabad’s six districts.

An unstructured schedule of open ended questions was devised for conducting individual interviews and focus group discussions. Participants were asked about their perceptions, opinions, and attitudes towards land disputes, state and non-state justice/dispute resolution, and their views with regard to training/capacity building of key stake holders (See Appendix I). Questions were asked in an interactive way where participants freely expressed themselves in an open conversational atmosphere. In addition, key relevant literature and LARA’s project documents were used for this research. The data were mainly analysed in the UK. After this brief description of the main aims and methodology of the study, the nature and levels of land disputes are examined in the context of Jalalabad City in section II of the report. In section III, the current state of state and non-state justice in Jalalabad is examined. Based on field work as well as ‘library research’ for this report, the structure of a proposed short training course on comparative Alternative Land Dispute Resolution is described in section VI. And key actionable recommendations are presented in section V of the report. Moreover, after a careful analysis of field data collected through interviews and focus group discussions, ‘Jalalabad Community Conversation Forum’ and ‘Hybrid Model for the Resolution of Land Disputes in Jalalabad’ are proposed and illustrated in Appendix I. While training materials for the proposed short course are included in Appendix II, a brief description of methodology for this research and the interview guide are included in Appendix III.

2.0 JALALABAD: THE CITY AND ITS LAND DISPUTES

Jalalabad is one of Afghanistan's largest cities and the capital of Nangarhar province. It is located at the junction of Kabul and Kunar rivers irrigating vast fertile lands in and around the city. This is one main reason that the city has been a major centre for agricultural products, which include different kinds of vegetables, fruits and grains. Due to its mild tropical climate in the winter, Jalalabad supplies fresh vegetables and fruits to many other parts of Afghanistan in the winter. Because of these reasons and because of its location on the main highway linking Kabul and Peshawar in Pakistan, the city is also Afghanistan's major trade and business centre. Besides its economic and strategic importance, Jalalabad also has historic and symbolic significance: in the late 19th and early 20th centuries, it served as the winter capital of Afghanistan where royal palaces and the mausoleums of King Amanullah Khan and of some prominent members of his family are considered as important historical sites. In the pre-war era, wealthy Afghan families maintained a house in the city, and continue to be a winter picnic place to many Afghans today.

Like other Afghan cities, Jalalabad had been severely affected by the long Afghan conflict and its consequences. One important consequence of the conflict has been the migration of thousands of its original inhabitants to Pakistan coupled with the lack of investments in its physical infrastructure during this period. Following the establishment of the post-Taliban administration(s) in Afghanistan, and the expectation that the long Afghan war may be ending, thousands of refugees have returned from Pakistan, Iran and from some other countries to Jalalabad. This flow of returnees as well as migration from rural districts and neighboring provinces to Jalalabad, and the increase in its own original population have mainly resulted in an unprecedented swelling of the city's urban population (Giovacchini 2011).

This swelling of Jalalabad's population happened without planning and preparations as one senior municipality official put it eloquently: 'We have brought people to Jalalabad without houses for them, cars without roads for them, and built tall buildings without space for them. And the outcome is the current urban crisis.' What has further deepened this 'urban crisis' is the failure of the Afghan government to come up with meaningful plans for providing immediate and long term solutions to the city's swelling population and to its related urban problems during the past 10 years. Today, Jalalabad's population according to Afghanistan Central Statistics Office (CSO) is estimated at 194,400 (CSO 2010). However, key respondents for this research estimated that Jalalabad's total population is well over one million. Also the respondents estimated that 97% of their city's population are Pashtuns; the rest are Shari, Pashaie, Tajik, Gujars as well as some Sikhs.

While population pressure has increased the demand for the construction of new houses for the tens of thousands of Jalalabad's population, weak rule of law and endemic corruption have provided opportunities to those with political power, guns and money to grab public, state, and even private lands inside and outside the city. These lands have then been turned into residential building sites and satellite towns, where residential plots are sold at very high prices and/or are allocated to relatives and political followers of local strongmen/warlords (Mumtaz 2011). As a consequence of this monopoly of the booming housing market in the hands of a few, the poor and the politically powerless have been excluded from finding homes for themselves and for their families in the city. Thus, some of the homeless and poor in Jalalabad have, too, resorted to building homes for their families on public, state or on privately

owned land without official authorisation. One of the interviewees for this research observed: ‘The poor in this city - who resent the monopoly of the housing market by a few rich people - have no money, no jobs, and no homes. In order for them to find a roof for their families, they have no choice but resorting to any means - legal or illegal’. Indeed, greed of the few, need of the many and the lack of an effective state response to this ‘crisis’ situation has resulted in widespread land disputes in and around the Jalalabad city. The nature of these land disputes in Jalalabad and around it is eloquently described in a case study in Box 1 below:

Box 1: Jalalabad’s “Grab-Town” a Difficult Case of Illegal Settlement and Land Dispute

In March this year, as we started our study on urban governance in Jalalabad, one of our first tasks was selecting an interesting site. We chose Qasimabad, and the findings from our research there shed light on many issues related to informal settlements in urban contexts. There are more than 4,000 plots of land in Qasimabad, which is roughly 1.5 square kilometers. Since the fall of the Taliban, this once-empty area has changed significantly, with a lot of informal settlement and development. A plot there initially cost US\$ 80-160 but now they go for more than \$2000. You can see [a picture of Qasimabad here](#). Qasimabad is located in Behsud District, five kilometers north of Jalalabad city. This site was first selected as a potential satellite township as part of a master-plan developed during the 1970s, while Daoud Khan was prime minister. The site was marked as a reserve space for future urbanization. If population pressure on Jalalabad city rose too much, this town would be developed to increase residential capacity and thus help city residents avoid problems caused by high population densities. Unfortunately, due to three decades of war, the plan to urbanise and expand Jalalabad city as envisioned in the 1970s was never implemented. However, after the collapse of Taliban regime a large number of refugees returned from Pakistan and Iran, with many employment opportunities, investments and donor funds following the ISAF/NATO intervention. At this time, the price of land suddenly shot up. As a result, people who had the support of some influential local commanders quickly took over land in the vicinity of Jalalabad. This phenomenon was common all over Afghanistan. In response, in June 2002 a decree was sent by the transitional administration to all provinces, declaring: “The distribution of vacant and non-cultivated lands, which are government property, to people as construction plots for residential and other purposes should be strictly avoided” (Article 1). Fear of government action initially kept the process slow, but people soon realized that government attention was not focused on the issue, and settlement activity became more rapid. People from other districts and provinces as well as from the local area started constructing houses without any legal consent but with the support of local commanders and tribal leaders. The Ministry of Justice gazetted another law on land affairs in 2008 in an attempt to get a handle on such issues, but it had little effect in Qasimabad. Meanwhile, the local government made a plan for the distribution of land to disabled people, teachers, ulema and other government employees, without considering the issue of land grabbing and informal construction. It changed the name from Qasimabad to Hajji Qadeer Town and sold each plot for 38,500 Afs (approximately \$800). Those who paid up received legal documents from Jalalabad municipality. Last year the municipality received 33 million Afs from Qasimabad and will probably make another 30 million (approximately \$650,000) this year. An acute problem soon arose with many plots having two claimants—one informal settler and another with the legal document. The local government has proven very interested in selling land and generating revenue, but the issue of legal ownership and informal occupation remains unsolved. Today, the residents of Qasimabad city can be categorized into four main groups: 1. a group of people from Kunar Province who bought the land from a local commander; 2. a group of people allied with a local Nangarhari commander; 3. Settlers from the same Behsud District and nearby Daman Village; 4. a limited number of legal owners. During data collection in Qasimabad, one respondent said, “Legal owners are like uninvited guests at a party, who don’t have the courage to eat.” Another said, “I paid the price three years ago but still I’m living in a rented house.” People have demonstrated and met with officials from the governor down to try to solve their problems, but to no avail. The governor promised some petitioners that alternative plots would be provided to them, but these pledges have amounted to nothing—like words carved in ice and put under the sun. Some legal owners started negotiations with settlers on their own and managed to take control of their land by giving them some money. However, only a few pursued this method successfully. Meanwhile, conflict among residents of Qasimabad for control of more space has caused the killing of several people and many injuries. I think it will be very difficult for the local government to evict the settlers and give the plots to the legal owners. Currently, demonstrations have become a fashion in Afghanistan, and there are also international human rights groups and local power-holders to contend with. Knowing this, it seems impossible that the government could use force to take control of Qasimabad. It would be best if the government negotiates with the people already residing in Qasimabad and officially allocates their plots to them for the fixed price of 38,500 Afs. At the same time, the government must find acceptable alternative sites for those people who have already paid for a piece of land. In a township where more than 80 percent of residents are informal settlers, aka “land-grabbers,” I wonder if this town would be better known as Zoorabad – “Grab-Town”. **Source:** [Wamiqullah Mumtaz \(2011\) ‘Opportunities for Democratic Governance in Afghan Cities’ AREU, Kabul, Afghanistan \(<http://www.areu.org.af/BlogDetails.aspx?ContentId=1000&BlogId=556215169>\)](#).

The case study in Box 1, above, indicates the complex nature of land disputes in Jalalabad City. Although this complexity of land disputes needs to be studied case-by-case and diligently, these disputes could be generally categorized into three categories as a key respondent for this research observed:

‘In Jalalabad, all land disputes are of three main types: big disputes, mid-level disputes and small disputes. In big disputes influential politicians, senior government officials and

Warlords are involved. These people have acquired large pieces of public and state lands illegally and fraudulently; then they have turned them into residential and other business projects. Ordinary people have been crying for fairness, and elders have tried to do something about this huge problem. But it is beyond their power to solve it. However, most mid-level and relatively small land disputes that mainly happen between relatives, neighbors, shopkeepers and others are effectively resolved by elders; also they are adjudicated in the courts’.

While big disputes in Jalalabad have predominantly existed outside the city, mid-level and small disputes over land/property are also more prevalent outside the city’s parameters than in the city itself. This research also reveals that the main causes of land/property disputes in and around the city included: Land grabbing, weak rule of law (especially problems with the enforcement of law), corruption, weakness of and lack of capacity in relevant institutions, forgery of documents, inheritance related problems, *shaf’a/shof’a*, lease and mortgage. While big disputes are mainly caused by land grabbing, weak rule of law and corruption, mid-level and small dispute tend to be connected with inheritance related problems, *shaf’a/shof’a*, lease, and forgery of documents and official corruption. However, the resolution of big disputes throughout much of Afghanistan (Giovacchini 2011) and in Jalalabad seems to be beyond the power of ordinary people to deal with. A very senior government official in the city said that: ‘Even, we could not do much about the lands that are grabbed by warlords’. And a senior judge at Jalalabad’s Appellate Court observed that ‘Judicial decisions could not be implemented in some cases as senior government officials are involved in the land mafia here; they interfere with our work’.

Establishment of the short-lived Special Court for Land Disputes by the Afghan government and its dissolution is a clear indication of the complexity of land disputes in Afghanistan. Then in order to facilitate resolution of land disputes between individuals and the government, prevent land grabbing, restitute governmental lands, and reduce land disputes between individuals and the government, the Land Dispute Resolution Directorate at *Arazi* was established in 2010. The Directorate has recently drafted a document titled ‘Procedure for the Resolution of Land Disputes’. The ‘procedure’, which strongly reflects Afghanistan’s 2008 Law on Managing Land Affairs (2008), proposes mechanisms for resolving land disputes. According to this document, the main role of the Directorate is to study and then refer cases of land disputes to relevant institutions such as the judiciary, the justice system (mainly the Directorate of *Qazaya-e-Dawlat*) local elders/mullahs for resolution. It also has proposed the creation of ‘Central and Provincial Commissions for Property Disputes’, which are envisaged to come to existence in the future. However, this study reveals that in order for the Directorate to function successfully, it needs more human and technical resources, and its proposed commissions for property disputes established in Kabul and all provinces. All this would seem to indicate that state institutions have serious problems in dealing with land disputes in Afghanistan and in Jalalabad. Nevertheless, mid-level and small disputes are currently dealt with by both the state judicial system as well as by non-state institutions of local dispute settlement.

3.0 THE STATE JUSTICE SYSTEM AND LOCAL DISPUTE RESOLUTION

3.1 STATE JUSTICE

The main state justice institutions in Jalalabad City comprise of an urban primary court (*Sharyic/Khari Mahkama*), *Hoquq* (rights), the prosecution department, provincial appeal court, (*De Isete'naf Mahkama*), provincial police department, and the city's prison. There are 6 *Nahias* (urban districts) in the city, each of which has a police station and some units of the city's municipality. Each *Nahia* is divided into various *gozars* (streets, or neighborhoods), which are represented by a *Wakil-e-gozar* who serves as a kind of link between local people of a *gozar* and *Nahia*.

The first formal point of contact for lodging criminal cases in Jalalabad City is a *Nahia*'s police station. A *Nahia* police station is usually staffed by two professional police officers (one head and the other deputy), two clerks/administrative assistants, two ordinary police officers, and one guard. A successful mediation between the victims and offenders at this stage may divert the case from the state criminal justice system and be dealt with by local elders. However, this depends on the good will of the staff of the *Nahia*'s police station. Otherwise, the relevant *Nahia*'s police station forwards all cases to the (public) Security Directorate of Nangarhar Police (*De Sarandoy de Amneiat Ameriat*). This Directorate, which has no powers to make further investigation about a case, forwards the cases it receives to the Criminal Investigation Department of Nangarhar City Police. It is the Investigation Department of Nangarhar City Police, where detailed investigations about a case are conducted, and where suspects could be detained for up to 72 hours. Once legal grounds for criminal prosecution are established, the case is formally processed by the City's prosecution department and at the court of justice respectively.

However, the first official point of contact for lodging civil cases in Jalalabad City is supposed to be the *Hoquq* (rights) department, which decides how a case is to be processed officially, if at all. However, according to a senior judge at provincial appeal court: 'In order to avoid bureaucratic delays and its related legitimate and illegitimate costs, many people lodge their civil cases at the city's urban primary court directly'. The judge further added that this provision does exist under the existing civil procedural law of Afghanistan. In a land/property case, once a formal application is made to the city's Urban Primary Court, it is first assessed as to whether it meets the jurisdictional and substantive criteria of a formal application or not. If it does, then the court starts making complex official enquiries that include: current ownership and registration of the disputed land/property; its potential inheritors; its official evolution/price; its officially confirmed physical location; whether it is registered with the municipality or not; and whether it is state owned or privately owned, etc. As this process of enquiry involves several government offices, it could take a long time.

After these enquiries are completed satisfactorily, then applicant is required to prepare *sorat-i-da'wa* (legal case) with the help of professional lawyers. It is at this time that a lengthy contestation between the litigants starts. This process of adjudication often takes months, and even years according to most interviewees for this research. More importantly, this is a very costly process as one respondent said that

‘Only rich people and commanders (warlords) go to the court’. Another respondent said that ‘Even many of those who go to court come back to *jirga* when they have no more money for bribes’. Thus according to most respondents, the bulk of land disputes in Jalalabad are resolved outside the court by local elders.

3.2 LOCAL DISPUTE RESOLUTION

As mentioned above and in section I of this report, due to the absence of a transparent, effective and cost-effective justice system in Afghanistan, most Afghans continue to take their disputes to non-state local institutions of dispute settlement for resolution (Asia Foundation 2011, Wardak 2011, Wardak 2009, Wardak et al 2007). The most important non-state institutions in Afghanistan are referred to as *jirga* and *shura*. The form and composition of a *jirga/shura* are determined by the nature of a dispute, but typically a body of respected local elders and leaders sit together in order to reach a settlement that is acceptable to the disputants and to the community. *Jirgas/shuras* are shown to be more accessible, more efficient, perceived as less corrupt, and more trusted by Afghans compared to state courts (Asia Foundation 2011, Wardak 2011, Schmidt 2009, Smith and Lamely 2009, Wardak et al 2007).

In Jalalabad non-state justice is mainly based ‘*urf*’ (custom) or ‘*urfi law*’ (customary law), which involve traditional *jirga* processes. The main sources of ‘*urf*’ or ‘*urfi law*’ Jalalabad appears to be a combination of *Pashtunwali* (Pashtuns code of behavior), local/regional norms relating to ‘best practice’, local interpretations of *Shari’a* (Islamic Law) and consensual pragmatism. The Islamic character of non-state dispute resolution in Jalalabad is particularly pronounced as the first point of contact of most disputants is the ‘*Mosque shura*’. Every large mosque (*jame’a*) has a *shura* comprising of a dozen local elders, and is often headed by an *Imam* (Muslim Priest). Other than its dispute resolution function, the *Mosque shura* plays a key role in the distribution and allocation of aid by national and international NGOs, and other aid organizations to local people. Moreover, *Mosque shuras* work closely with the *Nahia shura*. The latter comprises of two elders from each of the main mosques of a *Nahia*. The *Nahia shura* which represents elders from all *Mosque shuras* is registered with Jalalabad provincial council. The process of non-state dispute resolution in Jalalabad is described by a recent Research Report in this way:

‘...disputants first both have to agree to have their case dealt with by a *jirga*. After granting *waak* (authority) to the mediators, the disputants provide *machalgha* as guarantee, which is to be returned once they accept the *jirga*’s decision. After the mediators have come to a conclusion, they write and sign a decision document which usually also specifies a fine that the disputants will have to pay if they do not adhere to the agreement in the future. There are usually at least three copies stored. One remains with the mediators and one with each of the conflict parties. Often, one copy is also forwarded to the local government.’ (TLO 2009:12).

While this account provides a general description of non-state dispute resolution in Jalalabad, the practice of forwarding one copy ‘to the local government’ varies from one *Nahia* to another. This research has found that this practice was less common in *Nahia* 6 of Jalalabad. Moreover, in the other five *Nahias*, those elders who had good relationships with relevant state officials tended to forward the signed ‘decision document’ to them. While judicial officials were supportive of local dispute resolution, they did not see it their legal obligation to approve and stamp decisions that were decided informally outside the court. They could do so, while a case is being processed in the court or at the *Hoquq* department.

However, senior judges at Jalalabad Urban Primary Court and at the Provincial Appeal Court emphasized on the religious, cultural and pragmatic importance of the resolution of land disputes through mediation by local elders. They supported non-state dispute resolution by elders in the context of *jirga/shura* – mainly through mediation and reconciliation. The head of Provincial Appeal Court said that ‘We encourage people to resolve their disputes through the good offices of local elders; they can do this at any

stage of the litigation process'. This senior judge implied that he and his colleagues know that the process of adjudication in the formal justice system takes long time and is costly. Therefore, the parties are given the choice to resolve their case informally by elders through mediation, reconciliation and other mechanisms that are agreed upon. The judge further added that 'Once they reached a settlement we register it officially and issue them with a *wasiqa -i- shara'ei* (official legal document).' However, this usually happens in cases where all the facts about a disputed land/property are verified and established as the head of Jalalabad's Urban Primary Court put it: 'Although we persuade people to take their cases in the court to local *jirgas*. But in some cases of land disputes, we often need to have essential enquires completed from other government departments. We need all essential facts about the disputed land verified; only then can we formally endorse a *jirga* decision'. The need for the verification of essential facts about a disputed land was explained by a judge at Kabul's *mahkam-i- wasaieq* in this way:

'Sometimes, two persons collude in grabbing a piece of public land. Then, one of them claims its ownership with the understanding that it will be equally divided among them after the dispute is resolved. Then the disputants collude with some corrupt elders who 'resolve' the dispute as planned, and request the court to approve the decision. Of course, this could not be done by the court; it is fraud.'

Indeed, some respondents for this research did speak about the existence of what they called '*tejarati jirgamran* (commercial/businessmen mediators) who they alleged brought disrepute to non-state justice institutions in the area. Thus the courts do need to establish essential facts about a disputed land, the *Jirgamaran*/elders and the ways the dispute is resolved informally. Nevertheless, the willingness of state courts to endorse some *jirga* decisions officially is indicative of the existence of close links between state and non-state justice in Jalalabad.

However the pragmatism and cooperative attitudes of Judges in Jalalabad' courts are more a matter of their 'good will', and depended on their relationships with *jirga/shura* elders and/or the disputants. They do not have the legal obligation to do so as one judge put it: 'We are operating in a legal vacuum; there is no law which gives judges the authority to attest informal settlements reached through *jirga* and lend them official recognition'. He further added,

'In order to make things easy for people, we tell them that they need to reach settlement through *jirga*. Then, if the case is straight forward, they would need to lodge a formal application with the court (or *Hoquq*), and then we refer them to go to *jirga* for *islah* (mediation/reconciliation). Since they already have the *jirga* decision, we could turn that into an official *Islah khat* which is registered officially.'

However, this official registration requires the disputants to pay the court tax, and poor people may not be able to afford. In addition, the application process to the court involves costs and delays. One solution to further avoid the costs and delays is the participation of the Head of Jalalabad Urban Primary Court at *jirga* sessions. When this was suggested to the judge, he said that 'By law, a judge could not be part of a *jirga*'. However the judge agreed that he could participate as an observer in *jirga* processes after his official working hours. But he further added that 'In order for me to do so, a written permission form the Provincial Appeal Court is needed.' Indeed, this would have a strong potential for state and non-state justice institutions to collaborate effectively in resolving land disputes in Jalalabad.

Such a collaboration is particularly important as USIP supported 'National Policy on the Links between Formal and Informal Justice' was dismissed by the Ministry of Justice, and a draft 'Law on Jirgas and Shuras', by the Afghan government (Wardak 2011). This legal vacuum calls for pragmatic approaches to the creation of relationships between state and non-state justice in Afghanistan. Such approaches must not only reflect community-based best practice, but also be in line with Afghan laws, Islamic jurisprudence and human rights principles. Based on consultations with key stake holders, this was possible through the

mobilization of community to discuss communal problems and resolve land disputes in Jalalabad through community conversation.

Thus in order to co-facilitate a forum to further identify the most effective community based land dispute resolution practices in the Jalalabad and the greater Jalalabad area, Jalalabad Community Conversation Forum (JCCF) and a Hybrid Model for the Resolution of Land Disputes in Jalalabad (HMRLDJ) are proposed. The design and membership of these forums are fully discussed and illustrated in Appendix II. In order for the JCCF and HMRLDJ members to broaden their horizons (and possibly) learn from the experiences of other nations, a short train-the-trainer course on alternative land dispute resolution techniques is devised (For necessary training materials see Appendix VI).

4.0 COMPARATIVE ALTERNATIVE LAND DISPUTE RESOLUTION: A TRAINING COURSE

This short course is directly related to and designed within the context of the key findings of this Report. The main aim of the course is to introduce members of the proposed ‘Hybrid Model for the Resolution of Land Disputes in Jalalabad’ (HMRLDJ) to comparative Alternative Land Dispute Resolution in other countries in different parts of the world. The course is designed to help participants learn from the strengths and weaknesses of different models of Alternative Land Dispute Resolution (ADR) in selected developing countries in post conflict situations. This would help Afghan participants to learn from successful Alternative Land Dispute Resolution techniques in other countries, and examine their applicability to the situation in Jalalabad.

In the long run, this would help Afghan participants to examine the incorporation some of these comparative Alternative Land Dispute Resolution techniques into the proposed HMRLDJ. This may, in turn, result in development of a refined version of the proposed HMRLDJ – a version that reflects the most effective CBDR mechanisms in Jalalabad and which is in line with Afghan Laws, Islamic Shari’a and human rights principles. The training in the context of HMRLDJ would also promote community conversation among key state and non-state actors concerned with land disputes resolution in the city. In order to achieved these objectives, , LARA’s Capacity Building Unit is expected to further develop the proposed ‘training materials’ (Appendix II) in ways appropriate for the participants of this course many of whom would be local elders and leaders. The training materials would also need to be translated into simple and readable local languages.

4.1 SPECIFIC OBJECTIVES

- To introduce members of the proposed HMRLDJ members to comparative Alternative Land Dispute Resolution techniques in other parts of the world, and thus broaden their knowledge on this subject.
- To enable Afghan participants think critically about local practices with regard to land dispute resolution in Jalalabad, and learn lessons from successful Alternative Land Dispute Resolution techniques in other parts of the world.
- To enhance the competence of Afghan participants in resolving land disputes in Jalalabad in ways that reflects the most effective local CBDR mechanisms and are in line with Afghan Laws, Islamic *Shari’a* and human rights principles.

4.2 DELIVERY

This specially designed summer course is to be delivered in five days (between 1.00 – 4.00 pm) through workshops focusing on the use experiential and adult education techniques, including visual and audio aids. Workshops are designed to promote an interactive atmosphere among the participants, so that they participate actively in discussions. The course is to be delivered jointly by Dr. Ali Wardak, Mr. Shafiq Ziai, selected local *Jirgamaran* and the head of Jalalabad’s Urban Primary Court. The course would be evaluated at the end.

5.0 KEY RECOMMENDATIONS

- Prior to starting any practical work with regard to co-facilitating and conducting the proposed JCCF, consultations with all key stake holders interviewed for this research need to be followed. (See appendix I). Other stake holders not included in the in Appendix I need be to be identified, and added to the proposed list.
- In order to mobilize the above mentioned key stakeholders for cooperation, it is important that further consultations with them are followed by a team of senior LARA officials.
- In order for the proposed JCCF to operate as a genuinely independent advisory community forum, a well-equipped purpose-built building for it- *Jalalabad Community Conversation Centre* (JCCC) - needs to be built neutral ground at a centrally located place in the city.
- Prior to conducting the proposed JCCF, consultations with groups of selected local elders/leaders, *imams* and *ulama* for each of Jalalabad six *Nahias* and with provincial representatives of AIHRC, MOWA, LARA's WTF and the heads of the city's Urban Primary Court need to be followed. (See Appendix I for the names and mobile telephone numbers of most of these leaders and officials).
- It is important that consultations with members of the various proposed JCCF groups are conducted by an experienced team lead by LARA's Dispute Resolution Specialist, and facilitated by LARA's Jalalabad Office.
- The proposed lists of local elders/leaders, *imams* and *ulama* for each of Jalalabad's six *Nahias* (See Appendix I) need to be further refined, so that truly honest, pious well respected and knowledgeable individuals are represented in the HMRLDJ.
- Effective measures should be taken to prevent *Tejarati Jirgamaran* who are reported to be monopolizing *jirga/shura* through connections with corrupt state justice officials.
- After district profiles are completed and lists of participants for each district HMRLDJ are finalized, each HMRLDJ needs to be piloted in its related district. This is to test their workability in the 'real world'.
- The piloting process may result in the further identification of most effective local land dispute resolution mechanisms, and in the emergence of new HMRLDJ sub-models. 'Lessons learned' and 'best practice' must be carefully recorded.
- In order for to learn from 'best practice' with regard to alternative land dispute resolution models in different parts of the world, the proposed training programme need to be conducted while the HMRLDJs are piloted.
- LARA's Capacity Building Unit would need to further develop the proposed 'training materials' (Appendix II) in ways 'digestible' by the participants, and to be translated into simple and readable Pashto.

- The training course should be conducted in an interactive way that is conducive to the creation of conversational atmosphere and engages participants fully.
- Following the successful completion of the training course, it needs to be evaluated and 'lessons learned' recorded.

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APPENDIX 1: COMMUNITY CONVERSATION AND COMMUNITY BASED DISPUTE LAND RESOLUTION FORUMS FOR JALALABAD

This study, while exploring the current state of state and non-state justice institutions and their strengths weaknesses in Jalalabad, also examined the existing links among these institutions. The study has found that these links exist on the basis of complementarity among these justice institutions, which compensate for the weaknesses of each other. However as mentioned earlier, the existing interactions and links between state and non-state justice institutions in Jalalabad take place on pragmatic grounds, outside a legal framework. The lack of a national legal framework makes these interactions patchy, less complete, and subject to outside influence.

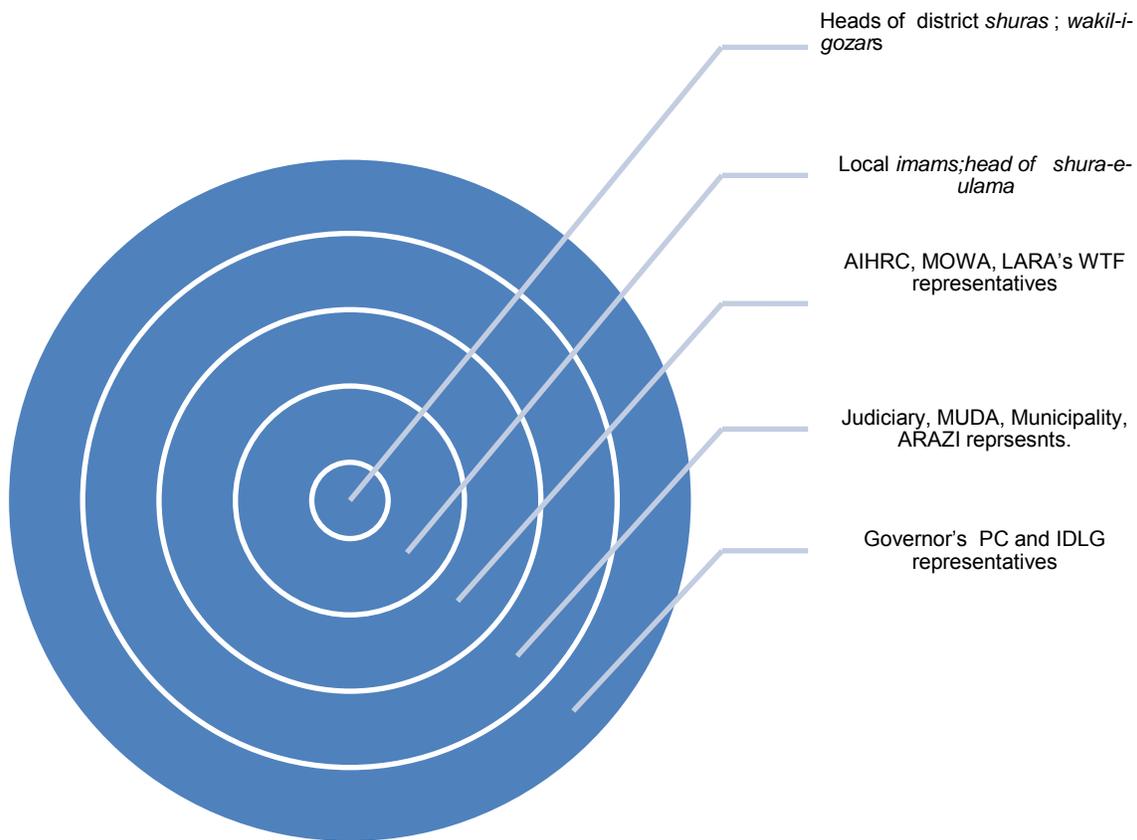
In the absence of a legal framework/state policy on the relationships between state and non-state justice institutions, there is an urgent need for devising pragmatic mechanisms for linking them so that land disputes the current urban crisis in Jalalabad are dealt with effectively. Such mechanisms are needed not only for addressing the land dispute dimension of Jalalabad City's 'urban crisis'. But also they needed to address key other dimensions of the current 'urban crisis' in the city, especially the absence of a consultative, accountable and effective local governance in the city. In the absence of such local governance, non-state grassroots intuitions operate informally in order to address governance issues in Jalalabad City as one researcher has observed:

'The most relevant finding seems to be that sophisticated grassroots governance [in Jalalabad] may be in place, or rapidly evolving, in areas where important physical transformations of the urban space are anticipated. Grassroots governance seems largely to revolve around the three poles of the mosque, local community councils and the *wakil-i-gozar* (head of urban ward). These institutions are critical in organizing decision-making processes within the community, negotiating with state authorities and supporting collective action. They could possibly offer a way to represent the interests of urban constituencies in the formulation of new master plans and other planning instruments for the city, as well as undergird urban development projects.' (Giovacchini 2011:32).

However just as with state and non-state justice institutions, the interaction among grassroots governance institutions and state authorities does not take place within an organised participatory framework. Respondents for this research called for the creation of a high level and credible mechanism that could

pave the way for the development of local governance, regulatory mechanisms and planning processes that are inclusive, participatory, transparent, and effective. Based on consultations with key stake holders, this research proposes the creation of ‘Jalalabad Community Conversation Forum’ (JCCF) – and advisory forum the main elements of which are illustrated in Figure 1 below:

Figure 1: Jalalabad Community Conversation Forum (JCCF)



As Figure 1 above illustrates the proposed JCCF comprises of five concentric circles. In Figure 1 above, the more inner the relative location of a circle, the more central its role is in the collective decision making processes at JCCF. Thus, as *wakil-i-gozaars* and heads of district *shuras* represent ordinary residents and play fundamental roles in collective decision-making processes within the community, they occupy the most inner (red) circle at JCCF. These local leaders and elders must represent each of the six *nahias* (districts) in Jalalabad City. In order for the decisions and proposals made by the local leaders and elders to have more normative legitimacy, they need to be blessed local *imams* from each of the six *nahias* (Although a local leader/elder and *imam* in some *nahias* may be the same person). As illustrated in the green circle, it is also important that the *imams* are also joined by the head of Jalalabad provincial *shura-i-ulama* who is a prominent religious leader and a former senior judge.

While participants of the two most inner circles in the JCCF represent local people (mainly men) and the normative dimensions of their communities, important conversation about community decision-making

need to be inclusive of women and in line with fundamental human rights principles. Thus as the yellow circle in Figure 1 illustrates heads of the regional offices of Afghanistan Independent Human Rights Commission's (AIHRC) and of the Ministry of Women Affairs (MOWA) in Jalalabad as well as members of LARA's Women Task Force are to be part and parcel of the JCCF.

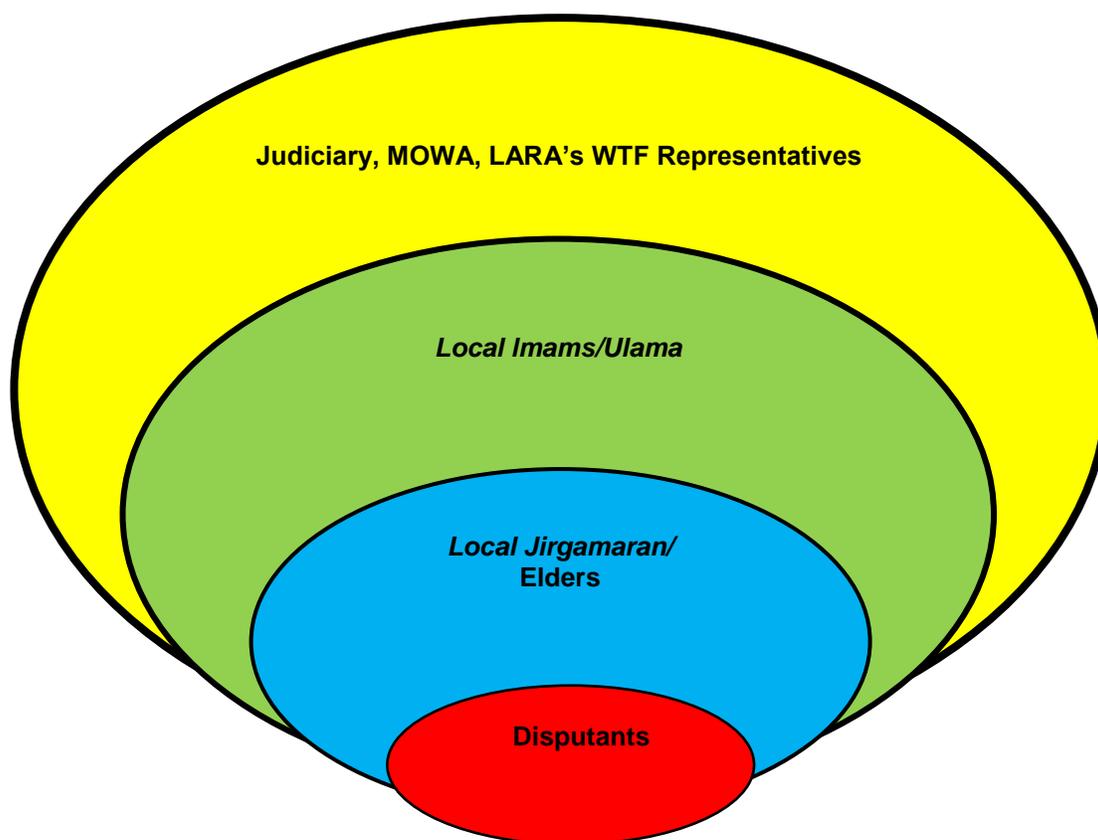
Very importantly, in order for this inclusive conversation to result in implantable decisions, it would need to have technical and professional advice and support from relevant state institutions. In this way as the gray circle in Figure 1 illustrates, it is proposed that the heads of Jalalabad's Appellate Court, the city's municipality (mayor), Ministry of Urban Development Affairs (MUDA), and of *Aarzi* have much to contribute to the JCCF based 'community conversion' technically. Although not mentioned in the diagram, this conversation would also benefit significantly from participation of the provincial heads of the departments of Customs and Revenues, Cadastre and Agriculture.

Finally, as the Provincial Governor represents the highest state executive authority in the province, it is very important that collective decisions reached through participatory and professional sound process at JCCF are approved by him or by his representatives as the blue circle in Figure 1 illustrates. Furthermore, in order for this approval to gain wider official legitimacy, it is important it is supported by the heads the Independent Directorate of Local Governance (IDLG) and the Provincial Council of Nangarhar Province.

Based on consultations with key respondents for this research, the JCCF would need to be located and built physically on a neutral ground at a centrally located place in Jalalabad City. A well-equipped building in the city would make it possible for the various members of the JCCF to hold frank and strategic conversations that are conducive to collective and participatory decision making. However, as the proposed JCCF membership includes many senior state officials and prominent non-state personalities, it would be very difficult for all of them to hold meetings regularly. Therefore, JCCF is designed to hold meeting only periodically advising on important strategic decision making relating to the city's local governance, regulatory mechanisms, planning processes and land 'big' land disputes and land grabbing.

However, on the basis of consultations for this research 'mid-level' and 'small' land disputes need to be resolved by a similar but separate forum – a forum that is more local operating at *Nahia* (or even *Guzar*) level. Such a forum would mainly comprise of local elders, *imams* and *ulama* and other local leaders and elders. Thus a 'Hybrid Model for the Resolution of Land Disputes in Jalalabad (HMRLDJ) is proposed, which is illustrated in Figure 2 below:

Figure 2: Hybrid Model for the Resolution of Land Disputes in Jalalabad (HMRLDJ)



As Figure 2 above illustrates, the HMRLDJ is designed to comprise of four concentric circles. While disputants are the main focus, *Jirgamaran/Elders* play central role in the dispute resolution process as illustrated in the blue circle. This is because it is these leaders who have thorough local knowledge, expertise and are trusted by the disputants and the community. However, in cases of land disputes which often involves issues relating to inheritance, lease, and mortgage, the involvement of local *imams* as well as prominent *ulama* (with through knowledge of Islamic Law) is essential. A resolution proposed in accordance with Islamic Law and blessed by local *imams* and prominent *ulama* is, more likely to be accepted by the disputants and be in line with Afghan Civil Code.

However as mentioned earlier, decisions proposed in this way are often criticized for being exclusive of women. In addition, such decisions may sometimes result in the violation of Human Rights Principles. Thus as the yellow circle in Figure 2 illustrates that the heads of the regional offices of Afghanistan Independent Human Rights Commission's (AIHRC) and of the Ministry of Women Affairs (MOWA) in Jalalabad as well as members of LARA's Women Task Force are assigned the roles of observers in dispute resolution processes in the context of HMRLDJ. Similarly, as mentioned earlier, the head of Jalalabad' Urban Primary Court would also have the role of an observer in this dispute resolution processes. This senior judge is expected to provide a much needed expert advice for making the collectively achieved decision approvable by the state judiciary. It is important to mention that HMRLDJ is proposed to facilitate the resolution of land disputes in ways that are acceptable to all stake holders, including the representatives of the Judiciary. Decisions made within the context of HMRLDJ will not have legally binding effects on the disputants. However such decisions are more likely to be approved by judicial authorities and other relevant state institutions without delays and complications.

As mentioned earlier, while the JCCF and HMRLDJ are to interact closely, the former is mainly designed to provide a participatory advisory forum for all key stake holders where master plans, new planning

instruments, urban development projects, strategic policies and resolution of big land disputes are discussed. However, as the resolution of most ‘mid-level’ and ‘small’ land disputes lie within local communities, the HMRLD is applicable for the resolution of land disputes at *guzar* and at *nahia* levels. In other words HMRLD is designed to resolve land disputes that occur at a specific district/neighborhood by its own *Jirgamaran/Elders*, *imams* and *ulama* with participation of Jalalabad-based representatives of AIHRC, MOWA, LARA’s WTF and the head of the city’s Urban Primary Court.

In order to facilitate the creation of HMRLDJ, the current research has identified groups of *Jirgamaran/Elders* and *imams* from each of Jalalabad six districts and have secured the agreement of AIHRC, MOWA, LARA’s WTF representatives and a conditional offer of participation from head of the city’s Urban Primary Court (See Appendix II). However, the ‘grantee’ organization in the process of its work in Jalalabad will need to further refine these lists so that truly honest, pious well respected and knowledgeable *Jirgamaran/Elders*, *imams* and *ulama* are represented in the blue and green circles of HMRLDJ. The ‘grantee’ organization would also need to compile a full demographic profile of each of Jalalabad’s six districts, including information about the number their respective population, *guzars*, mosques *shuras*, key traditional elders/leaders, the level of land disputes and the ways these disputes are resolved - formally or informally. In addition, the commitment of representatives of AIHRC, MOWA, LARA’s WTF and the head of the city’s Urban Primary Court to HMRLDJ would need to be consolidated.

As HMRLDJ is a proposal based on existing body of knowledge and limited field work for this project, its scope, participation, and workability may change in the process of its application by the ‘grantee’ organization. This process may result in the development of new HMRLDJ sub-models. Similar developments may take place with regard to translating the idea of JCCF into reality. In fact, both JCCF and HMRLDJ need to be used as road maps guiding the activities of LARA’s Dispute Resolution Specialist and the ‘grantee’ organization. Changes and new developments to JCCF and HMRLDJ are to be recorded as ‘lessons learned’ - valuable lessons with the potential for wider applicability to other urban contexts in Afghanistan.

A-1.1 PROVISIONAL LISTS OF HMRLDJS MEMBERS FOR EACH OF JALALABAD CITY’S SIX NAHIAS

As discussed in the main body of the paper, local dispute in Jalalabad requires local solutions at *Nahia* (or even at *Guzar*) level. This to say that each of Jalalabad City’ Six *Nahias* needs its own HMRLDJ. Thus, in the process of this study, local elders/leaders and *imams* for each of the city’s six *Nahias* were identified, and most of them interviewed. Those interviewed made the commitment to work as members of the HMRLDJ. The names of local elders/leaders and *imams* for each of the six HMRLDJs are listed below:

a. *Nahia* One:

1. Local Elders/Leaders

- Zalmail Khan Haqyar (Contact Person - Mobile Tel. No: 0771130181)
- Mohammad Aslam
- Gholam Seddiq
- Omara Khan
- Mir Ahmad Mama

2. Local imam/Mullah: Mowlawi Abdul Rabbi

b. Nahia Two:

1. Local Elders/Leaders

- *Haji* Mohammad Waris (Contact Person - Mobile Tel. No: 0775959149)
- *Wakil* sahib Pacha Noor (Mobile Tel. No: 0774726475)
- *Wakil* Abdul Ghafar Ahmadzai (Mobile Tel. No: 0774726475)
- *Haji* Ashequllah
- *Haji* Masoom

2. Local imam/Mullah: Mowlawi Askar Khan

c. Nahia Three:

3. Local Elders/Leaders

- *Haji* Sardar Khan (Contact Person - Mobile Tel. No: 0700623336)
- *Haji* Jom'a Gul Khan (Mobile Tel. No: 0700149172)
- *Khan* Mohammad Qane'a (Mobile Tel. No: 0770940918)
- *Mowlawi* Hamidullah

4. Local imam/Mullah: Mowlawi Omara Khan

d. Nahia Four:

1. Local Elders/Leaders

- *Habiburrahman* Khan (Contact Person - Mobile Tel. No: 0700635287)
- *Haji* Mohammad Yasin
- *Haji* Nasrullah Khan
- *Haji* Abdul Basir
- *Dagrawal* Mohammad Daud

2. Local imam/Mullah: Mowlawi Sohbatullah

e. Nahia Five:

1. Local Elders/Leaders

- *Ajab* Gul Khan Mojahed (Contact Person - Mobile Tel. No: 0799117120)
- *Moleh* sahib (Contact Person - Mobile Tel. No: 0799117120)
- *Malik* Sahib (Contact Person - Mobile Tel. No: 0707135930)
- *Haji* sahib Salar
- *Haji* Shir Mohammad Khan

2. Local imam/Mullah: Mowlawi Habibullah Storai

f. Nahia Six:

1. Local Elders/Leaders

- Haji Gul Agha (Contact Person - Mobile Tel. No: 0799792524)
- Mowlawi Mirza Gul (Mobile Tel. No: 0777554832)
- Wakil Taj Mohammad Majnoon (Mobile Tel. No: 0799028135)
- *Zabit Shiraz*

2. Local imam/Mullah: Mowlawi Zar Mohammad Shah

Moreover, as proposed in the paper, each HMRLDJ's member must be joined by the head of Jalalabad' Urban Primary Court, heads of the regional offices of Afghanistan Independent Human Rights Commission's (AIHRC) and of the Ministry of Women Affairs (MOWA) in Jalalabad as well as members of LARA's Women Task Force as observers in land dispute resolution processes. These officials all of whom were interviewed for this report indicated their strong commitment to contribute to land dispute resolution in the context of HMRLDJ (although the role of the head of Jalalabad' Urban Primary Court is dependent on authorization by the head of Provincial Court of Appeal). The names and telephone numbers of the officials are listed below:

1. Head of Urban Primary Court, Jalalabad: Qazi Abdul Rahim (Mobile Tel. No: 0789517616)
2. Head of AIHRC, Jalalabad: Dr Bidar (Mobile Tel. No: 0799394284)/Mrs Sabrina Hamidi – Deputy Head, AIHRC (Mobile Tel. No: 0700617270); Mrs Shila Baberi AIHRC Associate, Nangarhar University ((Mobile Tel. No: 0700629514).
3. Head of MOWA, Jalalabad: Mrs. Anisa Imran – (Mobile Tel. No: .../Mrs Mahtab Malekzai Advisor MOWA (0700601388).
4. Members of LARA's Women Task Force

A-1.2. PROVISIONAL LIST OF MEMBERS OF JCCF

As JCCF's members are proposed to comprise of high ranking state officials and prominent non-state key holders, the people mentioned above need to be joined by:

1. Head of Provincial Court of Appeal
2. Head of the city's Municipality, and its buildings department
3. Representative Ministry of Urban Development Affairs (MUDA),
4. Head of *ARAZI*
5. Head of Customs and Revenues,
6. Head of Cadastre
7. Head of Agriculture Department
8. Representative of Provincial Governor
9. Head of Independent Directorate of Local Governance (IDLG)
10. Head of Provincial Council of Nangarhar.

11. Head of *Shura-i- Ulama*

As mentioned in this report, consultations with most of the above mentioned officials need to be conducted by LARA's senior staff. For the purposes of this study, only deputy head of Jalalabad municipality and its buildings department, head of Jalalabad's Court of Appeals, and the deputy Governor were interviewed. All these officials indicated their support for JCCF.

APPENDIX 2: TRAINING MATERIALS COMPARATIVE ALTERNATIVE LAND DISPUTE RESOLUTION

A-2.1 WHAT IS ALTERNATIVE DISPUTE RESOLUTION (ADR)?

The term alternative dispute resolution or "ADR" is often used to describe a wide variety of dispute resolution mechanisms that are short of, or alternative to, full-scale court processes. The term can refer to everything from facilitated settlement negotiations in which disputants are encouraged to negotiate directly with each other prior to some other legal process, to arbitration systems that look and feel very much like a courtroom process. Processes designed to manage community tension or facilitate community development issues can also be included within the rubric of ADR. ADR systems may be generally categorized as negotiation, conciliation/mediation, or arbitration systems. However, ADR strategies in general include: Facilitation, Moderation, Consultation, Socio-therapeutic consultation, Conciliation, Mediation, and Arbitration. Adjudication (not and ADR mechanism) is used as the last resort for dispute resolution.

Negotiation systems create a structure to encourage and facilitate direct negotiation between parties to a dispute, without the intervention of a third party. Mediation and conciliation systems are very similar in that they interject a third party between the disputants, either to mediate a specific dispute or to reconcile their relationship. Mediators and conciliators may simply facilitate communication, or may help direct and structure a settlement, but they do not have the authority to decide or rule on a settlement. Arbitration systems authorize a third party to decide how a dispute should be resolved.

It is important to distinguish between binding and non-binding forms of ADR. Negotiation, mediation, and conciliation programs are non-binding, and depend on the willingness of the parties to reach a voluntary agreement. Arbitration programs may be either disputants must follow even if they disagree with the result, much like a judicial decision. Non-binding arbitration produces a third party decision that the parties may reject. It is also important to distinguish between mandatory processes and voluntary processes. Some judicial systems require litigants to negotiate, conciliate, mediate, or arbitrate prior to court action. ADR processes may also be required as part of a prior contractual agreement between parties. In voluntary processes, submission of a dispute to an ADR process depends entirely on the will of the parties.

Source: Brown, S., Cervena, C. Fairman, D. (1998) ALTERNATIVE DISPUTE RESOLUTION PRACTITIONERS' GUIDE, Conflict Management Group (CMG), Washington DC: Center for Democracy and Governance.

A-2.2 THE MAIN STRATEGIES OF DISPUTE RESOLUTION

Depending on the degree of escalation present, eight strategies of conflict resolution are recommended (Glasl 1999, modified):1.

Facilitation

The facilitator helps the parties come together, the parties still being able to solve the problem by themselves. Facilitation can be applied in a very early stage of pre-conflict to defuse the conflict in time and avoid escalation.

Moderation

The moderator helps the parties come together to clarify and settle minor differences, the parties still being able to solve the problem by themselves. Moderation can be applied in a pre-conflict situation to defuse the conflict in time and avoid escalation.3.

Consultation

The “tutor” accompanies the process, working on the deeply internalised perceptions, attitudes, intentions and behaviours of the parties in order to calm them. Consultation is yet another approach useful during the stage of pre-conflict to stop the conflict progressing toward becoming a full-blown crisis. It is more appropriate than simple moderation in a case where a latent conflict has manifested itself for a longer time and has already created prejudices and hostility.

Socio-therapeutic consultation

This special form of consultation focuses explicitly on destructive, dysfunctional or neurotic behaviour due to psychological damages caused by former negative experiences in life. Socio-therapeutic consultation is extremely helpful if the parties involved have already lost face during the processes of peace making, peacekeeping and peace-building, as it helps in the understanding of one own behaviour as well as that of one’s opponent, and therefore creates understanding and a willingness to forgive one another.

Conciliation

This is a mixture of consultation and mediation. The conciliator helps the parties to negotiate while – whenever necessary – addressing internalised perceptions, attitudes, intentions and behaviours with the objective of reducing prejudices and hostility. Conciliation can be applied in pre-conflict and early conflict situations as long as the parties are able to talk to each other.

Mediation

Mediation, too, requires that the parties are willing to face each other and to find a compromise. The mediator follows a strict procedure, giving each party the opportunity to explain its perceptions and to express its feelings, forcing the other party to listen and finally moderating a discussion aimed at finding a solution with which both parties can live. Preferably, the moderator should not propose solutions but may lead the way towards them. At the end, a written contract is signed by all parties and the mediator seals the agreement. Mediation can be done in any situation as long as the parties are willing to find a compromise.

Arbitration

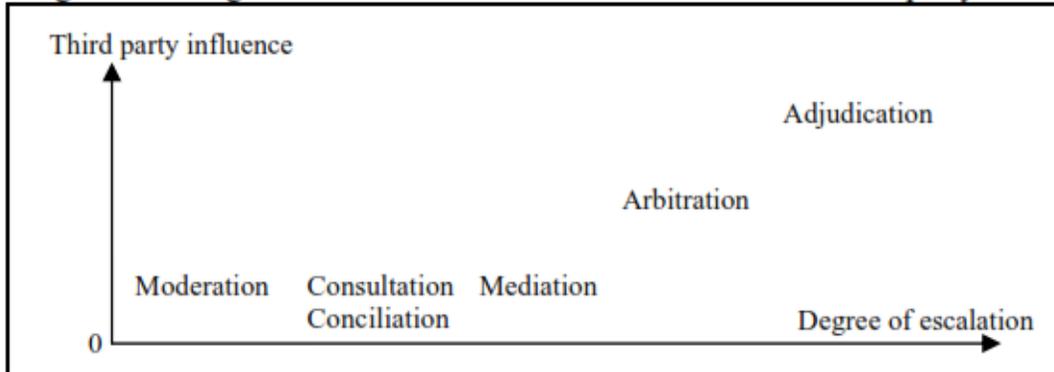
Arbitration follows strict rules too. Unlike the moderator, however, the arbitrator is expected to make direct suggestions on how to settle the conflict. He is more influential and powerful than moderators, tutors or mediators. He has decision-making authority. Therefore, arbitration can be used even at the peak

of a conflict. What makes it different from adjudication is that the arbitrators are accepted and trusted by both parties. The arbitrator may be appointed by all conflicting parties or be a respected person traditionally responsible for dispute settlement.

Decision by a powerful authority (Adjudication) should always remain the last resort.

It is important to stress that every dispute over land has different degrees of escalation. Specific strategies of dispute resolution need to be chosen for specific degree of the escalation of a land dispute as illustrated in Figure 12 below:

Fig. 12: Strategies of conflict resolution and influence of third party



As illustrated above, in Figure 12, In the case of moderation, consultation, conciliation, negotiation and mediation the third party helping to resolve the land conflict only influences the process, not the outcome. These are all consensual approaches where the outcome is exclusively defined by the parties. Only in the non-consensual approaches of arbitration and adjudication is the outcome defined by the third party. Choice of the third party in relation to the various stages of a land dispute - pre-conflict, in-conflict, and post-conflict - is further illustrated in Figure 13 below:

Fig. 13: Stages of conflict and possible methods of dispute resolution

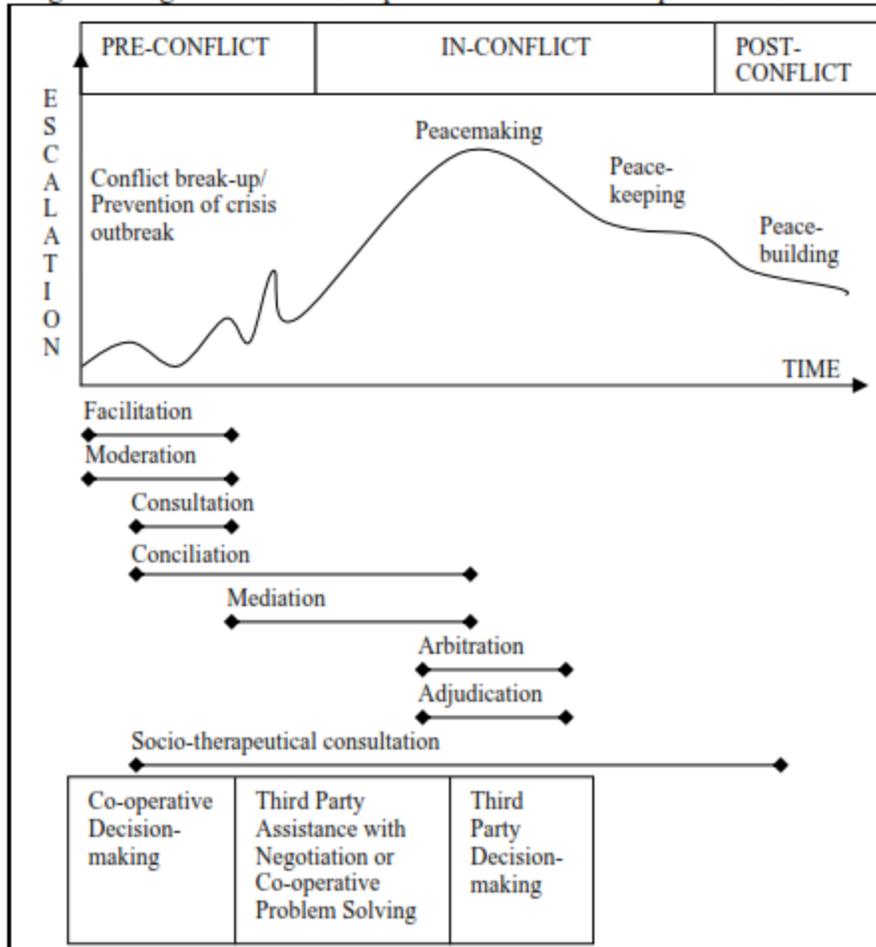
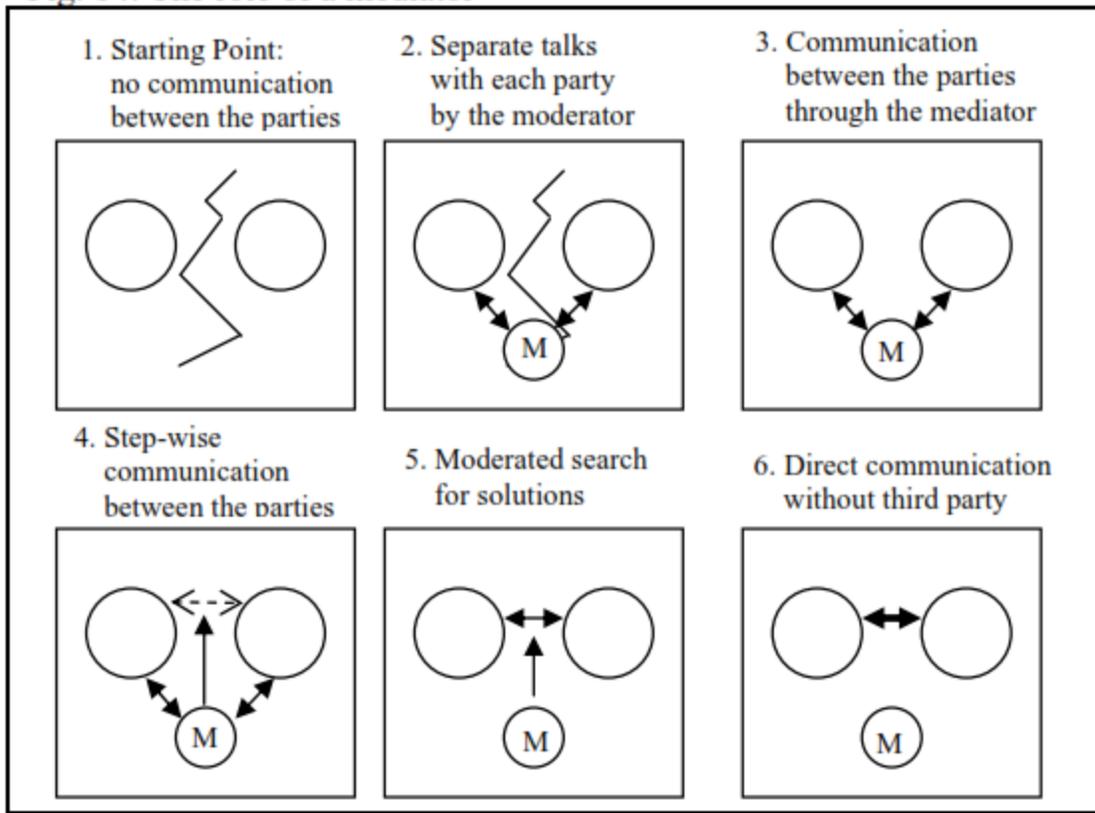


Figure 13, above, illustrates that while Facilitation, Moderation, Consultation are more appropriate to be used for the pre-conflict stage, Conciliation and mediation could be used at both pre-conflict and in-conflict stages. And whereas Arbitration and Adjudication are only appropriate for in-conflict stage, Socio-therapeutic consultation is used for the all the various stages of dispute. As mediation is one of the most common strategies for ADR, the role of a mediator is illustrated in Figure 14 below:

Fig. 14: The role of a mediator



Direct communication between the disputants should then be followed by **mediation**, a sophisticated procedure of guiding the dialogue and negotiations between the parties, assuring that both sides listen to each other, helping the parties to structure the discussion and assuring through active inquiry that all details –especially the interests, motivations and feelings of both sides – are presented without offending the other party. In a way, mediation is professional way of jointly peeling the conflict onion. While organising the process and improving the communication, the third party is not

A-2.3 COMMUNICATION BETWEEN THE PARTIES THROUGH THE MEDIATOR

Direct communication without third party is not supposed to take a decision. The decision-making is entirely the responsibility of the conflicting parties, in order to increase ownership of the outcome. The mediator might be allowed to suggest solutions, but this has to be agreed upon before the mediation starts. Mediation can be carried out by professional mediators or by land experts who have received a special training in mediation, such as land officers in special departments dealing with land conflicts. The exact nature of the conflict determines whether a higher degree of professionalism in moderation or more detailed insight into land issues is needed. In the USA, mediation is quite commonly used to settle land use conflicts.

Source: Wehrman, B. (2008) LAND CONFLICTS: A practical guide to dealing with land disputes, Germany: GTZ.

APPENDIX 3: COMPARATIVE CASE STUDIES OF ALTERNATIVE LAND DISPUTE RESOLUTION

A-3.1 EAST TIMOR

A-3.1.1 Context and Mediation Procedures

In 2000 the United Nations Transitional Administration in East Timor (UNTAET) granted the Land and Property Directorate authority to mediate land disputes. East Timorese mediators received intensive training in 2001 and 2005 but there are no mechanisms for on-going or recurrent mediation training. The mediators are staff members of the Land and Property Directorate. They are paid a relatively small sum in addition to their standard salary to undertake mediations and to cover their costs. When they are not mediating, they perform their standard land administration duties. The mediation activities are funded from the general budget of the Land and Property Directorate. The directorate is a self-funding agency as a result of revenues from leases over public land.

Both Law 1/2003 on landownership and a draft law on mediation maintain the authority of the Land and Property Directorate to mediate land disputes. The following procedures apply under the draft mediation law and current directorate guidelines.

- An individual claimant or a group of complainants goes to the national Land and Property Directorate or the district Land and Property Directorate office and requests mediation. A dispute may also be referred to the directorate by a village head (chefe de suko) if the parties have agreed to submit the case to the directorate.
- The other parties to the dispute are informed of the claim. Mediation will proceed only when all the parties to the dispute voluntarily accept the mediation, and where there has been no previous legal or administrative resolution to a dispute regarding the same land. Mediation will not occur if the land that is the subject of the dispute is the property of the state, if one of the parties is an officer of government, or if the subject matter of the dispute is considered a crime.
- The parties to the dispute agree to a Land and Property Directorate mediator or panel of mediators.
- A directorate mediator visits the disputed land and gathers information about the history of ownership from local informants such as the village head, neighbours and other informed and credible witnesses.

- The directorate mediator invites the claimant and the current occupant to separate meetings to hear each side of the dispute. Evidence presented during mediation may include public and private documents, witnesses and physical proof such as borders, trees, buildings and plantations.
- The directorate mediator may then meet with the claimant and the current occupant together to attempt to find a solution that is acceptable to both parties. This may occur on up to three occasions. The draft law also allows for a further stage—mediation by a Mediation Panel of Appeal.
- During the meetings the directorate mediator may facilitate interim agreements relating to land use and commitments not to engage in violence pending resolution of the conflict. The mediator will also suggest a variety of ways in which the dispute may be resolved, including selling, leasing, dividing or swapping the land.
- The matter will be resolved if a solution is found that is agreeable to both parties. If the parties fail to reach agreement after three joint meetings, the dispute is referred to the courts.
- If a settlement is reached, a report is produced and signed by the parties to the dispute and the directorate mediator or the panel of mediators. The settlement is registered with the Land and Property Directorate.
- A reconciliation ceremony may occur if the parties resolve to do so and meet their responsibilities and costs incurred in doing so.

The draft mediation law acknowledges that traditional forms of mediation are practised, and provides for these to continue unregulated by the draft law, provided they are not contrary to the formal law or fundamental human rights. It also provides for the Land and Property Directorate’s mediation process to use customary norms and processes, provided they are not contrary to law. There are no provisions relating to the involvement of women and there are no formal mechanisms for the directorate to monitor adherence to mediation agreements.

A-3.1.2 Case Study 1: Mateus and Abilio

Background to the Dispute. The dispute concerned the ownership of an irrigated rice field covering approximately 2 hectares of land. According to Mateus, his father had farmed 4 hectares of rice field before and after the Indonesian invasion in 1975. Mateus claimed that Abilio began using the land under dispute in 1981 under a sharecropping agreement with Mateus’s father. Abilio disputed this history and alleged that his father had owned and farmed the disputed plot of land until he gave it to the Catholic Mission just prior to the Indonesian invasion. According to Abilio, his family returned to Maliana in 1997 and began farming the land again. They were forced to flee the land once more in 1999 and returned later that year, recommencing farming in 2000.

Dispute Resolution Process. Intermittent disputes over the land occurred from 1983 to 2000. The dispute escalated in January 2001, when Mateus came to the rice fields with numerous members of his family and allegedly threatened Abilio, accusing him of having been an Indonesian collaborator and suggesting that the harvest from the rice field would be used to feed the pro-independence Falintil soldiers who had returned from Aileu.

Abilio then made a complaint to the Land and Property Directorate office in Maliana, the police and the local village heads on 21 February 2001. A meeting was held the next day between the parties to the conflict, the police and community elders. One village head suggested to Abilio that he agree to share the land with Mateus, but Abilio refused. Abilio and Mateus ultimately agreed that neither party would farm the land while they took their case to the Land and Property Directorate. It seems that nothing further occurred until 2003.

Mateus filed a complaint at the Land and Property Directorate on 18 February 2003. Abilio wrote to the head of the Land and Property Directorate on 2 March 2003 outlining his arguments. Both letters were copied to the sub district administrator and the local village heads.

The Land and Property Directorate subsequently invited both parties to a meeting where the mediator asked each of them questions separately. The mediator told the parties that there were a number of options available to them. For example, one could keep all the land; both could share the land; or one could relinquish his claim to the land. The mediator advised the parties that if they could not reach an agreement through mediation, they should take their case to court.

Both parties demonstrated a reluctance to take the case to court and argued that it was the other party's responsibility to do so. In interviews for this case study, Mateus stated that he wished to resolve the problem through mediation because he and Abilio were from the same hamlet and were related through marriage, and should therefore try to resolve the case so that neither family lost out completely. He also wanted to avoid 'locking' the land in a dispute and ultimately having it 'taken back' by the state.

The parties ultimately agreed to divide the land. On 4 March 2003 an agreement letter was co-signed by the parties to the dispute, the head of the Maliana Land and Property Directorate office, the sub district administrator and four witnesses. It provided that the disputed land should be divided in two, with Abilio keeping the east side of the field and Mateus keeping the west side of the field. The division of the field was calculated according to the amount of rice produced, and it was agreed that, since Abilio had invested more in maintaining the terracing, etc. (kabubu), he should retain slightly more land than Mateus. The letter included an acknowledgement that the agreement was reached together and that no person had forced or threatened the parties to make the agreement.

After signing the agreement at the Land and Property Directorate office, both parties went to the field to establish the border with the sub district administrator, the head of the district Land and Property Directorate and the village head. The border was established by sight (they did not have a metre at the time) and marked using stakes and rope. It was decided that Mateus would make the mound/terracing along this agreed border. To date there has been no further conflict about ownership and use of the land.

Observations. The Mateus and Abilio case appears to be an example of successful dispute resolution by the Land and Property Directorate. However, the agreement was reached in the context of the displacement of one of the parties, Abilio, who may have had few options other than to agree to the division of the land. It was clear from discussions with Abilio that he is not fully satisfied with the agreement.

The case study demonstrates the manner in which 'ordinary' disputes over family ownership of land can become tangled in allegations about support for or opposition to the Indonesian occupation. For example, when Mateus tried to claim the land in 1997, Abilio accused him of wanting to use it to feed the resistance. In his written deposition to the Land and Property Directorate, Abilio stated that in 1999 Mateus's father had told Abilio to leave the land. At the time, Mateus's father was accompanied by a man called Luis. The suggestion in Abilio's written deposition was that Luis was a member of the armed resistance and his accompanying Mateus's father was a veiled threat.

The case demonstrates how the mediation process of the Land and Property Directorate provides an alternative to local dispute resolutions on the one hand and the state-based court system on the other. In addition, one of the noteworthy features of this case is the solution—dividing the land. This illustrates the flexibility of remedies available to the Land and Property Directorate compared with normal court remedies. It should also be noted that other parties and witnesses were present when the agreement was signed and the land was surveyed and measured.

A-3.1.3 Case Study 2: the Tuganatu Group and the Ainuatu Group

Background to the Dispute. The land dispute between the groups from Tuganatu and Ainuatu villages concerns approximately 42 hectares of land in Aireu in Maliana. According to the current village head of Ritabou, who is from Ainuatu, 32 people from Ainuatu have lost their land, which is currently occupied by 11 people from Tuganatu. This dispute provides an example of inter-group conflict arising from Portuguese colonial policy. It is also part of a broader dispute over political disenfranchisement during the Indonesian occupation.

According to people from Ainuatu, during the 1960s the Portuguese administration organised workgroups from a number of the upland villages to farm on the Maliana Plain. As a result the land around Aireu was farmed by groups including Tuganatu and Ainuatu villagers. When Indonesia invaded East Timor in 1975, the people of Ainuatu either fled to the hills or to West Timor. According to local narratives of Indonesia's invasion around Maliana, people who fled to West Timor became associated with the Indonesians and 'pro-integration', while those who fled to the mountains were suspected of being Fretilin supporters and therefore loyal to the resistance and independence.

Informants from Ainuatu allege that they were punished because of their association with Fretilin. While this did not necessarily mean that the people of Ainuatu who had settled in and around Maliana were displaced, it did mean that they had no control over decisions made about 'their' village land. At around this time, local officials allowed people from other villages, notably Tuganatu, to take over the land they had farmed since their relocation by the Portuguese administration. Ainuatu people allege that the people from Tuganatu regularly threatened them and said they would never leave the land while Indonesia was in power.

Dispute Resolution Process. On 22 and 23 October 2000, members of the Ainuatu community attempted to make some reconciliatory moves towards the people from Tuganatu who were occupying their land. According to informants from Ainuatu, they wanted to try to resolve the problem according to customary relations of cousins and marriage (maun-alin and uma mane, mane foun), but the Tuganatu people were not interested in dialogue. Two further attempts at dialogue were made on 9 January and 24 March 2001.

During these meetings a number of 'outside' mediators were asked to facilitate the meetings. The people from Ainuatu claimed that they were happy to come to an agreement over the land, provided the people from Tuganatu recognised that the land under dispute was originally farmed by people from Ainuatu. They alleged, however, that the people from Tuganatu did not want to negotiate and continued to insult the people of Ainuatu. The readiness of the people of Ainuatu to participate in informal dispute resolution appears to have been motivated in part by their belief that they would not receive a fair trial through the courts because a local traditional leader, with whom the Tuganatu group are close, has relatives in the court in Dili.

This dispute was officially taken to the Land and Property Directorate in January 2002. A memorandum of understanding between the parties to the conflict was signed on 11 January 2002. Under the memorandum the parties agreed to participate in mediation and agreed that while this was occurring neither party would farm the land under dispute. The Land and Property Directorate organised a number of meetings between January 2002 and July 2003 in an effort to mediate between the two parties. However, the people from Ainuatu were not satisfied with the process and wanted more mediators to be involved, including the local church and human rights organisations. It appears that the people from Ainuatu did not want to discuss the land issue in isolation from other issues of disenfranchisement that occurred during the Indonesian period.

An agreement was signed on 7 March 2003 by representatives of the Ainuatu and the Tuganatu groups, and the local village head. The agreement provided that the parties to the dispute:

- have the land at Aireu surveyed so that a map could be created for mediation purposes
- not engage in violence during the survey process
- send a representative from each group to a mediation meeting of the Land and Property Directorate together with the village head, sub village head and the sub district administrator.

A group of mediators and staff from the national Land and Property Directorate office came to interview individuals involved in the conflict in April 2003. The National Chief of Mediation sent a letter to the head of the Maliana Land and Property Directorate on 23 July 2003 advising that the National Director of the Land and Property Directorate had directed that the case be resolved through the courts. According to the letter, this direction had been made due to the failure of mediation on 18 July 2003.

Observations. While this case involves a failure to reach final agreement, it is an example of a successful interim no-violence agreement. The case provides an example of conflict between groups and the extent to which disputes over land may be tied up with group identities, histories and rivalries. The success of a no-violence agreement is a notable achievement and has possibly prevented a dispute over land from escalating into inter-group violence.

A-3.1.4 Case Study 3: the Lariato and Bibilaro villages

Background to the Dispute. The case of Lariato and Bibilaro villages is another example of conflict between groups. It concerns a dispute over the border of a rice field of approximately 60 hectares between the two villages. The people from Bibilaro claim that in 1968–69 their community was involved in digging the irrigation channel to the disputed land and that in 1970 they started planting rice on the land. The people of Lariato argue that the land is theirs, they have been farming it since the end of the Japanese occupation and they were responsible for digging the irrigation channels to the disputed land.

The dispute over the land appears to have first emerged in 1974, at which time the district administrator ordered the village heads of Lariato and Bibilaro to resolve the problem. The people of Lariato claim that the village heads resolved the dispute at this time by agreeing to a border with witnesses from leading families of each village.

Dispute Resolution Process. The dispute came to the attention of the Land and Property Directorate in December 2002 when the district police responded to a fight between groups of farmers from each village. Police officers took four farmers from Bibilaro who had been involved in the dispute to the directorate office in Maliana. Forty farmers from Lariato also went to the Land and Property Directorate office and told staff there that when they went to their fields they found a group of farmers from Bibilaro working ‘their’ land. For their part, Bibilaro villagers alleged that the 1974 agreement was tainted by the two village heads’ subsequent support for the Indonesian occupation.

An official complaint was made by a representative from Bibilaro who claimed that people from Lariato were ‘occupying’ Bibilaro land. The mediator told the groups to return in one week, and in the interim he talked to elders from both communities to learn more about the history of the rice fields. It became apparent that there were a number of people who had witnessed the establishment of the village boundary, including customary elders from the origin group. As a result the Land and Property Directorate decided to ‘hand back’ the case to customary authorities. In the interim, the directorate facilitated an agreement between the parties stating that:

- Lariato may continue to farm
- Bibilaro will pursue the case through legal channels

- Lariato will participate in the justice process.
- The agreement also included a no-violence commitment.

Observations. This case again demonstrates the advantages of the flexibility of remedies available to the Land and Property Directorate. By sending the dispute back to the customary authorities, the directorate recognised the significance of local dispute-resolution mechanisms and their capacity to adequately resolve disputes. However, it also provided an interim measure to prevent the dispute from escalating further by having the parties agree on the interim use of the land and commit to no violence.

Source: Fitzpatrick, D. (2003) Mediating land conflict in East Timor, Australian National University, Canberra.

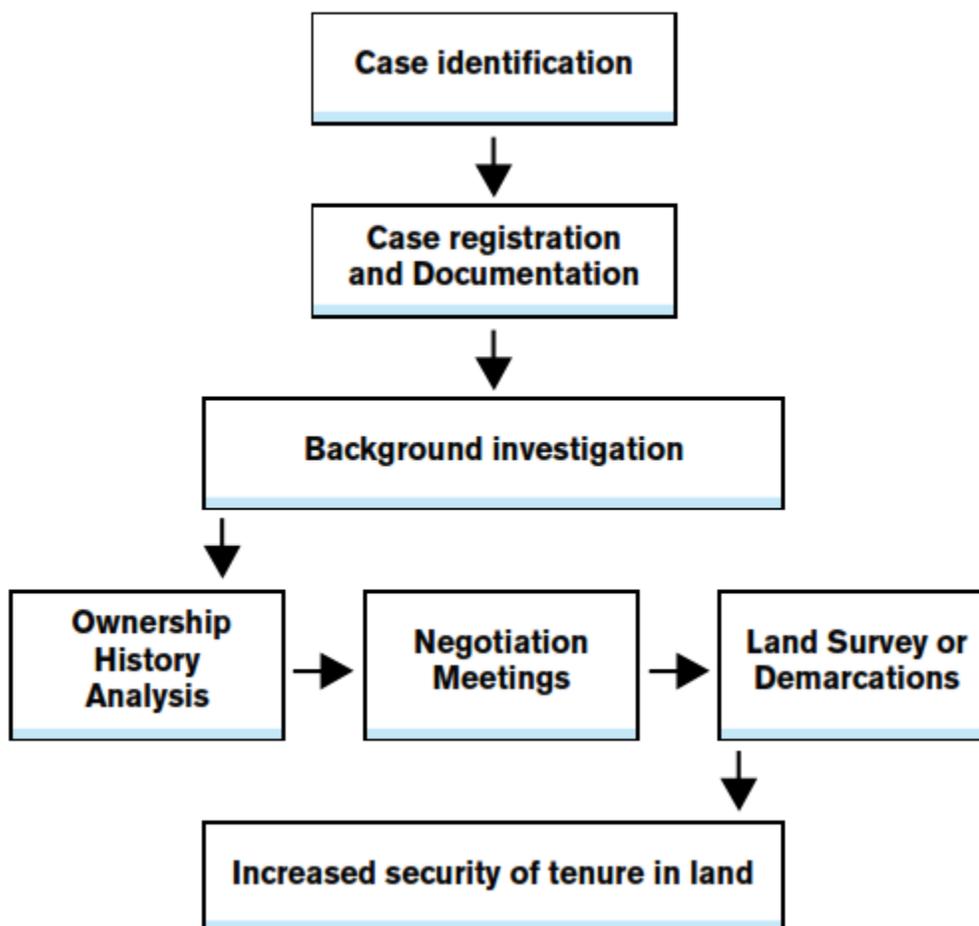
A-3.2 LIBERIA

A-3.2.1 Context and Mediation Procedures

The key stages of the Norwegian Refugee Council’s (NRC) dispute resolution process in Liberia are set out in the diagram 1 below. The process is usually described in NRC documentation as “facilitated negotiation”, perhaps because of the other procedural elements which are not related to mediation. However, the heart of the process remains the facilitation, by a neutral third party and on a confidential basis, of discussion and settlement between two parties, and so this case will generally refer to it as mediation.

The mediation component originated in an alternative dispute resolution project established by the American Bar Association in Liberia in 2006 and its procedures are closely based on the training materials produced by the ABA project staff. NRC’s five day mediation training for beneficiaries is based fairly closely on the ABA-designed mediation training which is given to NRC’s own project staff, although it also contains additional material assembled by NRC trainers as well as a session on land and property acquisition (“LPA”). It aims to give chiefs and local government officials sufficient mediation skills (through role plays and other methods) to facilitate their own basic mediations and also has the effect of sensitizing them about NRC’s dispute resolution work and generally creating a more permissive environment for mediation activities. “Difficult” mediation parties are occasionally invited to mediation training to give them a different view of how problems can be solved. Staff also suggested widening the target audience to include other local stakeholders such as “women heads”, youth leaders and community elders.

A-3.2.2 Norwegian Refugee Council's Mediation Process in Liberia



1. **Case Identification.** Staff find cases through a variety of means. NRC broadcasts land-related drama serials, advice programmes and short musical “spots” on local community radio and on UNMIL radio, which is widely listened to across the country. There are also billboards on main roads and on the outskirts of larger towns, encouraging people to bring their “land palavas” to NRC. People often approach NRC staff whilst they are carrying out casework in the field, since they use distinctive orange motorbikes, or after training sessions; usually staff are allocated an area to cover. Others hear about NRC from the parties involved in cases which NRC has helped to resolve, or are referred to NRC by local officials or other agencies (such as the community legal advisers involved in the Carter Center’s project with the Justice for Peace Commission).

NRC staff in turn make referrals to the GBV project (if they become aware of cases) and to other agencies, sometimes through the coordination forum of the county development committee. Some NRC offices are now carrying out community awareness “mobile team” visits to areas where disputes are known to be especially common; these usually involve public sessions (often during market days) and meetings with local authority figures (including religious leaders, “women heads” and youth representatives) and also give people the opportunity to approach staff individually during their overnight stay in the area.

2. Case Registration and Documentation. When someone approaches NRC with a relevant case, staff will record key information about the parties and the dispute on a case management form. This includes details of both parties' marital status, number of dependents, displacement history, ethnicity, education, religion, and previous exposure to related training by NRC or other NGOs; it also asks whether violence has been threatened and whether the matter has also been taken into the formal legal system or other dispute resolution venue (such as a chief's "court"). (If a case is also in the formal system, NRC will generally not proceed until it has been temporarily or permanently withdrawn, to avoid any contempt of court issues or "forum shopping" by one party). The case management form categorizes dispute types as "secondary occupation", "encroachment", "client claims access", "client claims compensation", "inheritance" or "forced eviction". Most cases in practice involve some form of encroachment (which seems to overlap with the secondary occupation category); "double sales" of the same piece of land to two different parties are also common, partly due to the rapid increase in land prices in urban and peri-urban areas. Staff describe how the process works (including the possibility of a survey) and make clear that it is entirely free; they also explain that NRC will act as a neutral mediator and facilitator and that all information disclosed will be kept confidential. Staff usually emphasize that they are not the police and that they are not there to judge the parties or to say that one is wrong or right. This is because many Liberians' only past experience in such matters has been of adversarial (and often arbitrary) chief's courts or intrusive (and usually threatening) governmental investigations. Staff will then approach the potential second party, again usually in an indirect manner ("are you aware of a dispute affecting your land?" rather than "a complaint has been made against you"), explain NRC's process and role, and discuss the matter with them. If the second party agrees to mediation, the case is registered in the database.

3 – 4. Background Investigation and Ownership History Analysis. NRC staff will then conduct what they describe as "background investigations", which involve discussing the dispute with community figures who may have useful information (for example elders who can attest to the boundaries of a piece of land granted by them). They will generally also look at and evaluate any land documents which the parties possess and are willing to produce; this may involve checking the authenticity of the documents. Staff described a detailed range of possible "material errors" and forgeries in documents, such as altered dates (since the older of two document usually takes precedence), signatories to tribal certificates who were not actually chiefs at the relevant date, different penmanship on successive pages of a deed, probate judges who were not in post at the time of alleged probating and so on. In some cases, checks are also made at the various document archives in Monrovia, though the results are often inconclusive due to gaps in registration caused by the civil war or deliberate removal of certain entries to cover up fraud. The results of these investigations are not made known to the other party and NRC staff do not give direct advice to either party as to the legal status of their documents, although they will describe the general provisions of Liberian law on the subject in "private sessions" with each party, and would also explain the basics of customary land management if relevant. It is not entirely clear how such explanations affect the decision of the relevant party as to whether to settle the dispute and on what terms, although it seems likely to be a relevant factor in their internal deliberations. NRC staff do not usually give general (i.e. unrelated to a specific dispute) advice on land and property matters whilst working in the community.

1. **Negotiation meetings.** Prior to the negotiation meetings, the NRC mediator may need to facilitate a number of meetings between the parties in order to examine points at issue, discuss the potential for settlement and generally move the process forward towards a final settlement conference. In some cases merely bringing the parties together can be an achievement in itself, given the depth of animosity (and sometimes armed violence) which may have existed between the parties in the past. Also, NRC staff will generally seek to engage and involve as many local authority figures as possible in these community-related cases, to add weight to the process and to ensure that any eventual settlement is known by and acceptable to all relevant parties. It also helps to preserve community knowledge of the settlement for the future and to prevent people from trying to unpick the settlement at a later stage. The mediation is usually also attended by a number of family members and by local

authority figures such as the town chief. Staff generally encourage the presence of family if this makes the parties feel more comfortable, but sometimes an individual relative proves to be obstructive to the process (for example a son urging his father not to settle) and may have to be excluded. Similarly, community members are usually welcome.

a. Establishing Facts. The mediator begins by inviting the first party to explain his/her understanding of the facts of the case; this is generally followed by questions from the second party (and sometimes from others) to clarify particular points. The mediator will often require that such queries are routed through him/her first, for clarity and to defuse any antagonistic or leading questions; this technique was also said by staff to make parties feel more confident about responding and to prevent people from feeling compelled to answer. The second party then gives his explanation of the case and is questioned in the same way, and third parties with relevant knowledge may also make statements. This process seems to have a number of purposes: it serves to put the relevant facts “on the table” and to enable all parties to feel that they have been heard and that their views are respected. It also to some extent indicates and tests the strength of both parties’ positions and enables other community members to express their views on the subject, since the “cross-examination” phase can be relatively prolonged. Relevant documents are usually referred to but not publicly examined; in general, the mediator will have already seen them in earlier private meetings, although some parties (for reasons of their own) will insist on holding on to them until the last minute. There is no public declaration of an obligation on the parties to tell the truth at the mediation, although staff commented that they would sometimes mention obliquely and in general terms at the private sessions beforehand that untrue statements would adversely affect the process. It was not clear how and to what extent this “evidential” phase of the mediation influenced the parties’ willingness to settle or their choice of particular settlement amounts. Staff suggested that the parties often had a particular settlement in mind before they came to the mediation session (presumably based at least partly on their view as to the factual/legal strength of their case), but it is possible that a party might only come to understand the actual position (or a significant weakness in their case) during this part of the process. The same might also apply to the parties’ view as to the moral strength or justice of their position.

b. Reaching and Documenting Agreement. The mediator then sums up briefly, repeating the key messages from the start of the session, and encourages the parties to formulate and consider a range of possible solutions to their dispute in a spirit of compromise which may require both parties to give up something. Often the parties then go into “private session” with family members and third parties to discuss their position, and the mediator visits each group. He/she would not get involved in suggesting a particular level or type of settlement, although they might note in a general way that excessive or unrealistic demands often prevent agreement being reached. The parties reconvene to indicate whether they have proposals for resolving the dispute – in practice the mediator will be aware of their respective positions and so there is no negotiating advantage to be gained from hearing the other party’s proposal first. This procedure may be repeated several times and of course may not result in a mutually acceptable agreement, although the mediations observed by the author were settled relatively promptly. The agreement is documented by writing it into a pre-printed NRC “memorandum of understanding”, which also contains general obligations on the parties to implement the settlement fully, prevent any reoccurrence of the dispute and refrain from litigating the matter elsewhere. The memorandum is read aloud for those who cannot read and then signed by both parties (and their spouses) and also by various witnesses (usually the chiefs and other authorities who have been present). Staff suggest that parties rarely litigate the same dispute in other venues if a properly drafted memorandum has already covered all the relevant issues.

There may be one or more subsequent meetings between the parties, for the signature of any further documents required by the settlement (such as a deed) or for an agreed survey or demarcation (see

below). In Liberia, “deeds” (i.e. transfers of land) are usually prepared by surveyors rather than lawyers, partly because there is a standard, government-approved, form of deed which simply requires the relevant details to be inserted, along with a description of the location and boundaries of the land which is known as the “metes and bounds” (see the glossary for a more detailed explanation). If a new deed has been produced, NRC staff will give the relevant party a briefing on the importance of carrying out the required registration formalities so that the deed is legally valid and enforceable, although NRC does not assist the party with payment of the various (legal and informal) fees involved. As noted in Part A, the registration process is fairly complicated and bureaucratic and this complexity and the cost deter many Liberians from completing the registration procedure. In addition, some people wrongly believe that mere possession of a land deed is sufficient. NRC staff do not routinely follow up cases to check whether new deeds are registered and so no specific data are available on this issue.

c. Surveying and Demarcation. In most cases, a survey or demarcation conducted by NRC is one of the final stages in the dispute resolution process, and staff suggest that the survey often plays a key role in ensuring a durable settlement. It may be required in order to establish or publicly document a particular boundary, to delineate a specific landholding, or to produce a diagram which will be attached to a transfer deed for private land. (Since President Johnson-Sirleaf has declared a moratorium on the signature of any further public land sale deeds, NRC’s policy is not to produce survey drawings for such deeds). Staff encourage the parties to plant soap trees (which are very difficult to eradicate) along the boundaries so that they can be readily identified; in urban settings, “corner stones” (actually concrete blocks with the parties’ initials on them) are often put in place. NRC has service agreements with government-approved land surveyors for each of the areas in which it operates and has also provided them with modern surveying equipment and some additional training for their field staff. Liberian law requires that all neighbors and other relevant parties are served with notices of an intended survey and NRC also arranges for details of the survey to be broadcast on community radio and advertised in local newspapers. NRC requires the parties to be present for the survey and they are also asked to provide any necessary labor for clearing the areas of land over which the survey lines are being measured, which also acts as a demonstration of their commitment to the process. The surveyor and his staff take “field notes” which are used to create the final survey drawing. As a matter of policy, NRC does not conduct a survey on an individual landholding which exceeds 200 acres in size. This is partly because it would involve an excessive amount of time and resources but also on the basis that a landowner of that size can afford their own survey and that potentially bringing so much land into private ownership at one time could actually increase conflict.

Observations. NRC Staff suggest that mediations are generally successful in achieving lasting settlements because the parties feel that they have ownership of the process and are involved in coming up with their own solution to the problem, which takes everyone’s interests into account. Certainly the process seems to be more empowering and participative than adjudication through the courts, and it also provides a certain degree of social recognition or affirmation for the views and opinions of “weaker” parties who might otherwise be excluded. In addition, the neutral and objective establishment and evaluation of the factual background to the case (along with general but private information for the parties as to the legal status of title documents) seems likely to be beneficial to the parties and the process.

Source: Norton, G. (2011) Norwegian Refugee Councils’ Land Dispute Resolution Process, NRC’s Report (<http://www.nrc.no/arch/img/9546544.pdf>)

A-3.3 SOUTH AFRICA

A-3.3.1 Background

Two-and-a-half centuries of conquest and settlement by European colonists deprived Africans of most of their land in South Africa. Economic and legal instruments were used in the late nineteenth century, and most of the twentieth, to exclude African farmers from increasingly lucrative urban markets. At the same time, the authorities started to make it first difficult, then impossible, for Africans to use land outside reserves in the more remote areas that had been set aside for them.

Since the mid-1950s, when the African National Congress (ANC) led a process of adopting a visionary document for South Africa called the Freedom Charter, the ANC had put nationalization forward as the mechanism necessary to redress decades of dispossession and destruction of black property and economic rights. This was the ANC's policy when it, and many other organizations, fought from 1960 until the early 1990s to dismantle apartheid through armed struggle, encouragement of economic sanctions and civil disobedience.

The ANC leadership did not abandon its ideas of nationalization until 1992, two years before it was elected the majority party in South Africa's first democratic election. Fears of nationalization had caused widespread concern among white farmers, business people and foreign governments. Returning exiles also opposed nationalization and expropriation because of negative experiences elsewhere, e.g. Mozambique and the Soviet Union.

Four years of constitutional negotiations resulted in an interim constitution in 1994 that heralded the start of a democratic South Africa. The "final" constitution adopted in 1996 retained the earlier negotiated "property clause". Section 25 reads that "no law may permit arbitrary deprivation of property". While expropriation is allowed "in the public interest" and this term is defined to include land reform policy, the constitution inevitably had the effect that the parameters of land reform were negotiated. Nonetheless, politicians have tended subsequently to blame the property clause for the continuing racially skewed landownership and their inability to alter it substantially. Today, disputes regarding land rights in South Africa are frequently occurring, but a wide range have been mediated successfully. The cases study, below, discusses the process, outcome and lessons learned from mediation in South Africa.

A-3.3.2 Case Study 1: The Makuleke land claim

Background. The Kruger National Park was established in 1926 based on exclusionist principles: the area was fenced off, people were removed forcibly, and benefits went primarily to whites. This was common to conservation throughout South Africa and resulted in a relationship of hatred and suspicion between black communities and the primarily white conservation authorities. In 1969, the Makuleke community was removed forcibly from its ancestral lands in the Pafuri area (between the Limpopo, Mutale and Luvuvhu rivers) and surrounding state-owned land when the Kruger Park was extended northwards. In terms of apartheid policies, the Tsonga speaking portion of the community was relocated to Ntlhaveni, in the then Gazankulu homeland, and Venda- speaking members to the then Venda homeland.

The Makuleke land claim was lodged in terms of the Restitution of Land Rights Act in December 1995. The claimed Pafuri area is an environmental hotspot from a biodiversity viewpoint and, in the initial stages, opposition was forthcoming from conservation circles with some saying that "if the Makuleke claim is upheld in respect of the land within the park, all conservation areas will be under threat" (Makuleke and Steenkamp, 1998).

After two years of intensive and complex negotiations a settlement agreement was reached and the Land Claims Court ordered the restoration of the Makuleke community's ancestral land, subject to various conditions aimed at ensuring that both the land's conservation status and the community's rights are protected. Under the terms of the agreement, a contractual park between the community and the South African National Parks (SANParks) was established for 50 years on 22 734 ha of pristine conservation land in the Pafuri area. The members of the community agreed to remain in Ntlhaveni, where they currently live, but aim to benefit from restitution of their land through ecotourism development.

A joint management board (JMB), consisting of members of SANParks and the community, is responsible for managing the land. SANParks has been contracted as an agent by the Makuleke to conduct day-to-day conservation management for an initial period. The Makuleke have full rights to develop the land for ecotourism ventures for their own financial benefit.

The mediation process and lessons learned. The mediation process ran from December 1996, involving as many as 13 parties, until a written agreement was signed in May 1998. The mediators facilitated this process until final agreement was reached in December 1998.

The mediation included joint sessions with the key parties, and later with all parties, individual sessions with each of the key parties, community hearings and rights enquiries. Many lessons were learned from the process.

The first relates to the fact that, for mediation to be an appropriate process, **there must at least be the possibility of a settlement between the disputing parties.** At the beginning of the Makuleke mediation, a dispute arose that could not be settled. Chief Mhinga claimed that the community fell under his authority and that, in traditional law, the community must act through him as chief when making the land claim. For this reason, the chief lodged a claim to the same land and on the same basis in parallel with the Makuleke community itself. The members of the community denied that Mhinga was their chief, maintaining that they had their own chief who had been stripped unfairly of his chieftainship owing to apartheid related actions against groups that opposed the government. After an initial period of deadlock, the Regional Land Claims Commissioner rejected Mhinga's claim because the Restitution Act empowers a community to claim, not a chief. This allowed the detailed mediation with the key parties to start in earnest.

The second lesson is that **all the important parties must participate.** Otherwise, any eventual settlement could be undermined or challenged by one not participating. However, what if a distinct but small section of the originally displaced community refuses to participate? A small group of Venda-speaking families were removed from the Pafuri to the Venda homeland, and were located about 50 km from where the Makuleke community was located. There they fell under the authority of chief Mutale. This chief refused to allow members of his community to participate directly in any settlement discussions. He insisted that he must represent the community. The Commissioner again refused on the basis of the Mhinga ruling.

Despite many attempts to convince the members of the Mutale community to participate, and the passing of many months, they declined. Their nonparticipation could have prevented the conclusion of an agreement that took 18 months to negotiate. With the concurrence of the Land Claims Court, a mechanism was therefore designed to give the right to become members of the landholding entity to people who can show that they or their ancestors were removed forcibly from the Pafuri area around 1969. This allowed the finalization of the settlement agreement and the eventual transfer of the restored land in 1999; 30 years after the Makuleke community had been dispossessed.

A-3.3.3 Case Study: The Khomani San and Mier Land Claims

Background. In 1995, descendants of various San families, who later decided to call themselves the Khomani San, lodged a land claim to an area in the northwest of Northern Cape Province. This claim was

not for landownership but for use rights to more than 4000 km² of land (calculated using an internationally applied reduction formula of 4:1 for hunting-gathering territory - see Chennels, 1998) in the area now known as the Kgalagadi Transfrontier Park and the Mier Municipality, which their ancestors had used in a nomadic way.

Their land claim is unique in South Africa because the San people are acknowledged as one of the first peoples of South Africa, having lived in southern Africa for more than 20 000 years. In the early 1990s, they and their language were thought by many to be extinct. The lodging of the claim brought together 300 initial land claimants. This number is expected to expand to about 1 000 as the verification process of people claiming to form part of this community is finalized. The San people were originally not one community with a joint structure of governance. They were descendants of various San clans or family groups, which historically had only occasional contact with each other. During the twentieth century, the San were "scattered all over South Africa in search of refuge ... Their centuries old culture, one of the oldest known to mankind, was gradually disintegrated."^[26] The descendants of the erstwhile occupiers became a disparate group of people, some now living hundreds of kilometres away from one another.

The San claim overlapped with a claim of another community in the area, the Mier community. The Mier community came to live in the Northern Cape from about 1865 when members of the "*bastervolk*" fled British rule in the Cape Colony, thereby displacing many of the San. The Mier community claimed areas within the Kgalagadi Transfrontier Park from which they were displaced when a nature reserve was first established in 1931.

The settlement had to be negotiated between four main parties: the San community, the Mier community, SAN Parks and the Land Claims Commission. The negotiations ran for four years. A settlement framework was concluded in 1999, and a detailed agreement settling all San and Mier claims was reached in 2002.

The 1999 agreement resulted in the transfer of about 37 000 ha of land to the San community and 42 000 ha to the Mier community, each area to be used and occupied by the respective communities under rules to be established by each community. In accordance with the terms of the final 2002 agreement, the South African Government transferred the ownership of 28 000 ha of land in the Kgalagadi Transfrontier Park, called the San Heritage Land, to the San community. The government also transferred ownership of 30 000 ha of park land, called the Mier Heritage Land, to the Mier community.

Lessons. There are three distinct areas regarding which lessons can be learned from this process: handling of competing claims to the same land; designing joint institutions that allow for different approaches; and resolving difficulties within one community regarding allocation of rights and management of community assets.

The issue of handling **competing claims to the same land** arose in a context where there were concerns that one or other of the parties may not always be able to engage, because of lack of capacity or differences in priorities. The process of mediation was complicated by the fact that there were competing claims to the same land. The following can be learned from this:

- Aim to achieve a compromise that both parties can live with.
- Facilitate an agreement that respects the differences between the parties.

The need to design **joint institutions that allow for different approaches** arose in relation to managing adjacent areas of land. All three main parties to the agreement, SANParks and the Mier and San communities, own or manage land adjacent to one another.

A JMB was created to manage the overlapping issues, but allowing for differences in approach. The following lessons could be learned from the design crafted by the parties and their representatives:

- Require agreement of all where another party's rights are affected; and provide the opportunity to engage, but with no veto, where another party's interests are affected.
- Design institutions for future decision-making that are robust and can function even where one of the parties shows no interest or is incapacitated. The parties agreed on the following:
 - Where a JMB meeting is attended by only two of the parties, the JMB may make a binding decision provided that the *rights* of only those two parties are affected materially.¹²⁷¹
 - The JMB would be able to make decision in the absence of the other party, even if its rights were affected, where a meeting had been postponed at least twice, and the chairperson had taken steps to: (i) establish why it was absent; (ii) bring the importance of the next meeting to the attention of the party; and (iii) canvass the issue with that party's representatives.¹²⁸¹

The third area concerns **difficulties within one community** regarding the allocation of rights and management of community assets. Since the transfer of the first land to the San community in 1999, allegations have been made that: farm infrastructure has collapsed; the community has no motorized transport and virtually no livestock; much of the game on the land has been sold or poached, and the remaining game is dying of thirst because water pumps are broken; leading community members have occupied farmhouses earmarked for community tourism initiatives; and some others have occupied other parts of the land through self-help. Possible ways of avoiding such problems in the future are:

- Allocate rights within the communities using clear and agreed criteria before transfer of land.
- Complete the verification of those persons who are and who are not to be considered to be members of the community before transfer of the land.
- Ensure that there are real means available for the management of the land concerned.
- An appropriate government agency should provide adequate backup and monitoring, especially in communities with low levels of capacity.

Source: D. Bosch (2002) Land conflict management in South Africa: lessons learned from a land rights approach, Rome: odd and Agriculture Office of the United Nations (FAO)
(<http://www.fao.org/DOCREP/006/J0415T/j0415t0a.htm>)

APPENDIX 4: INTERVIEW GUIDE

This interview guide is devised in order to guide the design and co-facilitation of a forum that would help identify the most effective existing Community Based Dispute Resolution (CBDR) practices about land disputes resolution in the greater Jalalabad area. Members of the forum and other selected relevant key informants would be the main respondents both as individual interviewees and as participants in focus group discussions in Jalalabad (and Kabul). The field data collected through these research techniques would then help in the development of an inclusive and women friendly CBDR based model (s) that is in line with current Afghan laws, human rights principles and principles of Islamic *Shari'a*. The field data would also help in devising a 'train-the-trainer' course on Alternative Dispute Resolution Mechanisms (including necessary training materials), for relevant key state and non-state and non-state key stake holders with regard to this project. The final report based on the data collected would also provide a general framework and practical suggestions for the activities of the LARA based Traditional Dispute Resolution specialist. It is important mention that the various questions in this interview guide are deliberately left unstructured, and are mainly used to guide unstructured/semi -structured interviews with different individuals and groups in different contexts. Thus, only questions that are found to be relevant to the context of each interview and a focus group discussion would be used. The interviews and focus group discussions are to be conducted by Dr Ali Wardak and with the support Mr. Shafiq Ziai.

1. Please tell me about the kind of work your institution does with regard to land issues in Afghanistan?
2. Who is involved in land administration and allocation in Afghanistan (or in Jalalabad/ Jalalabad City)?
3. In your view, roughly what percentage of people in Afghanistan (or in Jalalabad/ Jalalabad City) have land related official documents (titles, deeds or certificates)?
4. What percentage of these documents is unofficial – *qabala -e- orfi*?
5. *Are qabala -e- orfi* treated as a strong evidence of land ownership as *qabala -e- shara'ie*?
6. What are other sources of evidence over land ownerships?
7. In your view, roughly what percentage of official documents is tempered with?
8. And what percentage of unofficial documents, do you think, is tempered with?
9. What happens when people produce competing documents over land ownership?
10. How wide spread is the problem of disputes over land in Afghanistan/this area (Jalalabad)?
11. Who deals with land dispute resolution in the area?
12. Who do people, first, go to for resolving their land disputes?
13. Roughly what percentage of disputants is female?
14. What are the most common cases that women bring to court – such as *miras, ghasb*?

15. On average, how long does it take for a dispute over land to be resolved completely?
16. Do female disputants often go to state courts or to *jirga/shura*/elders for the resolution of their disputes over land?
17. Why do they prefer one of the above over the other?
18. Are traditional leaders' decisions enforced more effectively or those by judges in the courts?
19. In your view, does specific type of people (rich/poor/, literate/illiterate, urbanite/rural/Pashtuns/non-Pashtuns) prefer one of the above two over the other? And why?
20. In your view, what are the main causes of disputes over land?
21. Who are the male traditional leaders whom people trust as honest and effective resolvers of land disputes in this area?
22. Who are the female traditional leaders whom people trust as honest and effective resolvers of land disputes in this area?
23. Are these women involved in dispute resolution as *spinsari*, member of a relevant organization, witness, other in another capacity?
24. What category of these female local leaders is more important as far as the issue of land dispute resolution is concerned? And Why?
25. Do men or women often go to traditional figures of authority for? And Why?
26. Do women directly go to traditional figures of authority, or through other individuals, or organizations? Who?
27. How much are Spinarys (grey hair women/female jirgmaran) in dispute resolution over land - in Jalalabad?
28. Are there women/human rights or other organizations that help women when they have disputes over land in Jalalabad?
29. Do traditional figures of authority resolve specific categories of land disputes – *qabala -e- orfi* based ownership (ownership without any document, *ghasbi*, *mirasi* land)?
30. What kind of evidence do people use for proving their ownership of land (*shara'ie qabala*, *orfi qabala*, *shohhud*, other – what?)
31. On average, how long does it take for a dispute over land to be resolved completely by judges in the courts?
32. On average, how long does it take for a dispute over land to be resolved completely by local figures of authority?
33. How effectively are final decisions reached by local figures of authority enforced?
34. How effectively are final decisions reached by judges in the courts enforced?
35. How transparent are the final decisions reached by local figures of authority?
36. How transparent are the final decisions reached by judges in the courts?
37. In your view, what is the most effective way for resolving land disputes in Afghanistan (Jalalabad)? Why?

Current Mechanisms for Land Dispute Resolution in CBDR:

1. What are the current mechanisms for land dispute resolution in Jalalabad?
2. What are the advantages of these mechanisms, and why?
3. What are the disadvantages of these mechanisms, and why?
4. What should be done for removing the disadvantages?
5. In your view, what could be done for improving the current mechanism (s)?
6. How such a mechanism can be developed?
7. Do local leaders involved in land dispute resolution need some training so that their decisions are in line with Shari'a and Afghan laws?
8. If, yes, what kind of training?
9. Do government officials involved in land dispute resolution need some training so that they understand non-state local dispute resolution processes?
10. If, yes, what kind of training?
11. How women's role can be increased in decision making process?

APPENDIX 5: WORKSHOP AGENDA

A. Content and Structure

Day One

8. 00 – 8.30 am Welcome and Introduction
Mr. S. Ziai, course organizers and selected trainers.
- 8.30 – 10.00 Fundamentals of Alternative Dispute Resolution (ADR)
- a. What is ADR?
 - b. The main forms and Strategies of ADR: Facilitation, Moderation, Consultation, Socio-therapeutic consultation, Conciliation, Mediation, and Arbitration.
 - c. Stages of land disputes and choosing appropriate ADR strategy
 - d. Role of the Mediator illustrated
- 10.00 – 10.30 *Tea Break*
- 10.30 – 12.30 Workshop and Discussion

Day Two

- 8.30 – 10.00 ADR and Land disputes in East Timor
- a. Context and mediation guidelines
 - b. Case Study 1: Mateus and Abilio
 - c. Case Study 2: the Tuganatu Group and the AINUATU Group
 - d. Case Study 3: the Lariato and Bibilaro villages
- 10.00 – 10.30 *Tea Break*
- 10.30 – 12.30 Workshop and Discussion: observations, lessons learned and their applicability to the Afghan situations.

Day Three

- 8.30 – 10.00 ADR and Land Disputes in Liberia
- a. The context and process of mediation

- b.** The process of mediation: case identification, case registration and documentation
- c.** Background investigation and ownership history analysis
- d.** Establishing Facts and *Negotiation meetings*

10.00 – 10.30

Tea Break

10.30 – 12.30

Workshop and Discussion: observations, lessons learned and their applicability to the Afghan situations.

Day Four

8.30 – 10.00

Land disputes Resolution in South Africa

- a.** Context and Background
- b.** Case Study 1: The Makuleke land claim
- c.** Case Study 2: The Khomani San and Mier land claims

10.00 – 10.30

Tea Break

10.30 – 12.30

Workshop and Discussion: observations, lessons learned and their applicability to the Afghan situations.

Day Five

8.30 – 10.00

Land disputes Resolution in Nangarhar

- a.** Context and Background
- b.** Case Study 1: A successful land dispute resolution case through *jirga/shura*
- c.** Failed land dispute resolution case through *jirga/shura*

10.00 – 10.30

Tea Break

10.30 – 12.30

Workshop and Discussion: An examination of the proposed Hybrid Model for the Resolution of Land Disputes in Jalalabad (HMRLDJ)

12.30 – 2.00

Lunch and *zohr* prayer

2.00 – 4.00

Evaluation of the training programme and distribution of certificate

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