



Timor-Leste Land Law Program



Centro Nacional de
Investigação Científica



Ministério de Justiça
Direcção de Terras e Propriedades

REPORT ON RESEARCH FINDINGS AND POLICY RECOMMENDATIONS FOR A LEGAL FRAMEWORK FOR LAND DISPUTE MEDIATION

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Note: In the previous research report and many other documents, this agency has been referred to as the Land and Property Unit with the acronym “DNTP.” However, “Directorate of Land and Property” is the current official title of the agency. The acronym “DNTP” is based on the Portuguese version of the title, *Direcção Nacional de Terras e Propriedades*, and will be used throughout this report.

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Acronyms and Glossary

Acronyms

DA	District Administrator
DNTP (Portuguese)	<i>Direcção Nacional de Terras e Propriedades</i> , or the Directorate of Land and Property
GIS	Geographic Information Systems
GPS	Geographic Positioning Systems
LLP	Land Law Project
MOJ	Ministry of Justice
NGO	Non-Governmental Organization
RPG	Random Point Generation
SDA	Sub-district Administrator
UNTL (Portuguese/Tetum)	<i>Universidade Nacional Timor-Lorosa'e</i> , or National University

Glossary

<i>Adat</i> (Indonesian)	Traditional customs
<i>Aldeia</i> (Portuguese)	Hamlet, or sub-section of <i>suco</i> (village)
Arbitration	The practice of listening to both parties to a conflict, and then passing down a decision which the parties are expected to respect
<i>Atoni</i>	Ethnic group inhabiting the Timor-Leste enclave district of Oecusse and parts of (Indonesian) West Timor
<i>Belis</i> (Tetum)	Bridewealth
Decree-Law	Law passed by government through the Council of Ministers
<i>Katuas</i> (Tetum)	Elder(s)
<i>Kota</i> (Indonesian)	Town
Law	Generally enforceable law passed by Parliament
<i>Liurai</i> (Tetum)	Powerful leader
Local system	In this report, 'local' is used to refer to those conflict resolution systems that prevail in Timor-Leste, independently or in association with elements of the state system
Mediation	The practice of listening to both parties to a conflict, and assisting the parties to arrive at a voluntary agreement
<i>Suco</i> (Portuguese)	Village
<i>Sumpah Adat</i> (Indonesian)	Ritual oath
<i>Tobe</i> (Atoni)	Member of local administrative and ritual systems Different <i>Tobes</i> can have responsibility for different ritual and/or administrative functions, including land matters
<i>Tua Sabu</i> (Tetum)	Distilled palm wine

Introduction

Economic stability and growth depend directly on effective administration of clear and transparent land laws. Current capital assets in Timor-Leste are now locked up behind a veil of uncertainty concerning long-term use and ownership rights to immovable property.

Disputes over land can pose disincentives to national and foreign investors, jeopardize employment growth, and reduce agricultural production. Mechanisms capable of facilitating the swift resolution of land disputes are fundamental to maximizing economic development and agricultural productivity. As a subsistence society prone to experiencing yearly food shortages,¹ Timor-Leste has a particular interest in maximizing the efficiency of conflict resolution processes to ensure that lost production resulting from land conflicts is eliminated as much as possible. Furthermore, the special historic circumstances pertaining to Timor-Leste place the development of an enhanced land dispute resolution capacity high on the Government of Timor-Leste's policy agenda. With future elements of the Government's land law agenda scheduled to address matters such as land rights restitution and land title registration, it is vital that these aspects be preceded by a land conflict resolution regime capable of resolving any disputes that arise.

The Land Law Program (LLP) for Timor-Leste is a USAID-funded activity of the Ministry of Justice-Directorate of Land and Property (DNTP), and the National University of Timor-Leste (UNTL), supported by the technical team of ARD, Inc. The LLP is conducting research to inform policy recommendations concerning land law. The LLP also supports the Government of Timor-Leste's legislative agenda related to land. Activities include rendering technical assistance throughout the process of drafting four main laws regarding Land Dispute Mediation, Technical and Legal Land Registration, Land Title Restitution, and Compliance with the Constitution by Foreign Proprietors, as well as supporting the drafting of other laws.

As part of this initiative, LLP completed and distributed a first report in October 2003. That first report focused on *State Property Administration/Lease of State and Private Property*. Considerable progress has been made in that respect, with a draft bill on Leasing informed by the first findings and recommendations, currently being discussed within government.

This report is the second of this series of research studies focusing on various critical land titling issues. This second report includes research findings and policy recommendations for the development of a legal framework on Land Dispute Mediation.

This document comprises two parts:

Part 1 presents specific policy options and recommendations for stakeholders and policymakers to debate and consider, when determining the content of a Land Dispute Mediation Law.

¹ According to the 2001 *Suco Survey* (East Timor Transitional Authority, et al. 2001:2), agriculture 'is the main source of income in 94 per cent of *sucos*', and the 'main crops are mainly used for self-consumption/subsistence.' The survey also found that 'widespread food shortages' are reported every year, reflecting seasonal variations in availability.

Part 2 contains detailed information on the research process, and consideration of the policy implications of the research findings in the broad context.

The final conclusions and recommendations are those of the authors alone.

PART 1

Policy Options and Recommendations for a Legal Framework for Land Dispute Mediation

Edwin Urresta

The following policy options and recommendations are based on 1) the Land Law Program's research findings on land dispute mediation contained in Part 2 of this report, 2) extensive discussions with officials from the Ministry of Justice and the Directorate of Land and Property (DNTP), and 3) other studies and analysis of the Philippine law on the "Revised Katarungang Pambarangay Law - Chapter 7" and the Cambodian "*Prakas*" on the Guidelines and Procedures of the Cadastral Commission for Land Dispute Resolution.

Our discussion on policy options will seek to address these main questions:

- ◆ Should local² (traditional, customary or *adat*³) mediation systems be recognized and incorporated into the formal legal system for the resolution of land disputes?
- ◆ Can and should local mediation systems be regulated? If so, how?
- ◆ What is the subject of the dispute mediation law? Should it address land conflicts only, or non-land disputes as well? Should it cover both urban and rural land disputers, or address only rural land disputes?
- ◆ What types of land disputes should be addressed through mediation?
- ◆ Who should be designated competent authorities for land dispute mediation?
- ◆ What should be the roles of the local non-formal and formal authorities involved in the mediation process? What should be the role of the DNTP be in the mediation process?
- ◆ Should there be a sole local mediator or a mediation panel?
- ◆ Who should designate mediators and members of mediation panels?
- ◆ What type of legal instrument should regulate land dispute mediation?
- ◆ Is it possible to standardize the land dispute mediation process? If so, how? Which could be a basic process to be established by law?

² In this report, the term *local* is used to refer to those systems of conflict mediation that prevail throughout Timor-Leste. The case for this term, as opposed to such terms as *traditional* or *customary*, has been convincingly argued by Mearns (2001:2) on the grounds that the term *traditional* implies that mediation systems are not 'varied or subject to change.' While the authors do not wish to exaggerate the diversity of mediation systems throughout Timor-Leste, it is believed that *local* is the most appropriate term for many contexts.

³ *Adat* is an Indonesian term often used in Timor-Leste to refer to ritual aspects of life.

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- ◆ How many levels of mediation should be established?
 - ◆ What formalities should the mediation process and settlement observe?
 - ◆ What types of evidence are acceptable in these processes?

Recognition of Local Mediation Systems

In developing policy and legislation on land dispute mediation, the first aspect that needs to be considered is whether or not local mediation systems operating in Timor-Leste should be recognized by the State and incorporated into the formal dispute resolution system. Part 2 of this report, as well as previous studies on this topic, clearly establish that local-system dispute mediation mechanisms have functioned in Timor-Leste for many years. Despite the Portuguese and Indonesian eras with their own formal systems for dispute resolution, *adat* mediation remains widely practiced in the rural areas of the country.

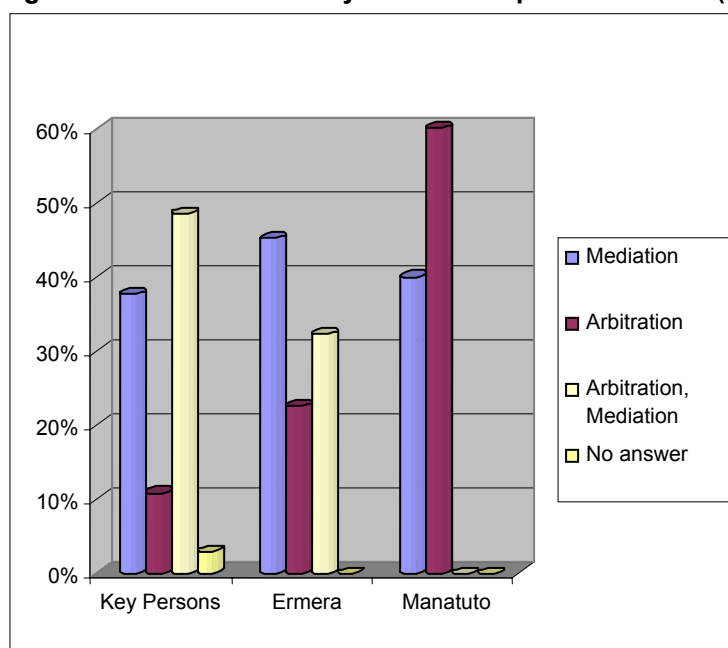
As indicated in Figure 25 (imported from Part 2, Section 3d) below,⁴ individuals normally expect that land disputes in rural areas will be resolved using mediation and/or arbitration⁵ in accordance with local practice. The evidence suggests that mediation is favored over arbitration, but that in a large proportion of cases, arbitration is also an option where appropriate.

In general, disputants strongly prefer that conflicts be resolved at the local level, with the process facilitated by a senior person with a good knowledge of the issues, the community, and the parties involved in the dispute (see Figures 21 and 26 under Part 2, Sections 3a and 3e). A local-system dispute resolution process is widely perceived as a faster, more economical, and more accessible option than the state system. The alternative of the judicial process is considered more expensive, complicated, and time-consuming (see Figures 36 and 27 under Part 2, Section 4c). The limited number of trained lawyers, clerks, and judges further exacerbates the constraints to the current judicial system.

⁴ All figures mentioned in this part relate to the Land Law Program's research activities and are included, in detail, in Part 2. This section also provides details of the sampling frame used for the key persons, Ermera, and Manatuto samples.

⁵ For the purposes of the research, an arbitration-preferred system was identified when respondents indicated that 'the traditional leaders listen to both sides of the story as told by the disputants and by witnesses. The traditional leader then passes down a decision, which the conflicting parties must respect.' A mediation-preferred system was identified when respondents indicated that 'the traditional leaders listen to each side of the story as told by the disputants and by witnesses. The traditional leader encourages the parties to arrive at a solution which each of the parties finds reasonable. Only if the solution is obvious, or if the parties are failing to cooperate, will the traditional leader pass down a judgment.'

Figure 25: Process normally used for dispute resolution (Q45)



Policy Options

In regards to the recognition of local mediation systems versus state systems, there are several policy options in this case. The State can:

- 1) Promote the use of the judicial system as the main means of land dispute resolution. Mediation can still take place, as an alternative where parties can freely opt for it. However, in this case, the State *prefers* to refer disputes to the courts.
- 2) Promote and facilitate mediation, as an important and first level approach, to land dispute resolution. In this case, mediation is supported and facilitated as a means to resolve as many disputes as possible without the need for the intervention of courts. Courts, of course, still have jurisdiction for the resolution of cases where mediation is unsuccessful or cannot take place.
- 3) Develop a formal mediation mechanism that is regulated by law and seeks to facilitate processes that do not necessarily reflect local practice but instead, adopts simple techniques utilizing trained mediators and formal agreements.
- 4) Develop a formal mediation mechanism, regulated by law that incorporates traditional mediation techniques to a systematic process. Clear rules are established with enough flexibility to allow local practices to work in a transparent and legal way.

Recommendation

Based on the principle that law should reflect and respond to social reality rather than impose new structures, LLP strongly recommends Options 2 and 4 be followed in that:

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- a) Mediation would be strengthened as a first option for land dispute resolution through the enactment of a law that recognizes this mechanism and provides a basic, standard process, flexible enough to allow local participation and to foster transparent resolutions. Not only is this the preferred mechanism in Timor-Leste, but it can also diminish demands on a weak and slow judiciary by enabling a great number of disputes to be resolved with legally binding effects established by law.
 - b) The new law should recognize local practices in dispute mediation and incorporate them, where possible, to develop a systematic process, effectively accepted by the communities and conflicting parties. A compromise between tradition and modern techniques can be made, to ensure active participation of the community, transparency, legal effects, formality, and social reconciliation.

Regulation of Local Mediation Processes

The fact that mediation has been traditionally practiced does not mean that it has lacked rules and processes. On the contrary, our findings indicate that clear perceptions prevail concerning a range of factors associated with the conduct of mediation processes (see Figures 21 through 29 under Part 2, Section 3). These include:

- ◆ The identity of local authorities suited to mediating disputes
- ◆ Desirable qualities that a good mediator should possess
- ◆ Appropriate processes
- ◆ Appropriate evidence types
- ◆ Procedures for formalizing agreements.

Significantly, LLP research findings note that ‘accounts suggest that often, even once disputes reach the formal sector, the actual routine which unfolds has greater resemblance to a traditional conflict resolution process, complete with compensation negotiations and reconciliation ceremony....’ (see Part 2, Section 3b). As a result, there is reason to believe that local processes are well structured and regulated, and that participants wish local practice to be reflected in the functioning of the state-system.

Policy Options

In developing a legal framework for mediation, regulation must take place. The question, therefore, is how rigid or flexible should that regulatory framework be?

The options in this regard would be to develop:

- 1) Detailed and strict regulations on mediation guiding the process and a ‘recipe’ of legal options for any scenario that may arise. The law would establish a standard process with little, if any, flexibility for the incorporation of very specific local practices. There is little space for interpretation of discretion by either those in charge of the implementation of the law or the conflicting parties.
- 2) Develop a land dispute mediation law that sets minimum legal requirements to ensure transparency, fairness, and some degree of standardization of the process. However,

the law would be flexible enough to give the parties and those assisting in the mediation process discretion on specific issues.

Recommendation

LLP's recommended approach is Option 2. For mediation to be an effective alternate justice mechanism, it should ensure fairness, transparency, and produce legally binding resolutions. At the same time, it must also allow flexibility for the will of private individuals and local practices to play an important role in the conflict resolution process.

There is a need to design a basic mediation process with a minimum of steps and requirements, to facilitate its adaptation to specific needs and local customs. Certain elements of the mediation mechanism must be legally obligatory, such as:

- ◆ existence of a public process;
- ◆ determination of basic roles and responsibilities of those involved in the process;
- ◆ requirement of voluntary acceptance of mediation by all parties;
- ◆ formalization of agreements and their registration; and
- ◆ participation of technically knowledgeable persons.

Other elements of the process can then be flexible to give space for the parties' own preferences and traditions, such as the option to choose the mediators from a pool of respected leaders; the acceptance or not of certain evidence; and the arrangement of a traditional reconciliation ceremony, and other aspects.

Subject of the Dispute Mediation Law

Another important decision to be made relates to the subject of a possible dispute mediation law.

LLP's research (see Figure 17 under Part 2, Section 2a) indicates that local-system mediation processes are used throughout Timor-Leste to resolve a broad range of disputes. These include land disputes, instances of domestic violence, and political disputes. While mediation processes are not confined to land conflicts, it is of significance that LLP research results suggest that close to half of all mediation processes do concern land conflicts.

In determining the subject of the mediation law, the main question here is:

- ◆ Should Timor-Leste develop a general law on mediation that can regulate mediation for a range of different conflicts (including land issues, business controversies, family affairs, or civil matters)? or
- ◆ Should the proposed law focus exclusively on land conflicts?

Policy Options

Once again, there are two apparent options in deciding what is to be regulated by the mediation act to be prepared by government:

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- 1) To draft a law⁶ to be submitted to Parliament that regulates dispute mediation in general, for all types of matters, with a formal administrative system that can support such an option, as an alternate mechanism to resolve conflicts.
 - 2) To draft a decree law⁷ to be approved by the Council of Ministers, or eventually a law to be submitted to Parliament. This would specifically regulate land disputes. DNTP would implement the law, monitor results, and take the lead in proposing necessary adjustments in light of the lessons of experience.

Land Law 01-2003 (Regime Juridico dos Bens Imoveis- I Parte: Titularidade de Bens Imoveis), in Provisions 12 and 13, determines that all land claims by Timorese and foreign citizens must be presented to the DNTP, so as to trigger, as appropriate, mediation processes or administrative procedures, to be determined by law. Consequently, as one of its mandates, DNTP has legal authority to facilitate mediation processes for the resolution of **land disputes**.

Another important aspect to consider is that DNTP has already been exercising mediation on land conflicts and, with support from the Canadian International Development Agency (CIDA), has trained approximately 25 mediators for this purpose.

Recommendation

LLP's recommendation is to adopt Policy Option 2. The enactment of a **decree law** approved by the Council of Ministers would be appropriate to the specific regulation of land dispute mediation.

Decree laws can be modified, updated, or expanded more easily by the Council of Ministers than a law passed by Parliament. Experimenting with a mediation system under the responsibility of the DNTP, if successful, could provide the basis for a future law on general mediation.

While the passing of a general law on dispute mediation can be foreseen, it would be appropriate for further research to be undertaken, and further administrative capacity to be developed, before such a law is enacted. In LLP's view, these undertakings would require further time to accomplish.

Geographic Nature of Land Disputes to be Mediated

Another element to consider is the applicability of mediation processes in urban and/or rural settings. The data outlined in the research section of this report clearly indicates that local-system leaders have a high profile in rural areas, and continue to be respected in urban areas as well. Yet, while the strength of local-systems in rural areas appears assured in the medium to long-term, the situation is less clear concerning urban areas.

⁶ The law is enacted by Parliament, has general jurisdiction, affects private individuals as well as public institutions, and is overridden only by the Constitution.

⁷ The decree law is enacted by the Council of Ministers, has limited jurisdiction, and only operates as determined by law.

With respect to disputes concerning formal titles, it is of note that, historically, the largely subsistence nature of the Timor-Leste economy presented governing administrations with little reason to title rural areas. Thus, as Meitzner Yoder has observed,⁸ modern land-titling processes were implemented by the Portuguese and Indonesian regimes mostly in urban areas, with most rural properties left out of the system.

Urban areas generally have more highly developed immovable property systems, as well as administrative and judicial bodies for the resolution of conflicts. Mediation can take place in a number of ways, not necessarily using customary mechanisms. People living in cities usually have more formal education and, therefore, can seek assistance from Land and Property officials or others and may, eventually, prefer to go to court. With the greater mobility characteristic of cities, local leaders may not be accepted by all. This may also be true for foreign citizens who have land claims or conflicts.

Notwithstanding the factors outlined above, it is of note that the research results indicate that, at present, local-system authorities in urban areas continue to be widely respected as capable mediators.

Policy Options

The Land Dispute Mediation Act could specify that the mediation process could be applied:

- 1) In rural settings alone;
- 2) Both in urban and rural areas of Timor-Leste; or
- 3) Make no distinction between urban and rural settings.

Recommendation

The LLP recommends adopting Option 3. Although mediation may be more relevant to rural property disputes than to urban property disputes, evidence suggests that local-system dispute resolution processes remain of relevance in urban areas at present. On this basis, it may be best to draft the law without specifying geographic limits to its applicability, implicitly allowing both urban and rural land disputes to adopt this legal mechanism.

Composition of the Mediation Forum in the Land Dispute Resolution Process

In developing a systematic land dispute mediation process as the first level of the official dispute resolution mechanism, there is a need to set certain conditions and legal requirements that include:

- ◆ Nomination of mediators by the parties, so that settlements can be fair, transparent, properly informed, and legally binding;

⁸ See Meitzner Yoder, 2003.

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- ◆ Determination of whether a sole mediator or a panel of mediators should be responsible for assisting the parties in reaching an agreement; and
 - ◆ Facilitation of trained mediators.

Mediation is entrusted by the parties to an agreed third party (individual or panel). This provides the conflicting parties with a sense of fairness, and gives the mediators legitimate authority. Consequently, the conflicting parties should be free to choose almost anyone whom they feel meets their requirements.

At present, under the local-level dispute resolution system, parties may refer conflicts to whomever they choose, usually starting with family members. These options should encourage parties to be maintained and reach settlements without the intervention of a state or formal agency. The law on land dispute mediation should not limit such outcomes.

Nevertheless, if the intervention of the DNTP is sought by the parties, the process then becomes more ‘formal’ and will be facilitated by the State. Hence, the law on land dispute mediation must provide guidelines for this process, including the composition of the mediation panel that will facilitate formal mediation.

Policy Options

Regarding options for the designation of mediators:

- 1) One option is for the law to determine that a sole mediator (individual) will participate in each case. The disputants would be able to choose one person with whom they both feel comfortable, to mediate. This person could well be a member of DNTP but might also be drawn from the wider community.
- 2) Another option is to determine that a panel of mediators works with the parties in each case. The panel could be composed of two or three members, jointly chosen by the parties, to facilitate the process. Again, one of the members might be from DNTP.

Recommendation

LLP suggests that Option 2 be implemented. The possibility of using a panel ensures more transparency. This option also provides a wider array of settlement options that should be provided by the mediation panel. One person may not have enough resources or energy to work with both parties, so it can prove to be beneficial to have a team of mediators supporting the process. In addition, a panel can allow participation of a trained mediator on land issues to work alongside other individuals, as explained below.

Role of the Directorate of Land and Property in the Mediation Process

As previously mentioned, Land Law 01-2003 specifies that DNTP is responsible for registering land claims for their resolution via mediation or administrative proceedings in accordance with laws on the matter that are still to be enacted.

DNTP's role is central in mediation. However, the particular nature of their involvement in the mediation process has yet to be determined. There are a number of options concerning the role of DNTP in the formal mediation system.

Policy Options

The options, in this respect, are that DNTP:

- 1) Becomes the sole mediator for those who freely choose to request its intervention;
- 2) Furnishes a member (mediator) of the mediation panel; or
- 3) Serves as the official facilitator and technical advisor of the mediation panel.

Recommendation

LLP recommends Options 2 and 3. Neither necessarily exclude the other.

Option 2 is appropriate because the participation of trained mediators with knowledge of existing regulations on land matters is important. Therefore, it seems suitable to include a DNTP mediator in the panel as this would provide a link between customary and formal mediation. The DNTP mediator would then participate in the process and, together with other members of the panel, guide the parties in their discussions and agreements and inform the participants regarding the compliance with the law.

Option 3 is also applicable as the DNTP could also facilitate the process in various ways. For instance, DNTP could organize a registered pool of other mediators periodically chosen by the community. This procedure could foster training and learning from experience for those involved who are not government officials. For those chosen by the community, this arrangement might also offer a means of social recognition and could generate broader interest in participating in these mediation forums.

DNTP should also facilitate technical support to the panel and parties, as well as record all the proceedings, evidence, and other information that may be required for an alternate resolution process in the event that mediation fails.

Designation of Members of the Mediation Panel

Upon requesting to participate in the legal land dispute mediation process facilitated by DNTP, the specific mediation panel that will hear the case has to be formed. As recommended above, the mediation panel would be composed of two or three members, one of whom could be a DNTP-trained mediator. The question, therefore, is how to designate the members of the mediation panel.

Policy Options

Options, in this regard, include:

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- 1) That the parties can freely choose two or three community members, as long as both parties agree on this decision. This would mean that every individual in the community, regardless of status within the government and *adat* systems, might potentially serve as a member of a mediation panel.
 - 2) That DNTP facilitates a process whereby a permanent list or ‘pool’ of eligible mediators is periodically elected by the community. Disputants would be able to choose members from this pool to determine their mediation panels.
 - 3) That DNTP or the Ministry of Justice periodically designates the list of eligible mediators for official land dispute resolution processes. The parties would then jointly choose their preferred mediators from this official list.
 - 4) That the pool of mediators be formed by some members elected by the community and others by the Ministry of Justice. This approach seeks to combine Options 2 and 3 above. Under certain circumstances, this option could also allow for Option 1 to operate if the parties do not find their preferred mediators in the official pool.

Recommendation

LLP suggests the adoption of Option 4 for the following reasons:

Option 1, by itself, is not appropriate because it undermines the formal legal role in the mediation process assigned to DNTP by Provision 12 of Land Law 01-2003. If the parties are given the option to choose anyone from the community, they might well decide to have no DNTP presence. This would not allow for trained mediators to support the process.

It supports the concept of a pool of mediators drawn from two different sources:

- a) The community could elect, for a certain period of time, a list of 8 or 10 respected members, with the possibility of promoting women’s participation in mediation forums. This pool could include the range of individuals normally called upon to mediate disputes, including *adat* leaders, *Chefes de Suco*, *Chefes de Aldeia*, and Sub-district Administration Officials.
- b) The law could determine that a trained DNTP mediator must be part of the mediation panel to provide the other panel members with technical assistance and guidance in legal and procedural aspects. Although it would be compulsory to include a DNTP mediator, the parties could still choose from a list nominated by the Minister of Justice for each district from DNTP trained staff.

This recommendation entails that mediation panels be composed of two or three persons. One DNTP official mediator and one or two more mediators who can either be chosen from the pool made available to the parties or from the community. The pool of mediators is intended to facilitate the selection process and would not exclude the option for the parties to choose someone they agree on who is not on the list, in accordance with those qualities considered most desirable for mediators (as indicated in Figure 26 under Part 2, Section 3e).

Special Role of the *Chefe de Suco* in the Mediation Process

The role of the *Chefe de Suco* in the local mediation system needs to be closely analyzed to see how it can support the new formal mechanism.

When asked who had general responsibility for decisions concerning land in the *suco* (as indicated in Figure 4 under Part 2, Section 1a), almost 50% of the key person sample, almost 80% of the Ermera sample, and more than 70% of the Manatuto sample indicated that the *Chefe de Suco* has major responsibility for decisions about land in a general sense.

Figure 4: Who has major responsibility for decisions about land in the *sucos*? (Q1)

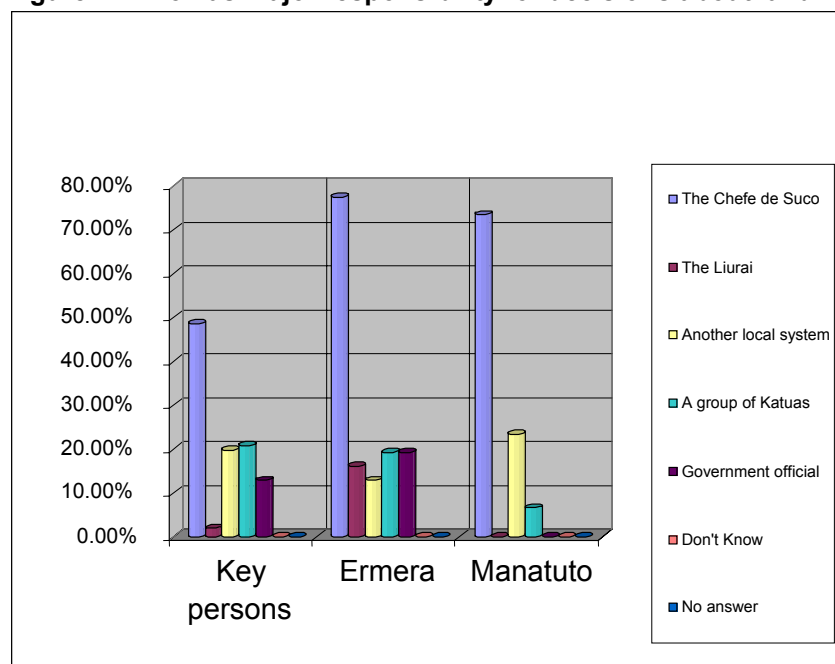


Figure 21 from Part 2, Section 3a also indicates that the *Chefe de Suco* is the third authority to whom parties generally resort to facilitate the resolution of a dispute, after family and *aldeia* (hamlet) level mediation, suggesting that the *Chefe de Suco* is an important community member in relation to decisions concerning land.

Policy Options

Chefes de Suco already play critical roles in the local-level land dispute resolution processes. In the formal mediation system, they might function in any or all of the following ways:

- 1) As witnesses of the history of the property and the conflict;
- 2) As members of the mediation panel; or
- 3) As facilitators of the mediation process.

Recommendations

LLP's research findings clearly reveal the *Chefes de Suco* as major actors simultaneously occupying multiple roles in the resolution process for land conflicts.

In some cases, the *Chefes de Suco* serve as mediators, while in other cases, they may act as arbitrators. In formal court processes, the *Chefes de Suco* may well function as expert witnesses.

When thinking of a formal land dispute mediation process, it appears appropriate to utilize the valuable information and support that the *Chefes de Suco* could provide. Consequently, the LLP team recommends that Options 1 and 2 be allowed, depending on the parties' preferences. If they want the *Chefe de Suco* to participate as one of the panel members, that should be possible. If, on the other hand, they prefer that the *Chefe de Suco* provide information as a witness in the processes, then that also should be possible.

The systematic mediation process should also consider enhancing the *Chefe de Suco*'s role as a point at which land disputes are referred to DNTP. That is to say that when the *Chefe de Suco* becomes aware that a dispute is unable to be resolved within the local-system, the *Chefe de Suco* would take responsibility for referring the case to the DNTP for formal mediation, subject to the consent of the disputing parties (see flowchart on pg. 20).

Legal Instrument to Regulate Land Dispute Mediation

Policymakers will have to determine the type of legal instrument (law, decree law) that will regulate land dispute mediation. This has important implications in terms of the authority responsible for passing the law or approving the decree law, and in the degree of flexibility for change of those regulations in the future.

Policy Options

Two possible legal instruments can be considered for this purpose:

- 1) *Law passed by Parliament.* Enactment of parliamentary laws is more complex and takes more time. However, laws are debated more thoroughly and have a higher level of enforceability. If modifications to the law are required, the process is much longer and there may not be a quick response to urgent needs.
- 1) *Decree law enacted by the Council of Ministers.* This option would facilitate swift regulation of land dispute mediation as Land Law 01-2003 passed by Parliament and promulgated by the President on March 10, 2003 has already given DNTP the role of processing land claims and disputes with mediation.

The role of DNTP, as a government agency, can be regulated by decree law, and the enactment of such an instrument is very expedient. Modifications and changes can also be made quickly, in response to urgent needs.

Finally, mediation is a voluntary agreement entered into by disputing parties, with assistance from mediators chosen by them. This agreement, properly documented and registered, is the equivalent of a contract between the parties. A decree law can simply set the administrative procedures to assist parties in resolving their disputes.

Recommendation

Based on the previous arguments, a decree law, as suggested in Option 2 above, may be the best approach for a specific land dispute mediation system. This law would be facilitated by DNTP, based on Land Law 01-2003. Its status as a decree law would provide flexibility for its assessment and adjustment.

Standardization of the Mediation Process

One of the main considerations relating to the development of a formal law on land dispute mediation incorporating aspects of local-system mechanisms is the applicability of a standardized formal process to all of Timor-Leste, when local practices may vary widely from one region to another.

LLP's research has established that local processes all contain the following elements, all of which usually appear in formal mediation systems as well:

- ◆ A mediator accepted by the parties as neutral and honest;
- ◆ A mediation process, with clear steps and rules;
- ◆ Parties can produce evidence and present witnesses;
- ◆ Agreements are normally agreed on by the parties, there is no imposition; and
- ◆ Once settlements have been reached, traditional formalities take place to make them binding and inform the community (reconciliation ceremonies).

Consequently, it is possible to design a flexible, formal, and systematic mediation system where these elements can generally operate. Local practices may differ slightly concerning how these various elements are realized, as well as how customary formalities should be implemented. However, the law need not establish rigid rules for this.

In accordance with constitutional principles, human rights considerations, and modern law, certain further elements should be introduced to the mediation process to improve the overall quality of outcomes. For example, the research results indicate that mediation proceedings could be improved in relation to the rights of women and relocated⁹ people, and the law can surely include provisions to promote improvements in these areas (refer to the final part of Part 2 for further details). In this respect, the *National Development Plan* prepared by the government identifies major guiding principles concerning equality and non-discrimination, and outlines a strategy for gender dimensions. LLP recommends that these policies be reflected in the development of the formal mediation process.

⁹ The term *relocated people* refers to those Timorese who, during the Indonesian occupation, were either moved forcefully or who themselves took the decision to move independently as a consequence of the occupation.

Policy Options

Hence, the options are:

- 1) Prepare very open and flexible regulations, without specifying the actual mediation process or the responsibilities of the different participants. This entails simply establishing main principles and guidelines but leaving procedural aspects up to the local communities.
- 2) Enact legislation with enough flexibility for the parties and participants to freely make important decisions in accordance with a systematic process that can be applied throughout the country. This seems possible because LLP's research findings suggest that local mediation processes shared throughout the country have important similarities and do not vary to an extent that would rule out a standard basic mechanism.

Recommendation

LLP strongly recommends Option 2. It seems feasible and practical to set up a basic mediation procedure with clear steps and requisites so as to ensure transparency. This procedure should determine the roles of the various participants and outline core components of the mediation process. However, sufficient flexibility should be left to enable community members, disputants, and DNTP officials to make major decisions themselves concerning other aspects of the process.

Levels of Mediation

The research findings indicate that local mediation takes place at a range of levels, with proceedings almost always beginning at the family level. When disputes are not resolved at the family level, they will usually progress to the *aldeia* or *suco* level (or the *aldeia* level *then* the *suco* level). If matters remain unresolved, they may then go to the official level and invoke the assistance of Land and Property officials or other government staff. However, many of these officials prefer to ask the parties to settle their own disputes and refer them back to local mediation forums. This can be very time-consuming for the parties concerned.

It is helpful, in this respect, to refer to those features of local mediation systems that make them more appealing than the judicial forum (see Figure 36 from Part 2, Section 4c).

Figure 36: Do local systems or courts offer the highest quality of service in the range of areas presented below? (Q51)

Areas presented below: (Q51)

Question 51	Key Persons Admin – 101 respondents							
Which System is Best								
Area of Service Delivery	Traditional System		Court System		Neither System is Good Enough		No Answer	
	Total	%	Total	%	Total	%	Total	%
Fairest System	48	47.5%	40	39.6%	1	1.0%	12	11.9%
Cheapest System	87	86.1%	3	30%	2	2.0%	9	8.9%
Least Amount of Traveling	87	86.1%	2	20%	1	1.0%	11	10.9%
Fast and Efficient Outcome	76	75.2%	13	12.9%	2	2.0%	10	9.9%
Least Corrupt System	58	57.4%	21	20.8%	10	9.9%	12	11.9%
The Most Respect for the Rights of Women	41	40.6%	39	38.6%	8	7.9%	13	12.9%
Promotes Reconciliation between Conflicting Parties	79	78.2%	11	10.9%	1	1.0%	10	9.9%
Easiest System to Understand	84	83.2%	5	5.0%	0	0.0%	12	11.9%

As indicated above, local mediation systems are considered cheaper (86%), more geographically accessible (68%), faster (75%), and easier to understand (83%) than the court system. In order for a systematic mediation process to be efficient, economical, and easy to understand, therefore, it should be as simple as possible and require minimal time and effort.

Having too many instances of local mediation can be counterproductive and become endless, unsatisfying, and costly. Thus, the question is: How many levels or instances of local mediation should be allowed?

Policy Options

The options are:

- 1) Only one level of formal, systematic mediation. This would not include the family and other local-level informal mediation options that the parties would continue to have, but without the intervention of government officials or legal mediators.

The single-level approach implies establishing a local mediation panel, with the participation of a Land and Property official, carrying out the procedural stages of the mediation mechanism, and ending the process with a settlement reached by the parties. When no settlement results, mediation ends and the matter is sent to the legally competent entity (court or Lands Commission, for example) for an enforceable decision.

- 2) A two-level approach could be useful in the event that parties do not reach a settlement before the first local mediation panel. Parties could then request to enter mediation before a second, higher-level panel that can again seek to mediate an acceptable settlement.
- 3) Several levels of local mediation could be offered based on the parties' preference and local custom, but with no systematic approach.

Recommendation

LLP strongly advises against an unstructured system and recommends Option 2. Providing for two levels of formal mediation would enable disputants to obtain more support and hear a wider range of views on possible settlement options. Mediators are expected to provide suggestions as to how best to settle a dispute. The participation of other people, at a higher level, may provide fresh ideas, and most importantly, may be useful in case any one of the parties believes that a mediator is demonstrating bias in favor of the other party.

Moreover, by having two levels of mediation, the parties could choose, if they prefer, to go directly to the second panel for whatever reason they see fit. The flexibility of this proposed system would be highly desirable.

Formalities of the Mediation Process and Settlement

Formalities in a systematic and legally binding mediation procedure are essential. They foster transparency, encourage record keeping, and facilitate accountability on the part of those who have responsibility in the process.

In this respect, evidence from LLP applied research indicates that in Timor-Leste, customary mediation has its own formalities. In the case of reconciliation ceremonies, for example, 51% of respondents consider these to be a main feature of the dispute resolution process.

Figure 30: What are the main features of a traditional agreement? (Q47)

Question 47 - 91 respondents		
From the valid answers, the most common features were;		
	Value	Percent
Traditional reconciliation ceremony (<i>Biti Boot</i>)	47	51%
Written agreement, or declaration	22	24%
Penalty	13	14%
Ritual oath (<i>Sumpah Adat</i>)	9	10%

According to LLP research findings, 24% of respondents consider written agreements a main feature of traditional settlements. Hence, it is appropriate to clearly determine, by law, the formalities that the mediation process should observe.

Policy options

In terms of formalities of the mediation process, the options are:

- 1) To require, by law, the observation of minimum formalities in the process and in the formalization of the agreement. This would include a written agreement, the registration of the agreement, and other administrative requirements.
- 2) Not to require, by law, any written formal details concerning the process or settlement.

Recommendation

LLP research findings confirm that formalities already exist in local-system mediation processes. A legal process requires a minimum of formalities. LLP suggests the adoption of Policy Option 1.

In LLP's view, essential formalities would include:

- ◆ Minutes/record-keeping of the mediation process and meetings;
- ◆ An agreement signed by the parties and the mediator(s);
- ◆ A summary of the evidence presented and the accounts of witnesses;
- ◆ A joint inspection of the disputed land;
- ◆ The option for traditional reconciliation ceremonies; and
- ◆ Registration of agreements with the DNTP.

Types of Evidence

The research findings (see Part 2, Section 3g of the Results section) refer to a great variety of evidence types acceptable in local-system mediations. In general, these are very similar to the kinds of evidence types accepted by formal law, including witness accounts, physical evidence (trees, fences, etc.), legal documents (land titles, tax receipts), and others types of evidence.

Policy Options

When drafting the land dispute mediation law, options on evidence are:

- 1) That the law specifies the type of evidence that can be presented by the parties.
- 2) That there is no strict rule on acceptable evidence.

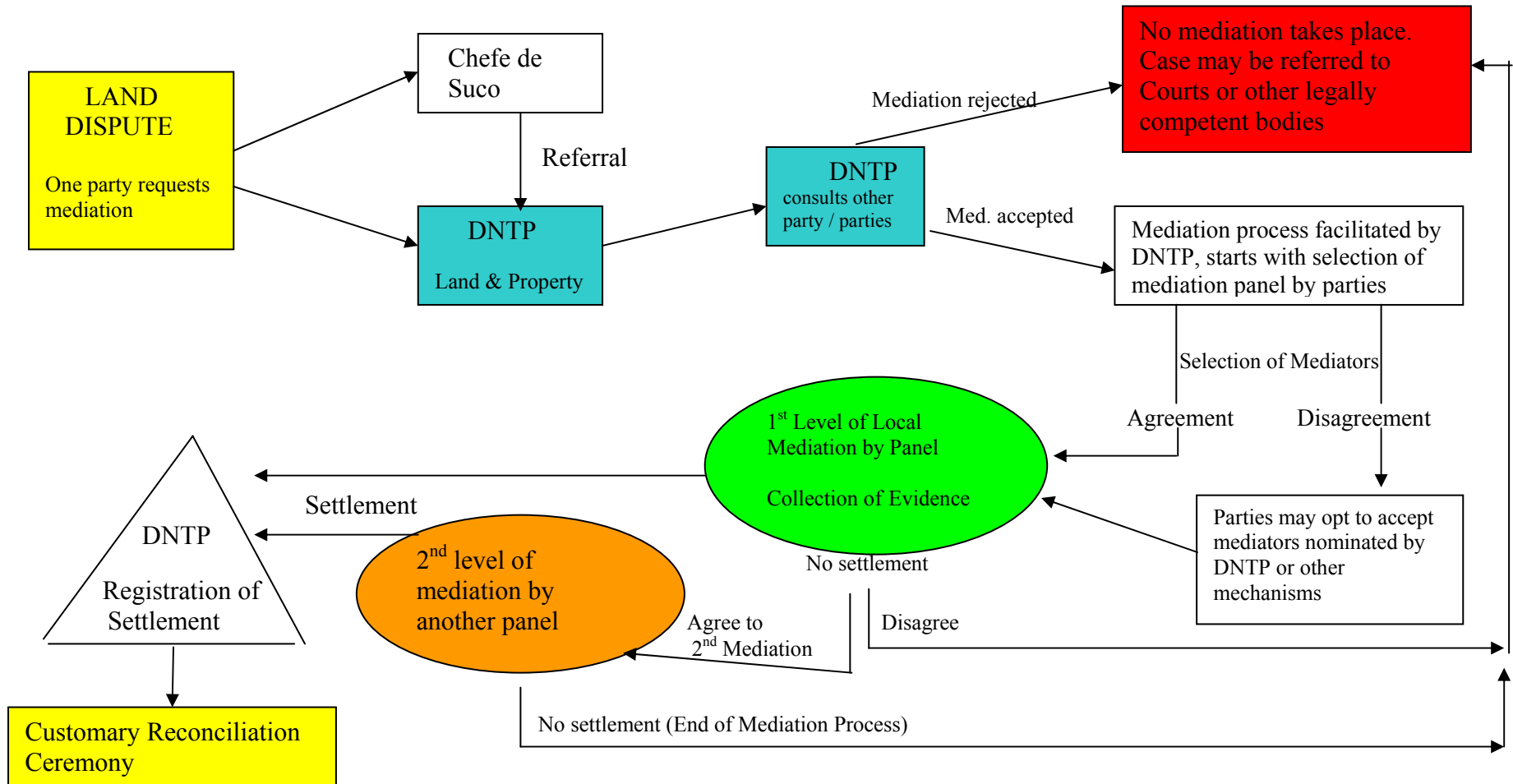
Recommendation

LLP recommends Option 1. The law on land dispute mediation should refer in general terms to acceptable evidence, in order to inform disputants and mediators of the kinds of evidence options that are broadly acceptable. It is not necessary for the evidence options to be too specific, in order to allow local practice to play a role in the process.

Proposed Standard Mediation Process (including flow chart)

In sum, the policy recommendations presented above could well become part of the systematic mediation process that is depicted in the following flow chart. The details of such a process should be clarified in the land dispute mediation law.

FLOW CHART OF MEDIATION PROCESS AS RECOMMENDED OPTION¹⁰



¹⁰ Flow chart prepared by Edwin Urresta based on policy recommendations contained in this document and discussions with DNTP's official mediators and Chris Moore (CDR Associates Trainer) in several meetings held during the CIDA-sponsored Mediation Training Program in Liquica, February 2003.

Part 2

Research Results and Analysis Concerning Policy Development for a Land Dispute Mediation System

Rod Nixon

Introduction

Disputes over land can pose disincentives to national and foreign investors, jeopardize employment growth, and reduce agricultural production. Mechanisms capable of facilitating the swift resolution of land disputes are fundamental to maximizing economic development and agricultural productivity. As a subsistence society prone to experiencing yearly food shortages,¹¹ Timor-Leste has a particular interest in maximizing the efficiency of conflict resolution processes to ensure that production losses occasioned by land conflicts are minimized. Furthermore, the special historic circumstances pertaining to Timor-Leste place the development of an enhanced land dispute resolution capacity high on the Government of Timor-Leste's policy agenda. With future elements of the Government's land law agenda scheduled to address matters such as land rights restitution and land title registration, it is vital that these aspects be preceded by a land conflict-resolution regime capable of resolving any disputes that may arise.

Past research, referred to briefly below, has already highlighted the clear preference of Timor-Leste communities for conflict resolution processes that serve to reconcile disputants rather than risk deepening conflicts through the generation of win-lose outcomes. The desirability of reconciliation in the close-knit social environment of the Timorese village is clear, and the capacity of local-level processes to facilitate the resolution of an extensive range of disputes throughout Timor-Leste has been found to be impressive. A central challenge of this component of the Land Law Program research agenda is to assess options for integrating local system dispute resolution processes into the developing state system. With government resources finite, the advantages of avoiding process replication are evident, to ensure that the capacity of DNTP, the courts, and other state institutions can be targeted for maximum benefit.

Background on Research into Local Justice Processes and Conflict Resolution Systems in Timor-Leste: Placing this Research in Context

Largely intact at the conclusion of the Portuguese colonial period, local systems of justice and conflict resolution continued to function throughout the Indonesian occupation, both because they were convenient and low-cost, and because Timorese often lacked confidence in the Indonesian justice system. Although neither the United Nations Transitional Administration in East Timor (UNTAET) nor its successor

¹¹ According to the *2001 Suco Survey* (East Timor Transitional Authority, et al. 2001:2), agriculture 'is the main source of income in 94 per cent of *sucos*', and the 'main crops are mainly used for self-consumption/subsistence.' The survey also found that 'widespread food shortages' are reported every year, in accordance with seasonal factors.

mission (UNMISET¹²) commissioned substantial systematic research into local justice and conflict resolution systems, the subject became the focus of a number of research reports and academic papers during and following the transition of Timor-Leste to independence. This attention was motivated by a number of considerations. These include the objective of assessing reconciliation options in the wake of the Indonesian withdrawal; interest in the potential for incorporating local justice and conflict resolution mechanisms into the Timor-Leste national administration; and how future peace-keeping and transitional administration operations might interface more effectively with local justice systems.¹³ This focus resulted in many aspects of local justice and dispute resolution mechanisms in Timor-Leste being documented by researchers for the first time, as previous anthropological work¹⁴ had been more general in focus. As asserted above, the result of this focus has been an improved appreciation of the central principles associated with local justice and conflict resolution systems in Timor-Leste, including the preference for mediation, flexibility with respect to the choice of mediation forums, and the negotiation of compensation if appropriate. Of major importance, the emphasis on reconciliation between parties has emerged as a defining feature of local justice and conflict resolution systems in Timor-Leste.

Most recently, research attention¹⁵ has centered on local conflict resolution systems in specific regard to the management of land disputes, in recognition of the importance of this area to national governance. The objective of these findings is to contribute further to this area of research through systematic analysis of local-system land conflict management processes, toward the drafting of recommendations for a legal framework for land dispute mediation.

Methodology

Introduction

Fieldwork for LLP research on land dispute mediation was undertaken during November 2003. It was preceded by over a month of preparation and capacity building, and followed by a month of data analysis and reporting. Two stages of research took place in relation to the mediation aspect of the investigation. The first stage took place from 9–19 November, and involved key person interviews in all 13 districts, 26 sub-districts, and 52 *sucos* (villages). These interviews, which totaled 142, were undertaken by five regional teams. Five ARD-LLP project staff, nine UNTL staff, nineteen UNTL students, and two senior staff from the DNTP national office participated in related fieldwork activities, using eight different questionnaires prepared for each of the different key person groups targeted for interview (see *Questionnaire* and *Sampling Frame* sections). To ensure that the local language abilities of team members were fully utilized, team assignments reflected the regional background of ARD LLP staff and UNTL staff and students.

¹² United Nations Mission in Support of East Timor.

¹³ See, for example Mearns (2001), Babo Soares (2001), Hohe & Nixon (2003), and Swaine (2003).

¹⁴ For example, Hicks (1988) and Traube (1986).

¹⁵ See Meitzner Yoder (2003) for a study of this area. See also D'Andrea (2003) for a study of customary land management systems in the broader context.

The second stage of the research took place from 25–29 November. This stage of the research targeted 30 randomly selected household heads (see *Sampling Frame* section, below, for details) in each of two rural sub-districts, in order to assess the extent to which the views and accounts of members of the general Timor-Leste community are consistent with the views and accounts of village, sub-district, and district-level representatives. In accordance with the time and resources available, two sub-districts were chosen for this component of the research: a sub-district with a high incidence of land conflicts; and a sub-district with a low incidence of land conflicts. On the recommendation of officers from the DNTP, the locations chosen were Ermera *Kota* sub-district (high conflict), and Manatuto sub-district (low conflict).

In preparation for the fieldwork component of the research process, UNTL, DNTP, and ARD personnel participated in capacity-building activities. These included workshops on the following areas:

- ◆ Research methodology
- ◆ Questionnaire design
- ◆ Questionnaire use
- ◆ First aid for major accidents
- ◆ Radio use
- ◆ Geographic information systems (GIS)
- ◆ Random point generation (RPG) for random sampling purposes
- ◆ Global positioning system (GPS) use, including field workshops on finding randomly generated waypoints in rural areas.

Communication forums were also organized in which local NGOs were invited to give presentations on issues related to land dispute mediation. Presenters included a delegation from Yayasan Hak, and a representative from the Government of Timor-Leste Office for the Promotion of Equality.

Questionnaire Design

In accordance with the object of providing an informed basis for policy recommendations on the development of a legal framework for land dispute mediation, the mediation research was designed to collect information on the following areas:

- ◆ The incidence of land disputes across Timor-Leste
- ◆ The nature of local processes for the resolution of land disputes
- ◆ Outcomes of local system land dispute resolution processes
- ◆ Costs associated with local system land dispute resolution processes (compared to the costs associated with the formal state court system).

Both stages of the research (key person interviews, and interviews with randomly selected household heads) utilized questionnaires employing mostly *closed-ended questions*. The use of mainly closed-ended questionnaires was essential to facilitate the analysis of data from a large number of respondents within a relatively short timeframe. Where possible, the closed-ended options included in the questions were formulated using information collected during the course of earlier studies. Where this information was not available, open-ended questions were used. The main questionnaire was pilot-tested in Dili prior to the full deployment of the research teams.

The first stage of the research targeted eight different groups of key informants, each with a separately prepared questionnaire. The key informant groups targeted were as follows:

Form A	Directorate of Land and Property (DNTP) District Officers
Form B	District Administrators (DAs)
Form C	Court officials
Form D	Pastors
Form E	Non-government organizations (NGOs)
Form F	Women's organizations
Form G	Sub-district Administrators (SDAs)
Form H	<i>Chefes de Suco</i> (village chiefs)

Essentially the same questionnaire (comprising 52 questions) was used for interviews with half the respondent classes (DNTP District Officers, DAs, SDAs, and *Chefes de Suco*). Further questionnaires were prepared for court officials, Pastors, senior NGO representatives, and senior representatives of women's organizations¹⁶ (these questionnaires comprised between 10 and 16 questions).¹⁷

The second stage of the research employed only one questionnaire, in accordance with the objective of targeting a random sample of household heads throughout two sub-districts. This questionnaire included only 20 questions, mostly taken from the master questionnaire prepared for DNTP District Officers, DAs, SDAs, and *Chefes de Suco*. This questionnaire is included under Appendix B.¹⁸

Sampling Frame

A central challenge associated with organizing social science research on a national scale, is to sample as large a population (of key persons; of randomly sampled members of subsets of the population) as possible within the constraints of the timeframe and budget. The research for this component of the LLP represented a significant investment of the overall time and resources available to the project, aimed at interviewing a) a robust sample of key persons from the districts, sub-districts, and *sucos*; and b) a sample of randomly selected Timor-Leste citizens from selected sub-districts, to assess the extent to which the views of this group are consistent with the views of the key person sample. The timeframe for the fieldwork was limited to meet the Government of Timor-Leste's urgent need for a completed report on land dispute mediation.

a) Key Persons Stage

The key person stage of the research targeted respondents at three levels (district, sub-district, and village) as follows.

¹⁶ Due to the sensitivity of some information, sources are not listed by name to respect their anonymity.

¹⁷ For reasons of space, questionnaires related to this report are included in a separate document. This is available upon request from ARD Dili.

¹⁸ Questionnaires available as per footnote 17 above.

Figure 1: Respondents targeted during key person research stage

District level	Sub-district level	Village/Suco level
<ul style="list-style-type: none"> • DNTP District Heads • District Administrators • Clergy • NGO Directors (or other senior experienced persons) • Women's NGO Directors (or other senior experienced persons) • Court officials (in those districts with courts) 	<ul style="list-style-type: none"> • Sub-district Administrators • Padres (if situated in the sub-districts visited) 	<ul style="list-style-type: none"> • <i>Chefe de Suco</i>

District-level interviews were conducted in all 13 districts. Within each district, 2 sub-districts were randomly selected. The total number of sub-districts sampled was therefore 26 (out of a national total of 66 sub-districts, or better than a one-third sample of all sub-districts). Within each sub-district, two *sucos* were randomly selected. The total number of *sucos* sampled was therefore 52 (out of a national total of 498¹⁹ *sucos*, or a 10% sample). The sub-districts and *sucos* included in the sample were as follows.

Figure 2: Sub-districts and sucos included in key person sample

District	Sub-district	Suco	District	Sub-district	Suco
Aileu	Aileu	Fahiria	Liquica	Liquica	Asumanu
		Lahae			Darulete
	Remexio	Fahi Soi		Maubara	Gugleur
		Rileu			Vaviquinia
Ainaro	Ainaro	Manelobo	LosPalos	Iliomar	Iliomar I
		Manetu			Kan Lui
	Hatubelico	Mulo		Loro	Baricafa
		Nuno Moge			Kotamuto
Baucau	Baguia	Afaloicai	Manatuto	Barique/Natarbora	Cribas/Barique Lama
		Larisula			Manehat
	Laga	Samalari		Laclo	Uma Kaduak
		Tequinomata			Laco Mesak
Bobonaro	Atabae	Odomao	Manufahi	Fatuberliu	Clakuk
		Raifun			Fahinehan
	Maliana	Memo		Turiscas	Aitemua
		Rairobo			Liurai
Covalima	Mape/Zumalai	Kuluwan	Oecusse	Nitibe	Lela Ufe
		Mape			Use Taku
	Tilomar	Cassabauk		Passabe	Abani
		Halimea			Haemenanu
Dili	Atauro	Macadade	Viqueque	Uatu Carbau	Baha Tata
		Vila/Maumeta			Leterea
	Vera Cruz	Naroman		Uatu Lari	Afaloikai
		Rumbia			Babulo
Ermera	Atsabe	Atara	Total districts visited: 13 (100%)	Total Sub-districts visited: 26 (approx. 39%)	Total Sucos visited: 52 (approx. 10%)

The total number of interviews conducted during the key person stage of the research is outlined in Figure 3 below.

¹⁹ Using the figures referred to in the *2001 Suco Survey* (East Timor Transitional Authority, et al. 2001:1).

Figure 3: Total key person interviews conducted

Key Person	Number of Interviews
Directorate of Land & Property Officers	13
District Administrators	13
Court officials	2
Clergy (Priests + Bishop)	(13+1)
NGO senior representatives	12
Women's Organization senior representatives	13
Sub-district Administrators	26
<i>Chefes de Sucos</i>	52
Total key person interviews:	142

b) Random Selection of Timor-Leste Citizen Stage

The challenge of the randomly selected Timor-Leste citizen stage of the land mediation research was to determine a sampling frame feasible within the time available. Identifying and finding respondents in farming communities can be time-consuming, and this reality had to be taken into account in the development of the methodology. It was therefore decided to limit the population from which samples would be drawn to two sub-districts. One of these would be a high-conflict sub-district, and the other a low-conflict sub-district. The sub-districts chosen, based upon recommendations from DNTP, were Ermera *Kota*/Town (as a high-conflict sub-district) and Manatuto (as a low-conflict sub-district).

Both the sub-districts selected are those in which district centers are situated. Therefore, it is important to bear in mind the possibility that individuals included in the sample could have had greater exposure to various aspects of modernization (including legal and administrative systems), than residents of more remote sub-districts. Yet, it should be noted that even in these district-center sub-districts, some very isolated locations exist. For example, when visiting a settlement near a randomly generated waypoint, one member of the Ermera research team found that residents claimed they had never been visited by the Indonesian military throughout the quarter-century of occupation.

There are significant differences between the two sub-districts. First, Ermera *Kota* has a population of 23,962—around 2.5 times the population of Manatuto (at 9,551).²⁰ Furthermore, Ermera *Kota* occupies only 93.5 square kilometers, compared with the 270 square kilometers occupied by Manatuto.²¹ In overall terms, therefore (i.e., not taking into account the large parts of Manatuto sub-district which are unoccupied), Ermera *Kota* has a population density of 256 people per square kilometer compared with 35 people per square kilometer in Manatuto. Furthermore, the main crop for most *sucos* in Ermera is coffee, yet the main crop for most *sucos* in Manatuto is rice.²² Despite being a fertile area and the most concentrated coffee-growing area in Timor-Leste,²³ the particular combination of economic productivity, and demographic and

²⁰ 2001 Suco Survey (East Timor Transitional Authority, et al. 2001:35-36).

²¹ Figures on land area are taken from a GIS database prepared by Wine Langeraar in preparation for the 2004 national census.

²² See the 2001 Suco Survey (ETTA, et al. 2001:85).

²³ According to information provided from *Café Timor*, November 2003.

other circumstances prevailing in Ermera *Kota* sub-district, does not appear to have provided the residents of this sub-district with net development benefits comparable to those enjoyed by residents of the less economically productive Manatuto sub-district. In fact, while 3 of 10 *sucos* in Ermera *Kota* sub-district are among ‘the 50 most poorly developed *sucos*,’ only 1 *suco* in Manatuto sub-district is included in this list.²⁴ Also, it is of note that Ermera *Kota* sub-district has a patrilineal land tenure system, while Manatuto sub-district has a matrilineal land tenure system. Finally, it is of significance that the two sub-districts share a feature in common with respect to physical access to formal legal institutions, since both Ermera *Kota* sub-district and Manatuto sub-district are situated within relatively close proximity to courts.²⁵

It was decided that the most appropriate way to select a sample from the population would be by superimposing randomly generated GPS waypoints over GIS maps of each sub-district, with the generation of random waypoints proportional to the distribution of the population within the sub-district.²⁶ Accordingly, GIS maps complete with settlements, roads, and vehicle tracks were prepared for each sub-district, using materials that have been developed in preparation for the forthcoming 2004 national census. Buffers of 2 kilometers were then created around all settlements indicated on each of the maps, and buffers of 0.5 kilometers were created around all roads and vehicle tracks. The computer was then programmed to generate 60 random waypoints per sub-district. The location of potential waypoints was confined to the pre-established buffer areas, and in proportion to the population density of each *suco*. The reason for establishing buffer areas and then confining waypoint generation to within these areas was to avoid sending members of the research team to look for respondents in uninhabited areas. Finally, the 60 randomly generated waypoints were randomly numbered 1 to 60, with field personnel instructed to work their way from Waypoint 1 to Waypoint 2, etc., until such time as they had completed 30 interviews. The 30 extra waypoints generated for each sub-district were emergency waypoints to be used in the event that any of the Waypoints 1-30 turned out to be located in uninhabited areas.

Members of the research team were then trained how to locate the randomly generated GPS waypoints in a field trial. Team members were instructed that, during the research phase, they should interview the household head of the residence closest to each of the waypoints. Team members were also instructed that, in the event they are unable to determine which residence is closest to a waypoint, they should discard that particular waypoint and move on to the next one.

Analysis of Data

The survey results were collated and analyzed using Access and SPSS programs.

²⁴ 2001 *Suco Survey* (East Timor Transitional Authority, et al. 2001:72).

²⁵ From the district centers of Ermera and Manatuto districts, the courts in Dili and Baucau, respectively, can be reached by road within several hours. This is not the case with other districts such as Vicqueque or Los Palos, from which district residents may have to travel for a full day or more in order to reach a court.

²⁶ Figures from the 2001 *Suco Survey* (East Timor Transitional Authority, et al. 2001:1) indicating the population density of each *suco*, were used to index the generation of random waypoints in proportion to population density.

Results

Note: The following data sets are used in the Results section as outlined below.

- ◆ Key person (Admin.): Refers to District Administrators, District Land and Property Officers, Sub-district Coordinators, *Chefes de Suco*. Respondents for this data set numbered 101.
- ◆ Random (Ermera): refers to the randomly selected respondents from Ermera Sub-district (31 respondents).
- ◆ Random (Manatuto): refers to the randomly selected respondents from Manatuto Sub-district (30 respondents).
- ◆ Reference is made to results from the Court Officials, NGO representatives, Women's group representatives, and Clergy questionnaires where appropriate.

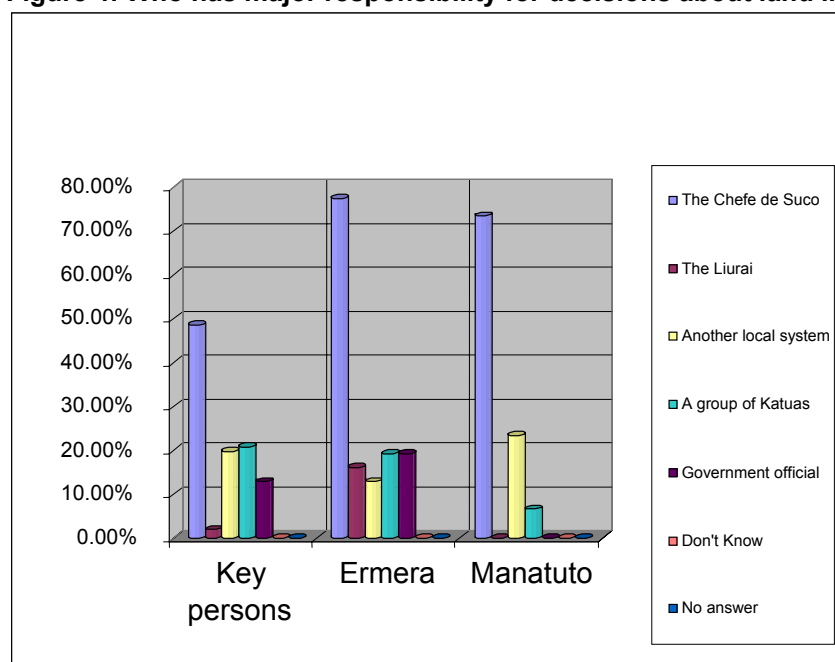
1. Some General Findings Concerning Customary Land Practices

The following comments are offered as general observations concerning aspects of land tenure arrangements prevailing in Timor-Leste. Not all comments have direct implications for land dispute mediation; however, they may be of value in providing background information concerning the context in which disputes, and the resolution of disputes in Timor-Leste, may transpire.

a) Responsibility for decisions about land (Survey Question 1)

Respondents from both the key persons and random stages were asked an introductory question concerning general responsibility for decisions concerning land in the *suco* (see Figure 4 below).

Figure 4: Who has major responsibility for decisions about land in the *sucos*?(Q1)



The question of responsibility for decisions about land in the *sucos* is too broad to be interpreted as providing information specifically on mediation responsibility.

However, responses indicate that *Chefes de Suco* are considered to have a higher profile than other local-system and state-system officials concerning land-related decisions on the broad level. This information is not entirely consistent with the knowledge that, in a number of local systems throughout Timor-Leste, specific local-system officials have responsibility for ritual and administrative aspects of land management (among the *Atoni* of Oecusse, for example, this person is known as the *Tobe*). The data may therefore point to the coordinating role the *Chefe de Suco* is expected to assume in relation to the *management* of land issues.

b) Separable rights (Survey Question 4)

To determine the extent to which separable rights (where one party owns land, yet another party has rights over aspects of it) prevail throughout Timor-Leste, respondents were asked the following question:

If one party owns the land, how common would it be for another party to have rights over that land?

Responses were sought in relation to the range of features outlined in Figure 5 below.

Figure 5: How common is it for one individual or party (Party A) to own land, and for another party (Party B) to also have rights associated with that land? (Q4)

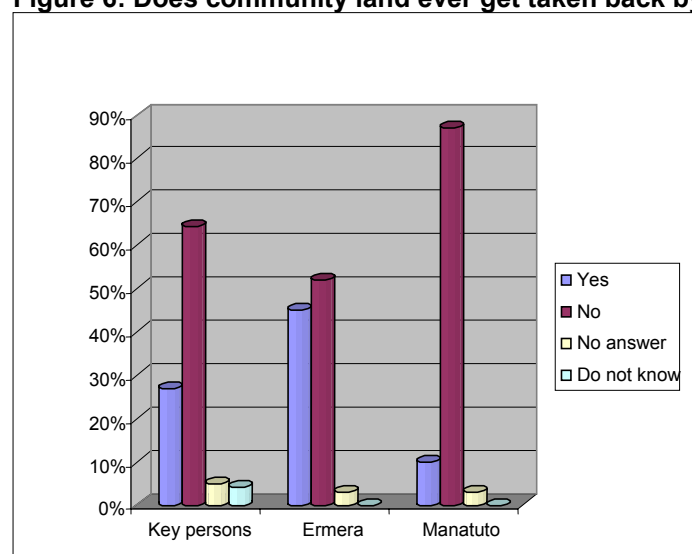
As the key person data set in Figure 5 (above) indicates, there is broad acceptance nationally of the concept that individuals may have rights to features geographically situated upon the land parcels of other individuals. While the figures indicate variation with respect to particular features, there is not a single feature in respect to which the legitimacy of separable rights is perceived as ‘very uncommon’ by a majority of the sample. This data indicating the frequency and diversity of separable rights throughout Timor-Leste suggests that it may be appropriate (in due course) to consider including provisions for separable rights in the development of land laws.

c) Local system land appropriation (Survey Questions 5, 6)

The practice of local-system land appropriation in Timor-Leste was assessed with the following question:

Does *suco* land used by an individual ever get taken back by the *suco* administration and re-allocated to other parties?

Figure 6: Does community land ever get taken back by the *suco* administration? (Q5)



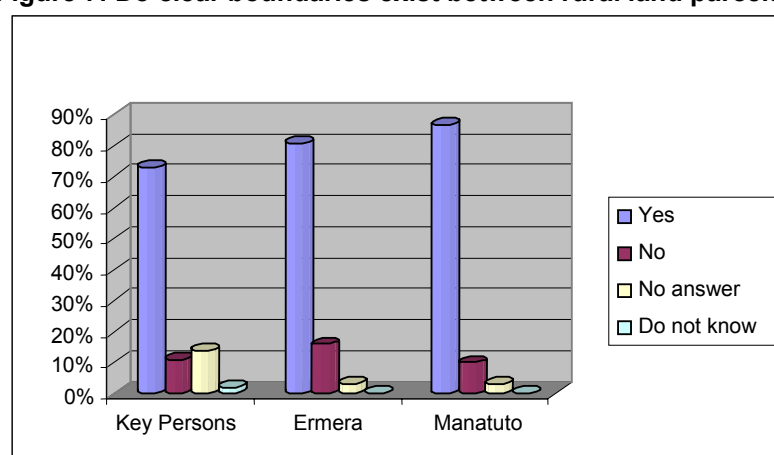
Responses to this question, outlined in Figure 6 above, suggest that appropriation of land by the *suco* administration is known to a significant proportion (*albeit a minority*) of respondents nationally, although the data suggests that the taking back of land is particularly uncommon in Manatuto sub-district.

A further qualitative question inquiring into the circumstances under which land is taken back by *suco* administrations solicited a range of responses. These included non-payment of debts to the *suco* administration and failure to comply with instructions issued by the *Chefe de Suco*. While the knowledge that land reclamation/re-allocation is practiced within some local administration systems could be of value in relation to policy development in the future, it is recommended that any such policy development be informed by more detailed research.

d) Boundaries (Survey Questions 8, 9, 10, 11, 12, 13, 14, 15, 16,17)

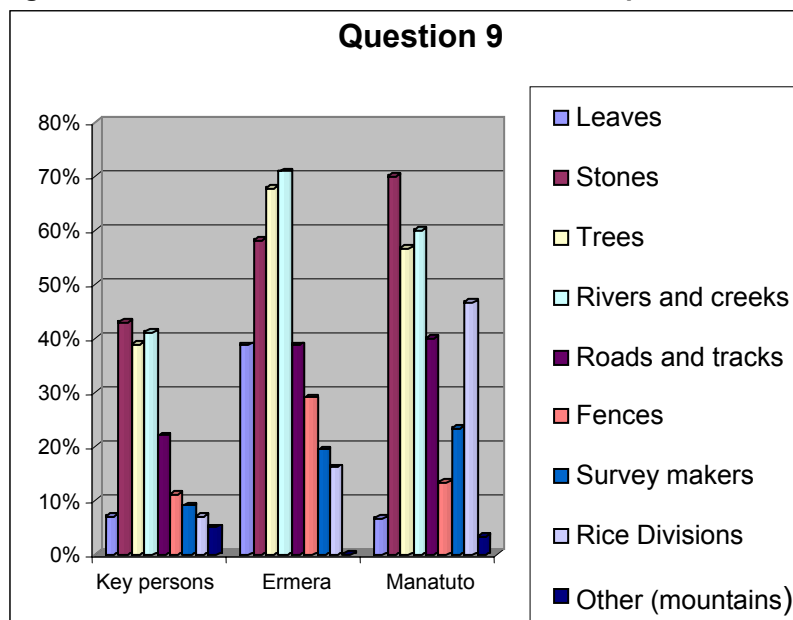
Information concerning boundaries is of clear importance in relation to the development of the Cadastral system. Yet, since boundary conflicts represent one of the more common forms of land disputes (see Figure 19), background information on boundaries is also of great importance to the area of land dispute mediation.

Figure 7: Do clear boundaries exist between rural land parcels? (Q8)



Survey data indicates that clear boundaries are perceived to exist between rural land parcels in the vast majority of cases (see Figure 7 above), and that stones, trees, rivers and creeks, and roads and tracks are among the more common features used to define boundaries between rural land parcels (see Figure 8 below).

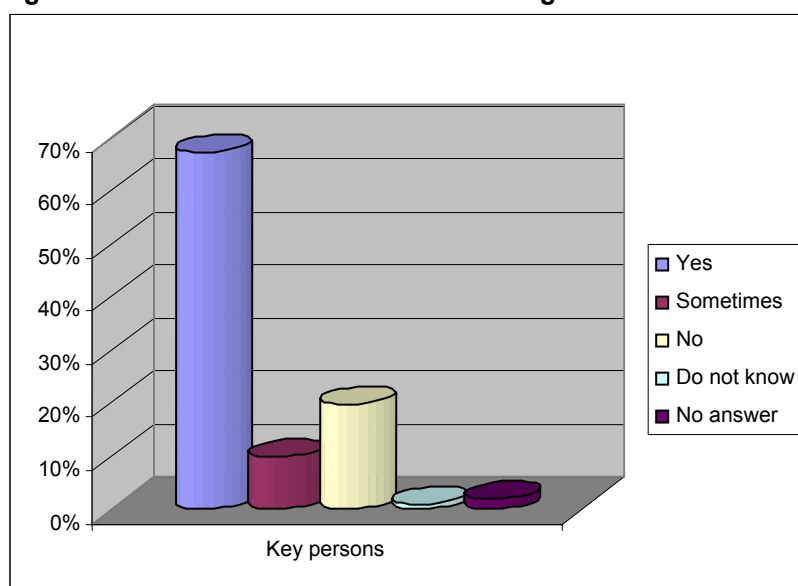
Figure 8: How are boundaries between rural land parcels defined? (Q9)



Clearly, the nature of the topography of the different regions throughout Timor-Leste plays a role in determining the prominence with which particular features serve as boundaries, as indicated by the relative significance of rice-field divisions and corners among the rice-growing population of Manatuto sub-district (Figure 8 above).

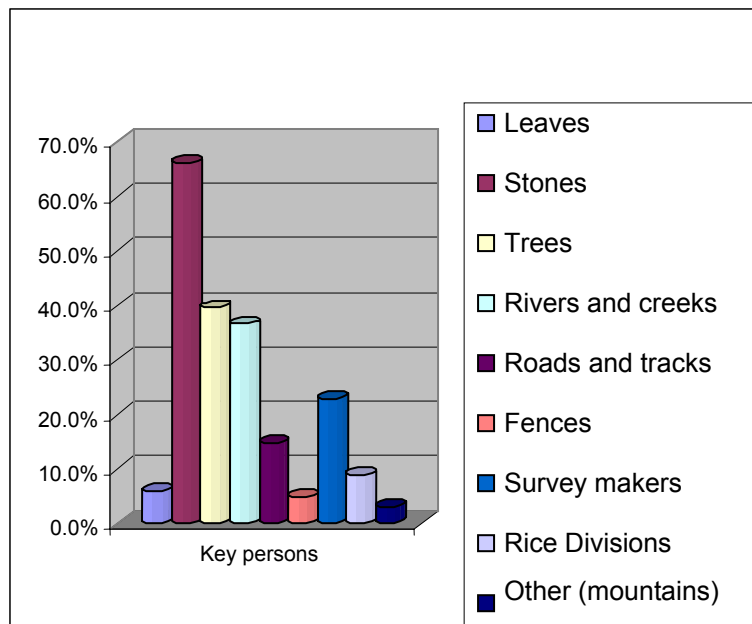
Survey questions were also designed to assess the nature of *suco* boundaries.

Figure 9: Do clear boundaries exist marking the borders between rural *sucos*? (Q12)



As with boundaries between land parcels *within sucos*, the data (see Figure 9 above) indicates that, in the majority of instances (65%), respondents perceive that clear boundaries mark the borders between rural *sucos*.

Figure 10: How are boundaries between *sucos* defined? (Q13)



In relation to how *suco* boundaries are defined, the evidence suggests that stones, trees, rivers and creeks (Figure 10 above) are foremost among those features that define *suco* borders, with roads and tracks less prominent than in relation to the borders between land parcels *within sucos*.

The situation with respect to the marking of urban land parcels in district and sub-district centers was also assessed (Figures 11 and 12 below).

Figure 11: Are allotments between urban parcels in your district clearly defined? (Q15)

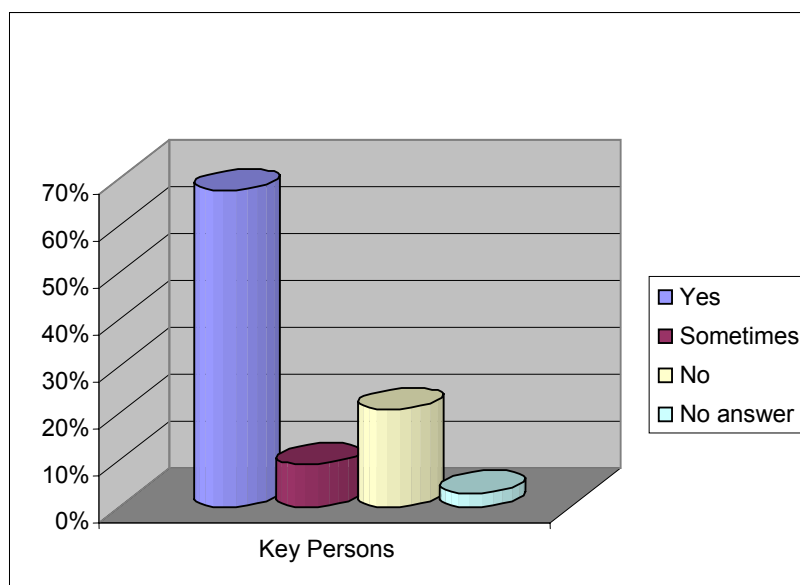
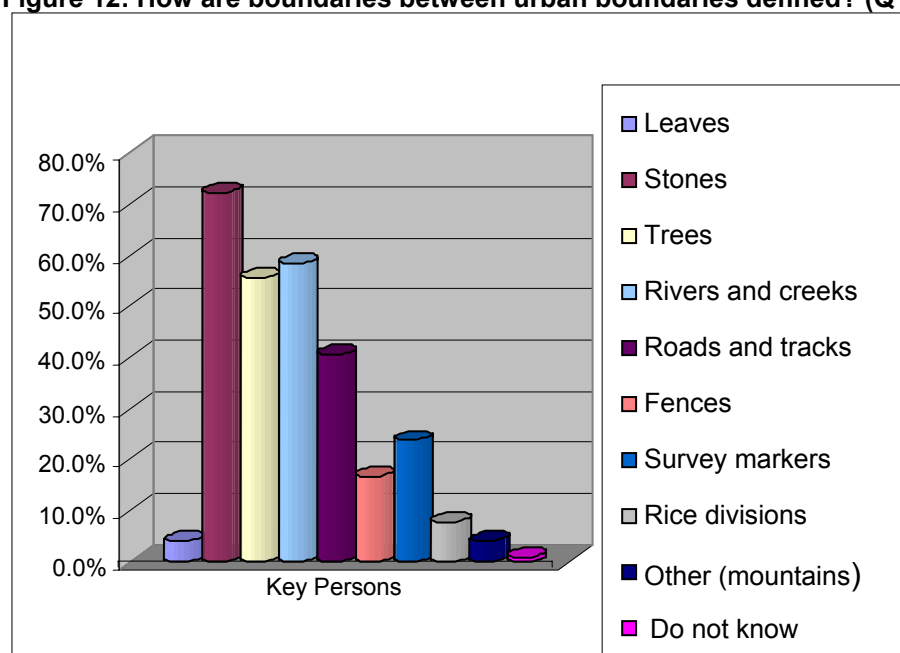


Figure 12: How are boundaries between urban boundaries defined? (Q16)



As with the borders between land parcels *within sucos*, and as with the borders *between sucos*, responses indicated the strong perception that borders between land parcels in district and sub-district centers are clearly marked. Likewise, similar features constitute the borders between these actual parcels.

Qualitative and unsystematically acquired feedback in response to other questions (Survey Questions 10, 14, 17) suggests that it is not unusual for boundaries, particularly those between rural parcels or between *sucos*, to be reviewed from time to time. Some of the reasons given for the review of boundaries include:

- ◆ Because border markers deteriorate
- ◆ Because every new generation has to learn about the borders
- ◆ To clarify who owns the land
- ◆ To prevent future conflict
- ◆ To make sure the land belongs to the owner
- ◆ Because sometimes the population living in the area loses clarity concerning the border, so it has to be checked again.

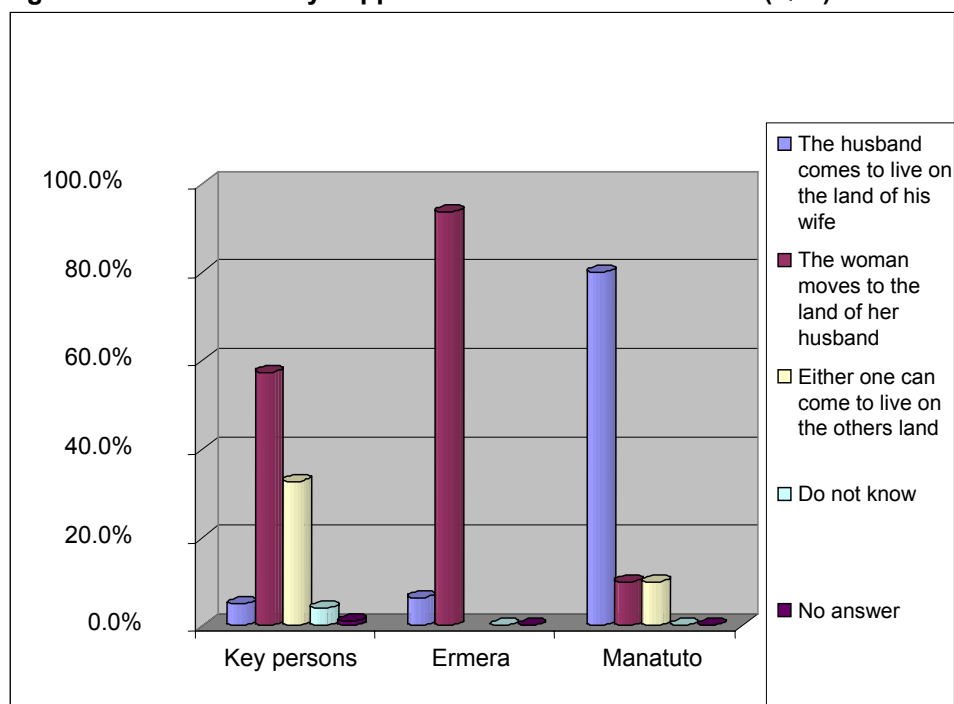
This qualitative and non-empirical feedback from survey respondents suggests that, in some cases at least, the determination of boundaries involves ongoing negotiations between two or more parties, consuming time and energy and potentially preventing agricultural use of land. There may be benefits, therefore, to the systematic documentation of particular kinds of boundaries, where possible, in order to reduce the costs associated with negotiating and settling uncertainties on a regular basis. Data indicating *suco* boundary disputes to be among the most difficult-to-resolve land conflicts (see Results Section 2b) suggests that attention be given to *suco* boundaries in this regard.

e) *Women and land* (Survey Questions 18, 19, 20, 21)

A series of questions was asked of both key person and randomly selected respondents concerning women and land. The first of these (Question 18) sought to determine spouse movement at marriage, using the question:

What normally happens in your district when a woman marries?

Figure 13: What normally happens when a woman marries? (Q18)



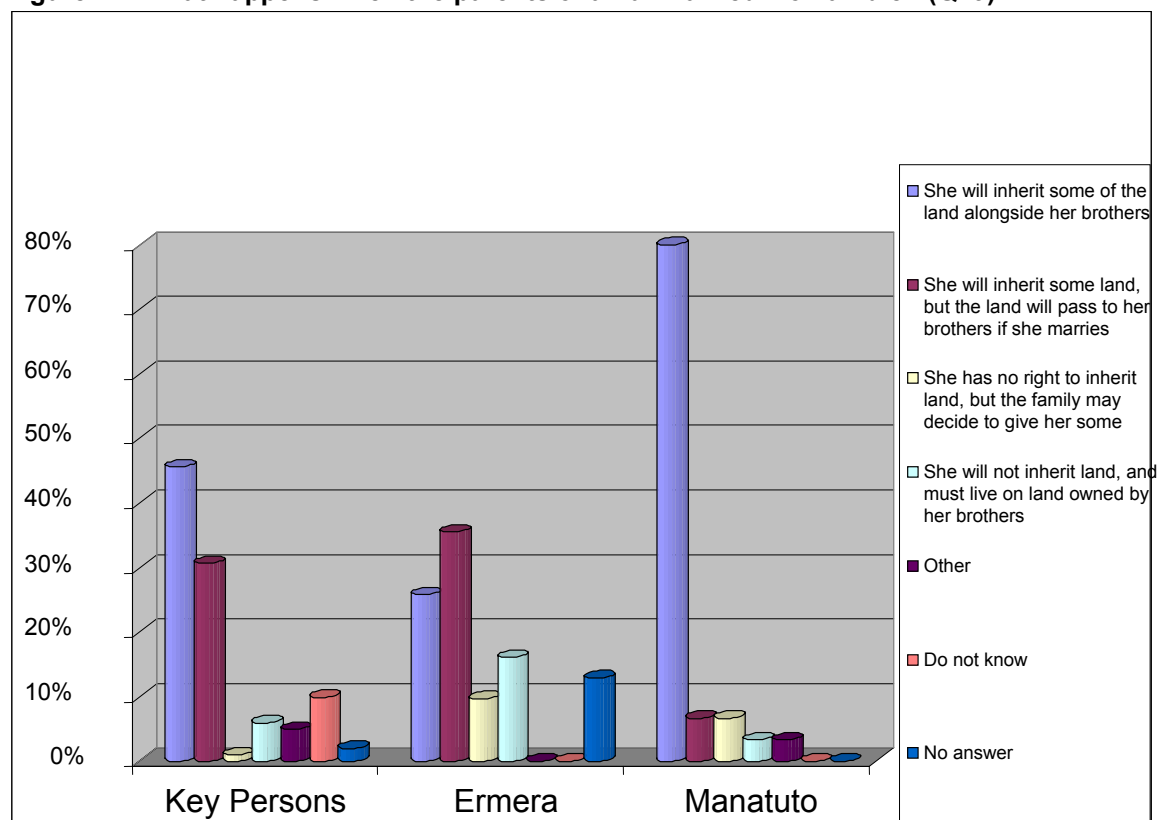
With patrilineal land tenure systems dominant in Timor-Leste, it is not surprising to find that, in the majority of cases nationally, women move to the land of their new husbands, whose families must pay substantial *belis* (bride-wealth)—usually over a long period of time,²⁷—to the family of the bride.²⁸ What is notable, perhaps, is the flexibility indicated in the key person results in relation to the category ‘either one can come to live on the other’s land,’ in comparison to the vivid differences between the examples of patrilineal Ermera and matrilineal Manatuto. It may be that the perceptions of members of the key person respondents group are that land arrangements at marriage are more flexible than they are in reality, but only further research could confirm this explanation.

The data presented under Figure 14 below was collected to establish the inheritance rights of unmarried women living on their parents’ land at the time of their parents’ death.

²⁷ Bride-wealth can be considerable. Variation occurs but anecdotal accounts suggest that 20 head of cattle is not unusual, and more than 60 head may be the common bride price in some areas. Payment can therefore take years or decades, but it might be observed that the need to pay *belis* promotes the ongoing generation and circulation of protein.

²⁸ The situation is reversed in matrilineal societies.

Figure 14: What happens when the parents of an unmarried woman die? (Q19)



Manatuto sub-district, a dominantly matrilineal area, demonstrates a strong trend toward unconditional inheritance rights for women (around 80% of the sample), with around 45% of the key person sample and around 25% of respondents from Ermera *Kota* sub-district indicating that unconditional inheritance rights prevail for women. Reflecting a tendency for the inheritance rights of women living in patrilineal systems to be lost upon marriage (similarly, men living in a matrilineal system could expect the same outcome), the key person and Ermera *Kota* samples both show a significant number of respondents (over 30% in each case) indicating that while an unmarried woman living on her parents' land at the time of their death might inherit some land, this land will pass to the ownership of her brothers in the event that she marries. In fact, that 45% of the key person sample indicated the existence of unconditional inheritance rights for women in this category to *some*²⁹ land seems surprising, given that the majority of land tenure systems in Timor-Leste are patrilineal, and that the brothers of women living in patrilineal systems require land to support their own families.

Consideration of the link between land tenure and broader cultural values should be present in relation to any discussion concerning women and land in Timor-Leste. The importance of value transfer at marriage has been explained elsewhere³⁰ as a fundamental component of Timorese cosmology, essential to the maintenance of fertility in the broad sense. Land-related aspects are an important component of the value exchange process associated with marriage. Policymakers may be tempted to consider the loss of a woman's inheritance rights at marriage an injustice, yet to ignore

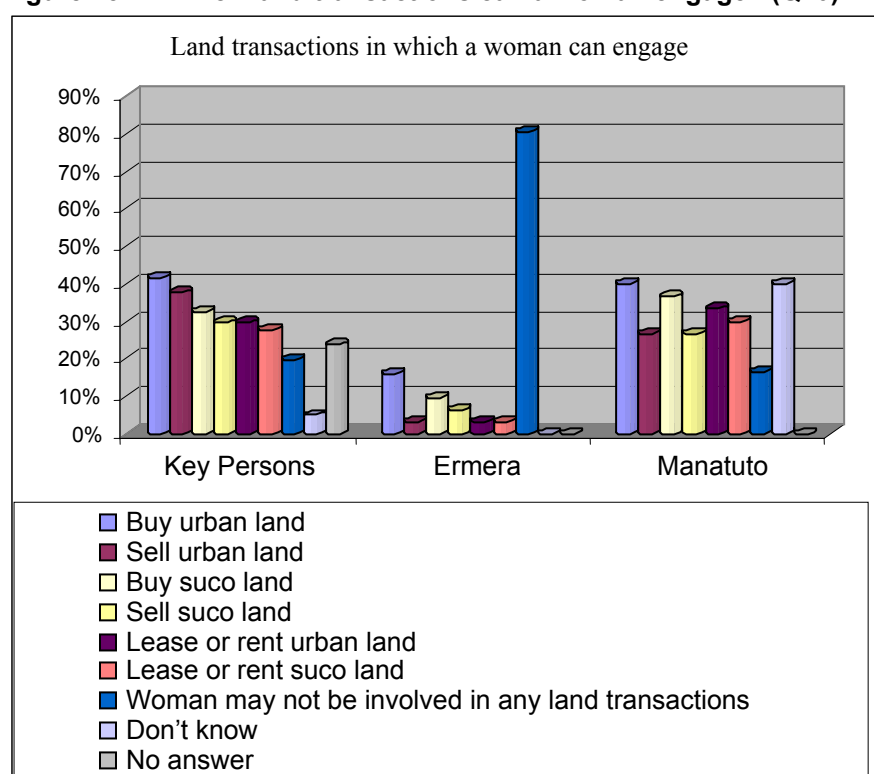
²⁹ Further research might endeavor to establish the size of the land package to which a woman in this category might be entitled.

³⁰ See especially Traube (1986), and also Ospina and Hohe (2001).

existential components of Timorese life in the course of the policy development process could be counter-productive in terms of overall well-being for the population of Timor-Leste, and could compromise popular support for state-formulated policies, laws, and rules.

In Question 20 (the data for which is presented in Figure 15 below), respondents were asked to indicate the land-related transactions in which women could engage.

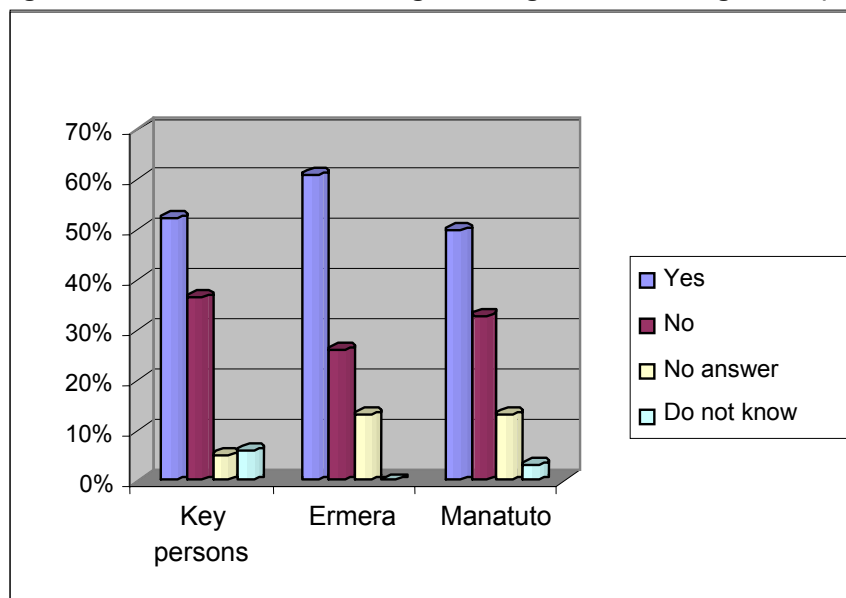
Figure 15: In which land transactions can a woman engage? (Q20)



The key person sample resembles the Manatuto sub-district sample in indicating that between 20% and 40% of respondents state that women may be involved in a range of transactions concerning land. Again, the results from Ermera *Kota* sub-district, the only dominantly patrilineal sample included, present a stark contrast to both the key persons sample and the Manatuto sub-district sample, with around 80% of Ermera respondents indicating that women may not be involved in any land transactions. From the information available, it is not possible to conclude whether a) the Ermera sample presents an exception to Timor-Leste norms in this regard, or whether b) members of the national key persons sample possess unrealistic perceptions concerning the land transaction options available to women, when in fact these options may mainly be accessible only to women in matrilineal areas such as Manatuto. While it is possible to conclude that precedents exist in Timor-Leste for the involvement of women in a range of land transactions, the evidence also suggests that the extent to which women may be involved in land transactions varies throughout the country. Policymakers should take this information into account in relation to the promotion of tenure rights for women, to avoid alienating those sectors of Timor-Leste society not yet open to this concept.

Notwithstanding the above caution, the data accrued in response to Question 21 ‘Are women demanding more rights in relation to land?’ (Figure 16 below) suggests that women as a group *do* aspire to access a greater range of land-related options than is presently open to them.

Figure 16: Are women demanding more rights concerning land? (Q210)



Interestingly (in reference to Figure 16), the perception appears to prevail in Ermera sub-district more strongly than elsewhere, that women are demanding more rights in relation to land.

2. Types of Disputes and Ease of Resolution

a) *Land disputes as a proportion of all disputes, and perceptions of change in incidence of land disputes* (Survey Questions 33/34, 36)

Respondents for the key person component of the research were asked to recall the total of all disputes (land disputes, domestic disputes, political disputes, and others) that had come to their attention over the past year (Question 33). They were then asked how many of this total number of disputes concerned land (Question 34). In the analysis of the data, information from DNTP personnel was excluded from the sample, so as not to include information from individuals whose area of professional responsibility involves identifying land disputes. The data presented in Figure 17 below, therefore, is derived from interviews with District Administrators, Sub-district Coordinators, and *Chefes de Sucos*, and indicates that close to half of the total number of disputes that have come to the attention of the sample of the 89 administrative officials, concerned land.

Figure 17: Land disputes as a proportion of all disputes (Q33/34)



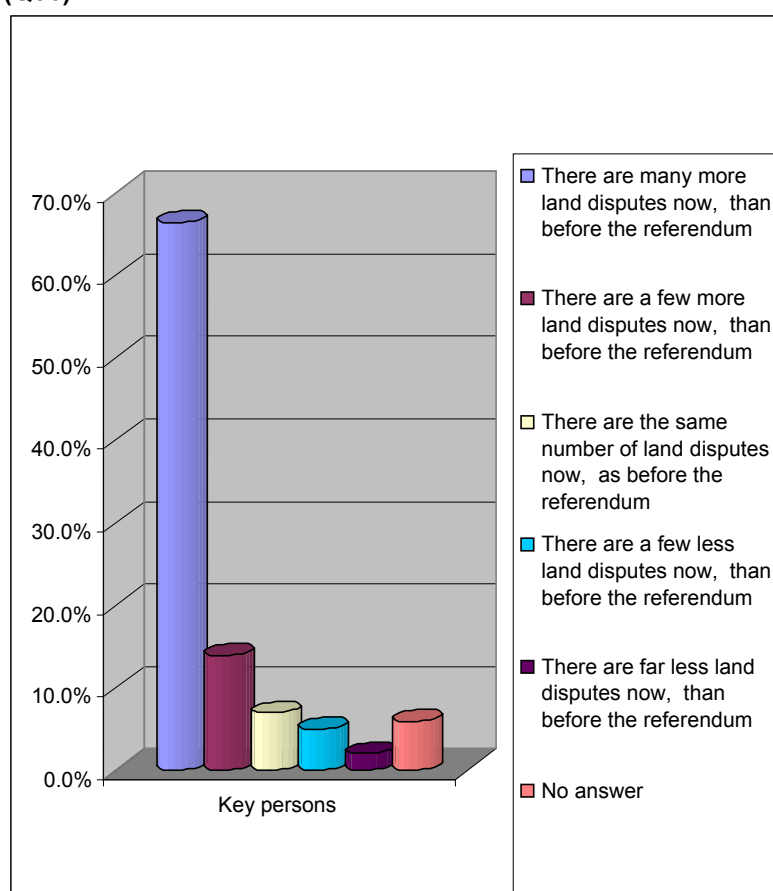
Question 33/34	Total respondents = 89		
Total Number of Disputes	Total number of land disputes	Total percentage	
189	87	46.03%	
Note : Information from Land & Property Officers is not included			

Other community leaders were also surveyed in relation to this matter, with similar results. Of the 13 Pastors of whom inquiries were made concerning their involvement in conflict resolution processes, six indicated that they had been requested to mediate disputes in the past year. The disputes these six Pastors had been requested to mediate numbered 20 in total. Of these 20 disputes, 15 concerned land.

Notwithstanding the possibility that many conflicts over land may have their origins in other differences between individuals,³¹ the results of this survey indicate that land disputes represent a substantial proportion of all disputes occurring throughout Timor-Leste, supporting the belief that policymaking that supports dispute resolution in this area is a priority. Furthermore, there is also a very strong perception in the community that the incidence of land disputes has increased since independence (see Figure 18 below).

³¹ See Meitzner Yoder (2003:13).

Figure 18: Perceptions of increase/decrease in land disputes since the referendum (Q36)



b) Common land dispute types and difficulty of resolution (Survey Questions 37, 38)

In order to profile the incidence of particular kinds of land disputes, and to assess the difficulty of resolution of particular kinds of land disputes, respondents were questioned concerning these matters.

Figure 19: Which kinds of land disputes are most/least common, and which kinds are easy/difficult to solve? (Q37a/37b)

Question 37 (A&B)			Key Persons Admin – 101 respondents									
Land Dispute Type	COMMON		NOT COMMON		NO ANSWER		EASY TO RESOLVE		DIFFICULT TO RESOLVE		NO ANSWER	
	Total	%	Total	%	Total	%	Total	%	Total	%	Total	%
Ownership Dispute	80	79.2%	19	18.8%	2	2.0%	64	63%	34	34%	3	3%
Parcel Boundary Dispute	75	74.3%	23	22.8%	3	3.0%	59	58%	38	38%	4	4%
Inheritance Dispute	74	73.3%	25	24.8%	2	2.0%	68	67%	29	29%	4	4%
Suco Boundary Dispute	54	53.5%	1	1.0%	46	45.5%	29	29%	67	66%	5	5%
Harvest Rights Dispute	35	34.7%	1	1.0%	65	64.4%	68	67%	29	29%	4	4%
Other Dispute (please state)	2	2.0%	1	1.0%	98	97.0%	1	1%	9	9%	91	90%

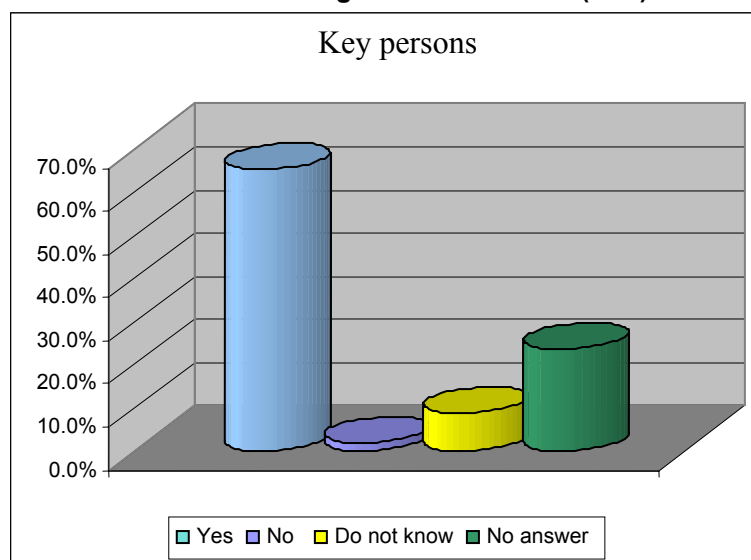
The results (represented in Figure 19 above) suggest a number of categories of land dispute in terms of classification for policy development purposes. The data indicates that the great majority of respondents consider ownership disputes, parcel boundary disputes, and inheritance disputes to be relatively common (79%, 74%, and 73% of

respondents, respectively). The data also indicates that the majority of respondents consider these three kinds of land disputes the easiest to resolve (63% of respondents claim ownership disputes are easy to resolve, 58% claim parcel boundary disputes are easy to resolve, and 67% claim that inheritance disputes are easy to resolve).

Harvest-rights disputes, while apparently less common than ownership, parcel boundary, and inheritance disputes (only 35% of respondents indicated that harvest-rights disputes are common) are considered by 67% of respondents to be one of the easiest kinds of land disputes to resolve. While relatively infrequent, therefore, harvest-rights disputes fall into the ‘easier to resolve’ category.

Most difficult to resolve of all are boundary disputes between *sucos*.

Figure 20: Number of respondents who know of one or more *sucos* that have disputes with other *sucos* concerning *suco* boundaries (Q38)



Suco boundary disputes are somewhat more rare than the more common kinds of land disputes (*suco* boundary disputes are only considered ‘common’ by just over half the respondents). However, they are considered difficult to resolve by 68% of respondents, confirming the view that *suco* boundary issues are a priority area demanding particular attention in the policy development process. This is particularly clear if the outright incidence of *suco* boundary disputes is taken into account. Although less common than other land disputes, the research data (see Figure 20 above) indicates that *suco* boundary disputes are common throughout Timor-Leste, with 65% of all respondents from the Key Person Survey indicating that they know of one or more *sucos* which has a boundary dispute with other *sucos*.

3. Defining Local-System Land Dispute Resolution

- a) *Mediation forums for land disputes - where does mediation begin, and what is the order in which land disputes proceed from forum to forum?* (Survey Question 35a)

Respondents from all survey groups were questioned concerning a) the procedure for initiating a land conflict resolution process, and b) the order in which the dispute

resolution process proceeds from one forum to another forum in the event that initial attempts to mediate a resolution are unsuccessful.

Figure 21: Order in which land disputes are taken to forums (Q35a)

Question 35 (A)	Key person interviews						Ermera						Manatuto					
	1st	2nd	3rd	4th	5th	6th	1st	2nd	3rd	4th	5th	6th	1st	2nd	3rd	4th	5th	6th
family	61	1	2	1	1	0	15	0	0	0	0	0	29	0	0	0	0	0
Aldeia	22	62	5	0	0	1	13	14	2	0	0	0	1	29	0	0	0	0
Suco	7	23	62	2	0	0	2	13	14	0	0	0	0	1	22	0	0	0
Sub - District	1	1	22	58	2	0	1	2	5	12	0	0	0	0	1	28	1	0
Liurai	1	2	0	2	3	0	0	0	2	1	1	1	0	0	7	1	1	0
church	0	1	0	3	4	1	0	0	1	1	4	0	0	0	0	0	3	0
District administration	0	0	3	11	27	21	0	1	2	3	0	0	0	0	0	1	12	4
land & property	0	1	2	7	28	24	0	0	3	1	4	1	0	0	0	0	2	12
court system	0	0	0	3	15	26	0	0	0	13	4	4	0	0	0	0	0	14
NGO	8	1	1	5	0	0	0	0	0	0	1	1	0	0	0	0	0	0

In the case of all sample groups, the data supports existing beliefs concerning the preferences of members of the Timor-Leste population for resolving conflicts at the local level if at all possible. Figure 21 below, therefore, describes the tendency in all sample groups for parties to first take land disputes to elders (*katuas*) at the family or *aldeia* (hamlet) level. Figure 21 also describes how disputes resisting settlement at the lower level are taken to *suco* (village) and sub-district level. It is of note in this respect that officials occupying positions in sub-district administrations also commonly hold positions in the local ritual (*adat*³²) and administrative systems. Thus while the *suco* level is technically part of the local system, and the sub-district part of the formal state system, the progression of conflict resolution cases proceeding from the *suco* to the sub-district level is often fluid.

The data from Ermera *Kota* sub-district is unusual in that approximately half of the sample indicate a willingness to take land disputes to court (instead of the more usual sub-district administration response) in the event conflicts are unable to be resolved at the *suco* level. It is unknown if there are specific reasons for this, and the data from the other samples indicates no such tendency. Whereas the data from Manatuto suggests that once disputes leave the realm of the sub-district and they make progress in an orderly manner from the district administration to the DNTP or to the courts, the key person sample suggests a somewhat less definitive state of affairs nationally. It is likely that local factors contribute to this tendency for forum shopping, and that the identity of individuals who hold office within particular forums is an influence on the choices made by disputants (see Section 3e below for a discussion concerning the qualities disputants value in a good mediator).

b) Adat and formal mediation - perceptions of mediation systems (Survey Question 46)

The research on land dispute mediation included a line of inquiry aimed at establishing where, in the collective consciousness of the population of Timor-Leste, does the dividing line between the *traditional system* and the *formal system* lie.

³² An Indonesian word, the term *adat* is often used in Timor-Leste in reference to ritual aspects of life.

Figure 22: Perceptions of which forum is part of which system: traditional, formal, or both (Q46)

Q46

Question 46		Key Persons Admin - 101 respondents							
Forum/Individual	Part of Traditional System		Part of Formal System		Both Systems		No answer		
	Total	%	Total	%	Total	%	Total	%	
Family <i>Katuas</i>	89	88.1%	0	0.0%	3	3.0%	9	8.9%	
Aldeia <i>Katuas</i>	62	61.4%	24	23.8%	2	2.0%	13	12.9%	
Suco <i>Katuas</i>	56	55.4%	29	28.7%	2	2.0%	14	13.9%	
Sub-district Coordinator	8	7.9%	81	80.2%	1	1.0%	11	10.9%	
Liurai	62	61.4%	17	16.8%	0	0.0%	22	21.8%	
Church/Priest	34	33.7%	40	39.6%	0	0.0%	27	26.7%	
District Administrator/District Administration	4	4.0%	87	86.1%	0	0.0%	10	9.9%	
Land & Property Officer	3	3.0%	88	87.1%	0	0.0%	10	9.9%	
Court Officials	3	3.0%	84	83.2%	0	0.0%	14	13.9%	
NGO	0	0.0%	0	0.0%	0	0.0%	101	100.0%	

The data from the Key Person Survey, presented in Figure 22 above, suggests that the level of the family *katuas* (elders) is generally perceived to be part of the traditional system (88%), but that this perception drops in relation to the level of *aldeia katuas* (61%), and again in relation to the level of *suco katuas* (55%). The results indicate a strong perception that Sub-district Coordinators, the District Administration, Land and Property Officers, and the courts are part of the formal system.

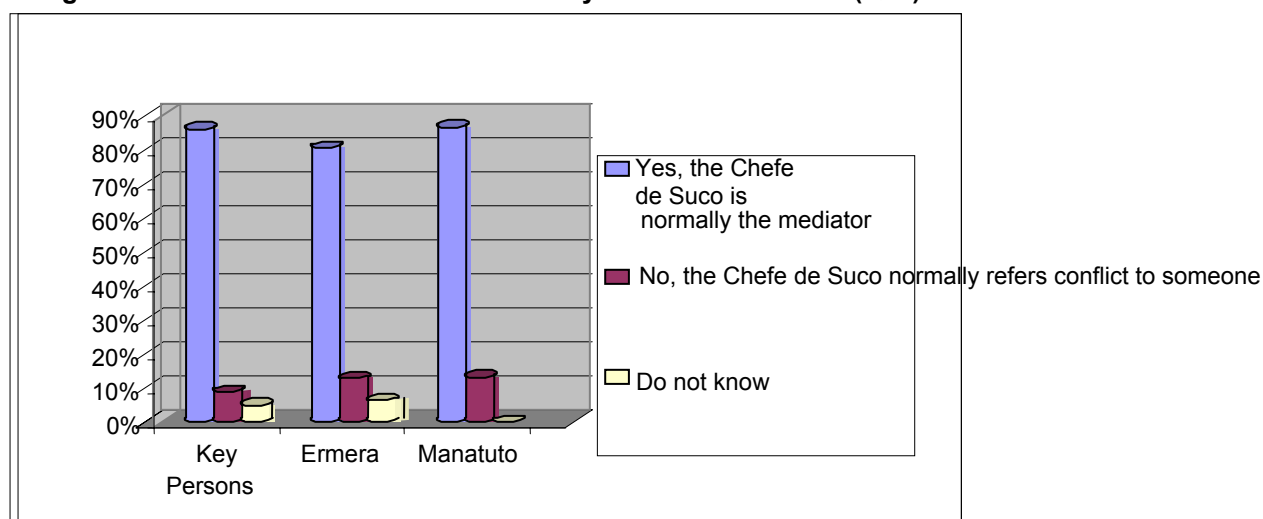
It should be noted, however, that the expectation of the formal system prevailing beyond a certain point, should not be taken literally. The two court officers consulted in relation to this study, for example, indicated that it is ‘very important’ for *katuas* (members of the traditional ritual and administrative systems) to attend court proceedings in relation to land disputes. Furthermore, accounts suggest that often, even once disputes reach the formal sector, the actual routine which unfolds has greater resemblance to a traditional conflict reconciliation process, complete with compensation negotiations and reconciliation ceremony, than to the kind of procedure one might associate with formal western concepts of public administration and law.

c) *Local-system mediators* (Survey Questions 42)

The survey included questions designed to establish who is normally responsible for mediating conflicts within the *suco*.

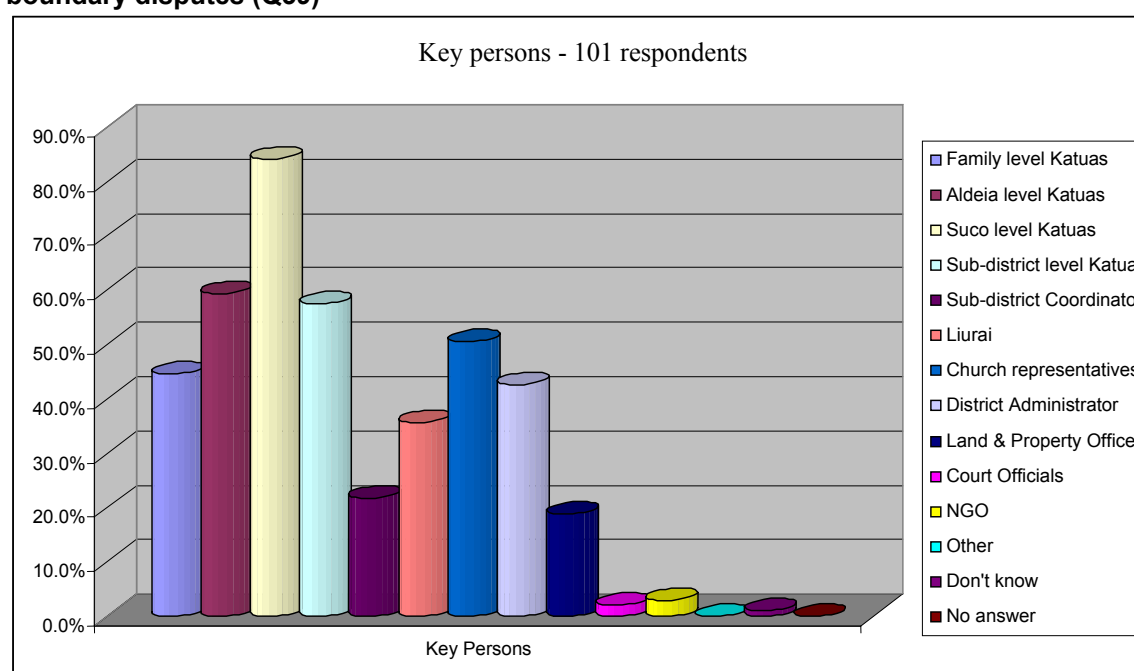
The data indicates (see Figure 23 below), that in the overwhelming majority of cases, *Chefes de Suco* are normally responsible for mediation.

Figure 23: Does the *Chefe de Suco* normally mediate a conflict? (Q42)



Respondents were also questioned concerning the appropriate authority for the resolution of border disputes between *sucos*, and given the opportunity to indicate more than one option.

Figure 24: Most appropriate authorities for managing the resolution of inter-suco boundary disputes (Q39)



The data presented in Figure 24 above outlines the range of authorities that respondents consider should be involved in the mediation of border disputes between *sucos*, on the basis of accumulated preferences. While the data is less definitive than in relation to the resolution of disputes *within* the *suco*, it is clear that many respondents perceive the need for the involvement of an individual from *beyond*, or *above*, the *suco* level, who is capable of mediating the dispute from a neutral perspective (see Section 3e below for evidence of this).

Anecdotal accounts suggest that in earlier times, the *Liurai*, as Lord of the Land, would have had considerable authority in respect to the resolution of disputes between

sucos, possibly through threatening to appropriate disputed land for his own purposes. Without wishing to suggest that resolving disputes between *sucos* has ever been a straightforward process, it appears apparent from the spread of responses in respect to this question, that no uniform process has yet developed which completely replaces the past role of the *Liurai*. In fact, the participation of the *Liurai* in the resolution of a *suco* boundary dispute remains appropriate for over 30% of respondents, while less than 20% indicated that the involvement of the Sub-district Coordinator was appropriate, and less than 20% indicated that the involvement of the Department of Land and Property was appropriate. Other outside authorities, whose involvement is perceived of greater importance, include church representatives and District Administrators. It is clear that a broad range of local *katuas* are expected to be involved in the resolution of a *suco* border dispute in some capacity.

While the development of procedures to facilitate the swift resolution of *suco* boundary disputes is an important objective, it might be observed that even District Administrators have links with local villages. Where a dispute concerns the village of a District Administrator, therefore, this official may not be considered an appropriate person to mediate it. On this basis, in a community-oriented society such as Timor-Leste, it seems important that the development of formal mechanisms for the resolution of inter-*suco* disputes take into account the legitimate need for forum shopping in many instances. In this respect, it is of note that the external (i.e. outside the sub-district) authority that received the greatest acknowledgment as an appropriate authority for mediating inter-*suco* boundary disputes was the church. It is likely that the high number of Pastors born outside of Timor-Leste is a factor in this preference, since such individuals will have no lifelong links with any single village. Unfortunately, the research data indicates (see Section 4a *Frequency with which disputes are resolved successfully in the various forums*) that church representatives are among the least effective mediators of land disputes.

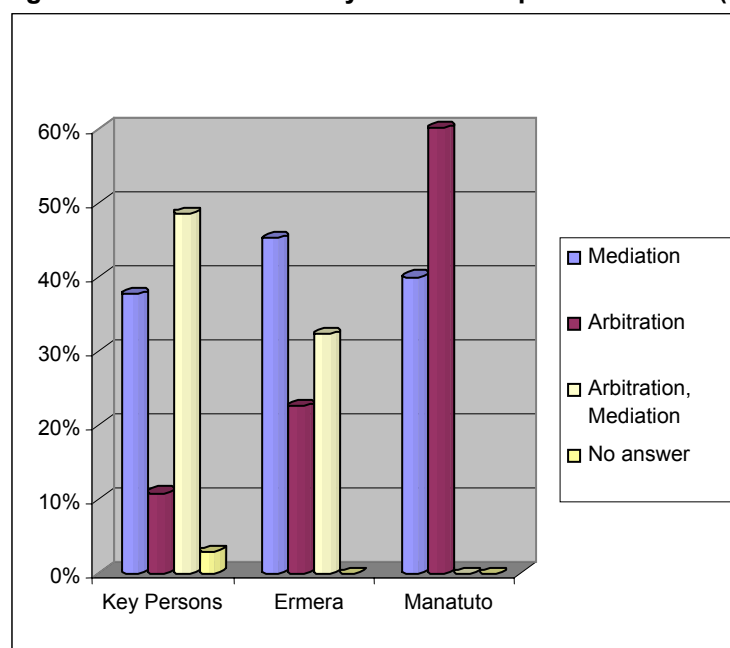
d) The land dispute resolution process (Survey Question 45)

Respondents from all survey components were questioned about the preferred process for mediating land disputes.

This question (Question 45 in the Key Person Questionnaire) provided ‘arbitration,’ ‘mediation,’ and ‘other’ options, and included a brief outline explaining the difference between arbitration and mediation.³³ In an unanticipated response, the national key person data (presented in Figure 25 below) indicates that more respondents ticked both the ‘arbitration’ box *and* the ‘mediation’ box, than ticked either *just* ‘arbitration’ or *just* ‘mediation.’ The figures also show, however, that of those who indicated only one preference, the preference was for mediation. The national key person results may be taken to indicate that mediation is the preferred option for resolving land disputes, followed by arbitration in the event that mediation is ineffective.

³³ See Footnote No. 5.

Figure 25: Process normally used for dispute resolution (Q45)



e) Important qualities that a mediator should possess (Survey Question 41)

Respondents were asked to list the three most important qualities a mediator should possess, in a format that was *not* multiple-choice.

Figure 26: The three most important qualities a good mediator should have (Q41)

From the valid answers, the following were the most common

Common attributes	52 valid responses	
Neutrality	20	38%
Honesty	15	29%
Good background knowledge	12	23%

The data accumulated in relation to this question indicates the most common attributes, as outlined in Figure 26 above, to be:

- ◆ Neutrality
- ◆ Honesty
- ◆ Good background knowledge of the problem and the community involved.

This finding supports the conclusion, already discussed in relation to Section 3c above (*Who normally mediates a conflict*) that the development of a legal framework for land dispute mediation should take into account the need for disputants to have a degree of latitude available to them in respect to finding a suitable arbitrator who is perceived by all parties to be neutral, honest, and equipped with suitable background knowledge (that may conceivably go back generations). Indeed, there could be many advantages in formally giving the DNTP responsibility—in the future legal land dispute mediation framework—for facilitating the determination of an appropriate short-list of potential facilitators for each different land dispute.

f) The role of witnesses in local-system land conflict mediation proceedings (Survey Questions 43a, 43b)

Respondents from all sample groups were questioned about the role of witnesses in relation to local system land-dispute mediation proceedings.

Figure 27: Are witnesses called to provide information at local-system conflict resolution proceedings? (Q43a)

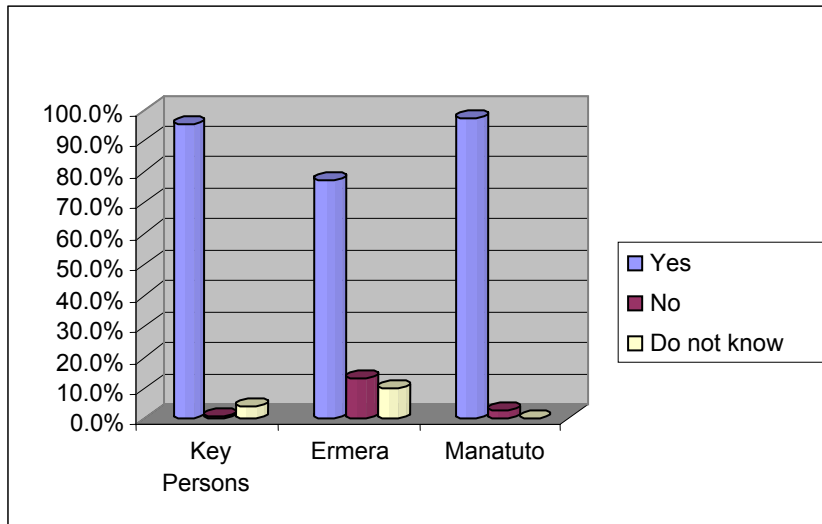
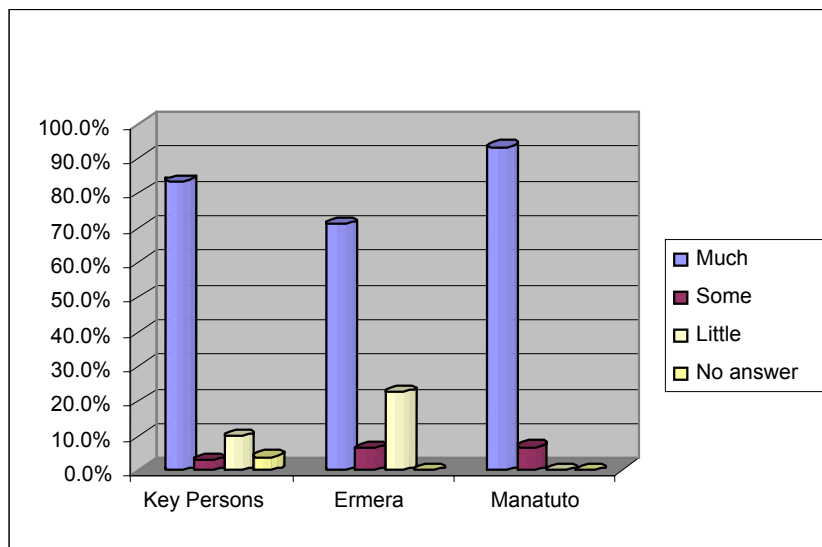


Figure 28: How much attention is given to the accounts of witnesses at local system conflict resolution proceedings? (Q43b)



As indicated by Figure 27 and Figure 28 above, the data indicates that in the vast majority of instances, witnesses are routinely called to participate in proceedings and that much attention is given to their accounts.

g) Acceptable evidence for land dispute resolution (Survey Question 3)

Information was sought from respondents in both the Key Person and Random Surveys concerning the kinds of evidence that is used in relation to the settlement of land disputes.

A range of evidence types was presented to respondents and they were invited to comment on the importance of each kind of evidence (*very important, important, not important, very unimportant*). The results (presented in Figure 29 below) indicate that a broad range of evidence types are accepted throughout Timor-Leste. To assist analysis, calculations were made in which the ‘very important’ and ‘important’ categories were added together, as were the ‘not important’ and ‘very unimportant’ categories. It is of note that the only evidence-type that failed to achieve 50% acknowledgment as an important kind of evidence by all sample groups was the evidence category No. 16, ‘Medium/short-term occupation without title or authorization.’ This outcome indicates that the occupation of premises without approval from any recognized authority (either local or state) is widely considered to be an undertaking lacking in legitimacy.

Figure 29: Evidence used in relation to the settlement of land disputes (Q3)

Form of Evidence	Key Persons Admin - 101 respondents				Ermera - 31 respondents				Manatuto - 30 respondents			
	Very important	Important	Not important	Very unimportant	Very important	Important	Not important	Very unimportant	Very important	Important	Not important	Very unimportant
1. Trees planted on the land	51%	45%	4%	0%	23%	65%	13%	0%	43%	57%	0%	0%
2. Terraces	44%	51%	5%	0%	10%	58%	32%	0%	7%	77%	17%	0%
3. Irrigation systems	33%	47%	18%	2%	10%	55%	35%	0%	20%	73%	7%	0%
4. Houses and buildings	30%	52%	18%	0%	23%	61%	13%	3%	30%	60%	10%	0%
5. Accounts of clearing the land from forest	20%	38%	40%	1%	16%	23%	61%	0%	3%	70%	27%	0%
6. Fences	25%	57%	17%	1%	29%	52%	16%	3%	43%	50%	7%	0%
7. Rock markers	33%	50%	15%	2%	26%	55%	16%	3%	27%	63%	10%	0%
8. Paths	24%	37%	35%	5%	13%	45%	42%	0%	0%	57%	40%	3%
9. Divisions around rice fields	23%	50%	26%	1%	23%	52%	23%	3%	7%	87%	7%	0%
10. Oral accounts of Katuas, supporting traditional claims	48%	43%	8%	1%	39%	52%	10%	0%	60%	33%	7%	0%
11. Oral accounts of other witnesses	39%	44%	16%	0%	19%	39%	32%	10%	47%	20%	30%	3%
12. Inheritance claims	43%	49%	6%	2%	13%	42%	42%	3%	23%	67%	10%	0%
13. Past allocation by senior traditional leaders	30%	53%	15%	2%	35%	52%	13%	0%	50%	43%	7%	0%
14. A formal certificate issued by a government department	42%	40%	14%	3%	13%	71%	16%	0%	57%	40%	3%	0%
15. Long term use of previously uncultivated land, but without any traditional/inheritance claim or approval by Suco/Aldeia elders	22%	38%	13%	27%	10%	29%	58%	3%	10%	60%	27%	3%
16. Medium/short-term occupation without title or authorization	9%	30%	53%	9%	0%	13%	77%	10%	10%	23%	50%	17%
17. An agricultural lease issued by a government department	18%	38%	42%	1%	0%	42%	39%	19%	10%	47%	37%	7%
18. Letter of recommendation for land ownership by Kepala Desa during Indonesian occupation	16%	37%	43%	4%	10%	48%	39%	3%	7%	63%	23%	7%
19. Receipt of tax payment	20%	49%	29%	2%	16%	35%	42%	6%	0%	67%	30%	3%

h) Defining features of a locally resolved dispute (Survey Question 47)

Respondents were asked to list the ...*main features of a traditional agreement* in an open-ended question format (Question 47).

Figure 30: What are the main features of a traditional agreement? (Q47)

Question 47 - 91 respondents		
From the valid answers, the most common features were;		
Traditional reconciliation ceremony (<i>Biti Boot</i>)	Value 47	Percent 51%
Written agreement, or declaration	22	24%
Penalty	13	14%
Ritual oath (<i>Sumpah Adat</i>)	9	10%

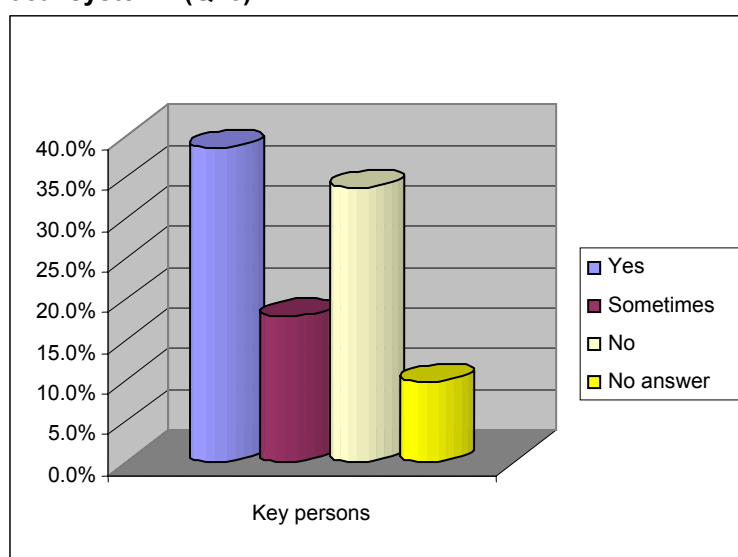
The assimilated responses to this question (presented in Figure 30 above) indicate that the most widely recognized important feature of a locally resolved dispute is

considered to be a reconciliation ceremony, at which specially slaughtered animals are cooked and eaten together by all parties, and distilled palm wine (*Tua Sabu*) is drunk. It might be observed that such an event is of particular importance in overcoming differences among individuals who, in many cases, live in close proximity to each other and one another's families for their entire lives.

The data also indicates that written agreements have a prominent role in the dispute resolution process, as do penalties (compensation payments) where appropriate and ritual oaths.

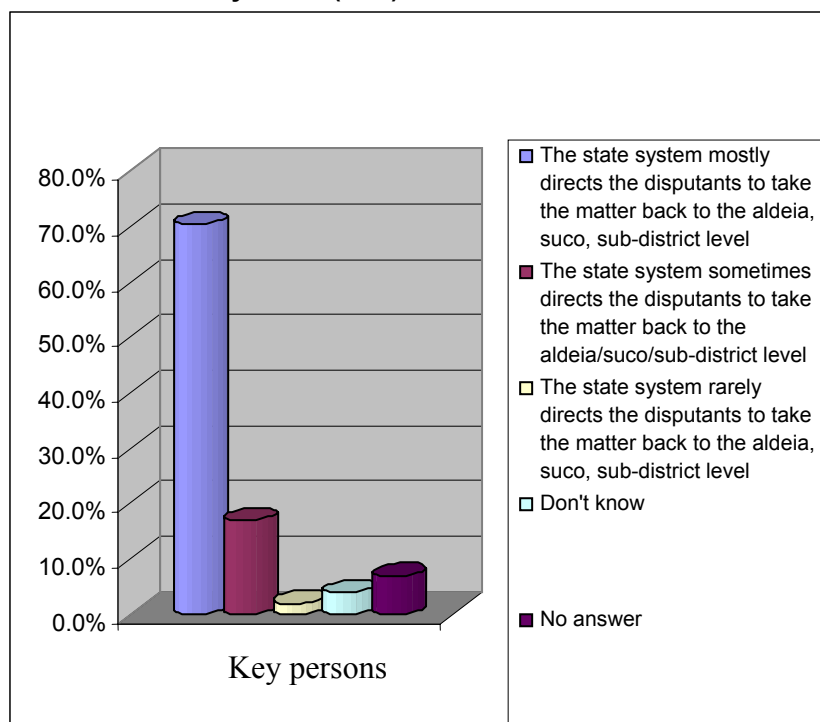
i) Disputes taken to the formal system without first being taken to the local system (Survey Questions 48, 49, 50)

Figure 31: Are disputes ever taken to the formal system without first being taken to the local system? (Q48)



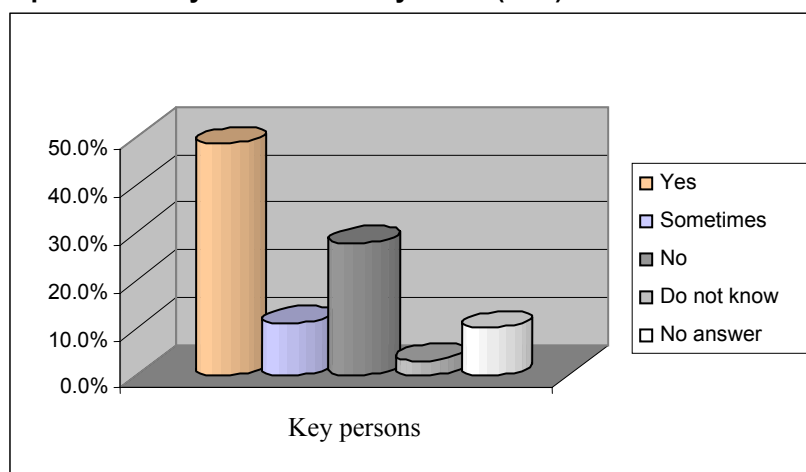
As already discussed under Section 3a above (*Where does mediation begin, and what is the order in which land disputes proceed from forum to forum?*) and elsewhere, there is a clear preference throughout Timor-Leste for resolving disputes at the local level. Even when the resolution of disputes must be mediated by authorities from outside the *suco* or sub-district, the importance of those involved knowing the history of the dispute remains a key factor. In order to access options for the establishment of a national land dispute mediation system, however, respondents from the key person sample were asked if 'people ever take disputes directly to the formal system (District Administration, Land & Property Officers/Court System) *without* first attempting to address' matters at the local level. The results (see Figure 31 above) indicate that disputes *are* taken directly to the formal system in a considerable number of instances, but that these cases are returned to the local level in the vast majority of cases (see Figure 32 below).

Figure 32: If disputes are taken to the formal system without first being taken to the local system, does the formal system usually attempt to resolve the dispute, or pass it back to the local system? (Q50)



Furthermore, there is evidence (Figure 33 below) that individuals who take disputes to the formal system without first going to the local system often have penalties imposed on them by the community,³⁴ indicating that strong moral pressure prevails throughout much of Timor-Leste for individuals to utilize local dispute resolution processes wherever possible.

Figure 33: Are penalties imposed by the community against individuals who take disputes directly to the formal system? (Q49)



³⁴ See also Meitzner Yoder (2003) for a discussion of this matter informed by qualitative research.

4. Assessment of the Effectiveness of Local Mediation Proceedings

a) *Frequency with which disputes are resolved successfully in the various forums* (Survey Question 35b)

In order to assess the relative effectiveness of the range of forums in which land dispute mediation proceedings take place, respondents from the Key Person Survey were asked to indicate how often conflicts are successfully resolved in each forum (Question 35b).

Figure 34: How often are conflicts resolved successfully in each of the following forums? (Q35b)

Question 35 (B)	Key Persons Admin - 101 respondents						No answer
	Always	Usually	Sometimes	Seldom	Never		
Family	21	33	13	10	15		9
Aldeia	17	34	27	13	6		4
Suco	23	40	21	7	7		3
Sub-district	15	21	27	16	11		10
Liurai	7	14	5	3	38		32
Church	5	8	9	5	40		33
District Administration	7	19	12	16	25		20
Land & Property	14	22	20	11	19		13
Court system	18	5	25	9	21		19
NGO	4	1	4	9	32		46
Other	0	2	1	0	10		80
Other	0	0	0	0	7		88

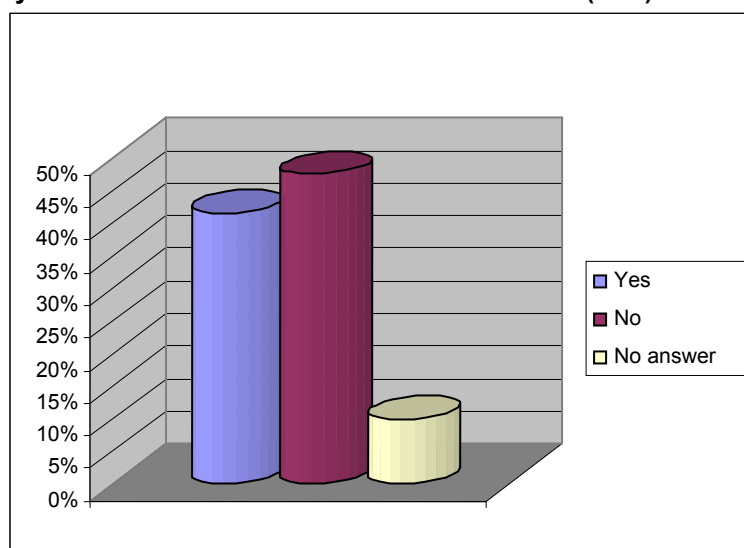
The most notable conclusion able to be drawn from the data accumulated in relation to this question (outlined in Figure 34 above), is that no single forum is recognized by a large proportion of respondents as *the* highly reliable forum for the mediation of land disputes. This information is of particular interest to the policymaker since it indicates that a range of preferences prevails throughout Timor-Leste concerning favored forums for resolving conflicts. Again, this information points to the need for a high degree of flexibility in the provisions of a legal framework for land dispute mediation.

A further notable feature of the data presented in Figure 34 (above), is the perception the NGOs and Church representatives are not among the more effective of land dispute mediation forums. This is of particular interest given that church representatives are the most highly recognized outside authority in relation to the resolution of inter-*suco* boundary disputes (as discussed under Section 3c, *Who normally mediates a conflict?*).

b) *Equality of access to local systems of dispute resolution* (Survey Question 44)

Respondents from the Key Person Survey were questioned on whether *relocated people have the same access to traditional conflict resolution systems as the traditional owners of an area*.

Figure 35: Do relocated people have the same access to traditional conflict resolution systems as the traditional owners of an area? (Q44)



The responses to this question (presented in Figure 35 above) indicate a majority perception that relocated persons, in fact, have less access to local dispute resolution forums than traditional owners. These findings suggest the need for special consideration of the needs of relocated people in the policy development process for a national land dispute resolution system.

c) Perceptions of effectiveness of local systems compared with the court system (Survey Question 51)

The perceptions of key person respondents were sought concerning the relative quality of service delivery prevailing in local-systems versus the court-system in relation to a range of factors.

Figure 36: Do local systems or courts offer the highest quality of service in the range of areas presented below? (Q51)

Areas presented below: (Q51)

Question 51		Key Persons Admin – 101 respondents						
Which System is Best								
Area of Service Delivery	Traditional System		Court System		Neither System is Good Enough		No Answer	
	Total	%	Total	%	Total	%	Total	%
Fairest System	48	47.5%	40	39.6%	1	1.0%	12	11.9%
Cheapest System	87	86.1%	3	30%	2	2.0%	9	8.9%
Least Amount of Traveling	87	86.1%	2	20%	1	1.0%	11	10.9%
Fast and Efficient Outcome	76	75.2%	13	12.9%	2	2.0%	10	9.9%
Least Corrupt System	58	57.4%	21	20.8%	10	9.9%	12	11.9%
The Most Respect for the Rights of Women	41	40.6%	39	38.6%	8	7.9%	13	12.9%
Promotes Reconciliation between Conflicting Parties	79	78.2%	11	10.9%	1	1.0%	10	9.9%
Easiest System to Understand	84	83.2%	5	5.0%	0	0.0%	12	11.9%

The data (presented in Figure 36 above) demonstrates a strong overall perception that local conflict resolution systems are superior to the courts. Specifically, local systems are considered to be cheapest (86% local; 3% court), require less traveling (86% local; 2% court), be faster and more efficient (75% local; 13% court), be less corrupt (57% local; 21% court), more effectively promote reconciliation (78% local; 11% court) and be easier to understand (84% local; 5% court).

The views of representatives from women's organizations were also sought in relation to the relative quality of service delivery between local systems and the courts.

Figure 37: Do local systems or courts offer the highest quality of service in the range of areas presented below? – Sample of representatives from Women's Organizations (Q51)

Area of service delivery Total sample = 13	Which system is best?		
	Traditional system (total respondents)	Court system (total respondents)	Neither system is good enough (total respondents)
Fairest system	8	2	3
Cheapest system	12	2	1
Least amount of traveling	7	4	2
Fast & efficient outcome	6	4	3
Least corrupt system	7	3	3
The most respect for the rights of women	3	7	3
Promotes reconciliation between conflicting parties	8	1	4
Easiest system to understand	7	3	3

While the women's organization sample was considerably smaller than the key persons sample, the overall perceptions evident in the data are similar to those in the key persons sample (see Figure 37 above). The most significant difference is in respect to the rights of women, with four respondents thinking the courts are superior compared to three thinking local systems are superior (and a further three thinking that neither system is good enough). To improve outcomes for women in relation to local system land dispute resolution mechanisms, policymakers might consider actively capacity-building individuals involved in local dispute mediation systems to take greater account of the rights of women. One component of this agenda might be aimed at ensuring that women are not subjected to unreasonable community pressure against taking disputes to other forums (as discussed under Section 3i, *Are disputes ever taken to the formal system without first being taken to the local system?*).

An Assessment of the Research Findings, and Consideration of Their Implications for Policy Development

1. The Profile of the Directorate of Land and Property Among Local System Leaders

The data collected during the course of the research facilitates an assessment of the profile of DNTP as a conflict resolution forum in comparison with other forums—local system *and* state system—nationally. This information derives in particular from survey questions concerning the areas of: *Where does mediation begin?* (Results Section 3a); *Who normally mediates a conflict?, including boundary disputes between sucos* (Results Section 3c); and *Frequency with which results are resolved in the various forums* (Results Section 4a). Based on this information:

- b) The key person data on conflict mediation indicates that Land and Property is among the final forums to which disputes are taken, along with district administrations and the courts. This is by no means inappropriate, given:
 - i. That the resources of DNTP are not extensive enough to process the mediation of every dispute in the country, and that
 - ii. The preference throughout Timor-Leste for local dispute resolution mechanisms where possible, as referred to above.³⁵
- c) The key person data (see Figure 34 under 4a) indicates that while the DNTP is perceived to be less successful at mediating disputes than forums *within* the *suco*, it is one of the most successful of those forums *outside*, or *beyond* the *suco*. Given that it is more difficult to resolve disputes (such as inter-*suco* boundary disputes, for example) that end up getting diverted to forums beyond the local system, this information suggests that DNTP is playing an important role nationally in mediating the more serious class of land disputes, and that it has a profile among local-system leaders as a valid forum to which serious land disputes can be taken for resolution (or potentially, referral to other forums as discussed below).

2. Specific Observations of Relevance to the Policy Development Process

- a) There is a strong preference throughout Timor-Leste for settling land disputes at the local level. Local dispute resolution mechanisms are perceived as cheaper, quicker, fairer, more accessible, easier to understand, less corrupt, and more supportive of reconciliation between disputants than the court system (Results Section 4c).
- b) Reconciliation between disputants is a central feature of local-system dispute resolution processes, along with written agreements and compensation payments where appropriate (Results Section 3h). In order to ensure that the legal framework

³⁵ It seems likely that the road conditions throughout much of the country are a factor contributing to this preference, amongst other factors. Information received from UN road transport advisors (November 2003) suggests that in the short to medium term, the resources available to the Government of Timor-Leste will only permit the upkeep of roads connecting district centers. On this basis, the physical access of rural populations to government services located in district centers is unlikely to improve in the foreseeable future.

for land dispute mediation meets the expectations of the Timor-Leste population, policymakers should consider including these aspects.

- c) The perception prevails among women's organizations, that local systems are weak in the area of women's rights. Given perceptions that women may be demanding more rights concerning land (Results Section 1e) and national development priorities, means by which local-systems could be strengthened in this area should be considered.
- d) Another weak point of local systems concerns relocated people, suggesting that this area should be given added attention in government policymaking.
- e) The practice of penalizing individuals who take land disputes directly to the state system is a double-edged sword (Results Section 3i). On one hand, it acts as an incentive to reduce load on the state system. On the other hand, it places pressure on disputants to use forums that one or more parties may wish to avoid. It is a practice that would be of particular concern if found to be applied consistently to the disadvantage of particular groups, such as women or relocated people (Results Section 4b). Means by which the practice of penalizing individuals for taking disputes directly to the state system could be discouraged might therefore be considered in the course of the development of a legal framework for land conflict mediation.
- f) Notwithstanding the strong preference for resolving disputes at local (family, hamlet, and village) level, it is clear that Timorese disputants value access to a range of forums for matters that resist resolution at the local level. It is likely that this flexibility is necessary to ensure access to those qualities so valued in a mediator (Results Section 3e), specifically neutrality, honesty, and knowledge of the background of a dispute.
- g) Because inter-*suco* boundary disputes are known to be one of the more difficult and widespread kinds of land disputes to resolve, attention should be given to means by which firm inter-*suco* boundaries can be established where possible as a way to prevent these disputes from arising. In some cases, it may be possible for *suco* boundaries to be established with relative ease, while, in other cases, it is known³⁶ that *suco* boundary issues are perceived as highly sensitive and that discussion of these matters is strongly discouraged. While establishing *suco* borders in presently contested areas is likely to be impossible, formalizing borders about which agreement prevails could prevent disputes arising among future generations of local leaders, thereby contributing to a more predictable land tenure regime, with consequent benefits for the investment profile of Timor-Leste.
- h) With respect to the kinds of evidence used in local land dispute resolution proceedings (Section 3g), it is significant that *medium to short-term occupation without title or authorization*, is widely considered to be a weak form of evidence in support of land use rights. This information could be useful, in due course, in relation to proceedings to resolve disputes concerning properties occupied since the referendum.

³⁶ See Meitzner Yoder (2003).

3. Consideration of the Nature of a National Enabling Legal Framework for Land Dispute Mediation

The research findings outlined above highlight the benefits of a national legal framework for land dispute mediation that maximizes utilization of local dispute resolution mechanisms. With local systems demonstrating an impressive capacity to successfully resolve an extensive range of disputes, there are clear advantages in a legal framework that formally recognizes these systems as effective mediation forums, with the authority to preside over disputes in the first instance. Given the profile of *Chefes de Suco* within local systems, it may be appropriate to give formal recognition to these individuals as the officials responsible for either mediating disputes personally, or sending them elsewhere for resolution. As noted above, however, the state may wish to include provisions preventing local-system officials from penalizing individual disputants who, for any reason, are reluctant to use local-system dispute resolution mechanisms.

The research findings suggest that while DNTP is an effective *extra-suco* forum for the mediation of land conflicts in its own right, it also has the capacity to work as a formal broker of all disputes which enter the *extra-suco* realm. By keeping track of all disputes that pass outside the *suco* realm, DNTP could play a role in negotiating appropriate forums for the resolution of particular disputes, potentially accelerating their resolution. The maintenance of strong links between DNTP District Officers and all potential mediation forums to which disputes might be independently taken by individual disputants (e.g., sub-district administrations, church representatives, NGOs, etc.) would be an important component of DNTP playing this role, at least until the role of DNTP as a mediation/referral agency becomes widely known.

As a final comment, it has become clear in the course of the mediation research that shortcomings prevail with respect to DNTP record keeping. Capacity development in this area, along with the adoption of suitable record-keeping technologies (electronic or other) and procedures, will be crucial in enabling DNTP to keep track of disputes. Developments in this area would also enable the DNTP central office to assimilate information from all districts for future policy development and strategic planning purposes.

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