

## DISPUTE RESOLUTION

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## Mediating land conflict in East Timor

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## A snapshot

### Mediating land conflict in East Timor

A mediation model for addressing conflict over land was introduced in 2000 in East Timor by the UN Transitional Administration. The model is now managed by East Timor's Land and Property Directorate. Despite difficult circumstances and limited resources, mediation by the directorate has been successful in managing a large number of potentially violent disputes.

Land conflict mediation in East Timor is innovative and experience highlights the benefits of:

- » using interim no-violence and land-use agreements pending final resolution
- » embedding the mediation system in land administration rather than judicial administration, which allows remedies unavailable in the courts, such as selling, leasing, dividing or swapping land
- » avoiding problems associated with a lack of capacity in the court system and having greater access to self-funding opportunities than the courts
- » creating a bridge between traditional dispute-resolution mechanisms and the courts and allowing use of ritual and customary institutions should the parties agree, and reference to the courts should the parties be unable to agree.

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## Introduction

Pacific countries are affected by widespread disputes over customary land. In some instances, land remains subject to customary claims because it was alienated or leased without the involvement of traditional landowners or with the involvement of others who claimed ownership at that time. In others, land is claimed by different ethno-linguistic groups that have intertwined due to migration, displacement or economic development. Because the disputes involve land—the most fundamental socioeconomic resource—they are resistant to winner–loser models of formal legal adjudication. Where they involve different groups, they are also resistant to local arbitration through the traditional mechanisms that operate within groups.

In East Timor the issues underlying customary land conflict are extreme in degree but often similar in nature to land conflicts in the Pacific. In 2000 the UN Transitional Administration introduced a mediation model to resolve conflicts involving customary land in East Timor. The model is now managed by East Timor's Land and Property Directorate (the Direcção Nacional de Terras e Propiedades) and implemented on a decentralised basis by district officers of the directorate.

Despite difficult circumstances and limited resources, mediation by the directorate has been successful in managing a number of potentially violent disputes. Of the 972 disputes brought to the Land and Property Directorate between December 2000 and January 2006, 314 were resolved through mediation. This contrasts sharply with the poor record of East Timor's court system in resolving or managing land-related conflicts.

Although mediation and village-level dispute resolution is not new in the Pacific region, mediation in East Timor is innovative and potentially useful in at least two respects.

- » It involves interim no-violence agreements that may be sealed by ritual and witnessed by traditional, government and church representatives.
- » Mediation is embedded in land administration, not judicial administration. This enables remedies not available in the courts to be used, including the sale, lease, sharing or swapping of land, as mechanisms for resolving conflicts.

This case study reviews the mediation procedures involved in four cases of conflict in Maliana and assesses the successes and limitations of those procedures in reducing and resolving conflict. It also explores whether East Timor's mediation model could be used in a Pacific context, recognising that any type of policy or policy model requires adaptation if it is to be adopted in another country.

## The setting

East Timor has a land area of approximately 14 600 square kilometres. With 44 per cent of the land mass at an incline of greater than 40 per cent, large areas of East Timor are not cultivated. The bulk of agricultural activity is subsistence farming of corn, rice, root crops, vegetables and fruit, although there has been some production of coffee, tobacco, cloves, cocoa, vanilla and areca nuts. East Timor has not been self-sufficient in staple foods for 35 years, largely as a result of conflict and population displacement.

Culturally and linguistically, the country is a patchwork of 25 or so ethno-linguistic groups. Outside urban areas, most land is managed through affiliation with 'origin' groups that cluster around 'sacred houses' (*uma lulic* in the Tetum lingua franca).

The endemic nature of land conflict in East Timor stems largely from its history of colonisation, invasion and occupation. The first Portuguese governor of East Timor was appointed in 1701. After almost two and a half centuries of Portuguese rule, during World War II the Japanese invaded and occupied East Timor from 1942 to 1945. Following the end of the war the country returned to Portuguese rule. In 1960 the UN General Assembly nominated East Timor as a candidate for decolonisation and self-determination. In 1974 the Portuguese administration in East Timor was reorganised, and local political parties were allowed to be formed. This led to the establishment of two main parties: Fretilin (Frente Revolucionara de Timor Leste) and UDT (Uniao Democratica Timorense). On 28 November 1975 Fretilin issued a declaration of independence for East Timor. In response, UDT issued a statement, on behalf of a group calling itself the Anti-Communist Movement, asking for intervention by the Indonesian Government and integration of East Timor into Indonesia. On 7 December 1975 Indonesia's armed forces invaded East Timor and Fretilin was driven underground as the party of resistance.

By the end of 1976 approximately 80 per cent of East Timor remained outside the control of Indonesia's forces. This led the Indonesian army to resettle villagers from the hinterland into coastal 'strategic camps'. By December 1978 Indonesian military statistics showed that 372 921 people—as much as half of the population—were refugees in these camps. Further military operations during the harvesting and planting seasons led to widespread famine in the early 1980s. As a result of both invasion and subsequent famine, it is estimated that between 160 000 and 200 000 East Timorese died between 1975 and 1981.

In early 1999, after years of intense international pressure, Indonesia agreed to allow the East Timorese people to vote for independence. At the time of the UN-organised independence vote in August 1999, Indonesian statistics estimated the population of East Timor to be almost 900 000. As a result of the pro-Indonesian militia violence, about 450 000 people were internally displaced within East Timor itself, and a further 300 000 fled or were forcibly transported across the border to West Timor.

This widespread displacement—more than 75 per cent of the population—created a humanitarian crisis. It also reawakened endemic cycles of land conflict as some took advantage of displacement or abandonment to repossess lands allegedly lost as a result of dispossession in the Portuguese, Japanese and Indonesian periods. The cyclical phases of displacement and reoccupation are the primary cause of land-related conflicts in East Timor.

Compounding these problems of population displacement was the destruction of land records, housing and infrastructure. Most land title offices and records were destroyed. More than half the housing stock was seriously damaged or destroyed.

There was an understandable rush to occupy habitable houses when displaced people returned to seek shelter. This phenomenon of ad hoc occupation has also been a feature of historical cycles of displacement in East Timor, most notably in the 1940s (Japan) and the 1970s (Indonesia). The recent violence in East Timor also owes much to ad hoc housing occupations as longstanding Dili residents (Westerners) have acted—in the shadow of political and military instability—to expel ‘Easterners’ who occupied Dili houses during the chaos of displacement and return in 1999 and 2000. These recent acts of violence illustrate the way in which land and housing claims intertwine with assertions of local identity, political affiliation and alleged Indonesian collaboration to produce periodic outbreaks of civil conflict.

On 25 October 1999 the United Nations Security Council established the United Nations Transitional Administration in East Timor (UNTAET). UNTAET did not establish a land claims commission, or indeed any effective regulation of privately held land in East Timor. In September 2000 it rejected a draft regulation that envisaged systematically registering uncontested titles, beginning in Dili, while referring disputed claims to a proposed land claims commission. As a result of this decision, the UNTAET Land and Property Directorate (by then under the East Timor Transitional Administration) was authorised only to file and record property claims, and was not to continue preparations for a land claims commission, a systematic titles registration project, or indeed any form of normal land registry function. Its major task remained supervising systems for mediating land conflicts and allocating public and abandoned properties through temporary lease rights.

Some progress has been made on land regulation since the departure of UNTAET and the election of an East Timorese Government. The new Constitution guarantees rights to housing, private property and protection against expropriation without due process and compensation. There are now also regulations governing the definition and nature of state land, and the grant of leases over state and private land. However, the key issue of ownership—who owns land, where and under what title—is yet to be resolved. A law on land ownership restitution, with plans for a land claims commission, was expected in 2006 but has been delayed by political and social instability. The lack of legal certainty relating to land ownership in East Timor has undermined attempts to adjudicate land conflicts, and placed the primary burden for conflict management on local systems of mediation.

## Overview of land conflict and mediation in customary areas

It is not possible to estimate the total number of land disputes in rural East Timor. There are many more disputes than those submitted for mediation by the Land and Property Directorate. These conflicts are often connected with migration and marriage patterns that have led outsider and subsidiary groups to occupy land traditionally belonging to an 'origin' group. In some cases, these groups see themselves as having joined traditional owners through marriage or agreement, even though others in the origin group may dispute the connection. In other cases, outsiders feel that long-term occupation has displaced the hunting and shifting cultivation rights of earlier users, or the rights of returning owners long displaced by Portuguese and Indonesian government policies. In yet other cases, the later group recognises the traditional authority of the origin group, but either has nowhere else to go or claims that the origin group has lost entitlements due to collaboration with the Indonesian administration. In many cases, allegations of collaboration with Indonesia complicate disputes over historical or customary entitlements.

### MEDIATION PROCEDURE

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

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

- 1 An individual claimant or a group of complainants goes to the national Land and Property Directorate or the district Land and Property Directorate office and requests mediation. A dispute may also be referred to the directorate by a village head (*chefe de suko*) if the parties have agreed to submit the case to the directorate.
- 2 The other parties to the dispute are informed of the claim. Mediation will proceed only when all the parties to the dispute voluntarily accept the mediation, and where there has been no previous legal or administrative resolution to a dispute regarding the same land. Mediation will not occur if the land that is the subject of the dispute is the property of the state, if one of the parties is an officer of government, or if the subject matter of the dispute is considered a crime.

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

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

## GENERAL OBSERVATIONS ABOUT LAND DISPUTE MEDIATION

Mediation of land conflicts by the Land and Property Directorate is more successful than resolution through the courts. According to East Timor's Judicial Monitoring Program, the court system, which had to be rebuilt from scratch after 1999, has prioritised its criminal case load. Very few civil cases involving land have proceeded to judgement, let alone successfully enforced orders. According to the head of mediation in Dili, the courts have yet to resolve a land dispute case.

East Timorese prefer to resolve disputes at the local (customary) level. Local mechanisms for resolving disputes are regarded as cheaper, faster, fairer, more accessible, easier to understand, subject to less corruption, and more likely to promote reconciliation than the courts. There is also evidence that disputants who take land disputes directly to the courts have penalties imposed on them or their community. This may reduce the load on the courts, but also places pressure on disputants to use local forums that one or more parties may wish to avoid (Timor-Leste Land Law Program 2004, pp. 48, 49, 52).

**NUMBER OF DISPUTES BROUGHT TO THE LAND AND PROPERTY DIRECTORATE AND THE MANNER IN WHICH THEY WERE RESOLVED OR ARE BEING RESOLVED FOR EACH DISTRICT <sup>a</sup>**

District	Resolved	Tribunal	In process	Total number
Oecussi	34	3	27	64
Aileu	22	2	16	40
Ainaro	–	–	–	–
Bobonaro	9	3	10	22
Baucau	–	–	–	–
Covalima	2	1	19	22
Dili	64	23	250	337
Ermera	12	3	3	18
Liquica	68	23	45	136
Lautem	14	4	11	29
Manatuto	1	3	3	7
Manufahi	6	–	7	13
Viqueque	8	–	49	57
<b>Total</b>	<b>240</b>	<b>65</b>	<b>440</b>	<b>749</b>

<sup>a</sup> These figures (copied from a Land and Property Directorate document) correspond to the period from May 2002 to June 2007. In 2006 mediation services were minimal due to the politico-military crisis. According to the head of Land Disputes and Mediation at the National Land and Property Directorate office, the reason no cases were brought for resolution/mediation in Baucau and Ainaro districts was that people in these districts preferred to use community-based mechanisms.

Yet traditional community-based mechanisms for resolving disputes cannot solve all land conflicts in East Timor. There is a need for a system that provides a compromise or ‘bridge’ between customary mechanisms and the courts. Relocated, outsider or subsidiary groups have less access to customary mechanisms for resolving disputes than do members of the origin group. Customary forms of dispute resolution are less likely to succeed where land conflicts are between groups or involve individuals from different groups. The courts are also unlikely to succeed because origin group members will resist winner–loser models of judicial adjudication that grant ownership rights to relocated, outsider or subsidiary group claimants. Such models of adjudication are often unable to resolve conflict where there is little off-land employment, and the disputants are unlikely to move elsewhere should the dispute remain unresolved.

The mediation procedures of the Land and Property Directorate ‘fill the gap’ between local mechanisms for resolving disputes and the courts. They can incorporate traditional institutions and reconciliation ceremonies if the parties agree. They allow disputes that cannot be resolved to be referred to the courts. Mediation is by far the best means to resolve conflicts that involve complex questions of social identity, group relations and undocumented historical events. This is particularly true of conflict between groups.

Mediation is also important where coercive enforcement of legal determinations is unavailable, inappropriate or unlikely to prevent conflict and the dispute being referred again to the courts. Mediation is more likely to solve the enforcement problem and ensure the sustainability of land rights determinations, because it involves public and documented forms of agreement, and allows the parties to retain some access to land through sharing, petition or lease arrangements.

There are a large number of land conflicts in East Timor that are based on claims of dispossession by the Portuguese and Indonesian administrations. These conflicts now involve the East Timor state because state land in East Timor is defined to include all land owned by the Portuguese state, and all land acquired by the Indonesian administration. As already noted, the Land and Property Directorate cannot mediate land conflicts where one party is the state or a government official. This is a key limitation on East Timor’s land conflict mediation model.

## Overview of dispute resolution in Maliana

Maliana lies 149 kilometres south-west of East Timor's capital, Dili. It is the capital of the district of Bobonaro and has a population of approximately 22 000, most of whom depend on agriculture for their livelihoods.

### DISPUTE RESOLUTION PRIOR TO THE INVOLVEMENT OF THE LAND AND PROPERTY DIRECTORATE

When a dispute occurs between members of the same family or extended family (*uma fukun*), the dispute is usually dealt with in the first instance by calling on family elders. If a meeting of the extended family occurs, the head of the house, community elders (*lia nain*) and any person with the task of monitoring land use might be involved. Most disputes concerning rice fields in Maliana do not involve members of the same extended family, in which case the dispute bypasses the family and goes directly to the subvillage head (*chefe aldeia*). The subvillage head may also call on customary officers to assist or attend meetings at the subvillage (*aldeia*) and village (*suko*) level.

### DISPUTE RESOLUTION THROUGH THE LAND AND PROPERTY DIRECTORATE

#### Mediation

The Land and Property Directorate office in Maliana is the district office for Bobonaro. It has three members of staff and only one mediator, who is also the head of the district Land and Property Directorate. Cases are usually brought to the directorate office in Maliana after more localised attempts to resolve the conflict have failed. Sometimes parties to a dispute bring their cases to the subdistrict administrator, who then refers the case to the Land and Property Directorate. In other instances the police might be involved. If the police intervene in a fight between farmers over land, they often bring the parties to the conflict directly to the Land and Property Directorate.

Generally speaking, land conflict mediation in Maliana follows the procedures set out in the draft mediation law and the Land and Property Directorate guidelines. According to the Maliana mediator, it is necessary to emphasise the 'cultural' aspects of conflict resolution in order to obtain the respect of the parties to the conflict. This may occur by invoking 'sacred' boundaries and stressing the importance of attempts to resolve the dispute at the family or extended family level. However, the mediator also stressed that there is no toleration of 'criminal acts'. If the case involves any violence the Land and Property Directorate will refer the matter immediately to the police.

### Interim 'no violence' agreements

No-violence agreements are not always a part of the mediation process, and the Maliana Land and Property Directorate does not use a standard template for such agreements. Sometimes agreements are signed for a specific stage of the mediation (for example, when mediator is to visit the disputed land), and the mediator prefers to discuss the wording of such agreements with the parties to the conflict.

In general, no-violence agreements include:

- » acknowledgement that the parties to the conflict have entered voluntarily into the agreement
- » commitment not to engage in violence while the case is going through mediation, and to continue the agreement if the case goes to court
- » some arrangement concerning the disputed land (for example, agreement that neither party can farm in the interim, agreement to rotate use, or agreement that one party can farm the land).

No-violence agreements are always documented and witnessed by local authorities, such as the village heads, the subdistrict administrator and the Land and Property Directorate. In Maliana, no-violence agreements are not normally witnessed or sealed by customary authorities.

### RESOLUTION OF THE DISPUTE

In Maliana, the most common resolution is for the parties to the conflict to share the disputed land. In dividing the land, certain factors such as years farmed and investment in terracing are taken into account when calculating the entitlement of each party. There are no cases in Maliana involving resolution of disputes through share cropping or finding alternative land.

As with the no-violence agreements, the wording of final agreements is usually worked out with the parties to the conflict. Only if mediation fails is there communication with the courts. In such cases a recommendation letter is prepared for the courts by the district Land and Property Directorate. There does not appear to be any communication with the courts regarding successful mediations.

If cases are referred to the courts the Land and Property Directorate tries to encourage the parties to the conflict to come to an agreement on land use while the case is pending. For example, parties may agree to take turns to farm the land. In all cases, copies of agreements and recommendation letters are given to the parties to the conflict, relevant village heads, the subdistrict administrator, the district police and the national office of the directorate. A copy is also kept at the district office of the directorate.

In the following reviews of Maliana cases of dispute and mediation, all names have been changed to preserve confidentiality and because of the sensitivity of some allegations.

## Case 1: Mateus and Abilio

### BACKGROUND TO THE DISPUTE

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

### DISPUTE RESOLUTION PROCESS

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

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

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

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

Both parties demonstrated a reluctance to take the case to court and argued that it was the other party's responsibility to do so. In interviews for this case study, Mateus stated that he wished to resolve the problem through mediation because he and Abilio were

from the same hamlet and were related through marriage, and should therefore try to resolve the case so that neither family lost out completely. He also wanted to avoid 'locking' the land in a dispute and ultimately having it 'taken back' by the state.

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

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

### **OBSERVATIONS ABOUT SUCCESSES AND LIMITATIONS**

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

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

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

## Case 2: the Tuganatu group and the AINUATU group

### BACKGROUND TO THE DISPUTE

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

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

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

### DISPUTE RESOLUTION PROCESS

On 22 and 23 October 2000, members of the AINUATU community attempted to make some reconciliatory moves towards the people from Tuganatu who were occupying their land. According to informants from AINUATU, they wanted to try to resolve the problem according to customary relations of cousins and marriage (*maun-alin* and *uma mane, mane foun*), but the Tuganatu people were not interested in dialogue.

Two further attempts at dialogue were made on 9 January and 24 March 2001. During these meetings a number of 'outside' mediators were asked to facilitate the meetings. The people from AINUATU claimed that they were happy to come to an agreement over the land, provided the people from Tuganatu recognised that the land under dispute was originally farmed by people from AINUATU. They alleged, however, that the people from Tuganatu did not want to negotiate and continued to insult the people of AINUATU. The readiness of the people of AINUATU to participate in informal dispute resolution

appears to have been motivated in part by their belief that they would not receive a fair trial through the courts because a local traditional leader, with whom the Tuganatu group are close, has relatives in the court in Dili.

This dispute was officially taken to the Land and Property Directorate in January 2002. A memorandum of understanding between the parties to the conflict was signed on 11 January 2002. Under the memorandum the parties agreed to participate in mediation and agreed that while this was occurring neither party would farm the land under dispute.

The Land and Property Directorate organised a number of meetings between January 2002 and July 2003 in an effort to mediate between the two parties. However, the people from AINUATU were not satisfied with the process and wanted more mediators to be involved, including the local church and human rights organisations. It appears that the people from AINUATU did not want to discuss the land issue in isolation from other issues of disenfranchisement that occurred during the Indonesian period.

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

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

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

### **OBSERVATIONS ABOUT SUCCESSES AND LIMITATIONS**

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

## Case 3: Jose and Pedro

### BACKGROUND TO THE DISPUTE

The dispute between Jose and Pedro concerned the ownership of a 23 000 metre square irrigated rice field in Phoe Dolen, Maliana. This case illustrates a failure of the Land and Property Directorate to reach a final resolution, but provides an example of how an interim land-use agreement can enable the disputed land to be used until a court decision is reached. This dispute bears many similarities to some of those occurring in the Pacific as it concerns a claim by one party to original occupation and generational farming of the land, as opposed to the claim by the other party of having had the land allocated to them through a land use agreement.

Jose alleged in written testimony that his family had farmed the disputed land since the Japanese invasion. According to Jose, Pedro's father came to work on Jose's grandfather's land in 1964. When the Portuguese surveyed the land in 1966, Pedro's father was farming mixed vegetables in areas adjacent to Jose's family's field and continued to do so until 1969. Jose's testimony alleges that in 1970 his family was unable to farm their whole plot, so offered some of it to Pedro's father to farm 'temporarily'. Jose's family asked Pedro's father to vacate the land in 1978 and return to farming only his own land, but Pedro's father refused. According to Jose, there were disputes over the land intermittently during the 1980s and 1990s. In 2005, Pedro started planting coconut trees on the disputed land. Jose confronted him and told him—without success—that he could not plant the trees. In July 2006 Jose occupied the disputed land by clearing the field for rice cultivation. Soon afterwards Pedro and his family looked for Jose in the fields, allegedly to kill him. Jose believed that Pedro and his family would refuse to deal with the problem 'as family', so in December 2006 he took the matter to the authorities.

Pedro and his family dispute Jose's version of history. They claim to be descendants of the original occupants of the land, that their father was responsible for clearing the disputed land in 1966 and that prior to this the land was empty (*vadio*). According to Pedro and his family, at this time the Portuguese colonial administration was surveying the rice fields on the Maliana Plain. Although they did not distribute land certificates, Pedro and his family claim that they still own the hoe and other tools distributed by the Portuguese administration, proving they are the original owners of the land. When Pedro's father died in 1999, his land was passed to Pedro, his oldest son.

Pedro claims that neither Jose nor his family made any claim on the disputed land until February 2007, when Pedro claims that Jose and his group began clearing and preparing the fields for rice cultivation. Pedro asked Jose and his group to stop. On 5 February the dispute went to the village head, but neither party would back down on their claim. The dispute was then taken to the Land and Property Directorate.

## DISPUTE RESOLUTION PROCESS

On 9 February the parties met with the Land and Property Directorate mediator but the mediation process was unable to help the parties to reach an agreement. On 23 February the mediator declared that the parties could not resolve the problem through mediation and had agreed to take the matter to court. The declaration was co-signed by the parties to the dispute. An interim agreement on land use was signed on 16 April 2007. The agreement states that neither party is permitted to farm the land until a decision is reached by the court.

## OBSERVATIONS ABOUT SUCCESSES AND LIMITATIONS

Although this case involves a failure to reach final agreement, like case 2 it provides an example of interim or 'bridging' mediatory involvement by the Land and Property Directorate. The directorate can facilitate interim land-use agreements and, as in the previous case, the interim agreement helped to manage a dispute with substantial potential for violence.

## Case 4: Lariato and Bibilaro villages

### BACKGROUND TO THE DISPUTE

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

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

### DISPUTE RESOLUTION PROCESS

The dispute came to the attention of the Land and Property Directorate in December 2002 when the district police responded to a fight between groups of farmers from each village. Police officers took four farmers from Bibilaro who had been involved in the dispute to the directorate office in Maliana. Forty farmers from Lariato also went to the Land and Property Directorate office and told staff there that when they went to their fields they

found a group of farmers from Bibilaro working ‘their’ land. For their part, Bibilaro villagers alleged that the 1974 agreement was tainted by the two village heads’ subsequent support for the Indonesian occupation.

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

- » Lariato may continue to farm
- » Bibilaro will pursue the case through legal channels
- » Lariato will participate in the justice process.

The agreement also included a no-violence commitment.

### **OBSERVATIONS ABOUT SUCCESSES AND LIMITATIONS**

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

## Applicability in the Pacific

Customary land conflicts in East Timor bear some similarity to land conflicts in the Pacific.

- » Group migration, changes in agricultural production techniques, and colonial settlement policies have contributed to land disputes.
- » Generational disputes over ownership and occupation, in circumstances of uncertainty over historical events and a general lack of documentation, have contributed to conflicts among extended family groups.
- » Complex claims involving status and hierarchy within a group, often involving ‘newcomers’ asserting entitlements through marriage or historical agreement, have contributed to conflicts within territories managed by traditional ‘origin’ groups.

These types of conflict have been greatly exacerbated in East Timor—first, by historical cycles of dispossession and resettlement and, second, by social tensions created by the Indonesian occupation.

The potential applicability of East Timor’s mediation model in Pacific island countries would be enhanced by the following:

- » a preliminary assessment of prevailing dispute-resolution mechanisms to ensure that mediation by local land officials does not overlap with or undermine effective existing systems such as village courts
- » a preliminary assessment of the financial capacity of the local land office and, if necessary, recommendations to apply revenues collected from the transfer and registration of titles or from the lease of public land to mediation programs, infrastructure and training
- » workshops and consultations to gauge political support for mediation by local land officials, and to advocate the value of such mediation on the basis of its flexible, low-cost and high-potential attributes
- » further research into the types of customary land conflict that respond best to mediation by land administration officials
- » mandatory obligations for mediators to have adult female members of affected households attend and participate in the mediation process
- » comprehensive mechanisms and training in relation to recordkeeping at the district, regional and national levels of land administration, and in the court registry in cases of successful agreements
- » mechanisms and obligations to keep copies of successful agreements in the offices of village and subdistrict officials, so as to maintain local awareness of agreements over a long period
- » inclusion of provisions relating to the legal status and (simple) enforceability of mediated agreements in mediation laws and regulations
- » integration and harmonisation of mediation by local land officials with any mediation or alternative dispute-resolution functions adopted by the courts.

## Lessons

### GIVE MEDIATION A BRIDGING ROLE IN RESOLVING LAND DISPUTES

#### LESSON 1

There should be ongoing efforts to identify and use customary dispute-resolution mechanisms in ways that create a bridge to more formal mechanisms.

The current land mediation system in East Timor creates a bridge between traditional dispute-resolution mechanisms and the courts. It allows the use of ritual and customary institutions if the parties agree, and reference to the courts if the parties are unable to agree.

### EMBED CONFLICT MEDIATION IN LAND ADMINISTRATION

#### LESSON 2

Mediation systems should reduce burdens on the court system and broaden the options available to deal with land disputes.

#### LESSON 3

Where necessary, systems should incorporate provisions for interim land-use agreements.

The mediation of land conflicts in East Timor is embedded in land administration rather than judicial administration. This allows remedies unavailable in the courts, such as selling, leasing, dividing or swapping land and establishing interim agreements to allow the land to be used until the dispute is resolved. It also alleviates problems associated with a lack of capacity in the court system, including minimal facilities in rural areas. Land administration generally has greater access to self-funding opportunities than the courts. In East Timor the Land and Property Directorate generates substantial revenues from leases over public land.

### TAKE ADVANTAGE OF NO-VIOLENCE AGREEMENTS

#### LESSON 4

Mediation is often the most effective means of dealing with land conflict between groups with potential for violence.

#### LESSON 5

Where necessary, mediation systems should incorporate provisions for interim no-violence agreements.

The mediation system can be better suited to dealing with conflicts involving groups or individuals from different groups than traditional dispute-resolution mechanisms. It can manage the potential for violence in complex cases of conflict between groups. Where mediation has involved interim no-violence and land-use agreements, it has successfully managed a number of potentially violent conflicts, pending resolution through agreement or adjudication.

## SUPPORT MEDIATION WITH EFFECTIVE LEGISLATION AND ADMINISTRATION

### LESSON 6

The mediation system should be backed by an appropriately comprehensive legislative framework and administrative infrastructure capable of resolving more stubborn cases and cases that fall outside the jurisdiction of the mediation process.

A large number of land conflicts will never be resolved through mediation, not only because of their complexity and high stakes but also because of social tensions arising from the Indonesian occupation. East Timor needs to pass its draft law on land restitution and establish a land claims commission to complement existing mediation mechanisms. Also, the current system does not deal with cases where one party is the state or a government official. This excludes most claims of dispossession by the Portuguese and Indonesian administrations.

## USE AND TRAIN THE RIGHT MEDIATORS

### LESSON 7

A balance needs to be struck between using mediators with local expertise and ensuring objectivity. In striking this balance important issues need to be addressed—providing appropriate training and building transparency and accountability into the mediation system.

District land officials have local knowledge and expertise but they are more susceptible than outsiders to allegations of bias and partisanship. There should be more resources devoted to training programs for mediators, and more transparency and accountability built into the mediation system.

## INSTITUTIONALISE WOMEN'S ROLES IN MEDIATION

### LESSON 8

Mediation systems should require specifically that gender issues are given adequate weight and should include some requirement for female mediators when appropriate.

The absence of women's voices and interpretations of law from the mediation process tends to encourage decision making that overlooks the land rights of women.

## MAINTAIN POLITICAL SUPPORT

### LESSON 9

Political support for mediation systems needs to be maintained, which requires ongoing monitoring at the local level and effort to maintain it.

In some districts of East Timor, mediation by the Land and Property Directorate has suffered a loss of political support since it was first established by the United Nations Transitional Administration.

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