

**DEVELOPMENT OF DISPUTE RESOLUTION MECHANISM FOR REDD+ IN
GHANA**

CONSULTANCY REPORT

FINAL REPORT

COMMISSIONED BY THE FORESTRY COMMISSION

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Executive Summary

Following approval of Ghana's Readiness-Preparatory Proposal (R-PP) by the Forest Carbon Partnership Facility (FCPF), the Ghana Forestry Commission begun a series of exercises to implement the R-PP. These include the design and development of a domestic REDD+ Dispute Resolution Mechanism ('DRM') to handle grievances from affected stakeholders and citizens-at-large.

Despite its potential benefits, the implementation of REDD+ may lead to significant deleterious consequences resulting in impacts to land, livelihoods, the environment, traditional uses of resources and just processes.

The implementation of REDD+ will have impacts on a wide range of stakeholders, including impacts on the existing roles, responsibilities and power relations among them. It is therefore important to understand such stakeholder groups, their interests and how they will be impacted by any potential REDD+ activities. Historically, conflict actors in the forestry sector have included timber companies, farmers, illegal chain-saw operators, community leadership (including chiefs and traditional authority), forestry staff, community pressure groups, district assemblies, and illegal mining or 'galamsey' operators and to some extent community-based organisations (CBOs).. Typically, REDD+ implementation could experience conflicts as a result of the following:

- Land clearing for agriculture- which can involve encroachment into defined project area.
- Tenure conflicts and/or boundary issues.
- Illegal logging and mining operations.
- Economic concessions- including granting of timber use rights in project area.
- Extra-community conflicts- between community institutions and local government
- Intra-community conflicts-

A very complex land tenure system, the conversion of forests to farmlands, a skewed benefit-sharing system, weak institutional and governance structures, ineffective involvement of

relevant stakeholders, lack of transparency and accountability affirm weak governance arrangements that potentially lead to conflict.

A DRM created to handle disputes from the implementation of REDD+ in Ghana would have to be accommodated within the legal and institutional context that exists today. Until recently, the legal and institutional landscape was primarily a holdover from the colonial era that closely resembled the British judicial system. Non-chieftaincy disputes had to be resolved through the formal court system, which consisted of the Supreme Court at the apex, followed by the Court Appeal, the High Court and then the lower ranked courts. The common form of litigation was and still is a trial before a judge that involves a judicial examination of the issues in dispute, in very formal proceedings that are governed by rules and procedure. Generally, alternative dispute resolution (ADR) methods such customary arbitration or mediation that were the essence of the pre-colonial traditional judicial system did not have legal backing until recently; that is to say, have the ability to generate a legally binding outcome. The 1992 Republican Constitution affirmed much of the development of the post-colonial era.

The main complaints with the formal judicial system have been the interminable delays, complexity of the legal proceedings and customs, the lack of privacy and the costs. Although litigation in the formal court system remains the primary mode of settling disputes in Ghana, because it has not fully succeeded in addressing the needs of the Ghanaian society, other avenues of resolving disputes, some unauthorized under the law were still patronized until the passage of the Alternative Dispute Resolution Act (Act 798) 2010.

The Ghanaian legal system now makes provisions for the use of alternative dispute resolution (ADR) methods as a compliment to the formal court system. The ADR methods whose use the law permits are Arbitration, Mediation and Customary Arbitration. The legal backing they have comes from the ADR Act 2010, which sets out specific guidelines on how these methods could be used to resolve disputes that would be legally binding and enforceable in court, like a judgement from the court. But environmental matters are excluded from the scope of the ADR Act. The consequence of this is that all environmental, which should be interpreted to include disputes about natural resource exploitation, and therefore REDD+ disputes, cannot be resolved using ADR methods. Unless the ADR Act is amended, disputes of this nature would

have to be resolved using the formal court system with its attendant problems. This report recommends that steps be taken to amend the Act to include environmental matters. This is because the features of the ADR methods and the legal force that the Act offers, provide for a more effective dispute resolution option than that of resolving REDD+ related disputes through the formal court system.

There are no formal structures of dispute resolution in District, Regional and National offices of the Forestry Commission (FC). Mainly, the FC has resorted to informal forms of mediation and arbitration. The main mechanism at the community and district levels has been mediation. Mainly, Range Supervisors and District Managers are the key mediators who facilitate settlements among concessionaires, farmers, communities and so on. Where the Forestry Commission has been found to be involved in a dispute at lower levels like the District, higher level officials have been called upon to mediate or arbitrate.

A shared understanding among REDD+ forest stakeholders of the purpose of DRMs, and of the need for streamlining the principles they enunciate is suggested to be the best starting point for dialogue on the current level of DRM effectiveness, and on ways to strengthen DRMs during the REDD+ readiness and implementation phases. The main objective of this report is to elaborate these principles and how they can be institutionalised for an effective dispute resolution during REDD+ implementation.

It is imperative that there is a clear and workable DRM process for REDD+. Necessarily, this should comprise:

1. A grievance complaint registration process – at all levels, the responsible authority needs to institute a clear and simple process through which aggrieved parties can lodge a formal complaint.
2. Acknowledgement of receipt – that fulfils requirements for legal admissibility – by a responsible officer.
3. The third step is to determine and propose a method of resolving or managing the dispute.
4. The fourth step would be to arbitrate, mediate or resolve the dispute.

5. The fifth step would be to implement specific agreements or outcomes from the resolution process.

In addition, gender considerations that allow women participation in both capacity building and resolution efforts and provide informational needs should be well integrated into the REDD+ DRM process.

REDD+ conflicts can be resolved at the:

1. Community level
2. District level and;
3. National level.

At the **community-level**, we propose mediation as a first mechanism to be employed. We recommend that only inter-group or inter-personal disputes related to the use and management of forest resources should be handled at this level. We propose mediation as a mechanism for dealing with local-level conflicts with the CRMC reformed to play the role of a mediator. Several implications emerge. First, the CRMC need to be well institutionalised as a semi-autonomous body through a statutory recognition. Second, the capacity of the CRMC to receive, diagnose and manage disputes should be built. Arbitration may be used when mediation fails to resolve the dispute. Here, the CRMC remains a potential body to arbitrate.

A number of forest/REDD+ conflicts may go beyond community-level and may lay within the jurisdiction of forest or administrative **districts**. At the District level, we propose a two-stage dispute resolution mechanism, first through the use of mediation with the District Forest Manager as the mediator. The second level is to employ a District Dispute Resolution Team (DDRT) of defined composition. We propose that the DDRT mediate or arbitrate on matters on all forestry matters that have the potential to end up in litigation, if the ADR Act is amended to accommodate forestry issues. If NOT, then it should be confined to issues that are not directly lawful offences against the state, i.e. criminal in nature.

There are a number of potential disputes, especially those related to policies on resource allocation, benefit sharing and forest management that require attention at the **national level**. We propose a National Dispute Resolution Team to mediate/arbitrate referred or new cases brought to their attention.

We recommend the following steps to establish and implement a REDD+ DRM for Ghana.

1. Conduct sector-wide stakeholder consultation on proposed DRM mechanisms.
2. Pilot and scale up agreed DRM mechanism.
3. Change of law to allow for environment or forestry issues to be settled through ADR.
4. Set up DRM structures at community, district and national levels.
5. Build capacity of key actors and create widespread awareness of the established systems.

List of Acronyms

ADR	Alternative Dispute Resolution
CRMC	Collaborative Resource Management Committee
CBO	Community-based Organisation
CHRAJ	Commission on Human Rights and Administrative Justice
CSO	Customer Service Officer
DCE	District Chief Executive
DD	Deforestation and Forest Degradation
DDRT	District Dispute Resolution Team
DFM	District Forest Manager
DRM	Dispute Resolution Mechanism
FC	Forestry Commission
FCPF	Forest Carbon Partnership Facility
FLEGT	Forest Law Enforcement Governance and Trade
FORIG	Forestry Research Institute of Ghana
FSD	Forest Services Division
NDRT	National Dispute Resolution Team
OFR	Off-Forest Reserve
NGO	Non-Governmental Organisation
REDD+	Reducing Emissions from Deforestation and Forest Degradation and conservation, sustainable management and enhancement of forest carbon stocks.

R-PP Readiness Preparatory Proposal
TVD Timber Validation Division
VPA Voluntary Partnership Agreement

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1. Introduction

The Government of Ghana has opted to contribute to global efforts to combat climate change by preparing to reduce its emissions from deforestation and forest degradation. It is doing this by actively participating in the on-going multilateral climate negotiations to create the mechanism as well as undertaking domestic preparatory initiatives geared towards the implementation of Reducing Emissions from Deforestation and Forest Degradation, Conservation, Sustainable Management of Forest and the Enhancement of Forest Carbon Stocks ('REDD+') activities in Ghana once the global mechanism is launched.

Following approval of the country's Readiness-Preparatory Proposal (R-PP) by the Forest Carbon Partnership Facility (FCPF), the Ghana Forestry Commission began a series of exercises to implement the R-PP. These include the design and development of a domestic REDD+ Dispute Resolution Mechanism ('DRM') to handle grievances from affected stakeholders and citizens-at-large. Subsequently, the Forestry Commission, acting on behalf of the Government, solicited submissions on this issue from local experts to support the national REDD+ implementation process.

Despite its potential benefits, the implementation of REDD+ may lead to significant deleterious consequences resulting in impacts to land, livelihoods, the environment, traditional uses of resources and just processes. It is increasingly acknowledged that since the emerging REDD+ processes operate in complex social interfaces with participating stakeholders having various priorities and motives intercepted by a mix of cultural, social, economic and political interest, the REDD+ initiative might have implications for conflict over land and natural resources (Dharam et al 2011). The problem is that various individuals and interest groups might perceive very different benefits and costs for the initiative, and have different use and management options for forest and land resources sustaining it. Similar conflicts may also arise when: incompatible needs and priorities of some user groups are not considered in REDD+ policies, programmes and projects; lack of information and clarity about REDD+ policy and programme objectives; inequity in resource distribution; or poor policy and programme implementation (FAO 2000). Such conflicts of interest are an inevitable feature of all societies and thus acknowledging conflict as a common feature of natural resource use is fundamental for

sustainable management. By and large, it is anticipated that the REDD+ initiative will surface a range of contentious issues particularly those pertaining to tenure arrangements, livelihoods, resource access and governance (Dharam et al. 2011). This is particularly relevant in Ghana as conflict over forests and land is widespread in the region (Ayine 2008; Marfo 2010).

Land and forest resource tenure has been a major issue in Ghana and in the last decade, competition over land and forest resource use has increased in frequency and severity (Yelsang 2013). The reasons for this are multiple and are largely attributed to large scale migration, population growth, rapid urbanisation, and the sale of communal lands with little or no consultation with the right holders (Yelsang 2013). Marfo (2006; 2009) reflects that these conflicts are diverse, and usually involve the problem of control, access and power of the actors entangled in the complex bundles of rights. Further, he notes that these conflicts are inevitable as long as there are competing rights, claims, interests, values and power struggles that are enmeshed in complex institutions and multiple legal systems of land tenure.

Historically, key areas that have generated enormous conflicts pertaining to forest resource management in Ghana are illegal logging, community-FSD interactions, benefit sharing arrangements and community forestry. It is anticipated that since the REDD+ initiative like antecedent interventions functions within existing governance platforms to manage forest resources at sustainable levels, similar conflicts are bound to surface. Empirical evidence indicates that attempts to ban chainsaw milling which continuous to sustain rural economies and livelihoods has generated intense conflicts among the FSD staffs, forest fringe communities, chainsaw operators and related traders (Marfo 2010). On the share of forest revenue, current benefit sharing schemes are not attractive to rural folks, and consequently disengage communities' participation in the management of the forest resource (see Ayine 2008).

The means to consider, address and minimize these impacts is imperative for the success of REDD+. Impacts pose risks which make it important that those affected to have an opportunity to raise their concerns and, where appropriate, ask for problems to be remedied. Strong safeguards and formal complaint mechanisms linked to REDD+ would help ensure positive outcomes. The potential for negative impacts and conflicts has been anticipated in the global

discourse on REDD+, leading to calls by actors like the World Bank to demand social safeguard mechanisms in REDD+ design and implementation processes. In the context of implementing REDD+ interventions, a grievance (or conflict management) mechanism thus becomes imperative.

The Forestry Commission of Ghana has responded to this call by commissioning this study with the following terms of reference:

Phase 1: Conduct an in-depth literature review, with a particular focus on (non-inclusive list)

- Mapping institutional and legal framework for REDD+ implementation and recommendations

Phase 2: Develop Options Paper on DRM and social accountability for Ghana taking into consideration the analysis conducted under Phase 1.

- Propose structures such that conflicts related to REDD+ can be addressed at the lowest or most localized level appropriate.
- Use principles of subsidiarity to establish conflict resolution structures.
- Assess the level of organization at all levels particularly at sub-national and local community level in consideration of how dispute resolution schemes would fit into existing institutional structures including the traditional authorities.
- Risks of inter- and intra-community conflicts arising from REDD+ activities/implementation.
- Key governance risks and recommendations for gaps to be addressed for a functional dispute resolution system.

Phase 3: Consultation on potential options with key stakeholders and preparation of the final report, including an Annex presenting proposals for a national architecture of dispute resolution mechanism for REDD+ in Ghana.

- Examine the REDD+ Readiness Preparation Proposal (R-PP) thoroughly and conduct desktop research on REDD+ and related issues.

- Review various documents and reports on other benefit sharing/dispute resolution mechanisms and related structures and processes, tree tenure and carbon rights initiatives.
- Adopt a participatory approach and organize regular consultations with key stakeholders (as outlined in R-PP Annex page 47) all along the activity.

2. REDD+ and Potential Conflict Areas

The implementation of REDD+ will have impacts on a wide range of stakeholders, including impacts on the existing roles, responsibilities and power relations among them. It is therefore important to understand such stakeholder groups, their interests and how they will be impacted by any potential REDD+ activities.

Generally in the forestry sector, the main conflict actors have included timber companies, farmers, illegal chain-saw operators, community leadership (including chiefs and traditional authority), forestry staff, community pressure groups, district assemblies, and illegal mining or ‘galamsey’ operators and to some extent community-based organisations (CBOs).

The context for conflict include intra-, inter- and ‘extra’- (between communities and powerful external actors) community conflicts. External actors include state supported forestry and mining concessions, illegal loggers and land speculators. Off-reserve areas (OFAs) have often served as the areas with the greatest incident and intensity of conflicts due chiefly to interactions between expansive farming, logging (legal and illegal) and illegal mining (galamsey) operations. These have often attracted the intervention of the police, military and law courts.

Poor sector governance will be a direct driver of REDD+ conflicts in Ghana. REDD+ conflicts are most likely to be pre-dominant in the forest governance arena where there have been increased calls for clarification and reform of the rights regime in land and trees, better implementation of benefit sharing (regime) and improved multi-stakeholder dialogue and decision-making. Tenure security and unaccountable representation – leading to unjust benefit-sharing – therefore serve as critical areas for concern. Unsurprisingly, the likely conflicts to

emerge as a result of REDD+ implementation are those related to age-long sector governance challenges.

Typically, REDD+ implementation, could experience conflicts as a result of the following:

- Land clearing for agriculture – which can involve encroachment into defined project area. Recent analyses of the deforestation and forest degradation (DD) drivers suggest that expansive cocoa cultivation represents a major driver of emission in the high forest zone (HFZ). Adequate understanding is required therefore, of the trends in the cocoa sector and the main factors underlying its role as a driver of emissions.
- Tenure conflicts and/or boundary issues – integration of REDD+ into existing tenures involve new relationships between key actors including the state, market and community stakeholders, which can – when not carefully done – greatly enhance the potential for conflict.
- Illegal logging and mining operations – resulting from activities of illegal chainsaw and galamsey operators.
- Economic concessions – granting of timber use rights in project area.
- Conflicts between community institutions and local government – which are typical extra-community or district-level conflicts.
- Internal or intra-community conflicts – in communities; particularly resulting from a lack of recognition of rights, transparency and accountability, elite capture, insecure land tenure and social exclusion among others. Conflicts can arise over the use of forest and land resources, and reflect governance and enforcement issues at the local level.
- Conflicts that will arise during project implementation including poor benefit sharing – upon what basis would incentives accruing from future REDD+ projects be shared when rights, ownership and accessibility issues remain to be defined?

In all of the above, recognition should be made of- and attention paid to intra-, inter- and extra-community issues that may lead to conflict.

REDD+ will have significant implications for conflict over land and resources due to complex interactions of motives, priorities and interests. And more so in Ghana with a history of

contention and conflict in the NRM sector particularly related to tenure arrangements, governance and access over land and forestry resources and benefit sharing (Marfo, 2006, Derkyi 2012).

A very complex land tenure system, the conversion of forests to farmlands, a skewed benefit-sharing system, weak institutional and governance structures, ineffective involvement of relevant stakeholders, lack of transparency and accountability affirm weak governance arrangements that potentially lead to conflict.

Failure to enable communities and farmers to benefit from trees on their farms and fallow lands, provide off-reserve tree tenure security, authority to legally dispose of resources and allocate greater proportion of benefits accruing from resource management to community members, individuals or collectively is recipe for conflict.

The lack of commitment to allocate and define property rights, define forest and tree tenure rights in all kinds of forests and ownership systems and to rationalize forest fees and improve framework for equitable distribution of forest rent between owners, state and users through consultative processes is additional recipe for conflict.

Marfo et. al. (2013) have concluded that fractured tenure; unaccountable representation and elite benefit capture will remain dominant features of forest resource governance and recipe for increasing conflict in the sector.

From the foregoing designing a dispute resolution mechanism to manage potential REDD+ conflicts is important. This will have to happen within the existing institutional and legal landscape. The next section briefly provides an overview of this landscape to properly contextualize the proposals in this study.

3. Policy, Legal and Institutional Context for REDD+

A DRM created to handle disputes from the implementation of REDD+ in Ghana will have to be accommodated within the legal and institutional context that exists today. Until recently, the legal and institutional landscape was primarily a holdover from the colonial era. Alternative dispute resolution methods such the customary arbitration or mediation that were the essence

of the pre-colonial traditional judicial system did not have legal backing. The current constitution, the 1992 Constitution affirmed much of the development of the post-colonial era.

3.1 Formal System

3.1.1 Judiciary

The 1992 Constitution vests the judicial power of the Republic solely in the Judiciary¹ and gives the Judiciary jurisdiction on all matters including civil and criminal². It defines the Judiciary as the Supreme Court, the Court of Appeal, the High Court, the Regional Tribunals and any other lower courts that Parliament may establish,³ namely the Circuit Court and the Magistrates Court that were established by the Courts Act 2002 (Act 620).

The common form of litigation is trial before a judge. This would involve a judicial examination of the issues in dispute with each party being primarily focused on winning by all means possible. The proceedings are very formal and are governed by rules and procedure, such as the rules of evidence⁴, which are established by the legislature and special committees set up for the drafting of court rules⁵. Outcomes are decided by an impartial judge and/or jury or assessors, based on the factual questions of the case and the applicable law. The verdict of the court is binding, not advisory; however, both parties have the right to appeal the judgment to a higher court.

3.1.2 CHRAJ

In addition to the courts, there are other existing bodies that exercise quasi-judicial functions. The Commission on Human Rights and Administrative Justice ('CHRAJ')⁶, for instance, is one such body which focuses on addressing violations of fundamental human rights and freedoms

¹ 1992 Constitution, Article 125(3)

² Ibid., Article 125(5)

³ Ibid., Article 126(1)

⁴ Evidence Act, 1975

⁵ 1992 Constitution, Article 33(4) and Article 157(2)

⁶ Established by the CHRAJ Act (Act 456) 1993

guaranteed by the 1992 Constitution and Acts of Parliament nationwide. It also acts as the State's ombudsman as it is the body charged with ensuring administrative justice in the country. What it cannot do is to directly enforce its own decisions or recommendations even though the Commissioner and their deputies are the equivalent of Court of Appeal and High Court judges, respectively. It can also not investigate matters that are pending before a court or tribunal.

3.1.3 National House of Chiefs

The National House of Chiefs also has judicial jurisdiction but dispute resolution functions but limited to matters in respect of the nomination, election, selection, installation or deposition of a person as a Chief and all matters relating to a paramount stool or skin or its occupant⁷. At the lowest rung is the traditional council from whom decisions can be appealed to the Regional House of Chiefs and then the Judicial Committee of the House of Chiefs. From there, there can only be an appeal to the Supreme Court of Ghana.

Although litigation in the formal court system remains the primary mode of settling disputes in Ghana, because it has not fully succeeded in addressing the needs of the Ghanaian society, other avenues of resolving disputes, some unauthorized under the law are still patronized.

The main complaints with the formal judicial system are the following:

1. Interminable delays
2. Complexity of the legal proceedings and customs
3. Lack of privacy as most cases are heard in open courtrooms
4. Cost

⁷ Chieftaincy Act, 1971 and the 1992 Constitution (Article 273 and 274)

3.2 Informal System

The consequence of this is the patronizing of the informal judicial system, which is made up of but not limited to having members of the Clergy, Chieftaincy, Heads of Family and the Police Force adjudicate disputes between parties. In most cases, the parties themselves would submit their issue to these individuals for the matter to be resolved. In other cases, it would be because the matter would come to them in the course of performing their duties. Their mediation of disputes that by law should be adjudicated by the judiciary doesn't have legal or administrative backing nor can the settlement be enforced in a court of law. Yet they are used by Ghanaians, as a form of "court of first instance" precisely because they are cheaper, simpler, less procedural and deliver a result quicker than the formal court system. If the disputing parties are not satisfied with the outcome there is always the option of the formal court system. These realities forced the Ghanaian government in 1998 to set up a task force to look at the use of alternative dispute resolution (ADR) mechanisms to improve people's access to a speedier, cheaper and more effective justice.

3.2.1 ADR Mechanisms in Ghana

The Ghanaian legal system now makes provisions for the use of alternative dispute resolution (ADR) methods as a compliment to the formal court system. The methods that the law accommodates are Arbitration, Mediation and Customary Arbitration. The legal backing they have comes from the Alternative Dispute Resolution Act (Act 798) 2010. In general these mechanisms can be used to resolve disputes between private individuals, business entities, government agencies and sovereign States. But in Ghana's case the Act is silent on whom the disputing parties can be. What the Act does do is to set out the scope of its application; that is to say, what matters can be resolved using the three mechanisms. Section 1 of the ADR Act stipulates that the Act applies to all matters except issues relating to national or public interests, the environment, the enforcement and interpretation of the Constitution and any other matter the law says cannot be settled by alternative dispute resolution methods. The glaring exception here is environmental matters. The consequence of this is that all

environmental related matters, which should be interpreted to include disputes about natural resource exploitation, and therefore REDD+ disputes, cannot be resolved using ADR methods. Disputes of this nature would have to be resolved using the formal court system with its attendant problems.

In the final section of this paper, this paper would recommend that the scope of the ADR Act be amended to include environmental or specifically forestry-related issues. This is because the features of the ADR methods and the legal force that the Act offers them, provide for a more effective dispute resolution option than that of resolving REDD+ related disputes through the formal court system. Arbitration under the ADR Act for instances, offers a suitable framework that can be useful for resolving disputes emanating from REDD+.

3.2.2 Arbitration

The ADR Act defines Arbitration as "the voluntary submission of a dispute to one or more impartial persons for a final and binding determination"⁸. Arbitration has been defined as a situation " where two or more persons agree that a dispute or potential dispute between them shall be decided in a legally binding way by one or more impartial persons in a judicial manner, that is upon evidence put before him or them, the agreement is called an arbitration".⁹

3.2.2.1 Features of Arbitration

Party Autonomy

The Act confers extensive autonomy on the parties to determine how the arbitration will be conducted. The ADR Act permits the parties to decide who should be the arbitrators, what the arbitrator's qualifications should be and whether they should have experience or knowledge in

⁸ ADR Act (Act 798), 2010, Section 135

⁹ Bernstein et al., 1993

the subject matter or not¹⁰, the nationality¹¹, where to hold the arbitration¹², language to be used¹³ and the number of arbitrators to sit on the panel.

Written Agreement

The Act envisages that this consent must be written. It can be in the form of a clause or provision within a written agreement between the parties stipulating that any dispute arising out of that agreement would first be submitted for arbitration.

Referral from Court

If the disputing parties do not have a written agreement requiring them to submit any dispute for arbitration, the ADR Act gives the Court the power to refer a matter before it for arbitration if it believes that the matter can be resolved by arbitration. This referral requires the written consent of the parties for the arbitration to go ahead¹⁴

Simplicity and Flexibility

The ADR Act provides that, unless the dispute is referred to the ADR Center, the procedure and rules governing the arbitral proceedings shall be “as the parties and arbitrators determine”. This gives the parties the freedom to determine who they prefer to hear their case and how they want their case to be heard and determined.

The Act also gives the parties the authority to tailor the way the arbitration is conducted to avoid some of the issues that bedevil the formal court system and make it unattractive to litigants.

¹⁰ ADR Act 2010, Section 12

¹¹ Ibid., Section 12(3)

¹² Ibid., Section 11

¹³ Ibid., Section 18

¹⁴ Ibid., Section 7

Privacy

On the concern about public hearings, the Act states quite clearly that the hearing will be private unless the parties agree otherwise¹⁵. The benefit of this is their being comfortable enough to put all their issues and evidence on the table¹⁶.

Time

With regard to time and delay, the Act stipulates that the parties, the arbitrator with the consent of the parties or the appointing authority, have the power to modify the time fixed for taking any step in the arbitration or the conflict resolution process¹⁷

Role of the Court

The ADR Act expressly provides for the High Court to play an important role in relation to arbitration, both in upholding the right and autonomy of the disputing parties to arbitrate and in facilitating the just and effective conduct of the arbitration itself. Consequently, the law provides that where a Court becomes aware that any action before it is the subject of an arbitration agreement, that Court “shall stay the proceedings and refer the parties to arbitration¹⁸

Conduct of Arbitration

Unless the parties agree to something different, generally the conduct or the procedure of the arbitration is not too different from the procedure in the High Court for instance. An arbitration management conference that is similar to “discoveries” is held within 14 days of the appointment of the arbitrators¹⁹. The parties and the arbitrators, acting together, are to seek to agree on matters with regard to the arbitration process. Oral hearings can be held at any point in the proceedings²⁰ just as witnesses can be cross examined as it is done in a normal trial

¹⁵ Ibid., Section 34(7)

¹⁶ Ibid., Section 34(6)

¹⁷ Ibid., Section 9

¹⁸ Ibid., Section 6(3)

¹⁹ Ibid., Section 29(1)

²⁰ Ibid., Section 31(11)

process. Parties can also be represented by lawyers or any other chosen by the party²¹. The Act also allows the arbitrator some flexibility to use mediation or other procedures at any time during the arbitral proceedings to encourage the parties to reach a settlement. If this is successful, the proceedings are terminated and the settlement recorded as an arbitral award as is often done with consent judgment in the formal court system²²

Effect of Arbitral Awards

An arbitration award is final and binding as between the parties and any person claiming through the parties. This means once a settlement has been reached and has been written up, it does not need to go through a trial in the courts for a judge to give his judgment for it to be enforced. The award has the same effect as a judgment of the Court and is only subject to appeal²³. It is enforced in the same manner as a judgment or order of the Court and to the same effect²⁴. The settlement can be set-aside by an application to the High Court by a party to the dispute if for instance it is discovered that the arbitrator had an interest in the subject matter or the award was induced by fraud or corruption among other reasons listed by the ADR Act in Section 58.

There are no formal structures of dispute resolution in District, Regional and National offices of the Forestry Commission (FC). Mainly, the FC has resorted to informal forms of mediation and litigation. There have been few studies on forest conflict management in Ghana (see Marfo, 2006, Derkyi 2012) and modalities for resolving forest disputes has not been systematically analysed. The main mechanism at the community and district levels has been mediation. Mainly, Range Supervisors and District Managers are the key mediators who facilitate settlements among concessionaires, farmers, communities and so on. Where the Forestry Commission has been found to be involved in a dispute at lower levels like the District, higher level officials have been called upon to mediate or arbitrate.

²¹ Ibid., Section 42

²² Ibid., Section 47

²³ Ibid., Section 52

²⁴ Ibid., Section 57

4. Dispute Resolution Mechanism

4.1 Overview

A dispute resolution mechanism (DRM) is a process for receiving, evaluating and addressing project-related queries and grievances from affected stakeholders at the level of the project, community, region or country. It is understood as an institution or process through which stakeholders are able to raise concerns, grievances and legitimate complaints and have them addressed. In the context of REDD+, we will situate our case within the environmental dispute resolution (EDR) framework. There are a number of approaches: avoidance, mediation, negotiation etc that come under the ambit of EDR, all aiming at out-of-court mediation rather than conventional adversarial processes²⁵.

In evaluating options for DRM, the major principles that shape our perspectives include:

1. That disputes are not necessarily dysfunctional to the extent that they ought to be prevented. Rather space should be created for the issues to be brought up and that the conflicts arising should be managed within constructive limits.
2. That at best, the principle of subsidiarity should apply, bringing conflict interventions closest to the disputing actors
3. That even though cooperative approaches aimed at win-win outcomes should be employed, it should be borne in mind that adjudication, including litigation in court may be an ultimate option
4. That space for collective engagement is key to conflict management and therefore participation and democratic representation of disputing actors should be ensured at all times and at all levels.
5. That stakeholders' ability to mobilise important resources is crucial for their effective engagement and therefore access to institutional, economic, social and communicative resources should be part of an RDM design.

²⁵ Lawrence Susskind and Alan Weinstein, *Towards a Theory of Environmental Dispute Resolution*, 9 B.C.

Envtl. Aff. L. Rev. 311 (1980), <http://lawdigitalcommons.bc.edu/ealr/vol9/iss2/4>

A shared understanding among REDD+ forest stakeholders of the purpose of DRMs, and of these principles, is suggested to be the best starting point for dialogue on the current level of DRM effectiveness, and on ways to strengthen DRMs during the REDD+ readiness and implementation phases.

We follow the framework designed for the Cambodian REDD+ case (figure 1) as we feel it represents a more generic model that captures the four-stages mentioned above. This framework should be applied to community, district, regional and national levels.

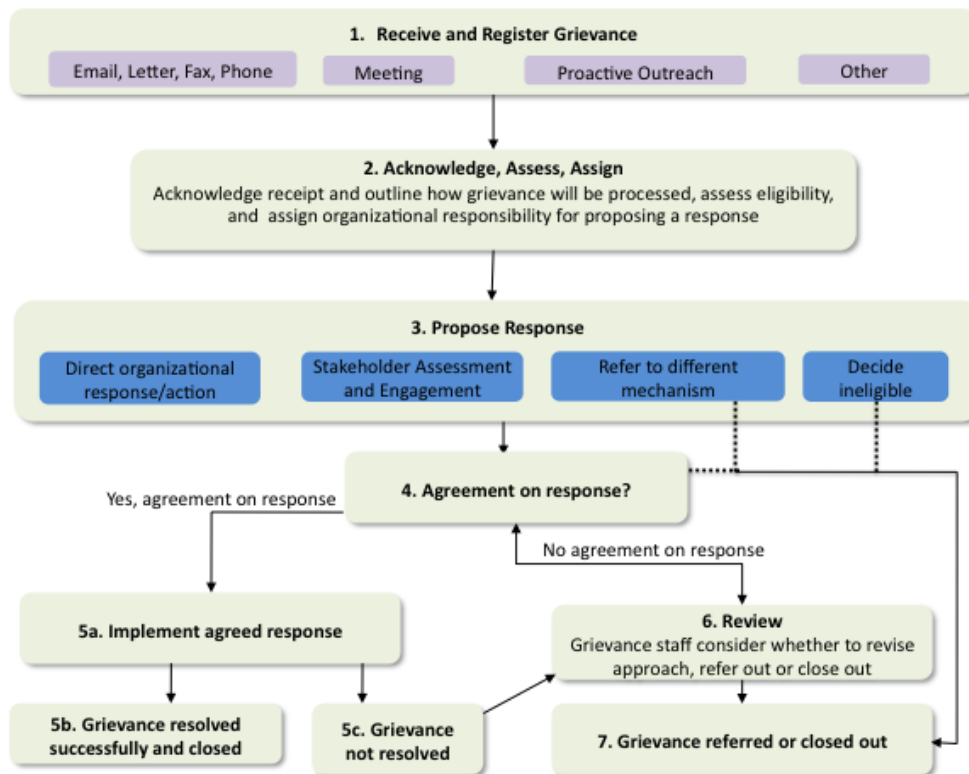


Figure 1: Generic model for dispute resolution processes (Source: Consensus Building Institute, 2013, p12).

4.2 Gender and DRM for REDD+

The gender factor in natural resource conflict and dispute resolution has been studied widely. More recent reviews have been offered by Juliana Birkhoff, UNEP and IIED. We build on the main thoughts of the gender dimension from these reviews to inform our DRM intervention proposals in this study. First, since women tend to use more options for addressing disputes,

departing from conventional litigation approach to ADR options is responsive to the gender dynamics characterizing potential REDD+ conflict.

Second, providing voice for women in the dispute resolution process is fundamental to an effective DRM in a male-dominated industry and society. Putting representative of women on respective dispute resolutions teams, especially at community and district levels, is strategic to harness their participation. In addition, training women in the ADR facilitation process will have strategic impact on integrating gender considerations in the process.

Third, the reviews suggest that women often act as peacemakers and get involved in disputes affecting others. Therefore, building the capacity of women in resolving disputes has positive rippling effects. Therefore, community-level dispute resolution training should factor in women participation. Training women group leaders and facilitating the training of their members will therefore have a strategic multiplying effect.

Fourth, the informational needs and capacity of women leaders on REDD+ and related issues like tenure rights benefit sharing and dispute resolution channels need to be provided. Particularly, building the capacity of queen mothers, leaders of women groups and customer service officials of the FC in this area is critical. Leveraging resources from donors and NGOs to focus on building the informational needs of men and women in relation to REDD+ is strategic to preventing disputes or their escalation.

Fifth, due to the structural discrimination and cultural roles of women, especially in rural settings, their social, financial and logistical challenges need to be factored into the resolution process, in terms of selection of venue for resolution and time. In some situation, public debate is not an established convention for women and therefore, facilitation of ADR strategies need to take such limitations into consideration during dialogue and negotiation.

4.3 Proposed DRM process for REDD+

A grievance complaint registration process is the first step. At all levels, the responsible authority needs to institute a clear and simple process through which aggrieved parties can

lodge a formal complaint. For purposes of clarity, we recommend the use of a very simple standard complaint form that should capture who is lodging the complaint, date and place, what the main issues are and what specific actions/remedies are being sought for and signature/thumbprint. If the dispute is to be resolved through the use of arbitration, the ADR Act requires all disputing parties to consent in writing before the dispute is addressed. With mediation, written consent is also required although lack of it would not invalidate the proceedings if the party accepts to mediate within 14 days of the receipt of the invitation. Therefore if the goal is to arrive at a legal binding settlement through the method of arbitration or mediation, then the first step of the grievance complaint registration process should require the disputing parties to give their written consent.

The second step is for the responsible officer to acknowledge receipt using a simple signed and stamped card also bearing assigned complaint registration number, name and position of officer, date and place. These must be considered legal documents that may be tendered in court in evidence and therefore all requirements for legal admissibility should be fulfilled. In addition to acknowledgement, an initial assessment of how the dispute will be processed for settlement should be conducted within a specific period, say maximum of 3 working days, if such requirements do not already exist in prior agreements. Capacity of responsible persons/institutions to do this assessment must be built at all levels.

The third step is to determine and propose a method of resolving or managing the dispute. This may take various forms from direct action by responsible agency, through joint fact-finding engagements, reference to different mechanisms to decision on ineligibility of complains. This is the area that the capacity to evaluate the appropriateness of the use various ADR mechanisms such as mediation and arbitration is most needed. The specific approach to use will depend on a number of factors and the responsible officers should be knowledgeable in doing such analysis.

The fourth step would be to arbitrate, mediate or resolve the dispute. With the ADR Act, the guidelines for the format of the hearings or how to conduct them are clearly set out so that the disputing parties, the arbitrators or mediates know how to arrive at a resolution that would be legally binding and therefore preclude the possibility of re-litigating the matter.

The fifth step would be to implement specific agreements or outcomes from the resolution process. Here documentation on what has been negotiated or decided is important for all intents and purposes and therefore responsible authorities managing the process at this stage have a duty to ensure that it is properly done. Under the ADR Act, this is a requirement. Settlements reached through arbitration or mediation must be in recorded in written form and filed in court as a court judgment.

Where agreement could not be reached or implementation is faulted, there should be an opportunity for review. Here, the review could be handled by a higher level authority. Under the ADR Act, once both parties consent to arbitration, they are bound to the process and the final award. The final award given under arbitration are binding and can only be appealed to the High Court on limited grounds listed in Section 58 of the Act. There is a little bit more flexibility with mediation. Although the disputing parties have to consent to the mediation, if at any point they are dissatisfied with the process, both or either party can make oral declaration (and the mediator must record it) or a written declaration that further mediation will not be worthwhile. Only then are they are free to take the matter elsewhere for resolution.

The following sessions particularly elaborate the specific DRM interventions that can happen at the third step of the generic model, i.e. proposing a response.

4.3.1 Resolving REDD+ Conflicts at Community Level

At the community-level, we propose mediation as a first mechanism to be employed. An existing body like the collaborative resource management committee (CRMC) can be strengthened to play a role here. This builds on existing efforts of collaborative forest governance and multi-stakeholder support for implementing forest policies. It also has the potential to reduce transaction cost as these structures have already been formed and substantial capacity building efforts have already gone into their institutionalisation. What perhaps remains is their capacity to receive process and design appropriate resolution strategy to address local conflicts including those related to REDD+ programmes. Particularly, traditional

and local elected authorities can be targeted for capacity building. These authorities have some established legitimacy, either through custom or elections, and are accessible to local actors.

We recommend that only inter-group or inter-personal disputes related to the use and management of forest resources should be handled at this level. A number of forest/REDD+ conflicts may be resolved locally especially when it affects actors within specific local settings. Examples from documented cases may be on-farm logging damage compensation payment and SRA negotiation/implementation at particular communities (Derkyi, 2013; Marfo 2006). We propose mediation as a mechanism for dealing with local-level conflicts with the CRMC reformed to play the role of a mediator. Several implications emerge. First, the CRMC need to be well institutionalised as a semi-autonomous body through a statutory recognition. Second, the capacity of the CRMC to receive, diagnose and manage disputes should be built. Aside their recognition that provides legitimacy and the level of authority needed to arbitrate or at least mediate disputes, access to information and communication resources is critical. Arbitration may be used when mediation fails to resolve the dispute. Here, the CRMC remains a potential body to arbitrate and therefore their recognition is key.

4.3.2 Resolving REDD+ Conflicts at District Level

A number of forest/REDD+ conflicts may go beyond community-level and may lay them within the jurisdiction of forest or administrative districts. Examples include land use (farming-mining-logging-conservation) disputes and all disputes for which the District Forest Manager or District Chief Executive may exercise his jurisdictional authority

At the District level, we propose a two-stage dispute resolution mechanism, first through the use of mediation with the District Forest Manager as the mediator. This is in concert with something, we believe, they do in their everyday practice. Strengthening their capacities and making them more conscious of this role has a critical subsidiarity advantage. The second level is to employ a District Dispute Resolution Team (DDRT) comprising:

- I. The District Chief Executive (or his representative),
- II. District Forest Manager

- III. One paramount chief chosen from among themselves if there are more than 1 in the jurisdiction,
- IV. A senior district police officer
- V. A citizen with substantial knowledge/experience in dispute settlement (lawyer, magistrate, ADR specialist etc.) to be appointed by the DFM in consultation with the District Forest Forum.
- VI. The District Customer Service Officer (CSO) only acts as secretary to the Team.
- VII. One queen mother appointed by the paramount stools who have jurisdiction in the area

We propose that the DDRT mediate or arbitrate on matters on all forestry matters that have the potential to end up in litigation, if the ADR Act is amended to accommodate forestry issues. If NOT, then it should be confined to issues that are not directly lawful offences against the state, i.e. criminal in nature.

Again this is something DCEs and these suggested actors are already doing in practice. However they need to be well integrated into forest governance in this way. The District CSO of the FSD is considered a very important player in REDD+ related conflict resolution especially at community and district levels where most conflicts related to implementation are most likely to be reported.

4.3.3 Resolving REDD+ Conflicts at National Level

There are a number of potential disputes, especially those related to policies on resource allocation, benefit sharing and forest management that require attention at the national level. At the same time the implementation of FLEGT VPA may raise a number of conflicts related to decisions on legality or illegality of the actions or inactions of forest sector players which may require some sort of settlement.

We propose a National Dispute Resolution Team to mediate/arbitrate referred or new cases brought to their attention.

The National Dispute Resolution Team (NDRT) could comprise the following:

- I. Head, legal unit of FC (also acting as Convenor)
- II. Head, FSD Operational Director
- III. 1 forest governance expert (outside FC)
- IV. Head, Climate Change Unit
- V. 1 NGO representative nominated by a recognised NGO coalition body
- VI. 1 traditional authority nominated by the national house of Chiefs
- VII. Representative of Ministry of Food and Agriculture
- VIII. Representative of COCOBOB
- IX. A representative of the FC Board
- X. The Chief Executive, FC
- XI. The Executive Directors of FSD, Timber Industry Development Division and Wildlife Division

They can also refer cases before them to independent external experts if the disputing parties had already consented to this option.

The stages, bodies responsible for managing them and specific capacity needs for such bodies are summarised in Table 1. This builds on the generic model in figure 1 and makes actions more concrete to the application of ADR Act and requirements to the Ghana forestry/REDD+ context.

Table 1. Stages in the DRM process and institutional bodies responsible for managing them and their capacity needs

Stages of the DRM process	Processes under the ADR Act	Responsibility			Capacity needs
		Community	District	National	
Receive and Register (diagnose)	Lodging of complaint/written consents	CRMC	CSO-FSD	DO-FC	Basic investigative skills & grievance documentation

Acknowledge, assess and assign (diagnose)	Pre-trial hearing		CRMC	DDRT	NDRT	ADR Act and procedures; content analysis and training in arbitration and/or mediation
Propose a response (design)		Mediation/arbitration Hearing	CRMC	DDRT	NDRT	ADR Act and procedures; content analysis and training in arbitration and/or mediation
Implement response (implement)	Awards and Settlement		CRMC	DDRT	NDRT	Drafting awards or settlement
Review (evaluation)			CSO-FSD	DDRT	NDRT	
Grievance referred/closed out (exit)	Consent for arbitration or refer to court					

5. Conclusion and Recommendations

Despite its potential benefits, the implementation of REDD+ may lead to significant deleterious consequences resulting in impacts to land, livelihoods, the environment, traditional uses of resources and just processes. The implementation of REDD+ will also have impacts on a wide range of stakeholders, including impacts on the existing roles, responsibilities and power relations among them.

Typically, REDD+ implementation could experience conflicts resulting from land clearing for agriculture; tenure and boundary issues; illegal logging and mining operations; extra-community and intra-community communities. The importance, therefore, to design and develop a dispute resolution mechanism (DRM) to handle grievances from affected stakeholders cannot be overemphasized.

A DRM created to handle disputes from the implementation of REDD+ in Ghana will have to be accommodated within the legal and institutional context that exists today and which comprises the formal and informal judicial systems.

Growing concerns and dissatisfaction with the formal judicial system has led to increased patronage of the informal system (made of the clergy, chieftaincy, heads of family and the Police Service) despite the fact that they may not always have legal backing.

The Ghanaian legal system now makes provisions for the use of alternative dispute resolution (ADR) methods as a compliment to the formal court system and backed up by the ADR Act (Act 798).

However, Act 798 excludes environmental matters from its scope of applicability. The consequence of this is that all environmental related matters, which should be interpreted to include disputes about natural resource exploitation, and therefore REDD+ disputes, cannot be resolved using ADR methods. Disputes of this nature would have to be resolved using the formal court system with its attendant problems.

The absence of formal structures of dispute resolution in the district, regional and national offices of the Forestry Commission (FC) aggravates concerns of adequacy of existing institutions – albeit in their current forms – to address REDD+ conflicts.

It is imperative that there is a clear and workable DRM process and structure for REDD+ and this should necessarily comprise of:

- A grievance complaint registration process – at all levels, the responsible authority needs to institute a clear and simple process through which aggrieved parties can lodge a formal complaint.
- Acknowledgement of receipt – that fulfils requirements for legal admissibility – by a responsible officer.
- Determination and implementation of a method of resolving or managing dispute as well as implementation of specific agreements or outcomes from the resolution process.

To this end, this report identifies three levels to resolve REDD+ conflicts. These include the:

1. Community level – to essentially handle inter-group or inter-personal disputes related to the use and management of forest resources and for which mediation is proposed as the mechanism to deal with issues at this level.
2. District level – where a two-stage dispute resolution mechanism is proposed. This includes the use of mediation with the District Forest Manager as mediator and the employment of a District Dispute Resolution Team or DDRT of defined composition.
3. National level – where a National Dispute Resolution Team is proposed to address issues related to policies on resource allocation, benefit sharing and forest management amongst others.

We recommend the following steps to establish and implement a REDD+ DRM for Ghana.

1. Conduct sector-wide stakeholder consultation on proposed DRM mechanisms

Using the same consultative structures used for the R-PP development with additional representation from locally elected authorities (DCEs and Assemblymen), organize a national forum to debate the proposals.

2. Pilot and scale up agreed DRM mechanisms

Select one or two REDD+ pilot sites and set-up agreed DRM system and monitor performance.

3. Change of law to allow for environment or forestry issues to be settled through ADR

We would recommend that the legal team of FC put up a proposal for some for forestry issues to be held under the ADR Act of 2010. We propose that REDD+ projects have mandatory

requirements for stakeholders parties to subscribe to resolve all disputes through ADR and that all REDD+ participants should sign agreement with clause for ADR. Two main approaches could apply. The first is to have a legal instrument that would recommend for a statutory regulation that requires all REDD+ disputants to go through mediation and/or arbitration as is the case with commercial cases at the Commercial Court. The second approach could be is to require follow the ADR Act’s requirement for written consent for all participants of REDD+ projects to give a written undertaking to resolve all REDD+ related disputes through arbitration or mediation. The former would be more effective as it has a wider scope of application as it brings even those who may not be REDD+ participants under the ambit of resorting to ADR as a mandatory first step.

4. Set up DRM structures at community, district and national levels

Marfo, Danso and Nketiah (2013), building on the FLEGT-VPA and REDD synergies, have strongly argued in support of integrating forest-sector programmes to create synergies and improve overall institutional efficiency. Thus, all institutional arrangement and training efforts must be aimed at building comprehensive capacities to handle sector-wide conflict issues. First, the institutional arrangements at community, District and National scales as described above should be set up. The specific institutions and their roles and responsibilities as mentioned in Table 2 should be clarified.

Table 2. Summary of recommended actions and institutions responsible for their implementation in piloting and scaling up a REDD+ DRM process

Action for implementation	Responsibility	Comment
Conduct stakeholder consultation on DRM mechanisms developed	FC	REDD+ secretariat may take this up
Set up the DRM teams in REDD pilot communities and Districts and pilot	FC	For resource and capacity constraints, the piloting should be progressive. For instant, start with one REDD pilot project and set up the arrangement across

		community, District and national scales
Study the functioning of the piloted DRM and document lessons	FORIG to lead	Use 5 member multi-disciplinary research team consisting of policy and governance expert (FORIG), lawyer (FC), Social forester (RMSC), conflict management scholar and forest landuse management expert
Share lessons with stakeholders and agree on broad strategies for revising design and implementation	FC	Use an multi-stakeholder dialogue process such as a National Forest Forum (plus). Other key stakeholders such as COCOBOD, MOFA, Chamber of Mines, Minerals Commission, EPA are recommended
Scale up and institutionalise DRM	FC Board	A paper on institutionalising DRM in forest governance should be submitted to FC Board. It should document the DRM development process, the lessons learnt and cost of implementation.
Capacity building	FC commission experts	Experts to assess specific capacity needs of responsible agencies/personnel. FC to prepare training programme and budget Commissioned Trainers to train

Amendment of ADR Act		responsible bodies/personnel
	FC's legal unit	Propose revisions to the ADR Act and/or pass a new law to establish DRM process in Ghana for REDD+

5. Capacity building

An effective functioning of a DRM at all levels will require capacity building. Some of the key capacity gaps have been mentioned in Table 1.

6. Create awareness

For any DRM process to be effective, it is important that stakeholders are aware of it and have knowledge as to how to access it. Therefore, a public education and awareness creation programme, particularly focusing on key stakeholders, both within and outside the forestry sector, is needed.

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