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**Strengthening and Streamlining the Community Land Demarcation Process  
By Arlindo Chilundo\***

## Introduction

In this short paper I am trying to analyse how the legal system can be streamlined so that the costs of delimitation and demarcation of land are reduced mainly in rural communities, where 80% of the Mozambican people live, most of them in absolute poverty. In doing so I look primarily into systems, then into processes and finally into mechanisms. I make some concrete recommendations towards reducing both time and procedures in delimitation and demarcation of community land.

## I. SYSTEMS

The land policy and law are the main system that influence local communities' land delimitation and demarcation processes.

### **Land Policy and Land Law**

#### Land Policy

The main objective of land policy is to “*safeguard the diverse rights of the Mozambican people over land and natural resources, while promoting investment and the sustainable and equitable use of these resources*”. In terms of its fundamental principles, the land policy recognizes customary rights of access and management of land use, and seeks to promote national and foreign investments without jeopardising local residents.

The strength of the land policy is that it provides guidelines for creating legislation that ensures the rights of Mozambican people over land while at the same time it promotes national and foreign investment. Thus, this policy (i) reaffirms that land is the property of the state; (ii) recognizes local communities' customary rights of management of land use; (iii) promotes national and foreign private investment; and (iv) establishes the basic and

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guiding principles for the transfer of land use rights between Mozambican citizens or companies when investments have been made in the land.

### Land Law

The main objective of the land law is to “*guarantee land access and security for Mozambican peasants and national and foreign investors*” and “*promote the management of land use (the main resource of the country) in order to contribute to the development of the national economy.*” This law was created to “*establish the terms through which rights of access and management of land use are constituted, exercised, modified and invalidated.*”

The main aspects of this law that have influence in community land delimitation/demarcation and resettlement processes are the following: (i) local communities have the right to be consulted before part of their land is granted to third parties; (ii) the revocation of land use rights of local communities because of public interests (for example, road construction; state airfield or the creation of a National Park) must be preceded by fair reparation or compensation; and (iii) local communities must be involved in identifying and defining the limits of their own areas especially in land delimitation and demarcation processes.

Like the land policy, the strength of the land law is that it seeks to safeguard the rights of Mozambicans to land and promote private investment – national and foreign. However, the lack of regulations to establish mechanisms for the representation of local communities prescribed in Article 30 of the law and mechanism to regulate land use in urban areas and suburbs are the main weaknesses for the implementation of the land law.

## **II. PROCESSES**

In this section, I examine the processes that derive from the systems analysed above: land policy and law.

### **Land Law Regulation**

The main goal of the land law regulation is to regulate land access by national and foreign investors as well as customary land rights.

This regulation states that the eradication of land use rights because of public interest (for example, road construction, state airfield or creation of National Park) is equivalent to expropriation and must be preceded by fair compensation or reparation. Therefore, local communities affected by an undertaking of public interest and forced to leave their land and resettle in other areas should receive fair compensation or reparation.

The land law regulation is an instrument that allows the implementation of the objectives of the land law. However, it has two serious weaknesses. One of the weaknesses in the

implementation of this regulation is the absence of an instrument that indicates the applicable regime for conservation or preservation activities in areas of total protection, as defined in Article 4 which states that “*the applicable regime for conservation or preservation of nature, [...] will be defined in a specific regulation.*” The regulation does not clarify if the identification and registration of local community areas in the National Land Cadastre is satisfactory to gain judicial status. With judicial status, local communities could be empowered to negotiate and sign equitable agreements with third parties with interest in using their delimited or demarcated land. The other weakness is that the land law regulation does not clarify the mechanisms of electing the representatives of local communities, their role, duration of their mandate, and the articulation of local community representatives with other authorities at community level.

### **III. MECHANISMS**

The mechanisms that are examined below are those oriented to implement the land law regulations.

#### **Mechanisms of Implementation of the Land Law Regulation**

The Technical Annex to the Land law regulation provides ways of delimiting and demarcating land including land occupied by local communities.

The objective of the Technical Annex to the Land law regulation is “*to define requirements for delimitation of land occupied by local communities and by national individuals of good faith, as well as for demarcation within the context of issuance of titles related to land use rights.*”

#### **Mechanism of Community Land Delimitation According to Technical Annex to the Land Law**

The main phases of the land community delimitation are as follows:

##### **Information and Awareness**

It is during this phase that the local community is informed of the objectives of the national land policy, and their rights contained in the land legislation. This includes informing the community about opportunities opened up by the delimitation process. The Technical Annex to the Land Law recommends the team of facilitators to register the number of men and women from the local communities who participate during this phase. However, it does not state how many men and women should be included. It is also during this phase that the community representatives are chosen.

The way this phase is conducted and its outcome is essential to the success of the following phases. The main strength of this phase is to create an opportunity to inform

the local community about land delimitation objectives, their rights and responsibilities, and opportunities opened up by the delimitation process.

### **Participatory Rural Diagnosis**

The aim of this phase is to understand the community's social, economic, and environmental conditions. It is also done essentially to know the boundaries of the community land, local institutions, the existing natural resources and mechanisms for their management. The outcome of this exercise is to understand how local communities define themselves. It is also mandatory to indicate the number of men and women who participate in this process.

With a view to ensuring that the results of delimitating community land are inclusive and based on consensus, the Technical Annex requires that, in the earlier stages, the team of facilitators work together with men and women of different socio-economic strata and age groups.

The results of a Participatory rural diagnosis of a delimitation process carried out in a conservation area is reinforced through the compilation of an inventory of natural resources existing within the community area and the zoning of land use.

### **Sketch Map and its Descriptive Memory**

This phase includes the following: (1) the drawing up of a map by the local community, (2) the validation of the boundaries of the map by members of the local community and the neighbouring communities and, (3) geo-referencing<sup>1</sup> of the sketch map of the community on a topographical map.

### **Devolution**

The sketch map and its descriptive memory prepared through a participatory rural diagnosis and geo-referencing process must be returned to the community. It is mandatory that the devolution takes place when members of the community and representatives of neighbouring communities are present. They are entitled to accept or reject the sketch map and its descriptive memory including the boundaries of the delimited land. This is a mechanism to balance the decision-making process among the participants.

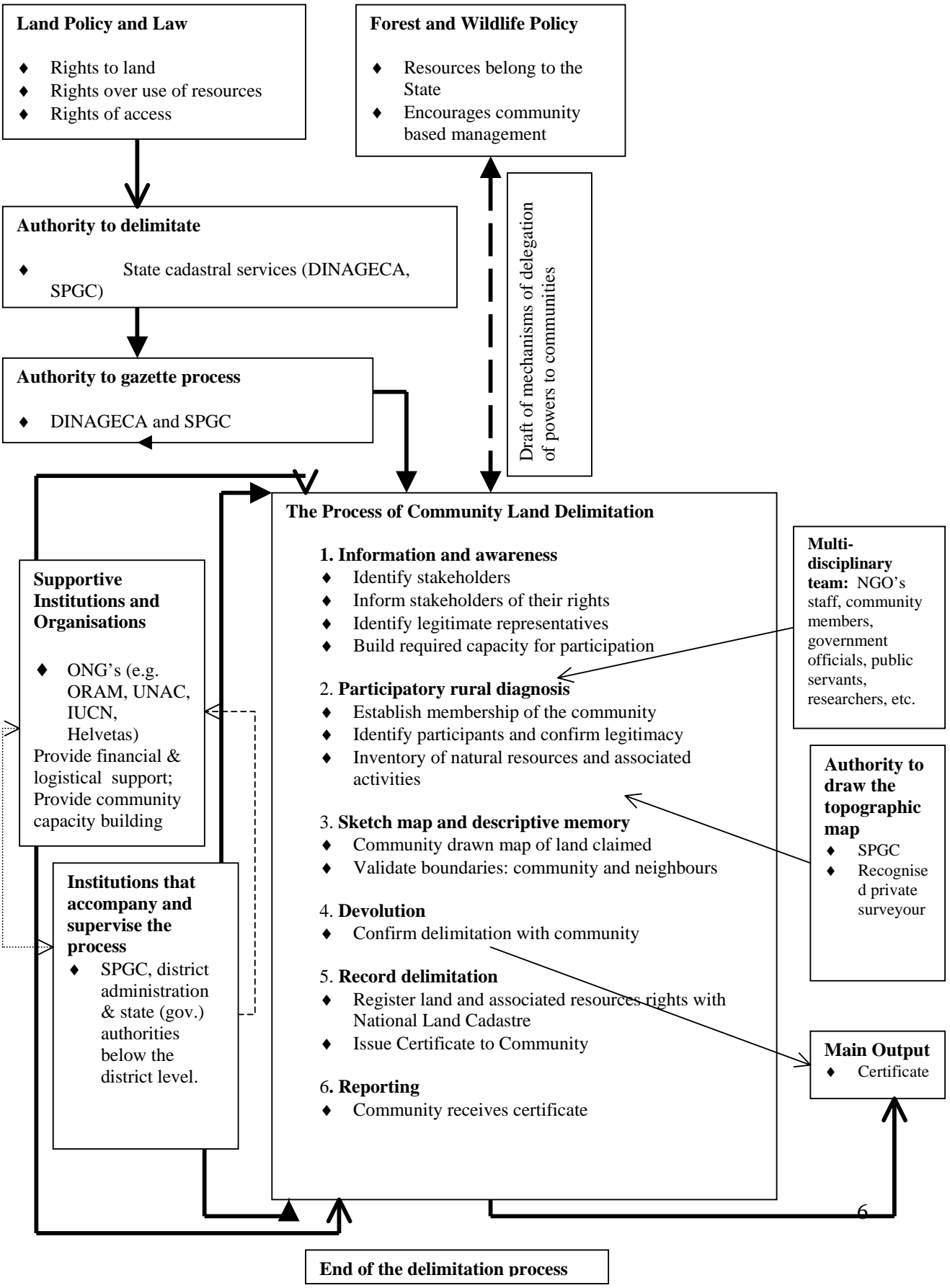
### **Recording in the National Land Cadastre**

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<sup>1</sup> Geo-referencing is the process of locating the community's area on the topographical maps by showing known geographical coordinates. It can also include the process of gathering the community's boundary points using a Global Positioning System (GPS) device for subsequent loading of the community's boundary points onto a computer. The geo-referencing of the community's area can be done by chartered surveyors (private) but due to the lack of these in many provinces of the country, it is the SPGC that carries out this work.

The registration of community land and natural resources rights is undertaken after the SPGC have certified that the process was conducted correctly and is complete. This phase includes the recording of the area of the community in the National Land Cadastre and the issuance of the certificate of “*land use rights*” to the community by the SPGC. The issuance of the community certificate is the sign that the delimitation of the community land was successful, it is also an acknowledgement of the rights of the community to land and other natural resources.

The Process of community land delimitation is part of the mechanisms of implementation of the Land Law Regulations



## **Mechanism of Land Demarcation According to the Technical Annex to the Land Law Regulation**

Community land demarcation involves the first four phases described above for land delimitation. However, there are significant differences between land delimitation and demarcation. Land demarcation (i) is more rigorous in terms of measurements; (ii) is more complex and expensive; and (iii) involves the placement of cement marks in limit points.

Specifically, the phases of land demarcation according to the Technical Annex to the Land law regulation involve the following:

### **Technical Surveying**

The technical surveying consists of descriptive and technical information. Technical information includes topographic map; the sketch of linkage to the geodesic network; information on measurements; measurements of the parcel and list of reference points.

### **Placement of Cement Marks**

Cement marks are placed in the identified limit points which many times correspond to those that their reference points are indicated in the topographic map.

Note: other marks can also be used, for example, natural limits (rivers, mountains, trees, etc.), roads, railways, and poles.

### **Measurements**

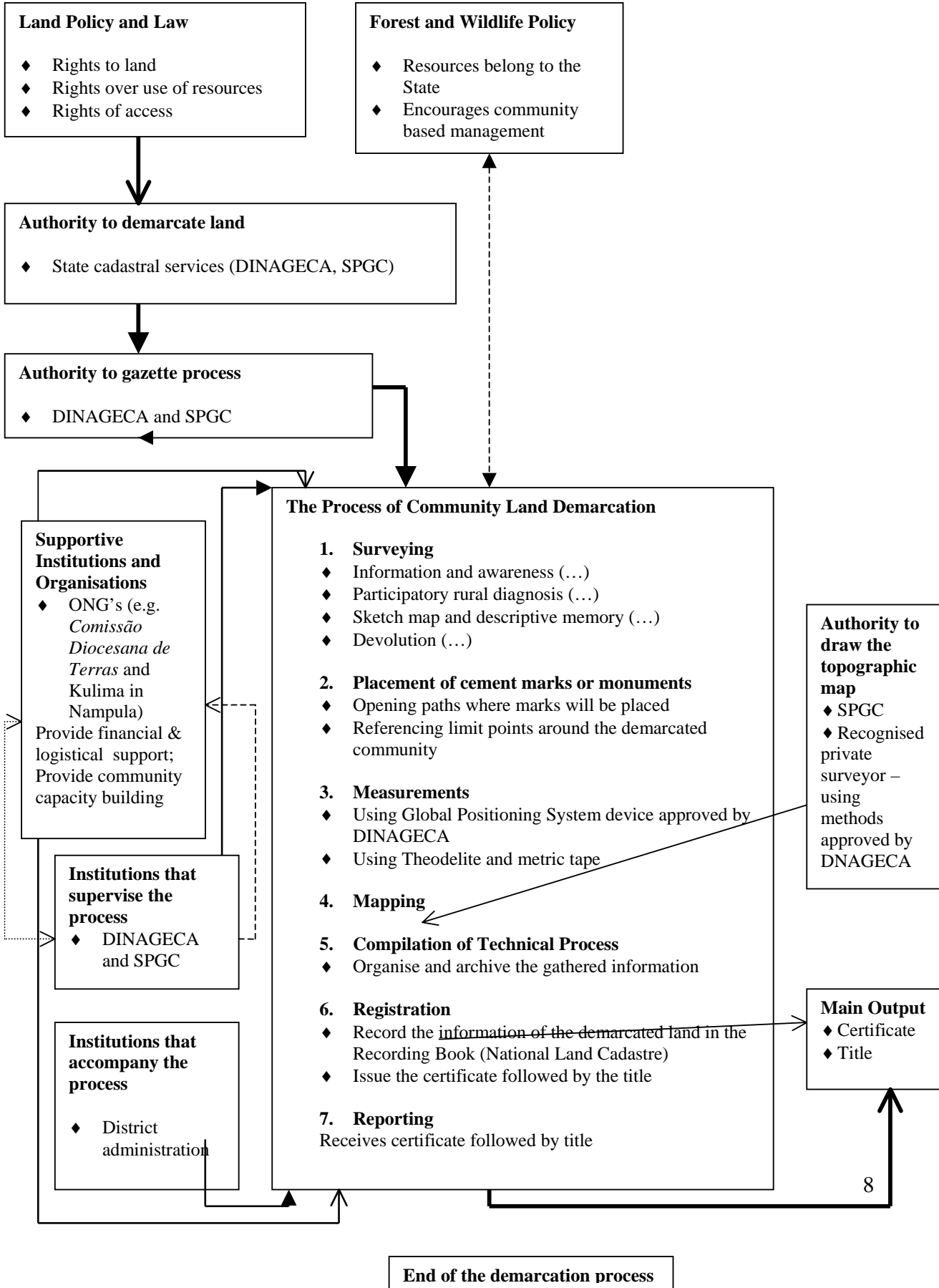
Measurements are carried out using classic and modern technologies. Under the classic technology, the distance between the limit points is measured using a metric tape. The angles between the marks are measured using a theodolite. The map of the demarcated area is manually drawn and the area is calculated.

Under the modern technology, the Global Positioning System (GPS) device is used to capture the coordinates of reference points of an area to be demarcated. The information that is gained by using this device is used to draw a topographic map of the demarcated area using computer software, such as, ArcView and MapInfo.

### **Compiling the Technical Process**

The technical process is compiled using the information from technical survey and measurements, and placement of marks or poles.

**The Process of community land demarcation is part of the mechanisms of implementation of the Land Law Regulations**





## **RECOMMENDATIONS ON HOW TO STRENGTHEN AND STREAMLINE AND DECREASE THE COSTS OF COMMUNITY LAND DELIMITATION AND DEMARCATION PROCESSES**

### **Changes in Systems and Procedures**

I suggest the following simplifications to land delimitation and demarcation process:

#### ***Information and awareness***

- ◆ In order to reduce the costs of numerous meetings to inform and raise awareness about the land law and its regulation in the local communities, this phase of delimitation could take place in one week or less immediately followed by other phases.<sup>2</sup>
- ◆ I recommend that the team of facilitators work with organizations that have experience with land delimitation or demarcation to reduce the costs of training personnel to implement the different phases of land delimitation such as information and awareness, participatory rural diagnosis, and drawing of the sketch map and its descriptive memory. I suggest giving preference to government and non-government organizations that work in the province or district where the land to be delimited or demarcated is located.
- ◆ In this particular case, I recommend involving government institutions (e.g. Provincial Services of Geography and Cadastre - SPGC) and non-government organizations for experience in engaging with local communities. In order to disseminate the land law and its regulation, I suggest using the translation in local languages of any legal instruments related to land registration.

#### ***Participatory Rural Diagnosis***

- ◆ With the view of streamlining and reducing the costs of land delimitation and demarcation process, I recommend that the team of facilitators work with as many community members (men and women) as possible from the beginning. This would reduce the time spent in the communities to build consensus.

#### ***Sketch map and its descriptive memory***

- ◆ I recommend that the drawing up of a map by the local community, georeferencing of the sketch map of the community, descriptive memory and devolution takes place in a successive period of time. This would reduce time and

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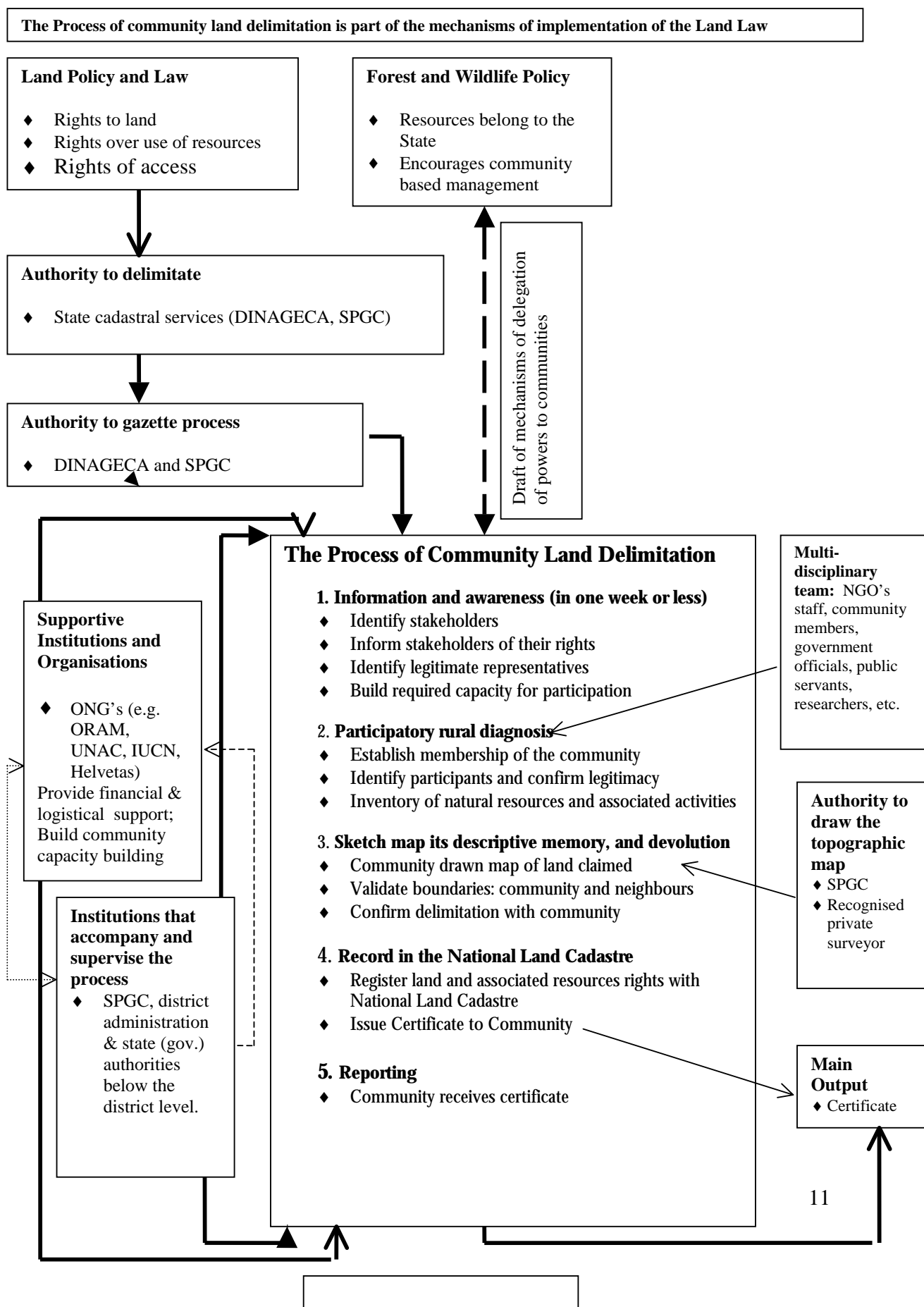
<sup>2</sup> The dimension of the community land to be delimited, and accessibility could have influence on the number of team facilitators.

travel expenses which are normally high from (and to) the communities to (and from) the Provincial Services of Geography and Cadastre (SPGC) to georeference the sketch map of the community on a topographical map.

***Placing marks***

- ◆ It is not mandatory to place cement marks in areas to be delimited or demarcated. I also suggest using natural limits (rivers, mountains, trees, etc.), roads, railways, and poles.

Thus, the streamline of the land delimitation process can be seen in the following framework:



### **Changes in Community Relations, Mechanisms, and Institutions**

- ◆ Where land delimitation and demarcation is followed by resettlement, it is important to reduce the uncertainties about the future among the involved communities. It is very important to inform the communities to be resettled about their rights for compensation or reparation for the loss of their land and other resources. This would have an effect in the ways in which these communities would become involved in land delimitation and demarcation processes.

### **Changes in Methodologies of Engaging with Communities**

- ◆ It is recommend that the team of facilitators work with existing community leaders. This would reduce the time spent electing community representatives during the information and awareness phase.

### **Delimitation and Demarcation of two or more Community Areas**

- ◆ It is recommend delimiting or demarcating two or more community areas at the same time. This would reduce time and travel expenses. In addition, land delimitation or demarcation of two or more communities creates an enabling environment to inform many community members about the land law and its regulation without additional costs.

### **Reducing the Impact of Land Conflicts**

- ◆ The time spent in solving land conflicts normally affects land delimitation and demarcation. When there is a land conflict between two or more communities, I recommend establishing a corridor –“no man’s land” - between the involved communities.

### **Conclusion**

From that brief analysis of the delimitation and demarcation processes of community land, one can draw the conclusion that it is possible to reduce both the time and costs of land registration for the communities. The study leads us to conclude by endorsing this kind of collective delimitation and demarcation of community land in rural poor areas, instead of individual land registration, which is expensive and the rural poor cannot afford to. By doing so we can, I am convinced, assure that the rural poor have their rights to land secured.