



# **Recognizing Rights to Natural Resources in Mozambique**

**Brief for the Rights and Resources Initiative**

**Paul De Wit and Simon Norfolk**

## THE RIGHTS AND RESOURCES INITIATIVE

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The mission of the Rights and Resources Initiative is to promote greater global action on pro-poor forest policy and market reforms to increase household and community ownership, control, and benefits from forests and trees. RRI is coordinated by the Rights and Resources Group, a non-profit organization based in Washington D.C. For more information, visit [www.rightsandresources.org](http://www.rightsandresources.org).

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Rights and Resources Initiative  
*Washington DC*

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## 1

## COMMUNITIES, LAND AND FOREST RESOURCES – THE MOZAMBIKAN FRAMEWORK

### 1.1 THE POLICY AND LEGAL CONTEXT

After a number of constitutional amendments in 1990 had introduced the need to revise the legal framework for land and natural resources<sup>1</sup>, the government of Mozambique embarked upon a rather piecemeal process to develop a new policy and institutional framework for natural resource management. The main pillars of this framework consist of various pieces of legislation dealing with specific natural resources, such as the Land Law, the Forestry & Wildlife Law, the Mining Law and their related regulations and annexes. These sector packages have tended to be developed in isolation of one another and on the basis of sector-specific objectives.

Some analyses, for example, have underlined the fundamentally different philosophical approaches in the land and forest legislation. The Land Law recognises customary rights and gives them the force of formal legal rights, whilst also encouraging the growth of private sector ‘take-up’ of land use rights. The enabling environment that is created by the Land Law is aimed at allowing local communities and private sector investors to negotiate agreements around land use rights, with the state role limited to ensuring that certain minimum standards are applied in these negotiations, that rights’ registration complies with technical standards and that the taxation system functions effectively. The benefits to local com-

munities are envisaged as coming in the form of payments or benefits to them as a result of negotiating the third party use of ‘their’ natural capital (SLSA, 2001).

Conversely, the Forestry and Wildlife legislation creates an enabling environment that is aimed at drawing local communities and the private sector into decision-making forums that have management powers over resources. These resources are still owned by the state, however, which recognises no customary or inherent right to them, except in certain limited ways (for example, the right to subsistence level use). Here, the benefits to local communities are envisaged as coming from a royalty paid by the state from the revenue that it collects for use of the resources and a say in how the resources are managed (ibid).

Over the same period of time, other legislative amendments have introduced new approaches to planning, decision-making, resource allocation and democratic oversight,<sup>2</sup> or have sought to introduce new forms of environmental control and monitoring, all of which have had an impact on and been affected by the specific NR laws.

Whilst commentators used to wonder which of these approaches was going to have the most positive impact on the livelihoods of the rural poor, the focus has now shifted on to the potential for harnessing these different approaches at the same

TABLE 1. KEY ELEMENTS OF SELECTED LAWS

Land legislation	<ul style="list-style-type: none"> <li>■ Maintains state ownership over land and natural resources;</li> <li>■ Recognizes the rights of local communities over land they have 'customarily' occupied, as well as rights to delimit and register their land, manage and allocate land within these areas and resolve disputes;</li> <li>■ Introduces the concept of community land delimitation through a legislated Participatory Rural Appraisal – the Technical Annex;</li> <li>■ Introduces a representative body to oversee the delimitation process – the G9 body;</li> <li>■ Subjects all external land applications to mandatory local consultation processes with local communities and affected parties; outlines the procedures for this;</li> <li>■ Introduces the concept of community land use plans (through a departmental memorandum);</li> <li>■ Sets the general context for the establishment of partnerships based on the commercial exploitation and use of community delimited land by private sector third parties;</li> </ul>
Forest legislation	<ul style="list-style-type: none"> <li>■ Allows for community declaration of historical and culturally significant forest sites Guarantees community access rights for subsistence use of forest and wildlife resources;</li> <li>■ Ensures that Simple License applications must specify work posts and other local community benefits;</li> <li>■ Stipulates that Concession approvals may only be given upon favorable outcomes from local consultation processes;</li> <li>■ Outlines procedures on community consultation processes;</li> <li>■ Guarantees community hunting rights and tax exemption on subsistence or ceremonial hunting practices;</li> <li>■ Establishes community participation in co-management structures - CO-GEP;</li> <li>■ Allocates 20% of taxes collected from the exploitation of the forestry resources to the local communities;</li> <li>■ Gives up to 50% of the value of the fines issued upon transgression of the legislation to agents and community members participating in enforcement activities or denunciation;</li> </ul>
Local government institutions legislation	<ul style="list-style-type: none"> <li>■ Institutionalizes representation of communities in local state decision-making and planning processes;</li> <li>■ Institutes Community Development Funds;</li> </ul>
Territorial planning legislation	<ul style="list-style-type: none"> <li>■ Enshrines the participation of communities in planning and identifying local development opportunities;</li> <li>■ Recognizes that land use planning needs to respect existing rights over land and natural resources;</li> <li>■ Establishes the principle that resource allocations should reflect local needs and encourages wealth sharing partnerships;</li> </ul>

time. After various experiences throughout the country in implementing land, forest or NR-related projects, it now appears that these laws may in fact have the potential to function very well together,

notwithstanding the earlier concerns regarding their separate development and differing philosophical underpinnings. Some highlights of the laws are shown in Table 1.



## 1.2

## THE DYNAMICS OF RECOGNIZING COMMUNITY RIGHTS OVER LAND AND NATURAL RESOURCES

Community land delimitation in Mozambique continues to be a responsive mechanism to a variety of different situations and drivers that require communities to establish strong rights over their land. These situations and drivers have varied over time, from the end of conflict in 1992, through early recovery and into a development phase of considerable economic growth. They show how the community lands concept has been able to respond to a wide range of different demands:

- In the early post-conflict period, the community land delimitation process was used as a form of ‘pre-emptive strike’, protecting community rights in the face of widespread speculative behavior and providing a land tenure ‘safety net’. This was the driving force behind early donor-funded delimitation programmes in Zambézia and Nampula provinces, for example.
- From the end of the 90s, delimitation became a more common part of the implementation strategies adopted by a number of Community Based Natural Resources Management (CBNRM) initiatives (Tchuma Tchato, Chipanju Chetu, Goba). Partly, this was a response to the perceived failing of the Forestry and Wildlife legislation to respond to the need for devolving strong rights over forest and wildlife resources; the land law was therefore used to try and devolve a different set of rights through another legal mechanism and bolster local claims to legitimate powers.

- From the mid 2000s onwards, delimitation has become more widely accepted as a potential mechanism to attract legitimate investment in rural areas and act as a pre-condition to provide for more balanced private investment partnerships. Largely donor-driven, this process has seen the establishment of the ITC (Iniciativa Terras Comunitarias) as a means of funding and supporting the registration of rights and emphasizes the linkage to local economic development opportunities and the potential for establishing community-investor partnerships. This approach is also implicit to the underlying principles contained in the Rural Development Strategy.

- More recently, community land delimitation is becoming seen as an essential part of the implementation of the 20% payment mechanism under the forest exploitation regime, providing essential knowledge regarding the respective territories occupied by different communities and their related benefit share. It has been pioneered by a few donor and TA agencies, particularly in some protected areas such as Gorongosa.

- Finally, delimitation is being approached as a mechanism for increasing local accountability for the protection of fragile environments and resources (parks, protected areas, conservation areas) and community lands are being delimited in the buffer and the core zones of such areas (Gorongosa, Quirimbas). This is the case with the Nhambita project, for example (see p 34 below).

## 1.3

## THE LAND AND FOREST RESOURCES

The natural resources base in Mozambique is unevenly distributed; the northern part of the country (Niassa, Zambézia, Nampula) is better endowed with suitable lands for agriculture than the drier

southern provinces (Maputo, Gaza, Inhambane) and the extreme western part (Tete). Figure 1 presents an overview of the land suitability for dryland agriculture, an agrarian system that prevails for a

FIGURE 1. POTENTIAL LAND SUITABILITY FOR RAINFED AGRICULTURE

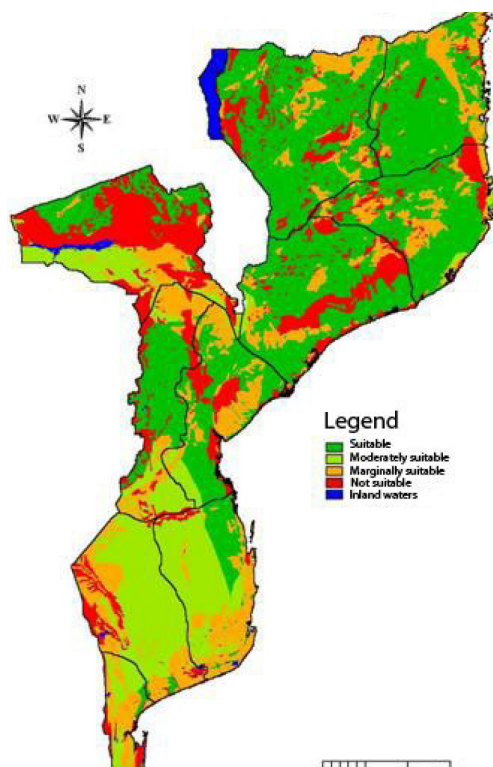
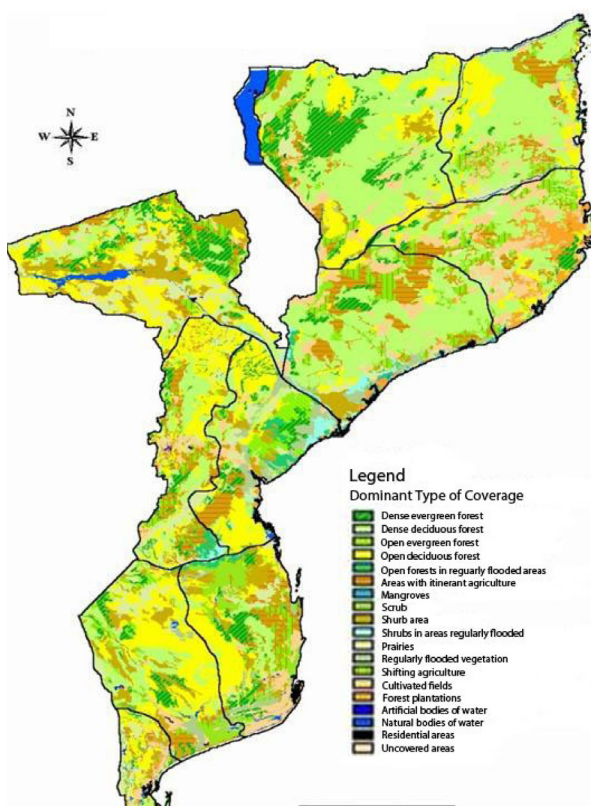


FIGURE 2. VEGETATION COVER IN MOZAMBIQUE



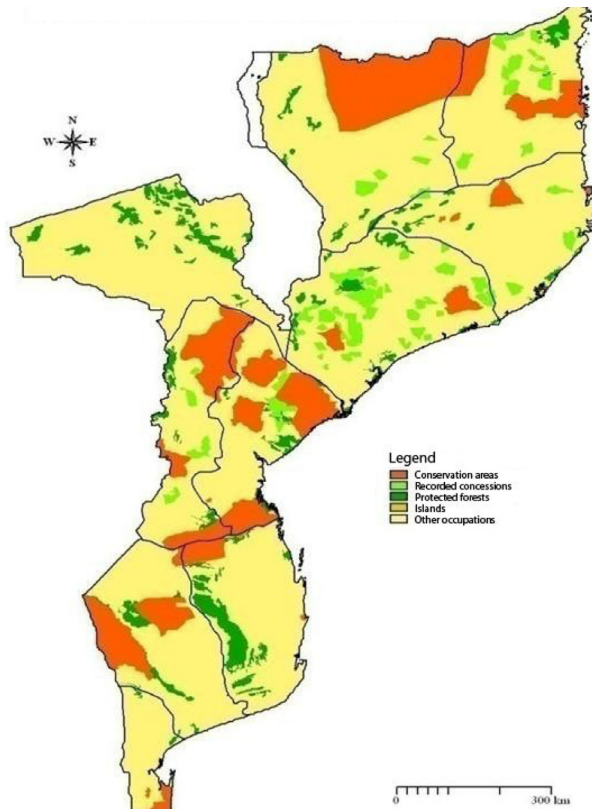
majority of rural households. Most policy makers continue to believe that the land resource base is abundant for everyone, including for communities, national private sector actors, and large foreign investments which pressurize government with their ambitious bio-fuel projects.

It is often stated that Mozambique is a vast country with large spaces that are not being used (or rather that are not clearly visibly used) and thus are subject for allocation by the state to actors that have a “capacity” to do so. A recent land availability assessment contradicts this prevailing view, however, and concludes that “only” 6.5 million hectares remain “available” for agricultural activities under certain conditions. This is much less than expected by some, and does not even take into account community land rights that have not yet been registered.

Equally, forest resources are more abundant in the centre and northern part of the country as compared to the south (Figure 2 and Figure 3). It also clearly illustrates the importance of different kinds of forest and woody covers (green tones) as compared to agriculture (brownish tones). Since the peace agreement, the forest sector has undergone major changes, overall resulting in a drastic reduction and degradation of the resource base. At the same time, there has been a sharp increase in requests for new forest concessions (see Figure 3), and particularly for the so-called ‘simple licenses’, which are much less regulated than the former. More recently, there has been high demand from foreign companies for access to large areas (in excess of 150,000 hectares) for new forest plantations. In one case, some 10,000 families have been identified as existing occupants of part of the requested areas; subsequent promises to provide labour opportunities to these residents, as a means of preventing possible major conflicts over access to land in the plantations, seem somewhat simplistic. Table 2 provides quantitative data on the existence of different forest types and forest exploitation rights.

Variations of deforestation rates in different provinces are the result of the impact of civil war and later of the degree of restored stability and

FIGURE 3. PARKS, RESERVES &amp; FOREST CONCESSIONS IN MOZAMBIQUE



population pressure on the natural resources base in the absence of a well regulated forest sector.

A national greenhouse gases inventory conducted in 1994 estimated the total direct emissions for Mozambique at 9,265 Gg of CO<sub>2</sub>. Land use change and forestry was estimated to contribute at 8% of the total. Given that since the last inventory, major changes in land cover have almost certainly occurred, it is expected that emissions from land use change and deforestation have increased significantly. A new national greenhouse gas inventory for the period 1995-2004 is currently ongoing (GoM, 2009).

TABLE 2. QUANTITATIVE OVERVIEW OF THE OCCURRENCE OF FORESTS, FOREST EXPLOITATION RIGHTS AND FOREST DEGRADATION TRENDS

Province	Productive Forest 2007 (a)	Conservation and Protected Forest 2007 (a)	Forest Concessions (No) – 2008 (b)	Simple License Holders (No) – 2008 (b)	Deforestation rate 1972-1990 (a)	Deforestation rate 1990-2002 (a)	Forestation 2008 (b)
Maputo	683	138	0	9	17	16	0,004
Gaza	2,422	1,357	3	66	3	13	0,012
Inhambane	1,437	982	12	77	14	11	0,093
Sofala	1,419	1,886	27	121	12	20	0,516
Manica	1,951	1,505	10	46	10	23	1,306
Tete	3,340	882	6	54	16	27	0,019
Zambézia	4,113	951	43	98	26	31	1,186
Nampula	2,317	455	18	61	28	33	0,062
C. Delgado	3,176	1,628	31	65	11	25	0,203
Niassa	6,050	3,379	6	19	8	21	6,404
TOTAL	26,908	13,163	156	616	145	220	

Sources: (a) Forest Inventory 2007 (b) Annual DNTF Report 2008. Area figures are 000s has and 000s has/yr.

# 2

## PROCEDURES AND METHODOLOGIES FOR DELIMITING COMMUNITY LAND

There are several different methodologies for securing community land rights, although the basic principles are similar. The approach of the *Plan Foncier Rural*, as an example, is well known in a number of western African countries, including Benin, Ivory Coast and Burkina Faso. Its development took place in a peaceful context, but with major land conflicts in the making, mainly centred in the confrontations between host farmers and incoming settlers, including pastoralists. The methodology used in Mozambique was developed in a post-conflict situation, within a specific context of needing to respond to a series of threats. Research started as early as 1993<sup>3</sup>; initial approaches and techniques were subsequently fine-tuned in other countries including Guinea Bissau and Angola. This finally resulted in what can be called the “*Mozambique methodology for community land delimitation*”<sup>4</sup>, which is prescribed in law by the Technical Annex (TA), a supplement to the Land Law Regulations<sup>5</sup>. The process is schematically illustrated in Figure 4 and includes the following steps:

1. Sensitization phase, imparting information and organizing the process

The first step involves informing local people about land and other natural resources legislation and related development issues, focusing on the possibilities that these platforms offer for securing rights over land and natural resources and a better management of these. The TA suggests a number of events and meetings spread over time to achieve this. The community also (s)elects between 3 and 9

members to represent it in land matters and sign delimitation documents.

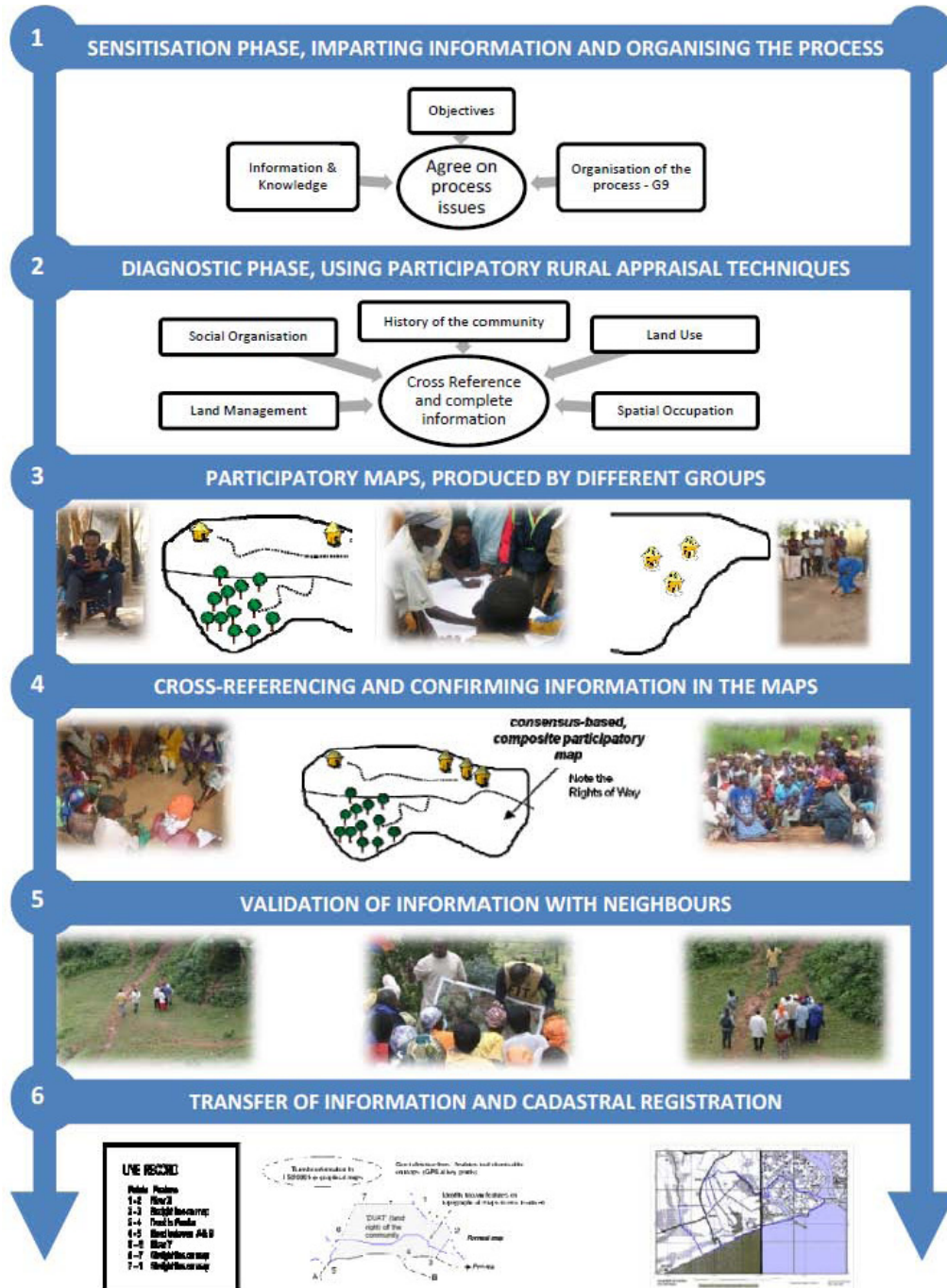
2. Diagnostic phase using Participatory Rural Appraisal (PRA)

The objectives of the PRA are twofold: (i) establishing proof that the community has an acquired right over land through occupation according to customary norms and practices, and (ii) establishing the territorial limits over which these rights apply. A variety of techniques are used, including Venn diagrams to establish institutional land management responsibilities, transects walks, semi-structured interviews to unravel the functioning of local land and management institutions, a range of visual techniques to establish the functioning of land management and production systems, including their territorial expansion and techniques to establish the dynamics of spatial occupation over time.

3. Participatory Mapping

During the PRA a number of participatory maps are produced by different interest groups, who each may have particular views of how the community occupies and uses space. These maps present the perceived boundaries of the community territory, identify neighbouring communities by name and location, and provide an idea on land and natural resources presence and distribution within the territory. The use of aerial photography or satellite imagery at a reasonable resolution is highly recommended, but often not applied.

FIGURE 4. DELIMITATION METHODOLOGY



#### 4. Cross-Referencing and confirming information

By comparing the different participatory maps and feeding in other information about history, social and religious sites, production systems and the use of natural resources, land management, a consensus-based composite map is produced, called the “cartogram”. This map does not have a scale, is not the product of standard surveying, but presents proportional distances and areas on the community territory and its natural resources.

#### 5. Validation of information with neighbours

The cartogram is confirmed with neighbouring communities who have been identified during the PRA. Each community (a target community may have up to 4-5 neighbouring communities) is visited and the consensus map is cross-checked in a series of meetings. The process of community land delimitation cannot proceed in the absence of agreement between the different communities.

#### 6. Cadastral processing

The following activities are part of the cadastral processing by the SPGC:

- Transferring the cartogram onto a topographic map, normally at a scale of 1:50,000. Georeferencing boundary points when required and using simple GPS equipment.
- Producing a ‘descriptive memorandum’ which is a narrative describing the nature and location of each identified and numbered boundary point and line.

- Local check of the final map with the community and its neighbours in a single meeting; after final agreement, maps and documents are signed by the community and representatives of the neighbouring communities.

- Clearance of the process by the State in its function as owner of all land in Mozambique; Registration in the cadastral records, with all documentation being recorded in the provincial cadastre.

- With formal clearance given, the provincial cadastre services issue a Community Land Certificate, the original of which is forwarded to the community.

Community land delimitation is thus fully supported by the law, is legally complete and subject to law enforcement. The TA includes also a set of standard forms that are to be completed before the process can be legally accepted and the community land be registered in the cadastre.

The methodology itself is the result of best practices learned from a series of 21 pilot experiences implemented in all 10 provinces of the country under different socio-environmental conditions. These were facilitated by different NGO service providers with the involvement of all ten provincial SPGCs. The resulting TA is thus the product of a broad and differentiated network of service providers, including public and private actors and institutions, and acquired a high level of legitimacy from its inception onwards.

# 3

## STATUS OF IMPLEMENTATION

### 3.1 ACHIEVEMENTS

After ten years of community land delimitation it remains difficult to provide an accurate status of its implementation for a number of reasons, including:

- Not all data that are available at the provincial level at the SPGC are transferred to the DNTF
- Data available at the SPGC are not always updated; often no specific records are kept on community land delimitations
- Both NGOs that were involved in community land delimitation and SPGC keep data registers but these may differ significantly

Lately, the legal rules to register community land have changed, and this introduced legal uncertainty and impacted on the way the SPGCs deal with communities that were already delimited before this change (a retro-active interpretation of this change which is legally incorrect), and with processes that were still in the pipeline for registration;

Table 3 gives an overview of community delimitations drawn from different sources of information. Once the TA was approved in March 2000, fast progress was made in several provinces, as indicated by the 2003 inventory. In early 2009, an inventory was made on the basis of the cadastral information kept by the National Directorate of Lands and Forestry. A later inventory (November 2009) uses the cadastral data from the provinces itself, which seems to be more updated.

A number of lessons can be drawn from this quantitative assessment:

- A limited number of communities have been delimited and obtained a certificate, probably corresponding to less than 10%<sup>6</sup> of Mozambican “rural communities”, and equally covering less than 10% of the national territory. The major reasons for this achievement are multiple. First, community land delimitation, as well as the registration of other, private land use rights, continues to be implemented on a demand basis, resulting in sporadic titling. This has, of course, major implications for the costs associated with the process, as well for the total output that can be expected from service providers. Second, community land delimitation is mainly driven by the NGO sector, and has never been a high government priority. The latter is clearly reflected by the low volumes of public budget allocations to delimitation<sup>7</sup>. As a reaction to this situation, a number of international donors have created a fund, known as the Community Land Initiative (ITC) which makes available resources for grassroots activities of land and natural resources management, with a major focus on community land delimitation. This facility has been slow in becoming fully operational. Third, the capacity to implement delimitations remains weak, both in the public and NGO sectors. The public sector has never made genuine efforts to build a capacity to address the challenge

TABLE 3. PROGRESS MADE ON COMMUNITY LAND DELIMITATIONS

Province	Number of communities						Area registered	
	2003 (a)		02/2009 (b)		11/2009 (c)		02/2009 (hectares)(b)	
	Certified	In process	Certified	In process	Certified	In process	Certified	In process
Niassa	3	3	9	0	7	0	357,231	0
Cabo Delgado	0	11	0	0	0	4	0	0
Nampula	43	13	93	2	103	19	743,418	4,518
Zambezia	28	20	73	18	65	52	3,637,001	568,011
Tete	0	2	0	27	0	27	0	3,928,912
Manica	4	14	7	7	10	8	226,374	553,656
Sofala	5	12	11	3	11	35	648,288	778,699
Inhambane	0	5	8	3	13	0	575,407	10,400
Gaza	8	1	17	3	17	7	447,782	24,702
Maputo	7	2	11	11	4	14	98,786	55,337
Total	98	83	229	74	230	166	6,734,287	5,924,235

Sources: (a) CTC Report, 2003 (b) Cossa & De Wit, 2009 based on DNTF data (c) SPGC data November 2009

and whilst initially the NGO sector was very active on the land front, several leading NGOs are now diversifying their activities, and leaving community land delimitation somewhat aside.

- There is an increasing caseload of delimitation processes which have not resulted in a certificate being issued. The amendment of Art. 35 of the Land Law Regulations [which refers the clearance of the larger sized delimitations to the Minister's (1,000-10,000ha) or Council of Ministers' level (>10,000ha)] seems to have a serious impact on this. Table 4 illustrates that a large majority of the delimitations exceed the provincial governor's responsibility of 1,000 hectares. There are also major delays in the handling of processes, mainly because of a number of prevailing uncertainties and inconsistencies discussed below. It must be noted that the DNTF, in its coordinating role as a national service, has not made consolidated efforts with the provincial services to address procedural doubts, resulting in administrative delays<sup>8</sup>.

- Major provincial differences, including two provinces without any community certificates,

are noticeable. Overall, the processes are demand-driven by NGOs in their role of service provider. Provinces with a strong leading NGO, or with projects that have particularly addressed community delimitation, have made major progress (Nampula and Zambezia provinces). Sensitiveness and the political motivation of local governments and prominent people, including businessmen, play a crucial role. Some provincial governments do not really support community land delimitation and erect administrative hurdles and red tape. Sensitivity and personal interpretations of the land law at provincial cadastre service level is not to be underestimated<sup>9</sup>.

- The community areas that are delimited vary considerably in size (less than 10 hectares, and in excess of 200,000 hectares, on some occasions even 500,000 hectares). Yet again this underlines a number of outstanding challenges on conceptual issues, currently given different interpretations by different actors. A major reason for this is that jurisdictional territories of traditional leadership



are, wrongly, taken as a proxy for ‘community land’, and that these are delimited at different levels of leadership. In Niassa province, for instance, several community land delimitations resulted in areas in excess of 400,000 hectares, including in each some 30 villages with populations totalling 20,000-46,000 residents (Akesson et al, 2008). These territories do not correspond, however, with land management territories, but with the jurisdictions of high level traditional leaders such as “*regulos*” and “*sultans*”.

- There is also an apparent link between the size of community land and the prevailing liveli-

hoods systems of the community members. The larger delimited areas correspond generally with forest-based systems, where communities combine extensive use of forest (charcoal production, hunting) with shifting cultivation. These larger areas occur mainly in the provinces of Sofala, Tete, Niassa and Zambézia. Nampula province is mainly an agricultural province (cotton, cashews) with a relatively high population density, and results in delimited communities of a smaller size.

## 3.2 COSTS

Efforts to calculate the costs of community land delimitations remain few. ORAM, a national NGO, provided a detailed analysis of costs based on some 20 delimitations implemented in the early 2000s, and reported in the CTC (2003) assessment. The costs of community land delimitation and

registration vary considerable according to the different service providers, the approach used, and technical factors.

ORAM calculates delimitations on the basis of variable costs (field work) and fixed costs (including institutional support costs). The variable costs of

TABLE 4. AREAS OF DELIMITED COMMUNITY LANDS

Provinces	Area Community Lands (hectares)					
	<1,000	1,000-10,000ha	10,000-20,000ha	20,000-50,000ha	50,000-100,000ha	>100,000ha
Maputo	1	16	3	2	0	0
Gaza	1	8	4	6	0	1
Inhambane	2	6	1	0	0	2
Sofala	0	1	0	5	5	3
Manica	0	2	0	7	2	3
Tete	0	0	1	3	5	18
Zambézia	0	45	19	12	11	4
Nampula	10	67	6	11	1	0
C. Delgado	0	0	0	0	0	0
Niassa	0	0	2	3	2	1
Total	14	145	36	49	26	32

Source: DNTF and SPGC cadastral data files

USD\$1,596 probably represents an underestimate of the real costs of an average land community delimitation and registration process, mainly because they do not include the salaries of the service providers. On the other hand, the total costs of USD\$8,714 gives a high estimate, and include overheads resulting from general institutional support costs of the service provider. Other estimates can be derived from the 21 pilot cases implemented by the Technical Secretariat of the Land Commission to consolidate the TA in 1999. On average, the costs of these delimitations ranged from USD\$2,200 – USD\$5,500, excluding facilitation salary costs.

Some actors seem to consider this as a high value. When compared to the titling of individual parcels however, community land delimitation seems to be a cost effective way to secure the land of a wide number of rural dwellers<sup>30</sup>. In sum it can be concluded that an average sized community land delimitation process implemented in an isolated fashion incurs a cost of USD\$2,000 – USD\$8,000. This covers an area of 1,000-20,000 hectares, and secures land for several thousands of rural people. There are also several possibilities to

cut down on costs. Considering a cluster approach, delimiting several adjacent communities at the same moment, and promoting as such a more systematic approach to community land delimitation is means to reducing the overall costs. The delimitation of larger sized land areas does not necessarily increase the costs proportionally.

It is highlighted that the community certificate is not a land title document equivalent to the full registration of a land right. This requires a more rigorous survey procedure with higher precision, as well as a physical demarcation with cement markers of a number of border points. This of course implies significant additional costs. Pilots implemented by the NGO Kulima in Nampula province indicate a total cost for community land delimitation and consequently demarcation of approximately USD\$14,000 (total area 2,000ha). The absence of a full title does not erode the rights which communities enjoy over land and natural resources. The community land certificate provides solid evidence of the land right without the need to go through the far more expensive process of land titling.

### 3.3

## FACILITATION, SERVICE PROVISION AND FUNDING

The TA indicates the responsibilities of different service providers in the process. Steps 1 to 5 are implemented by NGOs that have received specific training for this activity, eventually with some involvement from SPGC staff. The Cadastral Processing is the responsibility of the SPGC services. The efficiency and quality of delimitation depends to a large extent on the working relations that can be established between the SPGC and the NGO.

In most cases the NGOs, at the genuine or 'induced' request of the community, initiate the community land delimitation, rather than the government or the cadastral services. There is an increasing frustration among observers that "in all cases what

is most negative is the absence of the State, leaving NGOs to drive the process and establish priorities"<sup>31</sup> (Calengo, 2009). The NGO leading the exercise contacts at a certain stage the SPGC to request their participation. This process underlines the passive character of public land administration, where SPGCs respond to demands of communities and NGOs, rather than this public institution taking initiative and having an own program for delimitation.

The service provision capacity remains weak throughout the country. The CTC report stated in 2003 that "No single state agency is adequately trained or equipped to carry out the procedure on its own. With the exception of the 21 trial cases

implemented by the Land Commission to test and develop the methodology, virtually all delimitations done so far have been carried out with NGO technical and material support. As far as can be determined, there are presently no private sector providers or others operating in this market". This situation has not changed significantly; on the contrary, several SPGC staff that had been trained in community land delimitation have since left the service, and new cadres are not exposed to specific training.

There is also evidence that the quality of NGO service provision needs to be seriously improved; failure to do so may result in badly implemented delimitations, causing dispute rather than bringing benefits. This is clearly demonstrated in a series of recent delimitations in Niassa (Akesson et al, 2008). Another challenge is that established NGO service providers have diversified their activities and remain with a limited capacity to engage in delimitations. Calengo (2009) observes that *"ORAM are in reality the NGO most involved in the delimitation processes. The ORAM agenda in the provinces where the iTC operates is highly overloaded, with many different requests, which makes this NGO an 'intermediary of intermediaries'. When funds from the iTC are targeted to another NGO that has a poor understanding of the delimitation process, this NGO requests a sub-contract to ORAM to help it to do the work. In Cabo Delgado, where ORAM has no representation, the request is through the neighbouring province, to provide help to local organizations that are getting involved in the delimitations process through the iTC."*<sup>12</sup>

As a response to this, both iTC projects, covering six out of ten provinces, include the training of locally based service providers as part of their activities.

#### WHO PAYS DELIMITATION?

Legal provisions for the payment of community land delimitations are not applied in practice. In case of a delimitation related to a conflict, the State should finance the process, whereas in cases where delimitation is done because of new economic activities, the investors should pay. Presently there are four possible funding mechanisms:

- Costing through the iTC initiatives, but only in the six targeted provinces;
- Direct NGO budget allocation, such as ORAM in several provinces;
- Specific project budgets, such as the WB financed support program to the Transfrontier parks, that allocate funds to NGOs for land delimitation;
- Public budget lines, such as the agricultural sector budget support program ProAgri, which can be made available at the central level (over the last years DNTF has never requested a specific budget for community land delimitations), or at the provincial level (SPGC). In principle each SPGC includes in its annual funding a request to ProAgri for a number of community delimitations. This is in direct response to the required 50 delimitations/year target that is included as an indicator for the sector supported program ProAgri.

### 3.4

## CHARACTERIZATION OF DELIMITED AREAS

So far, less than half of the community lands have been digitized and the following assessment can only be used to indicate trends. Figure 5 presents delimitations against a background of poten-

tial land suitability for different land use systems, including agriculture. It is clear that community land is delimited over a wide range of land potentials, ranging from high potential agricultural

FIGURE 5. COMMUNITY LAND DELIMITATIONS

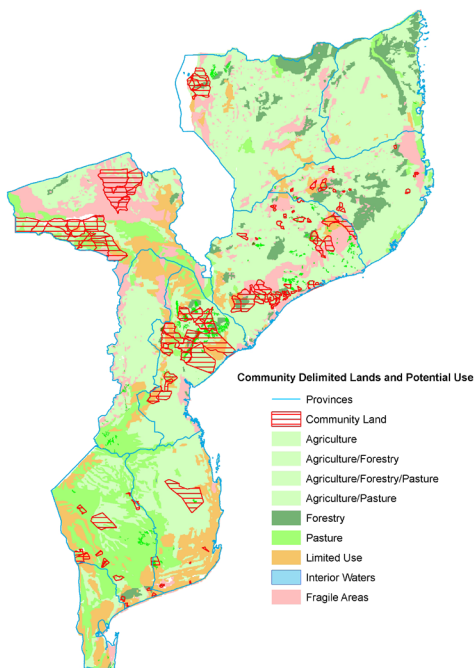
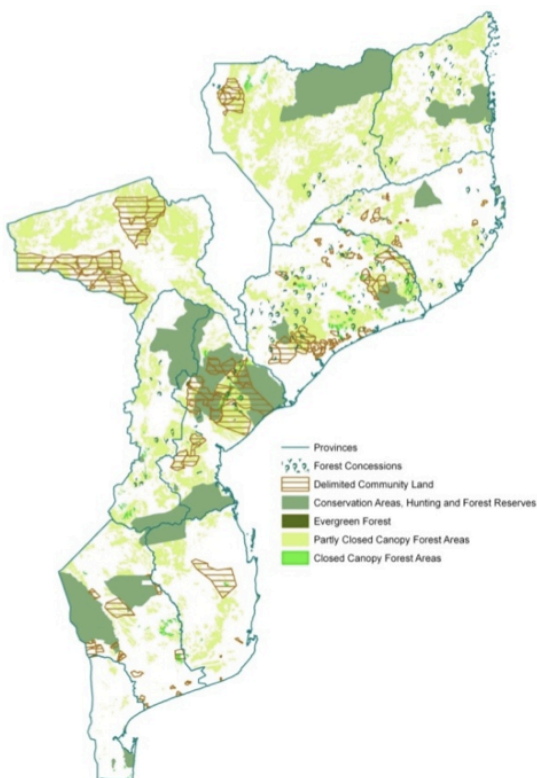


FIGURE 6. COMMUNITY LAND DELIMITATIONS PROJECTED AGAINST FOREST COVER AND RIGHTS OVER FOREST RESOURCES



lands, to lower potential land where only grazing should be practiced.

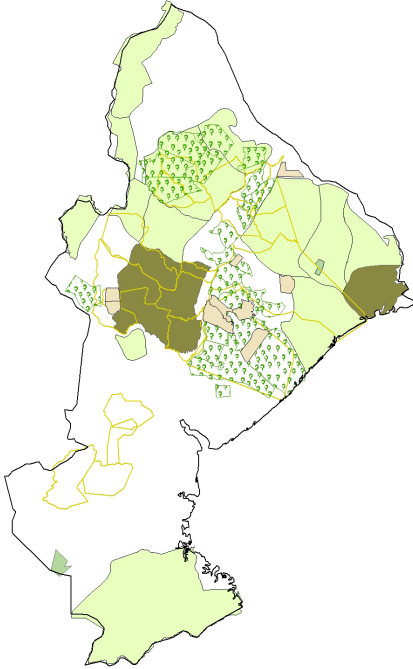
Delimitations also cover areas that show a limited potential use due to major limitations (shallow soils for instance), as well as lands that are being characterized as fragile due to erosion risks or other environmental threats. It is clear that a high agricultural potential is not necessarily a driver for communities or facilitating NGOs to target land delimitations. There are isolated cases where communities have attempted to register rights over irrigated lands (abandoned, not being used or in need of rehabilitation) but these were not successful so far.

Figure 6 illustrates delimitations against the forest resource base, including existing forest and hunting concessions as well as conservation areas. There seems to exist some correlation between the presence of forest resources and the areas that have been delimited, although this is not conclusive at this scale of presentation. The significant number of communities whose lands have been delimited in the vicinity of conservation areas, hunting and forest reserves is interesting. This is particularly striking for the southern Gaza province, neighbouring the Transfrontier Limpopo wildlife conservation area (extended Kruger Park).

Figure 7 illustrates at a more detailed scale the situation in Sofala province, located in the centre of the country and richly endowed with forest resources. Here, there is a significant correlation between the areas that communities have delimited as their land, and the presence of forest resources which have a legal status of forest concession, forest reserve, national park (Gorongosa and Marromeu National Parks) or private game concession.

Community land rights are registered over a significant part of the Gorongosa National Park, as well as in the buffer areas. This scenario is useful for generating some form of local community accountability and eventually active involvement for the conservation of the park’s natural resources asset base. The registration of the different community rights over the park area is a good tool to channel proportional direct benefits

FIGURE 7. RIGHTS OVER FOREST RESOURCES AND DELIMITED COMMUNITY LANDS IN SOFALA PROVINCE



derived from the park management (entry fees) to the respective communities. In a similar fashion, several communities that have a right to the 20% annual royalty benefit from the forest concessions have been delimited, which facilitates to a great extent its disbursement.

It must be observed that the overlap between agricultural concessions in excess of 500 hectares and delimited community land is less evident. This may confirm to some extent the difficulty that communities who have established rights over these lands through historic occupation, face to derive some benefits from the issuance of these longer term private land rights.

## 4

## OUTSTANDING CHALLENGES

## 4.1 THE USE OF THE TA

There remain challenges with the understanding of the objectives for community land delimitations as well as with the benefits that it can bring along. In combination with a continued supply driven approach of NGO service providers, this leads some observers to conclude that “probably, the majority of delimitations have occurred where they should not have done, and have not taken place where they were in fact necessary” (Calengo, 2009<sup>33</sup>). There is no doubt that the sensitisation phase requires much more attention.

The proper application of the PRA by NGOs also remains a major challenge and calls for more training and education among the service providers. Pijnenburg (2004) concludes after his fieldwork that:

*“It appeared that PRA was very much perceived as a necessary bureaucratic step in the process of community land delimitation. The PRA was seen as an extractive data-collection exercise; “in the PRA we only need the community to answer the questions”. The data were needed to accompany the map for the registration of the land as prescribed by the TA of the Land Commission. This made that the methods were used in a*

*rather extractive and mechanistic way. Facilitating staff considered the PRA a necessary evil. Such an attitude towards the method may partly be the cause of the uncritical attitude towards the quality of the data; there was hardly any probing and/or triangulation. Any answer on the questions of the long questionnaire was sufficient. There was no sharing or triangulation of the results. There was no moment of critical reflection and facilitators did often not know why they were doing what they did. In most cases, the work was often poorly introduced and the tendency was to finish as fast as possible. It was also characterised by an absence of dialogue and often without genuine empathy from the side of the NGO staff. The visual techniques, meant to allow full participation, were used in a way that minimised involvement, enthusiasm and ownership.”*

The handling of the cadastral administrative part of the delimitation shows flaws, and is the major source for the delays that occur with the issuance of a certificate once a community is de-

limited. The following outstanding challenges have been identified:

- Transfer of a cartogram onto a topographic map; the quality of cartograms may be poor with remaining doubts on boundaries;
  - Reluctance of surveyors to accept the concept and results of participatory mapping including natural boundaries;
  - Problems with geo-referencing, often excessive and with higher precision than required; problems with transferring surveyed points to map polygons including digitisation; remaining doubts on the use of different map projection systems;
  - Inconsistencies in the completion of the required documentation which may result in additional field work, higher costs and delays; subjectivities in the interpretation of process contents by different services at the national and provincial levels;
  - Lack of clarity, inconsistencies and subjectivity of the clearance process at the different levels.
- There is anecdotal evidence that some provincial governors are not likely to sign off documents even when these are in full compliance with the land

legislation. This situation is now exacerbated by the amendment of Art.35.

There is evidence that the completion of a process takes on average 2-3 years, which is in sharp contrast with the 90-day administrative handling process of private DUATs.<sup>34</sup>

Most of these challenges find their origin in a lack of (i) clear procedural guidelines to be issued by DNTF, (ii) agreed *modus operandi* between the DNTF, the SPGCs and other NGO service providers, (iii) a general lack of professional attention and (iv) resistance from public institutions and local governments to apply the law. Beyond doubt the TA requires additional procedural guidelines to increase the effectiveness of its use. There is also a need for more inter-institutional agreement and understanding, and a better partnership with clearly defined responsibilities between the cadastral services and NGOs.

## 4.2

### CONCEPTUAL ISSUES

Some land law concepts are not so easy to objectively unravel and interpret, let alone translate into simple and practical guidelines and procedures to instruct service providers for doing the job. The following issues require further attention at all levels, must be subject to further research and could result in additional regulatory and procedural consolidation.

#### LOCAL COMMUNITY

The concept of local community was widely discussed during the land law development process, but the only practical outcome was a vague

definition that is included in the Land Law Regulations and which remains open for debate and interpretation. There exist different interpretations on the nature of a local community, ranging from a number of different definitions in law to a possible different interpretation of each of these by various stakeholders. Debates tend to be rather academic, with different interests each defending different positions, and justifying their contributions on different grounds. It is not a surprise that in the absence of any further concrete and simple guidance, the identification of a community by a wide range of service providers results in different realities, as illustrated in Table 3.

## COMMUNITY REPRESENTATION

The key issue of forms of representation has been confused by GoM attempts to introduce different institutional forms at community level and to maintain a level of command and control over the countryside and the rural population. This has led to a situation in which the distinctions between private and public rights and duties have become blurred, often to the detriment of those operating in the private sphere. Community groups, as private entities and as holders of private rights under the Land Law, ought to be able to exercise these rights through some form of representative body, freely appointed by the community members as co-holders of rights. The Land Law goes some way towards providing for this, through the introduction of an elected body to oversee and sign off on the delimitation process (the ‘group of nine’, which has become known as the G9). Unfortunately, the Land Law does not provide for the G9 to have any other powers or duties beyond the act of delimiting the land, and is silent on the institutional arrangements for the continual overseeing of local land administration and management, other than identifying the “customary practices” of the “local community”. Instead, the law leaves the matter for other laws to determine.<sup>15</sup>

The GoM response to this critique has been multiple, as follows, but rather entrenches the confusion than to provide clear guidance:

- Decree 15/2000 creates potential confusion with the Land Law by specifying amongst other things the local community’ as a *public* body, and not as a private, land management entity. This clear distinction is also supported by the Forestry & Wildlife legislation, where the community is equally treated as a private body, capable of holding resource exploitation rights and, for the most part, bound by the same rules and regulations applicable to commercial operators from the private sector.
- The Law on Local Organs of the State (LOLE) introduces other institutional structures which also address the *public face* of the local community and its role in local level discussions about various

development and natural resource management issues. Such entities cannot represent the community as the holder of the private DUAT accorded to them by the Land Law.

Almost a decade ago, the review of the World Summit for Social Development noted that one of the conceptual shifts to be made by governments was that “Government[s] [need to] give the poor real ownership, not just a sense of ownership. People cannot be fooled by efforts to give them a ‘sense of ownership’ if it is not backed up by real ownership” (Singh and Gilman, 2000). Anstey’s characterisation of the Mozambican context as offering the “illusion of inclusion” shows that the lack of this conceptual shift has been a feature of the process of decentralising and devolving resource rights (Anstey, 2000).

The state needs to respond, therefore, by regulating for simple mechanisms of local community representation, as private bodies, with the necessary safeguards to ensure transparency and adherence to constitutional precepts. It is not enough to leave these issues to vague concepts of ‘customary practise’; rules for representation, regularity of elections, the acquisition of rights by incoming members to the group, etc. all need to be discussed and agreed upon by the members of the local community.

At present, there is no regulatory framework which permits local communities to do this, either within the land or the forestry laws. The introduction of a new form of rights-holding entity at local community level could respond to the requirements of both laws and help to concretise the envisaged benefits for the poor, whether these are to come from partnership arrangements based on the negotiation of capital, or from benefit systems based on recognising participation in local NR management systems.<sup>16</sup>

## NATURE OF THE REGISTERED RIGHT

The spirit of the land legislation establishes that community lands correspond with these lands that community members use in all their dimensions for achieving their livelihood goals and these of future generations. A local institution takes cer-



tain land management decisions over these lands and natural resources; for instance, members of this institution are consulted when outsiders seek access to land, or are called to witness internal land transfers. Thus, community land corresponds with land and natural resources management territories, not with territories of land ownership. Under the umbrella of the overall community land management right, different other rights exist, including more individual rights that are equivalent to ownership rights. A next question is whether communities, in their function as local land managers, have the right to exclude people or have a veto to requests for the issuance of new rights within the community lands. Different laws also suggest that a community has several responsibilities for local management, which raises the question whether communities have only rights, or also obligations as a manager. These concepts and their possible implications are not yet well understood and contribute to the creation of an adverse environment for community land delimitation among certain layers of society. Certain circles of the GoM believe that delimiting community land rights has a negative effect on private investment in rural areas.

#### **RIGHTS OVER RIGHTS**

Scenarios of overlapping rights rather than stand-alone community rights bring along direct benefits for communities and its members. These scenarios include combinations of community rights and forest concessions, community rights

and private DUAT rights, community rights and hunting areas, community rights and registered park and conservation areas. These bundles of overlapping rights and their interaction provide a strong tool for generating local benefits derived from land and natural resources use. The principle of overlapping rights is not, however, always clear for decision makers and land administrators. As for the latter, the cadastral services express doubts whether overlapping rights should be part of a cadastre registration, as it poses some technical challenges when compared to a one-parcel-one-right system (a unique parcel based system).

#### **COMMUNITY, FAMILY AND INDIVIDUAL RIGHTS**

In line with the existence of different individual and household rights under the overall community right, there must also exist options to allow individual rights holders to take themselves and their land out of the customary jurisdiction once there is a need to do so<sup>17</sup>. Mechanisms to achieve this are included in the Mozambican land legislation. There is consensus that this form of “de-annexing” can only happen if accompanied by dialogue and consensus between the particular individual and those who manage the customary rights. This part of the law has not yet been explored and requires piloting. The discussion on the transferability of such alienated land to third parties, including community outsiders, also needs further thought.

### **4.3**

#### **UPSCALING AND STRATEGIZING DELIMITATION**

So far, Mozambique stands out regionally and internationally as an example of successfully engaging in a programme of tenure upgrade in rural areas. Major questions remain on how activities can be scaled up to cover more of the national territory,

at least when there is a need and will to do so. Is there a need? Yes, beyond doubt, when considering the increased pressure on rural land over the last few years, not only driven by the bio-fuel projects, but also by the livestock, tourism and forest sector.

There is no clear sense yet as to whether the (political) will to expand the programme exists. On the one hand, the GoM has included, under pressure from the donors, a quantitative indicator on community land delimitation as part of the Poverty Strategy progress matrix. The two ITC funds to finance grassroots land management activities are operational and make available resources and expertise to facilitate delimitation. There are signals that DNTF wants to include a budget line under its overall annual budget for delimitation activities. These are all signals that point in the direction of further engagement, though it is an open secret that other actors consider communities as an “impediment” for development in rural areas, and community land delimitation as a major cause for constraining private sector investment.

There is consensus among some practitioners that future community land delimitation needs to be tackled more strategically along the following lines:

- Delimitation needs to be part of a chain of interventions to create direct benefits for rural people. This can be achieved by establishing partnerships between communities and the private sector, or by CBNRM initiatives, or by direct benefits derived from the use of the forest exploitation royalties, or in the future by benefits derived from carbon certificate trading.

- Community lands are delimited in strategic locations where there is a need (locations with pressure from private sector, new large sized land allocations areas of potential conflict, development corridors), where conditions are favourable to generate direct economic and/or environmental benefits (forest concessions<sup>18</sup>, conservations areas and surrounding buffer zones, lands with dense and valuable forest cover, official hunting areas), or where there is a demand. The last scenario remains doubtful, as genuine demand from communities itself remains weak.

- A cluster approach rather than to continue with isolated delimitations needs to be envisaged. In reality this translates in targeting certain area on the basis of the presence of land and/or natural resources, or an existing potential, or in places where possible investment opportunities have been identified at the central government level (the national zoning exercise)<sup>19</sup>. This approach is more cost effective and does hence not require that communities are “pre-identified” on the basis of doubtful criteria, which constitutes a major weakness now. Strategic delimitation on this basis strikes a good balance between the ad hoc on demand approach which is strongly driven by NGOs, and a full systematic titling which is out of bounds under the present funding and service provision restraints.

# 5

## RISKS ASSOCIATED WITH COMMUNITY LAND DELIMITATION

### 5.1 ROLE OF TRADITIONAL AUTHORITIES

Local institutions that manage communal lands are generally strongly rooted in customary structures, with dominating lineages exercising decision making powers. On a number of occasions, traditional leaders have been successful in influencing the community land delimitation process

to strengthen their political position. In fact the delimitation of local political jurisdictions rather than land management territories is widespread and results in adverse reactions from public land administrators. This is now a priority that requires urgent attention.

### 5.2 RIGHTS OF WOMEN UNDER FORMALIZED COMMUNITY TENURE

The direct rights that women enjoy under common tenure regimes are often weak and are more likely to correspond with a secondary 'land use right' which they gain, not as individuals, but through their relationship with a male rights holder. Formalising community land may weaken these indirect rights that women enjoy. Little progress has yet been made in developing effective and targeted solutions to improve the access rights of women to land and property. The land legislation foresees possibilities for the des-annexation of individual rights from community rights, including for

women, but this tool has not been used to date. The rights of women are strongly tied into over-arching constitutional principles and specific law (family law, civil code) as well as in favourable inheritance and succession regulations. In most cases women can only use these provisions if a) they know about them, and b) they have adequate support to start along what is bound to be a difficult path. The possible risks that formal community rights may bring along for the individual rights of women needs further investigation.

### 5.3 RISKS ASSOCIATED WITH BOUNDARY DELIMITATION

There are situations where boundaries are fuzzy and where a desire exists to keep it that way, such as when neighbouring communities use and manage the same key resource (a lagoon and the surrounding wetlands) that is located in the boundary area of both communities. The Mozambican law allows for the resource to be delimited and registered under a regime of co-titling between the concerned communities. The possible negative consequences of making boundaries visible between different communities have not yet been subject to research in Mozambique. In Burkina Faso, by contrast, this challenge has merited the attention it deserves.<sup>20</sup>

There may also be cases where boundaries are shifting in time and take on a dynamic character. There are reported cases in Mozambique where this happens as a result of changing allegiances between traditional authorities, or simply when rural people are moving to other lands (Tornimbeni, 2007). This raises questions as to whether the com-

munity boundaries “have always been like this”, a statement often made by local land managers during a PRA exercise for the community land delimitation exercise. An informal, non-documented “living cadastre” (i.e. the memory and knowledge of members of the local land management institution on different rights over land and their boundaries) may take better care of this than a formalized land cadastre.

There exist, of course, also risks and challenges when community boundaries are set and fixed in environments where there is an ecologic or other imperative for households and communities to be mobile. This situation is characteristic in pastoral societies of the Sahel region and in Eastern Africa. In most parts of Sudan, including Darfur for instance, the formalizing of community land without also dealing simultaneously with other rights that are inherent to the system (such as rights of way, seasonal access rights to water and grazing for other communities) is highly likely to fuel land conflicts.

### 5.4 RISKS OF EXCLUSION

Tornimbeni (2007) provides evidence that “the prospect of exclusionary strategies against mobile people in the future may be more than just a hypothesis”. There are accounts that immigrants (foreigners in some border areas, but also nationals seeking livelihood opportunities in communities other than their community of origin) and other mobile people are denied access to land and natural resources use in different parts of Mozambique. He argues that community land delimitation, thus the land law, is used by local authorities to control movement, relying on different mechanisms.

On the one hand, local leadership tends to attract “new community members” to boost tax collection and income, and consequently local political power. Another tendency seems to be the movement of economic migrants to communities that receive the 20% royalties from forest exploitation. People, and not least local leadership, seem to be eager to be included in territorial concepts such as community land delimitation, since this offers opportunities for practical advantages. On the other hand, a system of “travel documents”, necessary to settle in new lands (a colonial and post colonial legacy), is used to exclude people from access

to land. There is also evidence that the formalization of community land rights has an exclusionary impact on charcoal producers, another layer of the rural world that relies heavily on mobility. The key question of whether the formalization of com-

munity land rights results in patterns of exclusion, or whether specific measures need to be taken to ensure that this does not happen, needs further discussion and research.

# 6

## IMPACTS

### 6.1 IMPACTS ON COMMUNITIES

The impacts on community groups that have undertaken delimitation processes can be varied; they may consist of tangible benefits accruing to the community, in the form of a partnership agreement or the payment of an agreed rental or dividend by third party users of their land, or less tangible impacts, such as changes in attitude or behaviour. The Chipanje Chetu project (Box 1) in northern Niassa province, for example, illustrates how a delimitation process can both contribute to increasing local awareness of rights, attitudes and citizenship, as well as leading to direct economic benefits for a community. Since, however, there is no systematic monitoring, only anecdotal and partial evidence is available.

Simione & Alberto (2001) identified, from early examples of the delimitation process carried out in Manica province, the following benefits: the community assumes greater control of its area through a clearer definition of the boundaries, it leads to greater participation in the management of local resources, it stimulates more participation in local development activities and minimizes the incidence of local conflicts.

This tends to suggest that the most significant impacts are upon the community as an 'actor' (rather than as a 'recipient' of benefits) or on the resource base itself. Evidence from other cases shows that the benefits may be both direct, in the form of

revenue payments, and indirect, in the sense that the communities are better able to defend their rights and entitlements.

The building of social capital amongst community groups as a result of the implementation of the Land Law has been noted by various commentators. Knight (2002) identifies four significant areas in which the law is having a beneficial impact, all of which relate to an improvement in the internal functioning of groups or the extension of their external links to other actors (see Box 2).

These are undoubtedly positive gains, but they fall short of the widespread establishment of mutually-beneficial partnerships which the policy-makers in the 1990s believed could come about as a result of implementing the community delimitation methodology. There are, in fact, very few examples of successful partnerships, despite considerable donor and high-level TA support over several years. Those that do exist are encouraging, but they remain few in number.

Success with Community Based Natural Resource Management (CBNRM) models has also been thin on the ground and there is a growing consensus that this has largely been due to the government's reluctance to devolve power and authority down to community level, notwithstanding the rhetoric contained within high-level policy instruments.

## BOX 1. CHIPANJU CHETU, NIASA

The Chipanju Chetu project began in 1999 in an area rich in natural forest areas and wildlife but with an almost complete lack of control over timber exploitation and hunting. The Provincial Wildlife Services (SPFFB) began to coordinate with several NGOs that were trying to control the exploitation of wildlife and forest resources and subsequent activities (to make the local population aware of its new rights under the Land Law and forestry legislation) led to the formal delimitation of the area in March 2003 and the issuing of a certificate to the community. The delimited area covered 6,000 km<sup>2</sup> with an estimated population of 2,570 people (or approximately 650 families), spread fairly evenly amongst the five villages of Nova Madeira, Matchedje, Lilumba, Il Congresso and Maumbica.

The delimitation then evolved into a new project; the most significant element of this was a formal agreement between the project implementers, a professional hunting operation and the provincial government according to which a portion of hunting and trophy fees would be shared with the community, the local government and the project itself. Significantly, the lion's share went to the community. The scheme began in 2001 and revenues accruing to the community groups and the project increased steadily until 2004 (see table below).

Allocation of hunting fee revenues					
Beneficiary	% allocation	2001	2002	2003	2004
Local communities	57%	3,000	3,956	6,230	14,800
Sanga District Administration	20%	1,050	1,390	2,185	5,190
Chipanje Chetu Project	23%	1,210	1,600	2,512	5,970
Total	100%	5,260	6,946	10,927	25,960

Then in 2005, the provincial government decided to cancel the experimental licence for the hunting firm, effectively paralysing the project. It appears that this was part of a campaign led by local political and elite interests, which wanted to replace the private operator. But, because the community had already registered their rights, important conditions were imposed on the new tender process. The community also had a greater awareness of what they could legitimately expect from the hunting of game in their area. Stronger organization and increased awareness of rights has been a feature of the Chipanju Chetu project from the beginning: the community guards who were employed to protect the game from poaching activities soon became confident enough to stand up to local administration officials and provincial government personnel who were apprehended while hunting illegally.

Source: Norfolk & Tanner (2006)

## BOX 2. SOCIAL CAPITAL

- Through their use of the law, communities are being drawn more deeply into Mozambique's national (legal) framework, which is decreasing rural communities' isolation and helping to build a more inclusive nation-state;
- Increased feelings of personal and community power as a result of the delimitation possibilities under the law are leading to increased feelings of tenure security, which in turn are helping to foster personal and community development;
- Communities feel protected by the land law and believe that it is a validation of their own traditions and customary laws. This is helping to promote the implementation of resource management strategies;
- Communities are becoming more organized and united as they realize that cooperation and dialogue are necessary to be able to negotiate with investors for benefits and manage local resources.

Source: Knight (2002)

## BOX 3. CANHANE COMMUNITY

The Canhane Community is an example of the successful formalisation of land rights and the subsequent development of a community eco-tourism lodge venture. The community land delimitation was completed in late 2002; the delimitation process also served as the basis for a land use plan (conducted by Helvetas), which identified the area for the lodge. Over the next two years the lodge was constructed with full community involvement, and it opened formally for business in May 2004. An FAO report to assess the food security impact of the project stated that:

“the community is gaining a greater capacity to get involved with local institutions, and with the outside world, and to participate in the process of development now underway in the Massingir region” (Calane, 2006, p12).

After opening in mid-2004, the turnover and gross profits rose from US\$4,250 in the first six months of that year to US\$14,900 in the second semester of 2005 (Calane 2006:30). The positive impacts included:

- creation of new employment opportunities
- diversification of activities in a region very prone to drought and crop failure
- income from the lodge invested by the community in social infrastructure selected by the community itself
- community ‘ownership’ of the lodge programme, with a community elected committee running the lodge association
- growing local capacity to assess needs and take planning decisions
- better market links through community-implemented road improvements
- a renewed local commitment to education as the key to future access to the new job opportunities opening up locally and in the new National Park-driven economy

The Canhane community ran the lodge for a period of time as a community venture, and then embarked upon a search for a private sector partner to operate the lodge. Norfolk & Tanner (2006) noted that “the way in which the Committee [has] participated in the tender selection process is ample testament to the positive comments made by Calane regarding local capacity and a change in attitude and awareness of new opportunities”.

Sources: Calane (2006) and Norfolk & Tanner (2006)

Up until 2001, the only CBNRM project in Mozambique where the community managed to obtain full *de jure* powers and authority over resource use was that of Goba, a flagship project of the technical support unit for CBNRM established within the National Directorate of Forestry and Wildlife (DNFFB) and funded and supported under an FAO forestry project. The more general experience was that CBNRM operated for years in a legal vacuum, as local communities were given various responsibilities, and even *de facto* powers, without corresponding *de jure* authority.

#### **PAYMENT OF BENEFITS UNDER THE FORESTRY & WILDLIFE LEGISLATION**

In the last three years, the rollout of the 20% payment system to local communities under the

Forestry and Wildlife legislation, has picked up (after a slow start) and now covers 436 communities across all 10 provinces of the country (see Table 5)<sup>21</sup>.

Although progress has been made, large amounts still appear to be outstanding. Figures in Table 5 representing the amounts still owed were derived by calculating 20% of the total revenue received by the DNTF and subtracting the amounts already paid. These show that, at a national level, the state has not yet managed to pay half of the community benefit amount. There are wide variations amongst the provinces, with Zambézia having completed all payments, but Sofala having managed less than a quarter. Note that these figures ignore the amounts received at central level under the CITES (an additional \$714,184).



TABLE 5. PAYMENT OF 20% COMMUNITY SHARE FROM FOREST &amp; WILDLIFE REVENUES, 2006 - 2008

Province	No. of Community Groups registered	Amounts paid 2006 – 2008 (\$)	Amounts still owed 2006 – 2008 (\$)	% payment rate
C. Delgado	79	230,015	386,167	37.33%
Gaza	35	53,175	90,501	37.01%
Inhambane	30	113,816	188,539	37.64%
Manica	32	168,845	144,023	53.97%
Maputo	25	19,934	29,343	40.45%
Nampula	63	216,069	44,424	82.95%
Niassa	10	22,345	46,862	32.29%
Sofala	18	233,207	759,619	23.49%
Tete	35	162,475	141,966	53.37%
Zambezia	109	597,006	-25,504	104.46%
Grand Total	436	1,816,888	1,832,391	49.79%

Source: DNTF Annual reports 2007 – 2009 & authors' calculations

FIGURE 8. DELIMITED COMMUNITIES, FOREST CONCESSIONS &amp; CONSERVATION AREAS

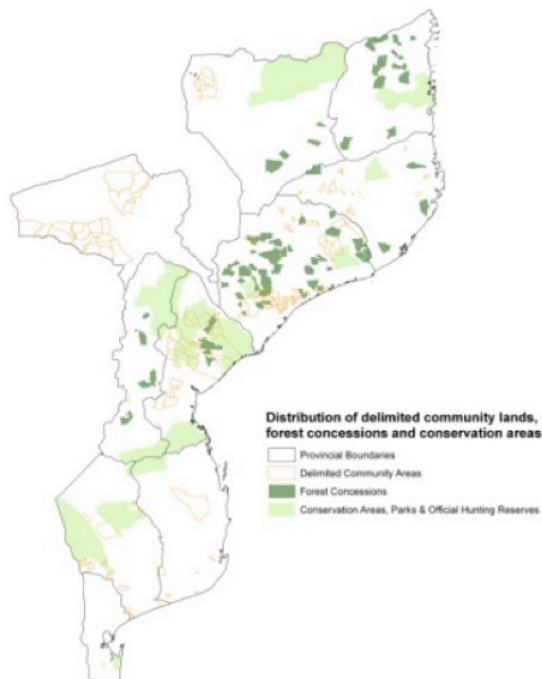
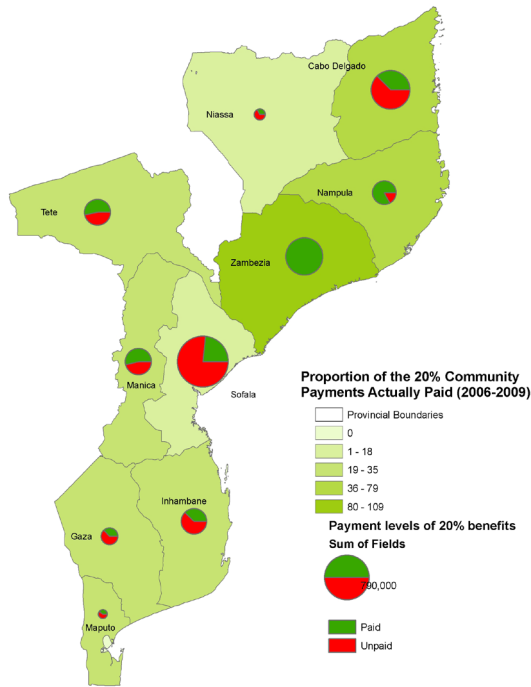


Figure 8 and Figure 9 show the geographical distribution of delimited community areas, forest concessions and conservation areas, as well as the proportion of the 20% benefits paid out to community groups between 2006 and 2008. The following trends/issues are notable:

- Zambezia province has more extensive areas under forest concession management than any other province, but apparently generates less revenue than both Cabo Delgado and Sofala provinces.
- Although the overall revenue generated is less in Zambezia, the proportion actually paid to community groups is higher here than in either Cabo Delgado or Sofala.
- The number of community groups registered and benefitting from the 20% payments is highest in Zambezia. This variation, along with the variation in the proportion of benefits paid over, is likely to reflect differences between the provinces that include capacity and political will, but most especially the presence of strong NGOs.<sup>22</sup>
- Benefits flowing to community groups in Niassa province are minimal. The irony here is that the provincial forest sector is dominated by

FIGURE 9 - NUMBER OF COMMUNITIES RECEIVING BENEFITS AND PROPORTION OF 20% PAYMENTS MADE, 2006-8



plantation forestry regimes, which are not liable for the 20% royalty payments, but which have a greater impact on local land rights and resource access.

■ Elements hidden by the figures available from the DNTF are (i) the proportion of the benefits that are flowing from wildlife, as opposed to timber, exploitation and (ii) the level of benefits flowing from tourism receipts in the conservation areas.

One of the peculiarities of protected areas in Mozambique is the widespread presence of human settlements.<sup>23</sup> Although the Forestry and Wildlife legislation defines protected areas, it does not specify whether or not human settlements can exist within their limits; it is usually interpreted as allowing people to live in protected areas and use their natural resources for subsistence. In national parks and hunting areas, which are better placed to attract private investment because of their animal components, many communities have been participating in co-management schemes with protected

area managers, and deriving direct benefits from employment opportunities and cultural tourism activities.

### DIFFERENCES & SYNERGIES

One of the key differences which may account for the relative progress made with the 20% payment system, in comparison to the lack of partnership arrangements based on the land law, is the fact that the 20% payment system is both a legal imperative and has been (finally) underpinned by practical and legal instruments in order to make it function.<sup>24</sup> This is not the case with partnership arrangements, community land delimitations or local consultations under the land law, which are neither compulsory<sup>25</sup> nor backed up by the necessary tools, methodologies or guidelines to make them effective.

That said, there are some strong synergies between the different legislative frameworks:

- The payment to communities of a proportion of the government revenue raised in a particular geographical area (as a result of the taxation of resource exploitation) depends upon also having a clear spatial definition of the area over which a community can legitimately claim underlying resource rights;
- Strong and legitimate community-level institutions are a pre-requisite for both the sustainable management of land and related resources, and the equitable allocation of benefits derived from the commercial exploitation of these resources – i.e. the land and forest laws both need strong institutions at community level;
- The delimitation process in the land law is designed to establish locally-legitimate representative institutions, but also attributes legal recognition to these bodies, a feature required by the payment system under the forestry and wildlife laws (to open a bank account in the name of the community, for example).

Given these synergies, a combination of the two approaches would seem to offer many advantages. Such integration could meld together the establishment of legitimate private bodies,

recognised in formal law and representing the co-holders of registered land rights in a defined, delimited area, with the channelling of payments from the state in recognition of the local rights to benefit from the commercial exploitation of resources in that area. A current example of where this approach could be beneficially adopted is the Gorongosa National Park and buffer zone area, where delimiting community land areas would assist in the formalization of the representative bodies of various community groups and in defining the 'shares' that each of these groups should legitimately receive from the park entrance fees.

This approach, if adopted consciously, has the potential to match the kind of successes witnessed in Tanzania, where land laws and policies from the 1980s and 1990s have evolved to recognize village land as one among the country's *de jure* land management categories. On this basis, a number of communities have successfully resisted the official

annexation of local woodlands into state forest reserves (the much renowned Duru Haitemba woodland is one example) and have moved on to craft and implement more intensive and effective management regimes. The conservation impact of such moves on the hitherto degraded woodlands was reported as "immediate and obvious" (Wily and Dewees, 2001: 10).<sup>26</sup>

The main element underlying the Tanzanian story is the good 'fit' between the policies and laws defining villages as legal units vested with local government, land management and natural resource management authority, and that these units are located as close to the ordinary people as possible. Mozambique has an opportunity to replicate this through harnessing the opportunities offered by the land law and the forestry and wildlife legislation. It does, however, require the state to take a more progressive and radical approach than it has to date.

## 6.2 IMPACTS ON THE GOVERNMENT

The government response to CBNRM concepts, and the devolving of management powers over land and natural resources, has been described in the past as "schizophrenic" (Virtanen, 2005, pp. 10), and of having led to an "embittered stalemate between state authorities, who are unable to fully enforce the new environmental policies, and rural populations unable to fully escape central demands and controls" (Walker, 1999, pp. 260–265). Reluctance towards devolution on the part of the government is evidenced in the long delays in establishing the framework for the 20% benefit payment system, as well as the continuing absence of any forestry co-management bodies at district level with delegated powers to manage resources.

This reluctance is most clearly seen, however, in the approach to the principles and concepts contained in the land policy and law, where the

government has gradually eroded the progressive elements of delimitation and mandatory local consultation. The amendment to article 35 introduced by the Council of Ministers in 2007, subjecting the registration of community land rights to administrative/political discretion, has been followed by a departmental dictate that seeks to introduce further conditions on the registration of land rights.

These are merely the latest obstacles placed in the way of community groups, NGOs (and even donor partners), as they have sought to put into practise the policies and tools of the land policy and law. Initially, the lack of will in the government for implementing this element of the land law was manifested by the complete absence of any allocated budget or state resources<sup>27</sup>. Latterly, it appears, the government is not averse to amending the law, and is even happy to contemplate retroac-

tive application in order to deprive local communities of their rights.

There are probably a number of reasons for this state reluctance to devolve control over land, including:

- the economic interests of state agents in valuable natural resources;
- the unwillingness of politicians to allow local control in areas sympathetic to the opposition;

- a fear that securing local land rights in the name of community groups may block private investment in the same areas;

Whatever the reasons, it is largely the state's reluctance to devolve power which leads to a situation in which successful examples of sustained and positive impacts from the land and forestry legislation are few and far between, despite the generally sound and clear policy principles.

### 6.3 IMPACTS ON THE RESOURCE BASE

The impacts on the resource base within delimited areas arise almost entirely as a result of changed behaviour. Again, the evidence tends to be anecdotal in nature, but is widespread. The Chipanju Chetu case provides an illustration of how the delimitation process has led, amongst other things, to an increase in local confidence amongst the community members responsible for monitoring and enforcement, which undoubtedly serves to reduce the incidences of poaching<sup>28</sup>.

A more direct example comes from the Community Association of Mareja in Cabo Delgado

where, in the face of continuing official inaction and evidence of collusion, the local community have begun to apprehend illegal loggers operating within their delimited area and to impound the unlicensed logs. They also benefit from an innovative benefit scheme (see Box 4).

Various projects in Mozambique have proved that while local inhabitants seldom consider nature conservation a priority issue, they do value various environmental services, and are often willing to give up or restrict the use of some resources to maintain these. An example is the case of Goba,

#### BOX 4. MAREJA RESERVE

The Mareja Reserve covers an area of 36,000ha of land delimited in the name of the Community Association of Mareja. It contains a variety of forest types, including miombo woodland, acacia savannah, tropical dry forest and contains many rare and endemic plant species as well as a variety of fauna, including elephants.

The reserve was established from the beginning as a partnership between two main stakeholders: the community of Mareja and a private investor, Mareja Management Limitada, which provides financial and technical support, with the objective of establishing a sustainable eco-tourism venture in the area. The community benefits are ensured via a contractual share in the tourism operation lease/concession fees and from equity sharing in the various tourism ventures.

The Community Forest Ranger initiative has been particularly successful and these rangers have been very effective in controlling illegal logging and poaching. Initially trained in the Gorongosa National Park, the rangers also receive a fixed contribution for conducting guided walks and an additional incentive fee for each animal species they sight; this incentive has attributed a value to wildlife which had been earlier looked upon only as a source of meat.

where the majority of the population were willing to impose strict rules on the use of key natural resources in order to secure the sustainability of the tree resources needed to continue the lucrative charcoal business.

Illustrative is also the use by local communities of the 20% cash benefits from the forest royalties. The DNTF statistics report that this cash is mainly invested in activities that do not envisage the conservation of the resources base, but rather may have the contrary effect. Such cash is used to horizontally expand crop production with a direct negative impact on the forest resources base: purchase of ploughs, animal traction, tractors, grain mills, opening of new agricultural fields, destumping. Only on a limited number of occasions, communities invest in measures that envisage sustainable forest management, such as the purchase of transport (bikes) for community forest guards.

A further important example is that of a small-scale agro-forestry based carbon sequestration project, which could be categorized as a 'Payments for Environmental Services' (PES) project, under implementation in Nhambita community in Sofala province. In this community, farmers have signed voluntary contracts with the implementing agency (EnviroTrade, a UK based company) to plant indigenous and fruit tree plants on their farm (either on the farm boundaries or in rows along with the crops) and manage them for 25 years, in return for annual cash payments.

The objective of the Nhambita project is to sequester carbon through the planting and then

sell carbon credits on the international carbon market. The project also has a range of other activities (carpentry, bee-keeping, nursery development), provides full time employment for about 100 people and also provides limited seasonal employment in forest fire prevention and patrol activities.

What makes Nhambita of particular relevance is the fact that the community undertook the delimitation of its land in terms of the Land Law in 2003. The community is located on the border of the Gorongosa National Park;<sup>29</sup> to minimize the poaching pressures inside the Park during its rehabilitation, a buffer zone strategy was used that envisaged involvement of the local community in the management of the Park and the delimitation of all the bordering community lands (Zolho, 2005).

Land in the area therefore consists of a mix of protected area; buffer zone and community land. The protected area is under state administration and presently managed under contract by a private non-profit foundation. The buffer zone, land immediately adjacent to the Park boundary, is jointly managed by the government, communities and other stakeholders. While subsistence farming is allowed in the buffer zone, no other commercial activity, including hunting or extraction of forest products for commercial production, is allowed. Within the delimited areas, the communities are responsible for land and resource management. Table 6 shows the evolution of the Nhambita project from 2005 – 2007, both in terms of the number of contracts and the level of income, to families and to the community fund.

TABLE 6. COMMUNITY BENEFITS GENERATED FROM THE NHAMBITA PROJECT FOR THE PERIOD 2004 - 2007

Year	No. Farmers	Contracts		Income (US\$)	
		Area planted	Trees planted	Farmers	Community fund
04/05	62	58	4,000	ND	ND
05/06	307	356	26,000	3,787.62	2,456.78
06/07	120	135	90,000	26,820.84	11,241.68
Total	485	549	120,000	30,608.45	13,698.46

Source: Serra, 2008

Project benefits are shared amongst the entire community partly as a result of Nhambita having secured co-title to the communally-occupied areas of their land (the forest and bush areas, for example). Deposits of USD \$40.50 per hectare are

made into the community fund as per the number of hectares that are brought under carbon sequestration. Since all land is registered in the name of the community, the entire community can gain from these group payments (Jindal, 2004).

## 6.4 IMPACTS ON THE DONOR PARTNERS

With one or two notable exceptions, many of Mozambique's donor partners have tended in the past to shy away from the debates around land policy and from directly supporting implementation of the law. Most believed it to be a highly sensitive and complex issue, tightly controlled by the national political elite, which did not warrant the expenditure of large amounts of political capital. Exceptions include DFID and the Netherlands, both of which provided early funds and support for pioneering work by NGOs. In more recent times, donor partners have become more forthright in their statements about land issues and have begun to both exert more systematic pressure on the GoM and to look for independent means to support the

implementation of the pro-poor tenure security elements of the legislation. This has led to the adoption of a formal indicator within the *Quadro de Avaliação do Desempenho* (QAD-PAF), the matrix used to measure progress on the Action Plan for the Reduction of Absolute Poverty (PARPA), as well as the establishment of an independent fund (the iTC) to assist community groups in the registration of their land rights and the completion of other related activities. Funding levels remain, however, relatively low and the focus of the iTC appears to be shifting towards public interest activities (the funding of district land use plans, for example) and away from the 'challenge' elements which were its *raison d'être*.

## 7

## LESSONS FOR OTHER COUNTRIES

There are a number of lessons from the Mozambican experience which may apply to other countries and contexts:

- The formalisation of community rights to land, and the acceptance of local communities as active land and natural resource managers with formal powers, remains, in many contexts, a politically courageous approach. The process must balance the introduction of progressive and radical approaches with the likelihood of long-term political acceptance, and requires continuous interaction between different interests within government and civil society, based on the principles of compromise and consensus. Significant and sustained stakeholder involvement is needed to provide a high level of social legitimacy to these approaches; this can then establish further political space for acknowledging and pursuing claims and rights. It is important to consider formal and institutionalized forms of stakeholder consultation, such as land commissions or other consultative fora.
- Community land delimitation, as a tool to formalise rights to land, needs to be underpinned by a legal framework that is comprehensive, clear and responsive to the diverse range of situations on the ground. The framework must be innovative and flexible enough to be applied across a wide range of tenure situations that will invariably exist within a territory. The legislation needs to provide clear answers to a wide range of questions, relating to the nature of the rights, the identity of the rights holders, the powers and duties of the representatives of those rights holders, etc. Concepts such as

‘community’, or even ‘village’, can be problematic when they are used in policies without a common understanding of what they mean amongst those responsible for implementation. In some countries, the common law, or, as in Mozambique, the Civil Code may provide some of these answers. A range of related legal problems may arise, involving issues to do with proof of identity, citizenship and the membership of groups, and these need to be addressed as part of the ‘complete legal package’.

- Community land delimitation needs to be considered as part of a wider process of formalising rights and increasing local participation in development processes and consequently achieving better levels of local land and natural resource governance. Policy makers need to consider the linking up of processes and the creating of synergies between rights registration and increased participation in other development processes, such as decentralised planning, local rural development and land use planning. The central objective should always remain the derivation of direct benefits by local communities from the use and management of their land and natural resources.

- Issues of group representation must be seriously considered and provided for in the legislative framework. The guiding principle in this regard must be to ‘build on what exists’; that is, as far as possible, to provide formal recognition to existing groups and their decision-making processes, without introducing unnecessary changes. That said, policy-makers must also be aware of and guard against any tendency to treat communities

as if they are homogenous, with common interests identified through consensual processes. In reality, social stratification within any community is a fact and it is possible that only the most visible and powerful will participate in delimitation processes and steer the processes towards the obtaining of personal benefits. Projects must be aware of the possible emergence also of new local elites.

- All stakeholders, including public officers, NGO staff and community members themselves need to be well informed and trained in the use of the legal framework, including the use of the methodology. There will invariably be a need for careful and comprehensive civic education and community capacity building. NGO staff, often from urban backgrounds, may lack the skills needed to work with rural communities. State actors will also need to be continually supported and trained in new approaches and inculcated with new thinking; the 'old ways' of doing things are enduring and maintain a strong hold over bureaucratic actors. Significant training and support in participatory methods and planning will almost always be needed for management and other entities involved in carrying out programmes and administering resources; training of this kind should be considered as an integral part of the formal curricula of land administration training institutions.

- Where new policy approaches involve the recognition of the hitherto informal land rights of community groups, it is inevitable (and desirable) that both state and non-state actors will need to be involved in facilitating and implementing the process. The law in Mozambique strongly suggests the implementation of delimitation processes through a partnership between the state services and local NGO and efforts should be made to create a conducive atmosphere at all levels such that this approach is supported and encouraged.

- Facilitators of delimitation processes must be sensitive to the contexts in which they work. Formal, legal, delimitation processes in some 'traditional' contexts may pose particular challenges in terms of civic education, depending on the prevailing history and culture of the communities; in many

contexts there are enduring beliefs that personalized relationships and informal rules still matter far more than institutions which are codified in law. In these contexts, legislation may not be seen by the local population as setting out the 'rules of the game' but only as providing a part of the game. In other contexts, deep-seated distrust or fear of authorities amongst rural communities may in fact dictate that the formal, legal delimitation of land is perceived as a threat.

- Evidence to date from Mozambique points to greater direct benefits accruing to community groups from implementation of the payment system from state revenues under the Forestry and Wildlife legislation, in comparison to the relatively limited benefits which communities have so far been able to negotiate as a result of securing their land capital under the Land legislation and negotiating with this in the market place. That said, it appears that the two laws can provide mutually reinforcing mechanisms; the forestry related payments provide immediate benefits, whilst the land delimitation process helps to underpin this and ensure fair allocations based on natural resource use, stewardship and management. In the growing context of payments for ecosystem services, actions to avoid further climate change and the introduction of REDD mechanisms, it is possible that this combination of the laws will prove to be a powerful tool.

- Implementing a limited number of pilots is easy in comparison to rolling out a comprehensive formalisation programme at scale throughout a national territory. Sound strategies for scaling up implementation need to be devised from the start; these need to include strategic approaches towards prioritisation, the identification of clusters, hot-spot areas and opportunities for synergies at local levels, the availability of comprehensive support for service provision, the establishment of partnerships and outsourcing of services. Strategic approaches are required that maximise real practical results and benefits accruing to local people.

- The mechanisms for financially supporting delimitation processes will inevitably have an



impact on the nature and the impact of the process. Both supply-driven (through funding to particular NGOs) and demand-led processes (through the establishment of the iTC) have been implemented in Mozambique and they each have their pros and cons. Whilst supply-driven funds have allowed for strategic interventions in certain key areas, they have also produced some delimitations which have had little positive impact. Similarly, the demand-led iTC has been able to respond to particular needs, but has also required a lot of effort and considerable transaction costs in order to establish disbursement mechanisms. The conclusion is probably that a mixture of funding mechanisms is required, with the state providing support in some areas, but with community groups having independent access to support in other situations.

- Continuous and rigorous monitoring and evaluation are required in order to assess impact, but also to track trends in the implementation of the process. These trends may, in some cases, be negative, such as the delimitation of traditional leadership jurisdictions rather than local land and resource management units, or the exclusion or marginalisation of certain groups from within communities in respect to land and resource access. Identifying such trends will require sensitive and well-designed research interventions, as well as monitoring systems. These will need to have strong feedback loops to the further development of policy and implementation approaches, leading to the appropriate and responsive consolidation of the framework.

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## ENDNOTES

1. Article 48 of the 1990 Constitution obliged the State, for the first time, to recognise rights acquired through inheritance or occupation. It was this amendment that heralded the subsequent revision of the land law and led to the legal recognition of customary and other rights to land.
2. These include the Legislation on the Local Government Institutions (LOLE), the Territorial Planning legislation, Decree 15/2000 and the package of legislation on municipalities.
3. A UNDP funded and FAO implemented support program to the Agricultural Sector in Mozambique researched from 1993 onwards local level land management systems and highlighted the need to recognize and use these to protect land and natural resources of community experiences (De Wit et al 1995 and 1996). This work later resulted in an initial field methodology to delimit community lands, which was tested and refined in other countries (initially in Guinea Bissau in 1996 and later in Angola). The resulting consolidated methodology corresponds in fact with the Technical Annex, and is thus to some extent a Lusophone African methodology.
4. Comissão de Terras, 2001; “Manuais do Curso e de Delimitação de Terras das Comunidades”; Maputo, Comissão Inter-ministerial para a Revisão da Legislação de Terras, Technical Secretariat. Two manuals were produced by the Technical Secretariat of the Interministerial Land Commission with support from FAO. One describes in detail the procedures for community land delimitation; the other is a manual to organize and hold training courses for service providers involved in community land delimitation.
5. Government of Mozambique, 2000; “Diploma Ministerial 29-A/2000. Anexo Técnico ao Regulamento da Lei de Terras”; Maputo, Ministry of Agriculture and Fisheries.
6. It is not known how many rural communities do exist in Mozambique. Proxies that can be used include the number of rural villages, the number of voting tables in rural areas, or estimates based on the administrative division ( a guesstimate of a number of communities for each of the localidades); all this points in the direction of some 8,000-12,000 rural communities
7. The CTC report provides information that for the period 2001-2003, the state made available funds for only 4 delimitations a year through the ProAgri budget.
8. It must be noted that senior DNTF staff is fielded on a regular basis to « resolve » administrative and technical challenges in situ for larger sized private DUAT applications. The same efforts for community land have never been considered so far.
9. At least one provincial service chief interprets the implementation of the amended art 35 as being retro-active to all delimitations processed since the adoption of the TA.
10. The cost of an individual plot demarcation and registration of 10 hectares is calculated at USD\$400 - see CTC report
11. “Em todo o caso o que é mais gritante no processo é a não presença do Estado passando por isso o processo a ser dirigido pelas ONGs, que ditam prioridades”
12. “A ORAM é na realidade a ONG que mais se destacou no processo das delimitações. A agenda da ORAM hoje nas províncias em que opera o iTC é muito sobre-carregada com solicitações de vária ordem, surgindo ela como ‘intermediário de intermediários’, quando é uma outra ONG que em nome da comunidade a delimitar consegue os fundos do iTC mas que esta não entende muito de delimitação sub-contrata a ORAM para fazer o trabalho. Em Cabo Delgado, onde a ORAM não tem representação já é solicitada a partir das províncias vizinhas para ajudar as organizações locais que começam a entrar no processo de delimitação via iTC”
13. “...provavelmente as delimitações na sua maioria ocorreram onde não deveriam ter acontecido e onde seriam necessárias não tiveram lugar”
14. In 2002 the GoM instructed the National Directorate of Geography and Cadastre to accelerate the administrative handling of private land use requests to a maximum of 90 days. Provincial services were put under severe pressure to respect this new timeframe.
15. 1997 Land Law, Article 30.
16. There is precedence for these kinds of institutional entities and legislation that allows for partnerships and trusts in many

countries within the southern African region. There is also evidence that they have improved land management practices and increased the participation of, and reduced discriminatory practices, against women at a local level. This would be appropriate, given that the state is not the sole regulator of women's access to land.

17. The need to do so often occurs when some community members are successful in business and want to use their land as a business asset.
18. The distribution of the 20% benefits for communities does seem problematic in the absence of community boundaries that are known and made visible. Statistics on 20% payments clearly indicate that on a significant number of occasions these payments are made as a lump sum to several communities who have been identified as having an established right over the forest without however specifying the share of this right. Authorities leave the internal distribution of the benefits to the communities itself. There is no first hand information whether this works well, or whether it is creating dispute.
19. Examples of a cluster approach exist in Mozambique. As part of the establishment of the TransFrontier Conservation Area of Chimanimani, five communities were delimited. Existing community land rights have been formalized over significant parts of the Gorongosa Park and its buffer zones. The 1:1million zoning exercise requested by the GoM has resulted in the identification of land parcels in excess of 100hectares that are potentially available for being allocated to investors to engage in mainly crop production. Delimiting community lands over these areas and in their vicinity is beyond doubt a good strategic approach to ensure that the rights of local populations are not overlooked, and that conditions are created to derive some direct benefits from the investment. This is another opportunity, if not necessity to adopt a cluster approach.
20. In Burkina Faso there is a real fear that commune boundaries can be interpreted by rural populations as "frontiers", eventually cutting through their land rights, undermining their established access to natural resources, splitting up social groups and their territory. Customary leaders seem also to be suspicious when "some kind of boundary" crosscuts their territory of jurisdiction.
21. Article 102 of the Forest and Wildlife Regulation establishes that 20 percent of the revenue from forest and wildlife exploitation is returned to the local communities living in the area where the resources were extracted.
22. ORAM, the national NGO that specialises in land and forest issues, has a particularly strong presence in Zambézia, for example.
23. This applies to all protected areas, including the national parks of the Bazaruto Archipelago, the Quirimbas and the Limpopo, as well as the forest reserves - the Ribaue-M'palue Forest Reserve, for instance, contains 1 300 households and Derre Forest Reserve has 15 000 inhabitants.
24. It is interesting to note that there exist a 36 page Manual that provides practical guidance on the application of the 20% forest royalty payment.
25. Except in the case of the consultations, which are a mandatory feature of the process by which investors can be allocated land leaseholds by the state. For problems with the consultation processes, see Tanner & Baleira (2006), CTC (2003), Norfolk & Cau (2001), Chidiamassamba (2004).
26. It is reported that more than 500 Tanzanian villages now directly own and manage 'forest reserves' in five of the country's twenty regions.
27. For details on the lack of allocated funds in PROAGRI for community delimitations, see Norfolk & Liversage (2001). For further details on the general availability of funds see CTC (2003).
28. As Anstey (2001) notes, the collection by this community of data on the illegal use of resources was particularly useful when it illustrated that over 85% of all such activities involved state officials, since it served to deflect the criticisms of the rent-seeking elite in local government positions who were no longer able to hunt at will.
29. Part of the community land was taken over by the National Park Authority when the then Hunting Reserve was upgraded to the National Park in 1965.



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