

LAW-MAKING IN AN AFRICAN CONTEXT:

THE 1997 MOZAMBICAN LAND LAW

by

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Acronyms

DINEGECA	National Institute for Geography and Cadastre
DNFFB	National Directorate for Forests and Wildlife
FAO	Food and Agriculture Organization of the United Nations
FRELIMO	<i>Frente de Liberta Vão de Mozambique</i> (Front for Liberation of Mozambique)
IDP	Internally displaced person
INIA	National Institute for Agronomic Research
LTC	Land Tenure Center of the University of Wisconsin-Madison
NET	<i>Nucleo de Estudos de Terra</i> of Eduardo Mondlane University
ORAM	Associação Rural de Ajuda Mutua (Mutual Association for Rural Support)
PROAGRI	National Agricultural Development Programme
RENAMO	<i>Resistencia Nacional Mocambicana</i> (Mozambican National Resistance)
TCP	FAO Technical Cooperation Programme
TS	Technical Secretariat of the Inter-Ministerial Commission for the Revision of Land Legislation (the Land Commission)
TSS-1	Technical Service Support programme of UNDP
UGC	General Union of Cooperatives
UNDP	United Nations Development Programme
USAID	United States Agency for International Development

INTRODUCTION

This paper discusses the development of a new Land Law in Mozambique¹, under the leadership of the Technical Secretariat (TS) of the Inter-ministerial Commission for the Revision of Land Legislation (popularly known as 'the Land Commission'). The TS began work on the new law in August 1995 after first formulating a new National Land Policy. The National Assembly approved the law two years later. Regulations and other instruments needed to implement it were completed in December 1999.

The Mozambican case offers important lessons at a time when land policy and reform is high on the agenda in many African countries. Firstly, it is an excellent example of the 'sociology of law' at work. Sociological analysis preceded the drafting of new legislation and subsequently guided it at every step. There were two sides to this sociology however, and both were important to the ultimate outcome. On one side, the team drafting the legislation was guided by policy recommendations rooted in sociological and agro-economic assessments of the land management 'norms and practices' of the vast majority of Mozambicans.

On the other side, the wider sociology of Mozambican society and politics was fully taken into account, to develop a strong consensus and ensure that the new law was widely accepted as legitimate. At no point were the interests of one group favoured exclusively over another. The process was instead guided by two basic principles: protect existing rights, and create secure conditions for new investment that would benefit local people and investors alike. The result is a law that gives legitimacy to practices already followed by the vast majority of the population, while also offering secure conditions for new private investment in rural areas.

The second point is that this law is also an important development tool, and was explicitly designed as such. Indeed equitable and sustainable development is its major underlying objective. It is *not* a law that simply defines and protects land rights; it does *not* assume that once its work is done, things will remain as they are. Quite the opposite – it creates the conditions for change, for a long-term but *gradual and well managed* process of rural development: through the adaptation of local structures to modern land management methods (and vice versa); through a process that should allow local people to realise and use the capital value currently locked up in their one key asset (their land); and through the decentralisation and democratisation of land and natural resource management right down to community level. It is this process that will stimulate a profound process of social development amongst newly empowered communities.

It is also useful to note how Mozambique differs from other regional neighbours, where much of the land question revolves around reducing the concentration of rights over the best resources in one favoured group and transferring rights over those resources to others. In Mozambique however, the new land law is *not a land reform instrument*. Largely thanks to the almost total flight of the colonial landowners in the mid-1970s and the subsequent imposition of State ownership, land concentration is not – *yet* – the issue in Mozambique. Mozambique does not have – again *yet* – a small land owning class that controls the best land resources in the country.

The 1997 Law instead seeks to recognise and protect *existing land rights*, in the main held by the large majority of rural Mozambicans through customary land laws and

¹ Law 19/97

management systems. It is not designed to change the fundamental, underlying structure of land ownership in Mozambique, to switch key resources from one group to another. The bedrock of State ownership of land and natural resources remains in place. Indeed it can be argued that in Mozambique, the new Land Policy and Land Law have been designed to *prevent land concentration*, as new market relations take hold and the power of capital begins to make itself felt in a still fragile multiparty democracy.

Assuming that efficient and publicly-minded land management services are in place, development can start through a process of negotiation between local people and new investors, bringing new dynamism to the rural economy without undermining the principles of equity and sustainability that underpin the Land Law. It is this development process that will transform the landscape, and hopefully contribute to the over-riding goal of poverty alleviation and rising incomes for the rural population. Compared with the already challenging legislative task however, implementing the law is by far the greater challenge, and a host of new pressures are building up.

In 1994, before the first multiparty elections and just two years after the end of some 25 years of war and violence, millions of Mozambicans were returning from exile to their land. In most cases they were able to establish themselves back in the areas from which they fled, and even today, many rural communities do not feel under threat from outsiders seeking their land. Yet political change has meant that since the consolidation of the 1992 Peace Accord and with a growing sense of political stability, land has rapidly been acquiring new value as a productive asset for those with either the money or influence to negotiate their way through outdated and seriously under-resourced land management services. Some of these people are 'serious investors', an expression often heard in Maputo these days; others are less well funded adventurers, seeking to establish a toe-hold in a so far unexploited tourist paradise; many are simply speculators who use their power and influence to secure land use rights over large areas but who do not have either the resources or the intentions to do very much with their new assets.

Other key issues were unresolved in 1994, and today still present a major headache to a government struggling to reconcile the demands of competing interests for land (including ironically, many white Zimbabwean farmers now seeking a more secure future in Mozambique). These include the future of the still intact colonial plantations-turned-state farms, and a host of long-demarcated and cadastrally registered properties dating back to colonial times. Many of these areas were long been abandoned or lay idle during the war and immediate post-war period. Most have been informally re-occupied by local people, usually without any form of struggle, who now claim the right to stay there. Many of these areas appear on cadastral maps as 'empty' properties owned by a State that has the right to allocate them to new 'owners', or new 'users' to be more juridically correct. Their subsequent allocation to new investors who arrive to find long established communities living and farming has been one area where the Government has been facing major problems.

At the same time it was – and still is – clear that rural communities are badly in need of new working capital, and that rural areas are crying out for investment in basic infrastructure to improve their links with input suppliers and new external markets. Here was a situation of great potential – bring the two apparently opposing sides together somehow, and a new model of equitable development might just be possible. And hence the new Land Law, a complete legislative package designed not only to protect existing rights, but also to stimulate community level development and

attract investment into rural areas. It allows communities to retain control over the resources they need to grow out of poverty. By providing mechanisms for local participation in new land allocations, it also allows local people to benefit directly from any new activity and have a voice in its implementation. The focus is not on separating 'communal' and other land – as in neighbouring Zimbabwe for example – but on stimulating integration and positive collaboration between the various parties.

Herein also lies the great challenge facing the Mozambican state today, as it tries to adapt itself to this new role and turn itself into a mediator and regulator of this often complex and turbulent engagement between very different socio-economic interests.

This paper is not a full-scale review of the Land Law itself², but is instead intended to demonstrate the 'how and why' of the complex socio-political process that lay behind its development. Along the way the key role of external assistance is also addressed, in itself an unusually self-conscious exercise in the sociology of development. But to begin with, to fully appreciate the challenge facing lawmakers in 1995 and law implementers in 2002, both the sociology and legislative process must be seen in historical context. Seeing the land issue in the longer term historical perspective reveals the deep roots of conservative approaches to land policy that still oppose the underlying principles of the new legislation and thus undermine its legitimacy.

The paper therefore opens with a brief account of land issues from an historical perspective. Again this is not intended as an exhaustive review of land history in Mozambique, but is rather intended to set the stage for what follows. Key issues here are the origins of the complex agrarian structure that now characterises rural Mozambique, and the *similarities* between the current situation and historical approaches to land issues.

The paper then discusses the arguments presented in 1995 for a more radical approach to land policy, starting at ground level with analyses of local production systems, social organisation, and the 'customs and practices' of most land users. Having established the basic parameters for a new land policy, the discussion then turns to the wider sociology of the institutions and interests that would subsequently shape the policy and legislative process. The methodology adopted by the new Land Commission Technical Secretariat is a key element in this wider picture, supported since 1995 to the present by a small non-resident FAO technical assistance team.

Discussion then moves onto the development of the new National Land Policy, which in fact was the major element in the overall legislative process. Only when the new policy was in place were the lawyers invited in to begin drafting an appropriate new law. *This law was crafted to implement the policy*, and was not merely the construct of lawyers seeking to 'upgrade' or 'modernise' previous and existing legislation. The legislative process itself is then discussed, focusing on the relationship between the small group of legal specialists and the wider inter-sectoral committee that constantly reviewed its progress and sent back comments and recommendations.

Key features of the new Land Law are discussed, including the new concept of 'local community' as an entity with a clear juridical personality with its related provisions for local level participation in land and natural resource management. Issues of titling and registration are also covered. Throughout however the focus of the paper is on the process behind these discussions, including the way in which the new Land Law

² For good reviews from different perspectives, see Quadros (1998); Negrão; (1996); and Kloeck-Jenson (1998, 1999a/b).

Bill (*projecto lei*) was finally subjected to national debate and then guided through the Assembly.

With the Land Law in place, attention then turns to how to implement it. The paper moves onto a full discussion of the two key instruments that were developed for this purpose, the Land Law Regulations, and the Technical Annex to the Land Law Regulations. This discussion also emphasises important and decisive moments when new policy instruments entered the picture after much debate at national level and the empirical testing of new ideas.

A note of caution appears at this point, with discussion of the persistence of old approaches. Passing new laws and legal instruments is only the first part of a complex transformation of potentially historic proportions. It is only when any new legal package is actually implemented that specific interests begin to feel the bite of provisions they may not be happy with, and the less-convinced begin to question and find ways around them. Changing deeply rooted ideas, achieving a 'new mentality', amongst economic actors and public servants with their own small empires to defend, is an extremely complex challenge.

In conclusion, the paper underlines the way in which the new policy and legal package was developed. It flags some of the new issues emerging in early 2002: how the new law fits into the wider policy agenda that is now emerging in Mozambique, including reduction, economic growth, and administrative decentralisation; the inevitable political and economic opposition to its more radical implications; new policy initiatives that threaten basic principles of the Land Law; the need to continue the transparent and inter-sectoral engagement with NGOs and others. The wider development agenda of securing equitable rural development through bringing local people into land management, and allowing them to realise and gain from the capital locked up in their land, remains however as the underlying justification for continuing with the new approach.

The paper closes with a brief look forward, to the importance of sticking to the basic principles developed after such a long process of social research, technical debate, empirical testing, and public discussion; to the need for empirical testing of the law before calling for premature revisions; to the need to build up capacity amongst the services and institutions that will implement and police the law in practice. The central issue of 'changing mentality' is again highlighted, not only through training and capacity building, but through exposure to successful cases that show just how the new package can bring about real social and economic development, not just for local people, but for the more economically and politically powerful as well.

I. BACKGROUND

The Colonial Era

Competition for land has a long history in Mozambique. Well before the Portuguese consolidated their colonial administration, indigenous empires and their allies vied for control over the fertile flood plains of the Limpopo and Zambezi Rivers. Colonial investors targeted these resources too, as well as highland areas in the west and north where good soils and reliable rains supported cotton, tea and other cash crops. While the colonial government ceded the largest of the plantations to mainly British and South African firms, Portuguese settlers also established hundreds of smaller farms, producing a range of crops and livestock for urban and regional markets.

Local communities were often moved off the best resources and relocated on more marginal land that was still near enough for them to work on the new plantations³. In other areas they stayed on their own lands, producing the surpluses demanded by the colonial state. An extensive network of settler traders secured thousands of small surpluses from Mozambican farmers, channelling them upwards to urban-based warehouses. Several large firms also had commercial monopolies (*concessões*) over huge areas, with small farmers acting almost like outgrowers. By the mid-20th Century, the agrarian economy consisted of several very large plantations, hundreds of small commercial farms in private, mainly in Portuguese hands, a large network of small and large trading enterprises, and thousands of small indigenous family farms, often but not always on more marginal land.

In this way small Mozambican farms, settlers, and large plantations were all tied into the colonial and international economy. Here was an agrarian economy designed to maximise surplus extraction and keep wage and other social costs to a minimum. Nor was it simply a case of foreigners gaining at the expense of Mozambicans. Some indigenous producers and even wage workers also gained, while local leaders and leading families were able to exploit the economic and political opportunities on offer in a way that is still evident today⁴.

Pre-Independence Colonial Land Laws

The colonial government knew that indigenous small farmers contributed strongly to overall national production, both as producers and as workers. It was also concerned to secure the best land resources for colonial settlers, and for the British and South African investors without whose capital the relatively weak Portuguese colonial state could not have exploited the resources under its control. These concerns were evident in the legislation in force at the time of Independence in 1975.

Like the new 1997 Law, the 1961 *Regulamento da Ocupação de Terrenos nas Províncias Ultramarinas*⁵ was also guided to some extent by anthropological research. Much of this work was commissioned for the purpose and published in the various Bulletins found in the Portuguese 'overseas provinces'. Land was classified into three classes: essentially urban land, around the main cities and towns; land around villages where local people maintained their systems of production; and lastly land considered by the colonial state as 'free' and available for handing out to new investors (i.e. the rest of the country). This classification was confirmed in a new law approved by the Portuguese National Assembly in 1973⁶, but which never really came into effect as it was overtaken by political events on the ground. Its provisions illustrate however, the concern to protect local rights on the one hand, while securing land resources for the State on the other.

Thus, 'empty land', defined as areas '*that have not definitively entered into a regime of private property or into the public domain, or are not covered by Base XXVII [of the same Law]*', are part of the patrimony of the overseas provinces and '*can only be conceded by the Government or by the Governments of these provinces*'. Base XXVII then goes on to state that '*lands occupied by the populations of the regadorias [a traditional political and land-management structure]*' are also a part of the

³ Negrão (1995) gives an excellent account of this process in the Zambeze valley. See also Tanner et al (1992), and De Wit et al (1995), for the Limpopo Valley.

⁴ See for example Negrão (1995), and Bowen (2000)

⁵ Portugal 1961: *Regulamento da Ocupação e Concessão de Terrenos nas Províncias Ultramarinas*.

⁶ Lei No 6/73, 13 August.

patrimony of the overseas provinces. The State however must '*safeguard the rights of the population to use and benefit from these lands*', which could not be conceded or sold if it could be shown that they were occupied.

Colonial legislation was of course a subtle double-edged sword. It gave substantial protection to local people within a relatively circumscribed area by recognising rights over their farms and village land. Definitions of village land were reasonably extensive, and did not insist upon actual physical occupation but did require some proof of 'occupation'. The law also left open the possibility however of the State declaring 'empty' or unoccupied land to be within its patrimony and thus free for concession or sale to settlers and investors. To many western settlers and agricultural experts, large areas exploited through traditional farm systems did in fact appear to be unoccupied, or at least seriously under-utilised, and were therefore vulnerable to annexation by the colonial state within the terms of its own laws.

The reality seen from the side of the indigenous population was quite different. Discussion of local farm systems later in this paper shows how large areas may *appear* to be unoccupied, but are actually exploited or held in reserve through an extensive traditional agriculture that relies upon a range of resources for its sustainability. Thus most 'free' areas were 'occupied' through long established cultural and historical ties, and apparently 'empty' spaces were often essential for the overall production system practised.

Colonial laws however gave the State the legal justification to allocate large areas to colonists and plantation enterprises. The interests of the State and its investors often overrode those of 'the population', and inevitably the best land was always the focus of attention⁷. Colonial occupation also reflected more political concerns. In the case of the State-sponsored '*colonatos*' of the 1950s, the principal objectives were to consolidate Portuguese occupation and to relocate Portuguese peasants and sharecroppers who were being moved off land back home. These schemes occupied many thousands of hectares⁸, and although the colonial government assisted with the removal of local people to new areas and offered token compensation⁹, the loss of key river valley resources resulted in dramatic shifts in indigenous production systems¹⁰. This shift increased the vulnerability of communities to natural disasters, with results that are evident to this day every time there is a major flood or drought.

Independence

Thousands of rural people joined the Armed Struggle for independence in the 1960s and 70s not so much out of ideological commitment but simply to oust the Portuguese and get their land back. Independence led to a socialist agrarian model however, and many were disappointed¹¹. Instead of being returned to their original owners, colonial plantations were nationalised, expanded in some cases, and managed by the State in the name of the people. Other land was subject to 'villagisation' and co-operative programmes with roots in the Tanzanian experience. All of these new policy prescriptions once again radically altered the relationship of rural people to both their land and the State.

⁷ De Wit et al (1995); Negrão 1995

⁸ See for example, Hermele (1988), for a case study of the Limpopo valley scheme.

⁹ Tanner et al (1992)

¹⁰ De Wit et al (1995)

¹¹ See Tanner et al (1993)

The State however proved incapable of managing the huge new enterprises, and by the mid-1980s most were technically bankrupt and production had plummeted. Peasant farmers also rejected the new villagisation model, and adapted to the new situation as best they could. Many maintained some of their own fields apart from the new co-operatives. Local leaders and more prominent families began securing their interests by occupying managerial posts in co-operatives and local FRELIMO structures¹². The essential link between small farms and markets had vanished however with the flight of nearly all the Portuguese settler traders, and almost all public resources for agriculture went to the state farms. Peasant farmers – whether as cooperatives or small producers - were denied adequate technical, input and marketing support. Where some way of marketing crops was possible, small farm production responded clandestinely to urban markets. Otherwise they simply reverted to meeting local subsistence needs.

The ensuing macro-economic crisis led to the first structural adjustment reforms in 1986, but in fact land policy had already begun to change in 1983. The Fourth FRELIMO Party Congress recognised the contribution of the 'private sector', and approved a limited privatisation of agriculture, although again this did not mean returning state-farms or colonial properties to their original occupants. The State instead favoured certain private sector interests to restore dynamism to the rural economy, and allocated land to a select group with few ties to local communities. The key concept here was 'capacity', something that was apparently lacking in peasant or 'family sector' farmers as they were called officially. Only 'modern' farmers who had access to financial resources and new about modern techniques had this 'capacity'. Small farmers meanwhile continued to be starved of the resources and market access they needed to develop. Nevertheless, they showed how capable they can be when presented with even very limited new marketing opportunities. Small farm production increased threefold between 1981 and 1991¹³.

There was of course another backdrop to these changes that was an even more serious obstacle to any kind of rational land policy. Major political differences between the diverse nationalist groups within FRELIMO came to the surface after Independence, culminating in the formation of the opposition Mozambican National Resistance (RENAMO). The marginalisation by FRELIMO of traditional leaders and the virtual banning of most traditional cultural practices and ceremonies also created a strong anti-Government mood in some areas¹⁴. The State Farm policy that required the removal of local people who had re-occupied the *colonatos* immediately after Independence had also fuelled antagonism towards the new regime in Maputo¹⁵. These and other tensions were exploited by RENAMO with backing from South African and the Smith Regime in Rhodesia, leading to a long and bitter civil war that destroyed much of the rural economy.

The combination of all these factors would have made it impossible to implement any kind of rural development policy, let alone one that demanded massive social and structural transformation. Millions of people fled to neighbouring countries. Millions more became internally displaced (IDPs) to relatively secure corridor areas and state farms, where they were allocated subsistence plots by local administrations. Resident local populations also allowed IDPs to occupy their more marginal land.

¹² Bowen (2000) provides a good account of this complex relationship between a differentiated peasantry and formal state structures.

¹³ World Bank (1993)

¹⁴ Geffray (1990)

¹⁵ Tanner et al (1992)

This process was not always altruistic however, with sharecropping and wage labour contracts characterising many relationships¹⁶.

Through the 1980s therefore, land occupation had indeed been radically transformed, at least on the surface. Virtually all colonial farms had been abandoned, but remained as demarcated areas on old cadastral maps. Large plantations and commercial concessions were converted into even larger State Enterprises, with local people again being forced to give up their land rights and become workers for the new *Empresas*. In transport corridors, in the *colonatos*, and around major towns and cities, heavy concentrations of *deslocados* joined long-time residents on land either allocated by the State inside moribund State farms, or on plots belonging to locals who still claimed long term rights over their temporarily ceded resources. And across huge swathes of Mozambique, abandoned farms and natural resources lay empty and 'unoccupied', awaiting the end of the war.

The End of War: 1992 to the Present

An extreme and unrelenting period of drought was amongst many factors that eventually brought FRELIMO and RENAMO around a negotiating table in Rome. The drought exacerbated economic problems and led to even more flight from the land, as people sought food aid and medical support in government-controlled safe havens. RENAMO could no longer live off the land, and the Government was in any case already introducing the political changes long demanded by its opponents. Both sides were also under intense international pressure to strike a deal. The October 1992 General Peace Agreement finally ended some 25 years of armed struggle and civil war, and gave the rural economy a chance to recover and respond to the market liberalisation and other reforms that had begun in the late 1980s.

Land rapidly became a key issue as millions of refugees and IDPs returned. While the Government attempted to engineer this process in some way, it simply did not have the resources to carry out a structured resettlement plan. The process largely took care of itself instead. Donors committed huge resources to transporting, registering and managing the actual return from exile, but returnees were free to go where they wanted. Millions of people went directly back to their original areas where they still had customary rights over abandoned land and resources. Most conflicts were settled by the same customary authorities who had managed land and natural resource use before the war. Indeed it quickly became clear that customary land systems had survived not only post-Independence policies and the disruption of war, but also the decades of colonial administration that preceded them. Moreover they were dealing with that most modern of problems, a huge demographic shift and resettlement crisis provoked by civil war, and at virtually no cost to the State¹⁷.

Many returnees did however find strangers on their land. Private interests were rapidly drawn to rural areas, not only by the end of the war but also by opportunities presented by structural adjustment and the new market economy. The legislation of the day supported new land requests in areas without occupants, and over land that had been abandoned for more than two years, although abandonment did not prevent the original land user from reoccupying the land, *if it was free when he or she returned*¹⁸. Concerned to get national production going again, the Government looked favourably upon those who were able to argue that they had the capacity to bring 'empty' land back into production. Often investors identified an area on a map,

¹⁶ Tanner (1989)

¹⁷ See for example, Myers et al (1993); and West (1992).

¹⁸ Law 6/79, Article 60

sometimes paid a quick visit to check it was not occupied, and then requested 'demarcation' and registration.

Post-Independence land legislation¹⁹ was of course conceived along socialist lines. The Constitution established State ownership of all land and natural resources, while anyone who wanted to use land had a secure use right under law. Legally therefore the idea that people were returning to 'their' land had no real foundation. The reality on the ground was very different however, and post-war occupation of abandoned and apparently 'unoccupied' land by new investors gave rise to a number of conflicts.

While these conflicts had their roots in the confusion of wartime flight and post-war reoccupation, they were also caused by the extreme weakness of administrative structures. Confusion surrounded the role of District Administrators, who appeared to be allocating land rights at local level with little or no consultation with anyone apart from the investor. Different sectors – the cadastral service, mining, hunting and tourism - were issuing licences and use rights without knowledge of others, often over the same area and in areas where communities also lived and cultivated. Smaller investors especially often thought that permission from a District Administrator or a licence issued by a line ministry conferred something close to freehold title²⁰. The State duly began allocating 'free' land to investors who promised to put it into production.

Unlike the 1961 colonial law, the 1979 law did not recognise any form of pre-existing customary right. In many respects however the colonial and post-Independence laws were very alike, for in fact they had similar objectives – to secure areas for large enterprises (State Farms) while securing the subsistence base of the rural population. The 'family sector' could occupy land without prior approval, provided that it was only to satisfy household needs²¹, and the law defined clear limits for family occupation²². It further stipulated that if there was not enough land available, these limits would be reduced. In a post-war landscape of deserted farms and under-used plantations however, the concepts of 'free' land and 'capacity' held sway, and new, 'capable' investors were encouraged to get production going.

The reality of a rising number of land conflicts between local people and investors also indicated another reality on the ground however. Local people continued to think of the areas in which they lived as 'theirs', whether or not they were being used. Anthropological and other field work was also showing that traditional authority structures were still in place, and that amongst other things, they managed the vast bulk of land and natural resource use. These customary structures were accorded a high level of legitimacy by local people, and the underlying issue of pre-existing local rights and how these are treated later became a one of the central concerns of the new Land Law.

Post-war demand for land was also being boosted by an attractive combination of socialist principles and capitalist logic. Peace and the transition to a market economy

¹⁹ Law No 6/79, 3 July

²⁰ These and related issues were highlighted in a wide-ranging report by several national consultants, including anthropologists, cadastral experts, and the then Coordinator of the 'Ad Hoc' Land Commission (João Carilho, now Vice-Minister for Agriculture and Rural Development) funded by UNDP and supported by FAO in the early 1990s. This report provided the guidelines for subsequent FAO support, discussed below.

²¹ Law 6/79, Article 47

²² 0.25 ha of irrigated land, 1 ha non-irrigated, per household member, and no more than 10 ha of 'complementary areas' if the household practised shifting cultivation. Each household would be allocated grazing land in 'pasture areas'.

were suddenly giving land new value as a productive asset. This phenomenon had already been observed in Guinea Bissau, with very similar consequences, and it was certainly evident that in Mozambique, those who were able to negotiate their way through the complex and obscure State land allocation procedures were onto a very good thing²³. Use rights could be acquired from the State at very low real cost – survey and registration fees basically – and once acquired were renewable and inheritable. The State did – and still has – the power to recover land that is not used according to the plan supporting the original claim, but in reality it lacked the capacity to check on this. A provisional land use title document gave rights to a new ‘investor’ that were virtually freehold in all but name. And as it was not necessary to actually purchase the land, very large areas were requested and usually granted by a government driven by the new imperative of national development.

Conflicts with local people soon began to emerge, especially where the target resources were in prime river valley areas or traditional grazing lands. The 1979 law allowed family users to request a use right ‘title of family occupation’, but very few of them requested this document as it had no apparent use. A family certificate was perceived of as being a weaker document than the land use title issued to new and more commercially oriented land users. This difference was inevitably exploited by those who could secure title documents through the formal administrative and political system. Outsiders appearing in a rural area waving their piece of paper argued that their claim was stronger, and proceeded to expel local residents using violent means if necessary.

Other problems were also emerging. IDPs who had received land on state farms and ex-workers with their own plots refused to leave. Many had been there for several years and felt they had a strong claim to the land. These claims were also rejected by the original occupants, who wanted their land back²⁴. The State had other ideas however, and began to privatise the state farms in joint ventures with multinational and national partners. An ‘Ad Hoc’ Land Commission was established within the Ministry of Agriculture specifically to look at state-farm privatisation. With support from the USAID-funded University of Wisconsin Land Tenure Centre (LTC), extensive field research was carried out between 1992-4 that revealed the true extent and complexity of the challenge facing the Government²⁵.

A final layer was inserted into ‘the land question’ by colonial landowners or their descendents who were also being attracted back by political changes and economic opportunity. Many were reclaiming old farms, often with supporting documents. These farms still existed on cadastral maps, or had been incorporated into larger state farms or enterprises. Most had been occupied by local people who were either descendents of the original land users, or were IDPs and others who had simply settled and began carving out *machambas*. Even where there were no ex-colonials trying to get their land back, these farms were treated as State-owned, demarcated units that were available for privatisation to suitably bidders. New holders of use rights then often arrived to find a whole community on ‘their’ land.

The new Government taking office after the first multiparty elections in October 1994 therefore faced a ‘land question’ that was both potentially explosive and extremely complex. A curious mix of socialist principles and capitalist supply-and-demand was creating new pressures and new problems. The new 1992 Constitution reaffirmed that land and natural resources were the property of the State. The 1979 law was

²³ See Tanner (1991); and Bruce and Tanner (1993).

²⁴ Tanner (1993)

²⁵ See for example Myers et al (1993), and West and Myers (1992)

still in place, and land could not be bought, sold, rented or mortgaged. There was therefore no legal land market. The State was allocating land use rights however, for approved projects, and these rights were inheritable and renewable. Moreover, investments made on the land could be sold or mortgaged. Huge areas were apparently under-used or completely unoccupied, and very large areas could be requested from the State at no real capital cost.

Demand for this extremely cheap factor of production grew rapidly, and those who were able to manipulate their way through the tortuous land allocation procedures stood to gain handsomely. Local people, seriously decapitalised by war and drought, were at a huge disadvantage, both legally and in practical terms, as they simply could not use even the resources they had once occupied. The loss of cattle was a major factor in this picture, with the national herd virtually wiped out and huge areas of previously used grazing land apparently lying idle and ready for occupation by new land users.

This complex picture produced a complex range of problems, between local people, between locals and new investors, between new investors, and between all these groups and the State. The large majority of smaller localised or 'horizontal' conflicts were, and continue to be resolved by traditional authorities and local 'social-control' mechanisms. Conflicts between local people and new investors have proved much more complex however, and many have lingered on to this day. The role of the State has been unclear from the start, and is still bedevilled by a lack of transparency, inefficiency, and charges of corruption. The community consultation provisions of the new 1997 law have offered a mechanism to deal with most of the 'pipeline concessions'²⁶ that emerged in the late 1990s, but infamous examples such as the IFLOMA forestry concession in Manica Province still have not found a successful long-term solution.

Meanwhile the scale of the migration back into rural Mozambique after the war served to emphasise an important and irrefutable feature of the landscape. It was indeed remarkable that the most abandoned land was reoccupied with relatively few problems. This feat was due in large part to the survival and continuing legitimacy of traditional or customary land management systems. It was evident that any new policy or legislation would have to take this reality fully into account.

II. ARGUING FOR A MORE RADICAL APPROACH

Officially sanctioned research on the 'land question' began in the early 1990s, under the auspices of the then 'Ad Hoc' Land Commission and with support from the University of Wisconsin Land Tenure Centre and USAID. Field-based reports from different parts of Mozambique began filling in the complex picture of land occupation and documented the range of issues discussed above. National Conferences were organised in 1992 and 1994, and especially in the second of these, the true complexity and scale of the land question began to emerge more clearly.

FAO had also entered the picture with support to a UNDP-funded TSS-1 project in 1993/4. A team of national consultants working with the Ad Hoc Commission looked at different aspects of the land question and produced a set of guidelines for future

²⁶ New and sometimes questionable land requests that needed to be updated in line with the new 1997 Law, and which remained unresolved until a major campaign by the cadastral services in 2001 to 'clean the slate'. See also Kloeck-Jenson (1999b); and Norfolk and Soberano (2000).

action²⁷. Their papers included studies by leading national anthropologists of customary land systems, and assessments of the (very limited) technical and operational capacity of the cadastral services. Together they revealed dimensions of the land question that are still relevant today:

- many land conflicts and related problems are due to the ineffective implementation of the existing laws, and the very weak capacity of the Cadastral services to do their job in line with the legislation of the day
- land conflicts were also being caused by the overlapping of responsibilities and actions between a range of public entities, from the Cadastral services through to line ministries that were allocating land rights and concessions (for mining for example) that conflicted with what other sectors were doing
- 'traditional' or customary land management systems were alive and well, and were in fact dealing with the vast majority of land access and use issues, including the resolution of conflicts at local level

The TSS-1 guidelines did not call for a new Land Law straightaway, but they did recommend the 'indigenous modernisation' of the legal framework, implying the gradual coming together of the customary and formal land tenure systems. Meanwhile, partial modification and better implementation of the existing legislation and modification would help to improve the tenure security of certain groups, in particular the 'family sector'.

Work on land issues was already underway as well in the NGO sector. It was evident that while the Constitution and the existing Land Law gave formal protection to local people, the reality was very different. Not only were local rights unprotected in practice, but class and political power were identified as important aspects of the growing number of land conflicts. Thus, for example, ineffective implementation of the law and the lack of attention given to the social dimensions of the Constitution, was leading to 'a rising number of land annexations, and favoured so-called private agriculturalists who have never worked on the land and who, in most cases, represent political and economic interest groups that arrive with the required documentation and claim the best land'²⁸.

A rush for land was indeed underway. As in the past, the focus was land in river valleys or close to roads and markets. And with tourism now on the agenda, land close to beaches or with 'eco-tourism' potential was also in demand. The State could quite legally allocate any 'unused' land to those who argued that they could develop it and put into production. Unlike small family farmers and Associations, these people could also pay for field and other costs, and were able to deal with complex administrative procedures and paperwork. Already scarce cadastral services were therefore mainly serving the new private sector, carrying out surveying and other work to record and register new requests for land.

In early 1995 the prevailing official view was still that the existing land law could be used with some modifications, while steps were taken to modernise and strengthen the cadastral services. The basic principle that land belonged to the State was still the bedrock of land policy and land management, and land was still seen very much as a 'single-sector' issue, an agricultural question. A strong role for the State was

²⁷ FAO (1994a)

²⁸ Raposo Pereira and Rui Baltazar (1994:10)

assumed, and the solution to land problems tended to be seen purely in terms of upgrading the strictly technical aspects of land management through support to cadastral service reform and capacity building.

The approach favoured by the National Institute for Geography and Cadastre (DINAGECA) was to survey individual family sector plots – *machambas* - and then issue them with use right title documents. A Swedish-funded project provided substantial support, using aerial photographs to identify plots that cadastral teams would then measure, register and issue a land use title for. Progress was slow and expensive however, with just tens of cases completed over several years.

The NGO sector favoured another approach, forming farmers into associations with legal status – *personalidade juridica* - and then seeking a land use title in the name of the Association. This was also painfully slow however, requiring two time and money-consuming steps: the setting up and legalisation of the Association, followed by the expensive technical process of surveying and registering all the *machambas* of its members, within a single area of land if possible. Field evidence again showed that this approach was not working, with only one or two associations a year getting past even the first stage.

The important social and juridical dimensions addressed by the LTC and TSS-1 programmes, and given prominence by civil society groups, were also being relegated to second place by land management institutions and policy makers. The TSS-1 exercise had however led on to a FAO Technical Cooperation Project (TCP) with the Ad Hoc Commission as its counterpart. This project aimed to 'carry out a diagnosis of land tenure systems in selected areas and define a programme of action to promote the security of tenure and agricultural development of the family sector'²⁹.

The Ad Hoc Commission/FAO team questioned the technical and practical basis of the approaches then being followed, and raised questions about the social impact of an uncontrolled land rush and the institutional environment within which land issues were being addressed. It was clear that individual titling was simply not going to work for small farmers, while the same approach heavily favoured stronger economic and political interest groups seeking new land resources. An uncontrolled land grab would result in a rural exodus and a huge increase in peri-urban poverty in a country just emerging from war and already with serious unemployment problems.

Moreover, the policy makers of the day and their technical advisors were grossly underestimating the challenge. Even assuming a relatively static picture and focusing only on agricultural land use, surveying and recording thousands of small farms across the country was too great a task and would require massive resources. As the market took hold and land rights began to change hands, it would become impossible to keep track of things using the approaches so far tried. These and related issues were also being addressed with increasing force by national academics³⁰.

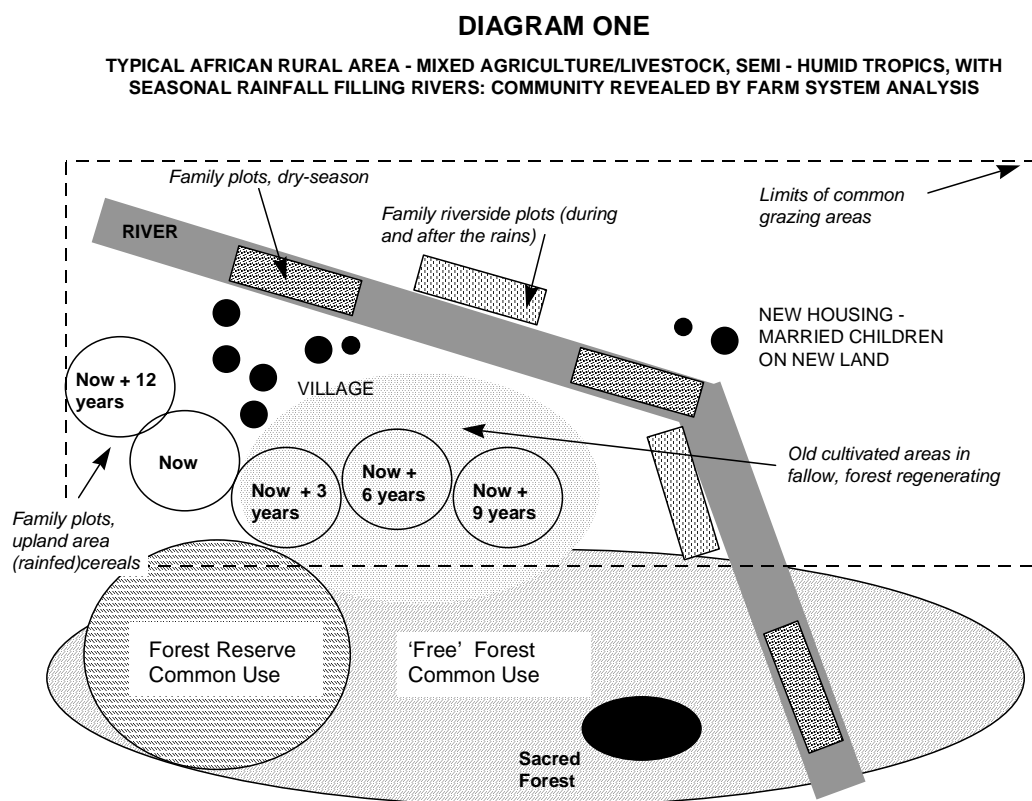
Far more importantly however, *these approaches were wrong and ill-suited to the reality of rural Mozambique*. The nature of land tenure systems in Mozambique and elsewhere was already well known to most anthropologists and land use and tenure specialists. It was fairly easy to show that the approaches tried so far did not account for the underlying reality of land occupation and land use³¹. This is clear in Diagram

²⁹ FAO (1994b)

³⁰ See the various national consultant papers in FAO (1994b); and Negrão (1996)

³¹ See Tanner (2000b) for a fuller account of how systems analysis was used in the Mozambican case.

One, which shows a typical African farm system derived from fieldwork in several countries including Mozambique.



Source: Tanner 2001a, from fieldwork in Mozambique, Angola, Guinea Bissau, 1990 - 1997

Each household requires access to and control over different types of land and resources over the course of a year. Some resources are communally used, such as forests, grazing land and water sources. Others may be regenerating and apparently unused as part of the lengthy rotation cycles commonly seen in this kind of system. Identifying and registering only the individual plots currently under cultivation – the plot labelled ‘Now’ for example - effectively leaves the vast majority of the local resource base unprotected as apparently ‘free’ land. These unused resources could then be allocated by the State to people from outside local communities who were seeking land for new investment projects.

The new FAO project raised all these points and argued that the existing law was not protecting all the diverse resources that local people need to maintain their production strategies and allow for future needs. As these strategies broke down, a rural-urban exodus to cities without employment would result in growing urban poverty. And any prospects would be lost for community-based rural development to take place once technical support and credit became available. Moreover local people still regarded *all* this land as theirs anyway, in spite of the prevailing constitutional principle of state ownership. This much was clear from field visits to NGO and UN-supported projects working at local level, and from other research carried out in the context of the Government ‘Pre-programme’ for agriculture that took place in the early 1990s³². Any new land policy would have to include some form of recognition of the rights acquired through customary land management systems.

³² See De Wit et al (1995), (1996)

It was also recognised however that private 'economic operators' and foreigners were potentially important sources of new capital and ideas, and were a necessary part of new rural development initiatives in impoverished rural areas. The ideal scenario would be one where local rights were recognised by incoming investors, who could then work with local people to a) find available land and thus avoid conflicts, and b) support local development in some way. The team rejected orthodox dualist interpretations of the Mozambican agrarian economy where 'family' and 'private' sectors are treated as separate and exclusive groups. Instead they advocated an integrated model where *all* land users could develop partnerships and collaborate over the use and management of land and other resources³³.

On the institutional front it was also argued that land was far more than an agriculture sector issue: many other sectors were involved and should play a part in policy formation. The TSS-1 documents had shown that institutional overlapping and the unclear roles of different departments were causing many land conflicts. If all were involved in the formation of new policy and a new legal framework, this could be avoided in future.

The Government responded by abolishing several land related bodies – including the Ad Hoc Commission – and creating a new Commission with a clear multi-sectoral composition. Nine separate ministries and sectors each appointed two people to work with the Commission, and an initial programme was agreed to review all existing material, conduct studies to fill in gaps, and make recommendations for a new land policy. With a new policy in place, a 'land programme' could then be devised and implemented.

It quickly became clear that a piecemeal revision of the law would not work. Bringing customary land systems into the law and creating mechanisms to allow local people to benefit from the management and legalisation of land through new use titles were major changes. These and other aspects of the 'indigenous modernisation' foreseen by the TSS-1 guidelines required an entirely new policy approach, which in turn would require a completely revised Land Law. By May 1995, the Minister of Agriculture and Fisheries had asked the new Land Commission to produce a proposal for revising the Land Law by the end of 1995³⁴.

III. POLICY DEVELOPMENT

Strategy and Consensus Building

The discussions surrounding the development of the new Land Policy are perhaps even more important than the legislative process itself. It was at this stage that the importance of using sociological and other empirical evidence was established, and where other pressures for change – from NGOs, independent specialists, academics – were given a voice.

By mid-1995 a new inter-sectoral Land Commission was in place, with a mandate to develop a new policy and revise the law. The emerging perspective was that activities should be programmed within a clear long-term horizon. Reviewing policy, developing a new law and instruments, setting the institutional context and then

³³ Comissão de Terras (1995)

³⁴ Tanner (1995)

moving on to implementation all require a lot of time. The small national team responded by adopting a clear three-line strategy:

- follow a strong inter-sectoral approach
- develop a *programme* of activities with clear objectives and goals over a realistic long term time scale
- with FAO TCP as a core support, follow a programme approach to bring in other donors to fund activities not covered by the TCP

As the magnitude of the task ahead came into focus, it became clear that a successful programme going through to full-scale implementation would take at least ten years. The programme was therefore developed around several intermediate objectives:

- Policy development, based upon sound sociological and socio-economic analysis
- Developing a draft law
- Wide discussions and a Conference with consensus over a final draft (*projecto lei*)
- Approval of the law by the National Assembly
- Development and approval of instruments – regulations and others as required
- Institutional development – structures needed to implement the policy and law and also review progress and revise as required
- Implementation

While this strategy makes technical sense, it is also important to see it in the wider political and social context of contemporary Mozambique. *This* sociology was certainly as important as the ‘traditional society’ role more usually accorded to sociology and anthropology by policy makers and development agencies. With years of political and philosophical struggle already behind it, achieving a semblance of consensus within Mozambican political society – government and civil – represented a huge challenge for the small Land Commission team. Institutional aspects were also complicated, with the TSS-1 guidelines already pointing to overlapping mandates and competing institutional interests as major sources of conflict.

The best approach was therefore to openly engage with all interest groups, even those in clear opposition, and move carefully ahead on the basis of open dialogue and participation. In this context the first point to note is the character of the Commission that grew out of the discussions and decisions of early 1995. Instead of having just Ministry of Agriculture and Fisheries personnel, the new Commission included delegated representatives from:

- Ministry of Agriculture and Fisheries
- Ministry of Environmental Cooperation
- Ministry of State Administration
- Ministry of Planning and Finance
- Ministry of Justice
- Ministry of Natural Resources
- Ministry of Public Works and Housing
- Ministry of Sport and Cultural Affairs
- Ministry of Defence (observer status)
- Institute for Rural Development

The new body later formally became an Inter-ministerial Commission presided over by the Prime Minister, with the Minister of Agriculture and Fisheries assuming the Vice-Presidency and taking an active personal role at all stages of the policy review and law making process. A small Technical Secretariat (TS) was first created however, with its own Coordinator who presided over working meetings and reported directly to the Vice-president. The political and consensus building implications of this institutional setting are very clear, and were an essential element in the overall success of the policy legislative programme that followed.

In addition to its new inter-sectoral character, within the Ministry of Agriculture itself there were several important institutions that needed to be closely involved in the new programme. Each of these either represented important vested interests or had interests of their own that would be affected by any change in policy and the law. They too were each asked to provide two delegates to participate in TS meetings:

- the National Institute of Geography and Cadastre (DINAGECA)
- the National Institute for Agronomic Research (INIA)
- the National Directorate for Forests and Wildlife (DNFFB)

The FAO advisory team had also been discussing land issues with NGOs working in rural communities where land rights were threatened, and argued for a strong participatory approach that would allow civil society to play a full role in policy and legal reform. National and international NGOs grouped together within the 'NGO Forum' were encouraged to participate in the process, and nominate two organisations to represent them at Land Commission meetings.

One of those selected was ORAM, a national NGO with a strong focus on land as the basis for community development. The other was the General Union of Cooperatives (UGC), with a long history of defending small farmer land rights and creating successful independent cooperatives in the Maputo Green Zones and with strong links to the National Small Farmer Association. At different points in the policy debate, representatives from other NGOs also participated in policy meetings, and 'land-NGOs' organised their own seminars and discussions. The academic sector was also receiving new support from a revised LTC project that was now supporting national research capacity on land issues in the form of a new 'Land Studies Nucleo' at Eduardo Mondlane University (*Nucleo de Estudos de Terra, NET*). Academics from the NET and other national specialists played an increasingly important role in the policy debate. All of these groups were also encouraged to submit reports and comments on the different drafts of the new law³⁵.

³⁵ See for example, NET/UEM (1996); UNAC (1996); Garvey (1996)

It was also evident at the time that specialists working on land in different ministries and in other institutions rarely communicated professionally. Academics, technical staff and civil servants were all engaged in land related matters, but had never really come together around a unique common objective: the review of land policy and legislation. A seminar series was launched with FAO support to help open up debate and focus attention on the considerable pool of national expertise that was in fact available.

This strategy was later expanded into a series of provincial and local level consultation exercises, once draft versions of the new Land Law were ready. It culminated in the National Land Conference of June 1996, when the final draft of the proposed Law was discussed by a wide audience of over 200 government officials, Assembly Deputies, civil society organisations and national and international specialists.

The manner in which the TS drew upon the assistance of FAO was also significant. Firstly, the technical advisory team was non-resident and worked through regular short term visits planned to support specific points of the workplan. At key times all team members were present in country, at other times individual consultants came to work in their specific area. The result was constant and regular support to a national team that assumed responsibility for carrying the programme forward.

Secondly, other donors were brought in and additional funding mobilised on a programme rather than project basis. In regular consultative meetings, donors were presented with a single budget framework that they could support on an activity-by-activity basis. FAO technical assistance provided programming support, developing the single budget and drafting proposals for new funding and assisting with discussions between the TS and other donors. As a UN agency team with FAO core funding, they were able to provide impartial, 'best technical solution' support, while the 'programme approach' ensured that no single donor became directly identified with the process.

The result of all these measures together was a strong sense of national ownership over the process and a powerful 'in-service' capacity building impact. It was also possible to generate a strong consensus as discussions developed, even where there were diverse and keenly defended positions on particular issues. Most importantly, the overall result – a new policy and law – had real legitimacy in the eyes of most Mozambicans.

The Technical Case

The new land policy had to address more than 'the land question'. It also had to respond to the over-arching principles of government social and economic policy:

- reduce and eliminate absolute poverty
- promote private investment and economic growth

This meant that while the new policy and law should reduce the level of conflict over land, it should also take a proactive stance with relation to poverty elimination and ensure that new investment would still be attracted into rural areas. In other words it was to be designed not only as a regulatory instrument, but also as a tool to promote socio-economic development in the countryside.

The TSS-1 guidelines provided the starting point for the technical analysis of land access and land management. It included a review of other material available at the time (mid-1995), the main features of which are already indicated above. The UEM Land Studies Unit, the LTC team, and others were also documenting the allocation of very large areas in key regions such as the Zambezi River basin. Inevitably ceding tens of thousands of hectares to new private sector interests was going to affect local residents and these areas quickly became a focus of land disputes. All this added to the sense of urgency over 'the land question'.

The discussion of Figure One above shows how farm systems analysis had already been used to argue for a new approach to land policy. This argument was reinforced by empirical results from another quarter. The 'family sector' was increasingly recognised as an important source of national production – including of export crops such as cashew – and as a principal target for development assistance. A new Family Sector Agricultural 'Pre-programme' had been launched in 1992 to examine its needs, and included a FAO-supported project in the Land and Water Department of the National Institute for Agronomic Research (INIA). This project was looking precisely at customary land use and management systems.

The INIA/FAO project confirmed that the 'family sector' used a wide range of land resources to support integrated, low-risk production strategies well suited to local environmental conditions. This analysis revealed a unit of occupation quite unlike the 'nuclear farm' or *machamba* model that cadastral services were working with. Moreover the important INIA programme was also revealing information about local level land management³⁶:

- customary land management structures managed well over 90 percent of all land access and land use in the country
- the land management units that emerged after an analysis of customary land systems could be identified through a carefully conducted process of participatory fieldwork with local people and their leaders
- long standing boundaries between customary land management units were still valid and recognised by local people

There was therefore a strong sociological and land use case for developing a new model to protect *all* local resources, *and* recognise the legitimacy and utility of customary land management systems. If these worked well and at no cost to the State, why abolish them or replace them with a new, 'modern' cadastral system which in any case was having problems producing results already? There were good examples close by – in Botswana for example - where customary authorities had long been integrated into the formal State land management system. Why not in Mozambique?

Mozambique had travelled a very different historical path however. The abolition of customary authority was a central tenet of FRELIMO strategy and its modernising philosophy, and there was great resistance to the idea of a 'return to the past'. This resistance was loudly expressed in a national conference in Maputo in 1994, when research results from Guinea Bissau were presented that suggested that customary or local level structures could become a new basic unit of administration, especially in relation to land and natural resources³⁷. In fact the situation in Guinea Bissau was

³⁶ See De Wit et al, (1995) and (1996)

³⁷ See Tanner (1994)

very similar for historical reasons, and offered a good reference point. Both countries share a common colonial heritage with a strong impact on the both their legal and land management systems. Indeed the same 1961 colonial law applied in both countries up to the time of independence in 1974/5.

Structural adjustment had also begun in Guinea Bissau in 1986, with a strong impact on land values³⁸. Perceptions of village land rights reflected the intellectual inheritance of the same 1961 colonial law that governed land issues in Mozambique. And perceptions of village land use were also conditioned by a deep bias amongst urban-based officials that family farms were simple subsistence units that on average required just 3.5 hectares³⁹.

As in Mozambique, large areas were considered to be 'free' for the State – as owner – to allocate as it saw fit. Local use of forests, rotation cycles, grazing land and river systems were ignored. River basin and valuable forest resources were naturally favoured by the new national private sector, as were areas where new infrastructure projects were planned. By the early 1990s a highly centralised cadastral and resource management system built onto the Portuguese model was mainly helping urban elites to survey and register new concessions (or *pontas*). It was evident that much of this work was simply done directly on cadastral maps - in some areas new *pontas* completely encircled villages and occupied all their land without their even being aware of it⁴⁰.

A strong urban-bias was also evident amongst urban policymakers with roots in the modernising post-Independence ideology of the ruling party. They favoured a 'modern' sector that could bring funds and new technology into rural areas and raise agricultural production. The small farm 'sector' was seen as backward, non-monetised with few links to the market, and unable to respond to new opportunities or lead the development process.

The reality was very different however. Small farmers had withdrawn from the formal economy in response to unfavourable market conditions created by official agricultural and macro-economic policy, but were clandestinely engaged in *regional* and local markets⁴¹. The reality of new land concessions stood out starkly against this highly dynamic view of the family sector.⁴² A survey of *pontas* revealed that many new 'investors' were under-financed, knew little about farming, and were using at the most 5 percent of the very large areas they now controlled⁴³. New land titles were being used for securing bank credits, but these were being used mainly for urban construction and commercial or trading ventures.

This experience has very strong parallels with Mozambique, where today there is strong evidence that most new private sector holdings are virtually unused⁴⁴. The underlying strength of the small farm sector and the need to focus on their needs as well those of new investors was also revealed in the first post-war economic growth figures, when the economy grew by some 19 percent. Very little of this was due to new private sector investment, but instead was the result of small farmers bringing

³⁸ Tanner (1991b), Bruce and Tanner (1993)

³⁹ MDRA/IBRD (1991)

⁴⁰ Tanner (1991a)

⁴¹ Tanner (1991a); Ribeiro & Miranda (1993)

⁴² Tanner (1991b)

⁴³ Pereira et al (1992)

⁴⁴ See for example Norfolk and Soberano (2000a)

land back into production even with the meagre resources they had managed to save or secure from aid programmes.

Such comparisons with countries with a similar legal and historical background, backed by technical arguments and field work in Mozambique itself, also justified a radical shift in policy towards a rights-based approach that took as its starting point an analysis of *existing* local land rights. The location and extent of these rights could be established through an analysis of farm systems, social organisation, political and resource management structures, and historical and cultural criteria. With these rights established, private sector interests could then engage with local people in a clear and mutually beneficial manner. Such a shift could provide a powerful answer to land conflicts, and offer a powerful development tool to tackle poverty. It could also contribute to national development objectives, especially if it were possible to attract new capital into the countryside in a way that brought benefits to all concerned.

On the other hand, if already evident trends continued, and the extensive resource base of the small farm system was *not* secured through an alternative approach, there would be high economic costs: the surpluses already produced by small farmers would be lost, along with the chance for rural people to use their resources for their own social and economic development. Inevitably they would move off farms that were no longer viable, to become part of the urban unemployed, no longer producing their own food and adding to the dependency upon imports and food aid.

Integrating Customary Systems into a New Law

Having established the importance of securing small farmer rights and the need to look more carefully at indigenous land use and management systems, attention turned to how customary laws and land management practices could be integrated into the formal state system. The INIA fieldwork showed conclusively that these systems had survived the upheavals of the war. Traditional leaders and land chiefs still played key roles in land allocation and management, although the pattern varied from place to place and they often worked closely with local government. An analysis of customary land management systems was also an important additional tool for identifying the extent of local land rights, and was later incorporated into a new instrument for implementing the law⁴⁵.

With over 90 percent of all land use managed by customary structures, during and since the post-war resettlement period, it made sense to give these systems full legitimacy under the law of Mozambique. Important questions were however raised by more sceptical colleagues, both inside and outside the Land Commission. These included concerns about:

- the feasibility of codifying and regulating some 25 different cultural and ethnically based 'customary' systems within the new Land Law
- the feasibility of integrating a customary legal system into a new law that had also to follow the codified Napoleonic system inherited from the Portuguese
- safeguarding the interests of women, whose land rights in customary systems are often far from secure in conventional modern terms

⁴⁵ The Technical Annex to the Land Law Regulations, discussed later.

- safeguarding against unscrupulous local leaders who were not always to be relied upon as trustworthy representatives of their communities

The response was to treat areas where local rights existed as self-contained land management units *within which the prevailing local land customs could and should apply*. Within these areas, customary norms and practices could take care of the allocation and management of the majority of small family farms, removing the need to individually survey and register each cultivated plot and other forms of natural resource use. In this case a fully codified version of each customary system would not be needed. The issue instead was the relationship between these units and wider Mozambique society. And the basis of this relationship would be a formal recognition in law that customary systems existed and responded to real needs, and that rights acquired through them were equivalent to use rights allocated by the State to other land users.

The vexed issue of women's rights continued to test policymakers and technical assistants alike however. Empirical evidence from many areas showed that within customary systems, women did *not* enjoy equal rights to men, and that at times of divorce or inheritance, they very often lost all rights to land they had been farming and using to support their families.

The response to this question was to refer back to the over-arching principles of the Constitution, which clearly states that women and men enjoy equal rights under law. Where it could be shown that application of customary norms and practices was prejudicial to women, the Constitution would over-rule local practice.

Field research was also showing that local leaders were not always 'legitimate' and did not always act in the best interests of the communities⁴⁶. This opened up discussion of the wider issue of representation, and in the first instance care was taken throughout the policy process to stress that local leaders were not necessarily *traditional* leaders. This issue came up frequently however, especially during the development of the Technical Annex to the Land Law Regulations (see below), and in fact is still an important focus of discussion today as implementation of the Land Law moves ahead.

IV. THE NATIONAL LAND POLICY

The result of these discussions was a new National Land Policy approved in September 1995 and well summed up in the following declaration:

'Safeguard the diverse rights of the Mozambican people over the land and other natural resources, while promoting new investment and the sustainable and equitable use of these resources'
(Government of Mozambique 1995).

The basic principles of the new policy were:

- State ownership over land, as laid down in the Constitution

⁴⁶ For example, West (1992)

- guaranteed access to land for the population as well as for investors, while promoting social and economic justice in the countryside by recognising the customary rights of access and management of rural people over their land
- guaranteed rights of access to and use of land by women
- promotion of private investment – national and foreign – without prejudicing the resident population and ensuring that both they and the public treasury benefit
- the active participation of nationals as partners in private enterprises
- the definition and regulation of basic guidelines for the transfer of use rights over land, between citizens or national enterprises, as long as investments have been carried out on the land in question
- the sustainable use of natural resources in a way that guarantees the quality of life for present and future generations

The new policy explicitly recognised the reality of small farm agriculture and land occupation, allowing that even where new land concessions did not occupy all local land, the specific resources claimed could undermine local production systems. It recognised too that ‘in some areas, there are claims over land that have an historical basis’ and that in others the land appears to be empty or abandoned but in fact may not be so – it may either not yet have been reoccupied, or the original occupants lacked the means of production to adequately use it (Government of Mozambique 1995:1).

Most importantly, the policy document also explicitly accepted that customary land systems were carrying out an important ‘public’ service at very low cost to the State. It then went an important step further: *in relation to the ‘family sector’, the Land Law would recognise customary rights of access and management.* These rights would include the various systems of transferring and inheriting rights, as well as the role of local leaders in the prevention and resolution of conflicts and the legalization (formal demarcation and registration of a land use right) of specific areas. ‘These practical systems that are already applied in the vast majority of cases of land occupation and use *should be taken into account in land legislation* (Government of Mozambique 1995:6).

The new policy went on to define the conditions through which small, middle, and large firms would have their land rights secured through the conventional cadastral process of demarcation, titling and registration. It states very clearly that the reforms included in the Land Policy with regard to the revision of land legislation and institutional strengthening would also determine precise lines of action for making new investments and the ways in which it should operate.

Co-titling

The new policy recognised that in order to safeguard the customarily acquired rights of the rural population, it would be necessary to identify the areas occupied by them and subsequently demarcate and register these in the National Cadastre. Following the analysis of farm systems and socio-administrative organisation discussed above, this implied the identification of a single collective unit within which many hundreds of

local land users lived, using various land and other resources allocated to them through customary channels.

This approach had been advocated by the FAO advisory team not only because it matched the actual sociology of rural land use, but also because it offered a quick and cost-effective way of securing local land rights. One large unit could be surveyed and recorded, without the need for surveying and registering hundreds of small plots and other resources with complex, communal and common land characteristics. Once a suitable land border could be identified around the villages and land resources in question, a single document could give overall protection to all those within this area, leaving the customary system to deal with the specifics of land use by its residents. The sociological basis for this approach was clear. The lawyers were then asked to come up with appropriate and legally acceptable concepts that could define and regulate such a unit within the new land law.

Matching available legal concepts to the reality of African land occupation and use resulted in a proposal from the legal specialist that either co-titling or a condominium model could offer an effective solution. If it was possible to think of including diverse settlements and common resources such as forests and water sources within a single unit, and if this unit could prove that it held land rights over a given area, any other entity, 'be it the State or an individual, will be obliged to negotiate with the local community [to gain access to local resources]. (Government of Mozambique 1995:6)

This approach also allowed for the possibility that other collective groups could have physical borders defined around them. These could be other socio-economic groups within the local community, such as a lineage group or extended family, or associations and cooperatives that promote a particular economic activity. They could then request a process of co-titling without having to pass through the double process of forming an Association and then requesting land titling over their collective assets. This offered an effective solution to the logjam of Associations that were still waiting for legalisation as an Association before even beginning their land registration process.

The Multi-sectoral Nature of Rural Land Use

Finally the new policy also recognised that several sectors had a strong interest in seeing that any legislation suited their specific needs. The impact of building and investment and the need to have clear principles for zoning areas as urban or otherwise were specifically covered. With relation to mineral resources, the policy reaffirmed that the State retained absolute rights over all underground resources. It allowed for their exploitation subject to a licence that limited the activities of the licence holder *only* to the exploitation of these resources, while admitting that other uses of the surface area – for example the agriculture of local residents – could continue.

Tourism was already emerging in 1995 as a key new activity in rural areas, in the context of eco-tourism and hunting, coastal hotels and other leisure activities. The policy saw tourism as being located in specific places however, with its activities specifically regulated not just by the Land Law but also by its own respective regulations. Such areas would be recorded in the National Cadastre, in a type of zoning exercise. The need for new land for public works such as roads, railways etc, was also foreseen in the policy document. In principle, if tourist or public infrastructure projects were to be carried out in areas where local rights could be

proven to exist, then these rights would have to be taken into account following the principles of 'active participation' already established in the policy.

V. DEVELOPING THE LAW

The Legal Group

With the basic policy principles in place, attention turned to drafting a new law to put them into practice. A small 'Legal Group' of national lawyers was contracted through the FAO project, with one working full time to collate and organise the work of the group. Five other lawyers were selected from Inter-ministerial Commission ministries and non-government service. The whole group was supervised by the new Coordinator of the TS, an experienced national lawyer who was also Legal Advisor to the Minister of Agriculture and Fisheries⁴⁷. Throughout the following 18 months, the lawyer in the FAO team⁴⁸ also provided expert opinion as and when required, and guided the work programme of the group.

The first task of the Legal Group was to develop a draft law in close collaboration with the core TS technical team. This draft was then submitted to the wider TS inter-sectoral committee and debated point-by-point. Meetings were arranged at least once a month, and well attended by delegates from all the sectors and organisations involved.

The old law did of course form an important backdrop against which the new one emerged. From the start however, the principle reference point was the National Land Policy, itself the result of intensive sociological and other analysis of the reality of land occupation and use in Mozambique. In other words, the lawyers were *asked to come up with legally acceptable concepts and proposals that would reflect this underlying reality, rather than starting with concepts taken either from the old law or based in the legal practice of European countries*. Historical background, farm and land use systems, and the social and political organisation of local communities were all taken into account.

The sociology and socio-political reality beyond local communities was also important. The real practices of cadastral service and other officials, their prejudices, skills and talents, a culture of complex administrative procedures and bureaucratic opaqueness, vested interests manipulating land management, all these were considered.

A critical contribution from the FAO technical assistance team was the preparation of detailed commentaries. Specific points in the new law were placed against the old law, and a full legal and technical justification presented. This approach facilitated discussion and helped to reduce the time spent on many of the newly drafted provisions.

Throughout the often-animated TS working committee discussions, social science input had a critical impact, constantly bringing the group back to a 'reality checkpoint' rooted in the norms, practices, and needs of ordinary Mozambicans. The Legal Group participated in all meetings, defending their proposals and suggesting ways in which the ideas and comments of each meeting could be incorporated. The group

⁴⁷ Dr Conceição Quadros

⁴⁸ Dr Ivon Pires. His comments and observations on this paper are gratefully acknowledged.

later added agreed amendments or additions to the evolving draft, which was then returned to the full committee for further discussion. until an acceptable draft had been produced. In this way, a first full draft of the new law was ready for wider discussion by December 1995.

Land Rights

The nature of the land right attributed by the Mozambican state was the first issue to be addressed. The Constitution still said that land was the property of the State, and could not be bought, sold or mortgaged. This principle was not up for negotiation and was a given that the TS and Legal Group had to work with. Yet it was – and still is - at odds with the development of a market economy. Without private property rights that can be legally exchanged in a market place of some sort, it is impossible for people to realise and use the full capital value locked up in their land and other resources. They are then locked into a cycle of under-performance and constraints that create and perpetuate poverty⁴⁹.

Finding a way to allow *all* land users – small farmers, the ‘family sector’, and new investors - to use and benefit from this locked up value was a fundamental goal. If an appropriate mechanism could be found, local people could in effect take charge of their own development process and gain some independence from state-sponsored assistance, NGOs and donor programmes. They could use their capital asset to generate resources, in partnership with credit agencies or investors, that *they* control and use in line with their own priorities. And with independent communities using their own resources, Mozambique itself could see an end to its national dependence upon external support.

At a more fundamental level still however, the notion of State ownership was also at odds with the popular view on the ground: most local people clearly still thought of the land over which they legally only enjoyed use rights as *their land*. Furthermore, this sentiment also extended to the much larger ‘free’ areas that were not actually used, and over which they legally had no secure tenure of any kind.

These points all came together in the search for a way to match the new law to the reality of land use, and allow land rights to be freely exchanged between third parties without having to return the land to the State. The principle of State ownership was not in fact an obstacle. The solution offered was to focus on surface rights, leaving ownership of the land itself with the State. Even if the surface right remained as a use right only (*direito de uso e aproveitamento*), the important thing was to allow this right to be exchanged, subject to appropriate regulation. With transactions regulated and registered, the State could also gain through new taxes and fees charged on these exchanges.

In the event the new law could not go as far as turning the use right into something close to a tradable commodity. This was politically difficult, and would not have been an appropriate development at the time in any case. What was important at this stage was to offer a way for all land users to identify and secure their *existing rights* first. Without firm State control and given an open door to the *de facto* privatisation favoured by some donors and private sector interests, this essential initial process would be over run in the rush for land.

⁴⁹ See de Soto (2000) for a strong defence of this point

The Constitution and existing law did however allow rights holders to sell buildings and other investments on their land to third parties. The new law included this provision, but added the requirement that the transaction be subject to a notarised contract and that it was *subsequently recorded in the relevant land use title*. The details of this process were left for later Regulations (see below), but the way was now open for legal *de facto* land transactions involving land with clear use rights and title documents that had benefited from investment.

How Use Rights Are Acquired

When the issue of how use rights are acquired was addressed, the sociological and other analyses of land occupation and use came to the fore. The Land Policy had admitted that there were areas of customary occupation where rights already existed and that these have an historical basis. It was therefore agreed that 'occupation, according to customary norms and practices' would constitute one way in which the use right attributed by the State was acquired. Furthermore, these rights were not new and did not have to be authorised – if they could be shown to exist, the law recognised them and offered them full legal protection.

The Legal Group was also asked to look at the reality of *de facto* occupation by IDPs and others, in state farms and other areas where they had settled for many years during the war. In recognition of the legitimacy of their position, the group proposed that 'good faith' occupation be allowed, subject to a specified time period and evidence that the occupation was not contested by any other party. This then entered the new law as the second way in which the use right attributed by the State could be acquired.

The third and last situation to consider was that of new requests for land, from investors or others with no previous links to the land in question. In this case the Legal Group was guided by earlier legislation, but sought to: a) simplify the process through which a new land use right could be requested and obtained; b) ensure that the new right was attributed with the full approval of local people in the area concerned; and c) ensure that the new right or the project linked to it would not prejudice the social and economic welfare of local residents. A formal request to the State for a new land use right then became the third channel for securing access to and use of land.

These three channels through which the State-attributed use right is acquired were placed together in a single article (now Article 12 of the new Law). A critically important aspect of this approach was to make explicit to all parties to any land transaction, that the use right acquired through any of these channels was equal before the law. A formally acquired right with full documentation was not in itself any different to one acquired through customary or good faith occupation. This ended – at least in law - a notorious practice whereby those who managed to secure title documents or licences to carry out economic activities, either through the cadastral services or other institutions, felt that they had the right to expel local residents from the area in question.

Title and Registration

One issue that was later hotly debated in the National Conference was that of titling and registration. Experience with Associations and other attempts to safeguard local land rights showed that the process of registration - surveying, demarcation of land borders, and titling - was expensive and time consuming. Nor did Mozambique have

the resources to carry out a national level campaign to demarcate and register all community land areas.

The recommended approach from the TS and the FAO team of technical advisors was to demarcate community land as and when necessary (in case of conflicts, when a new project was proposed in an area, etc). In this case a more gradual process of recording the map of land rights in the country could be adopted, and funding could be spread over time and even raised from the private sector interests that were giving rise to the need for registration in the first place.

In this case, it was felt that the law should be very explicit about the security of rights acquired by occupation – customary or good faith – but which had not yet been demarcated and registered. Through Article 12, these rights already exist anyway, and are given immediate protection under law. Agreement was finally reached on two key clauses:

‘The absence of a title does not prejudice the use right over land that is acquired through occupation [as in Article 12].(Law 19/97, Article 13/2)

‘The absence of registration does not prejudice the use right over land that is acquired through occupation [as in Article 12] as long as it can be conclusively proved in terms of the present law’. (Law 19/97, Article 14/2).

Taken together with Article 12, these provisions also mean that even where a local community is demarcated and registered, registration does not require the approval of provincial governors or higher authorities. They are not new rights. In this way a key administrative step is eliminated, and costs are reduced.

Proof

As Article 14 indicated, proof is needed that an already acquired right does in fact exist. A radical departure from previous legislation was proposed and finally approved, that allowed not only documentary evidence as proof, but also the verbal testimony of men and women from the community occupying the land in question. Official inspection (*peritagem*) and ‘other means permitted by law’ were also included. Similar conditions also attached to those claiming existing use rights through ‘good faith’ occupation (Law 19/97, Article 15).

The Local Community

The new legal concept of the ‘local community’ is one of the most important features of the new Land Law. The concept was designed to give legal form (*personalidade juridica*) to the single land unit identified by analysing farm systems, social organisation and land management structures. Within this unit, *customary norms and practices were acknowledged as the legitimate way in which local residents acquired and managed their land rights.*

If such a unit could be created, then the issue of codifying and incorporating over twenty distinct customary land systems could be avoided. If the new law recognised the legitimacy of what went on inside any given community, then all that was needed was to recognise the land use rights allocated within that area, *however they were acquired*, provided that the community in question accepted the legitimacy of ‘its’ customary system. Attention would then focus instead on the relationships between this community and the outside world. Customary law would be integrated fully into

the formal legal framework of the modern state without the need for long and complex codifications. And it would maintain its essential features: flexibility and adaptability, case-by-case conflict resolution rooted in culturally prescribed norms and practices, and legitimacy in the eyes of local people.

It is not hard to imagine the discussions that took place over this concept and how to define it. Precisely because Mozambique is so diverse culturally and geographically, many people thought that it would simply be impossible to define this unit in any way that would be practical or useful. Either it would be too unwieldy, trying to respond to all realities, or it would be so simple as to be full of loopholes and useless as a legal instrument. The definition of a 'local community' that finally emerged – Item One in Article One of the new Law – is as follows:

'A grouping of families and individuals, living in a circumscribed territorial area at the level of a locality [the lowest official unit of local government in Mozambique] or below, which has as its objective the safeguarding of common interests through the protection of areas of habitation, agricultural areas, whether cultivated or in fallow, forests, sites of socio-cultural importance, grazing lands, water sources and areas for expansion' (Law 19/97, Article 1/1)

The definition was widely criticised as draft versions passed through provincial and national conference discussions. Criticisms always came back to the impossibility of using *any single* definition across the whole of Mozambique. The defence in turn was always that with a definition of this kind, accompanied by appropriate provisions elsewhere in the law, it was not necessary to account for all cultural and geographical contexts. And ultimately, what was the alternative? Carrying on with the conventional model of individual titles over specific plots was certainly not going to work, nor was the Association approach.

Obviously the definition above leaves many things out. There is no reference to kinship systems (patri- or matrilineal, both of which exist in Mozambique) or other ties between community residents; there is no reference to size either in hectares or in numbers of residents; there is no reference to who leads or represents the community; there is no reference to what can or should be done by or within it.

To some extent these are deliberate omissions, as these details are all things that depend upon the specific local context of each community. Later discussions of the instruments needed to implement the Land Law did focus more clearly on these points⁵⁰. Within the more general framework of the law however, it was important to define a unit that effectively incorporated all the land and natural resources assets of a community, so that these could be protected in law against unscrupulous attempts by outsiders to occupy 'empty' or unoccupied land. *Occupation* was the key point of the local community concept, seen principally as a land occupation and land management unit.

Private versus Public Rights

There was much debate over whether the rights enjoyed by the customarily defined unit would be public or private. There were good arguments on both sides: seen as a management unit with a clear customary authority overseeing decisions and

⁵⁰ Discussed below.

resolving conflicts, the new collective land unit very much resembled a unit of public administration. Use rights attributed to it were therefore more public than private⁵¹.

The work of the INIA/FAO team also focused on traditional land management structures, not only to show that they worked, but also as a means of defining where community boundaries might be located. In other words, an area of *jurisdiction* was being discussed *within which* stronger rights similar to ownership were recognised under customary law. This type of model was also being discussed by the FAO team.⁵² And seen in the setting of the community itself, in which the same traditional authorities exercised a range of other functions closely resembling a form of public administration, the notion of jurisdiction was perhaps more accurate. Moreover, it might calm fears amongst investors and other opposed to the communities being given rights over such large areas: if what was being attributed was more like a management role instead of potentially exclusive land use rights, this left the door open for others to still request and secure resources within the area of a community.

Against this was the strong argument that that the rights acquired by the communities *must be identical to those acquired by other groups*. Otherwise, the reality of unequal power and access to tribunals and administrative departments would always come down on the side of the incoming investor with his or her document and a cadastral team on their side. Furthermore, the focus of all the discussions to date was *land access and use*, not public administration. The underlying issue was securing community land rights so that they could use these for their own development as and when appropriate.

Much of this discussion was influenced by concerns about the nature of private rights and what might happen if these were allocated to a group of local people over very large areas. In principle however, even if a strong private right is recognised by law, there is no reason why those holding the right cannot share it with or otherwise transfer it to a new investor. Indeed within the customary system this was already common practice when new people came into an area and wanted to settle there. This point was also more fully addressed in the Land Law Regulations and Technical Annex, discussed below.

The ultimate argument however was the need to really secure the rights of local people: to do so they needed a right that was *at least* as strong as those being attributed in new requests for land by private investors. The result was that the 'local community' could potentially include a large area of diverse resources – used or not – and enjoy private use rights over all these resources that were equal to those enjoyed by any other land user.

Local Participation and Consultation

The final issue to be addressed here is that of local consultation and participation in land management decisions. The provisions that are now in the Land Law arose from a concern that local people should be consulted first before any new land allocations are made. They are the ones who know where rights through occupation exist, whether they are active or not, and whether a piece of land is in fact 'free' or not. These concerns were subjected to intense discussion in the TS working committee meetings and in the wider discussions of draft versions. Fundamental issues of devolved power and decentralised decision making were raised by the

⁵¹ See Tanner (1994).

⁵² Tanner (1996)

prospect of local people having a real voice over resource allocation decisions, particularly if the principal of State ownership of the resource is taken into account.

Two new provisions resulted from these discussions. The first, in Article 13 (Titling) states that the process of issuing title for a land use right (by implication including all new requests for land) must '*include the official view (parecer) of the local administrative authorities, preceded by a consultation with the respective communities, for the purpose of confirming that the area is free and has no occupants*'. This provides additional legal protection for local people, and in principle is the prime legal mechanism for preventing future land conflicts between local people and incoming investors.

The second provision deals more with the management role of local communities, and is an implicit recognition of the relevance and importance of customary land management systems. This is Article 24, which states that communities participate in the management of natural resources and the resolution of conflicts, using '*amongst other things, customary norms and practices*'.

A very real concern was over who would represent the community in such consultation and land management decisions. In fact this particular question is still under discussion today, and is not an easy one to answer. At the time of the 1996 National Land Conference (see Part V, below) however, the focus was on underlying principles and a concern to ensure that consultation and representation were at least included as a basic principle in law. Developing concrete mechanisms and procedures could then be left to subsequent laws and regulations (Law 19/97, Article 30).

V. APPROVING THE LAW

The sociological arguments underpinning the new Land Law are one part of a much bigger picture. The new law was also of course being developed within a complex and often critical political context. *This* sociology and the way it was handled was an equally important part of the Mozambican process. In the previous sections, the involvement of a wide range of sectors, specialists and non-governmental groups was highlighted as one of the means for achieving a level of consensus that would allow the law project to go ahead. Wide ranging provincial discussions were also conducted with support from the Ford Foundation also served to legitimise the evolving draft and give a very large number of people a sense that they had actively contributed to the overall process.

When finally ready for formal presentation to a national audience, the new law – and its supporters – had to pass through a series of complex steps to firstly get it into the Assembly, and secondly for it to be ultimately passed into law. The first of these was the 1996 National Land Conference.

The 1996 National Land Conference

In many respects this Conference was a milestone for Mozambique and indeed would be for many countries with far more developed democratic systems. Over 200 people from a wide range of institutions and organisations took part, including NGOs at national and local level, and small associations representing farmers and women from different parts of the country. Several ministers and Assembly deputies were present, as well as politicians from the main parties. The main public sectors involved

with land issues sent technical staff from central and provincial level. Prominent members of the business community and members of the diplomatic corps were invited. Many national and international specialists also attended. The Conference was fully and openly covered by the press, TV and radio services.

Over a period of three days the draft law was discussed and dissected point by point. While the Conference was not binding in its decisions, full note was taken of all major criticisms, and a consensus sought on compromise solutions. On balance, by far the greater part of the draft received strong support from the majority of those present, even when senior figures expressed strong opposition. In short the conference conferred a strong sense of legitimacy on the process as a whole, and on the draft law in particular, that subsequent political review and assembly debate was obliged to take into account.

As an exercise in democratic participation it would probably be hard to equal this conference anywhere, north or south. It represents an important milestone in Mozambique especially, and has established an important precedent for involving civil society, government and other vested interests together in policy development and changes in national legislation.

Reaching the Assembly

After the Conference the TS had to incorporate the agreed changes and produce a new version that reflected the overall mood of the Conference. In fact relatively little was changed, and the revised version was subjected to close scrutiny by a seminar of the governing FRELIMO party. Several of the issues already raised above were strongly debated: how can a single definition of a community be applied across Mozambique; should so much power be devolved to local communities; what was there in the law to safeguard the interests of investors and promote the productive use of national resources; what safeguards were there to prevent foreign domination of the resource base and to allow Mozambican interests to gain access to national resources.

The party produced its own comments after the Seminar, and these too were duly incorporated into the evolving draft law⁵³. One issue still threatened to derail the whole process however: the concept of local community. Concerns focused on the power being accorded this new 'grouping', and whether it would be a *de facto* new unit of administration that could undermine the authority of the State. At the eleventh hour, the TS was faced with the very real prospect of either taking this central concept out of the law, or putting something else in its place.

The argument raised in defence of the local community concept was that it was the best-case technical solution to a very difficult and complex issue. Furthermore, it was the result of many months of work by dozens of national and international specialists, that in turn had been subjected to intensive national debate at all levels by literally hundreds of people. Taking it out would be extremely difficult, and it would be very hard to come up with anything radically different that did not require changes in both the policy and the rest of the draft law.

Shortly after the technical defence of the concept had been presented, the Minister of Agriculture met with the President of the Republic and the governing FRELIMO party. The result of this meeting was an instruction presented through the Minister to the

⁵³ Comissão de Terras (1996)

Land Commission Secretariat, to maintain the local community concept but insert the words 'at the level of a locality or below'. If this were done, the draft could go through to the Assembly as a formal Bill (*projecto lei*).

The underlying concerns here were that the new concept should not clash in any way with the formal structures of government, including the lower levels of public administration (administrative posts and localities). These concerns take on more significance still in the context of the decentralisation debate that had preceded the passage of Law 3/94. Recognising 'traditional' leaders was a major step for FRELIMO, and this process too was only recently underway after a long post-Independence period of effectively ignoring any formal role for former *Regulos* and other traditional authorities. The 'local community' idea, with its recognition of the validity of customary land management systems within each community, clearly raised many fears about the role of the State and, ultimately, over who had the final say over the use of land and other natural resources.

Passage through the Assembly

This is not the place to go into the detail of the debate in the Assembly. What is important to note is the way in which the TS and others worked hard to ensure that the new bill was fully understood and that the information needed for a full debate was available. The FAO legal specialist was invited to talk to the assembly deputies and explain the major features of the new bill. A full day of discussion took place that prepared many of those present for the subsequent rounds of political debate. Full copies of the new bill were also publicly available from the Assembly, and a full copy was printed in the main national daily newspaper. Public comment through the press and other media was widespread. Once again, these measures would be hard to equal in more developed countries. All contributed to the overall legitimacy of the final law that emerged several months later, with relatively few changes compared to the bill that was finally presented to the Assembly.

VI. THE POLITICAL CONTEXT

To fully understand the forces at work here, it is essential to understand at least superficially some important aspects of the surrounding political context. Firstly, the issue of local power and decentralisation was already a strongly contested area, during national level debates leading up to the passing of a new local government law by the National Assembly in September of 1994⁵⁴. This extremely progressive legislation foresaw the devolution of considerable powers down to district level, and the direct election of all district administrators.

This law had been developed by a specialist team in the Ministry of State Administration that included anthropologists as well as lawyers and local government experts. This team had also conducted an exhaustive research and consultation exercise on the specific issue of customary authorities and the potential advantages of bringing them more fully into the overall system of local government. The work of this group was also feeding into an active project supported by several donors, the Local Government Reform Programme.

State Administration was also an important full member of the Land Commission, and its nominated delegates had played a consistently active role in the policy

⁵⁴ Law 3/94, 13 September

discussions and subsequent drafting of the law. While there was never any formal mechanism linking the two laws, or any formal discussion between the TS and the State Administration team, the potential linkages between the two laws were very evident. It is therefore not difficult to understand the concerns raised in some quarters, that the 'local community' might easily become a vehicle for backdoor decentralisation and come to challenge the established basic units of local government.

Many people also thought that the new Land Law gave local people too much power over national resources. Several fundamental concerns underlay these discussions. Two were straightforward questions of access to resources. Certain groups with considerable economic and political influence wanted to maintain access to new land resources for outside (ie non-community) investors, and opposed giving secure use rights over large areas. Smaller areas deemed adequate for subsistence were fine, very large areas including attractive natural resources were not⁵⁵. And even if investors were to be allowed inside community areas, concerns were raised about giving local people control and influence over decision making and resource management. In the case of communities having to approve new requests for land, the question was clearly put by one eminent national participant in the 1996 Conference: what happens if they say No?

The third concern was more ideological and directed by a concern for the welfare of rural communities. Many in Maputo were deeply worried about the idea of transferring real rights to local people who were unable to withstand the onslaught of private interests that would inevitably try to take these rights from them. The major fear here was foreign capital, with far more resources than national entrepreneurs. Foreigners could simply outbid the local side and were very likely to pay derisory sums to local people for the resources they secured. In this context, it was far better for the State to retain strong control over resource management, in order to protect local rights and prevent the effective 'recolonisation' of Mozambique.

Linked to this were the same views that surfaced in the 1994 Conference, regarding a return to the past and letting 'traditional' authorities again play a political and administrative role. The view that such 'leaders' were merely colonial puppets is still strongly held in Maputo. Many FRELIMO politicians and others in the national elite had fully embraced the modernisation project of their party after Independence, and rejected the relevance of customary authorities in national affairs. For many this was a deep and longstanding philosophical commitment. To bring customary authorities back into public life, even at the most local of levels, was simple anathema.

This sentiment was echoed by many cadastral service officers, who also saw their mission in terms of creating a modern land management system. Most had been trained to do just that, and to now accept that customary land management systems should be recognised and integrated into the national system was a difficult pill to swallow.

Another critical aspect of this whole picture is the relationship between FRELIMO and the RENAMO opposition in the National Assembly. During the civil war, RENAMO adopted a very different approach to FRELIMO in the areas that it managed to gain control over. Instead of marginalizing traditional authorities, they were not only maintained but brought fully into the wider administrative system. Ceremonies and

⁵⁵ Compare this to similar views of village needs in Guinea Bissau in 1993, and the same basic model contained in the 1961 colonial land law.

rituals that were actually outlawed in FRELIMO areas were allowed to continue. The fact that the population in FRELIMO areas also clung clandestinely to these same traditions only underlines the concerns that FRELIMO leaders had in the mid-1990s about bringing customary authorities back into political life. Giving them real powers over land and other resources could have major consequences for national unity and long term political stability.

These issues are at the heart of the national political process, and are still very much alive. Those who were drafting and later modifying the *projecto lei* had to take them fully into account. With a new local government law in place at the time that was extremely progressive and promised new levels of decentralisation when implemented, the implications of the new Land Law proposals were indeed alarming to many people on more conservative sides of the political spectrum. The high level intervention referred to above, during governing party discussions of the draft bill, indicates the depth of feeling about some of the new measures being proposed.

It is tempting to assert that the wide-ranging public debate of the bill, and its *de facto* legitimisation through the 1996 Conference, ultimately persuaded the legislators to approve the new legislation. Public expectations as expressed through the press and other media were certainly high. And what emerged from the Assembly suffered relatively few alterations compared with what in. Yet many of the concerns raised about devolving power to local people, the emergence of the 'local community' as an administrative unit, and the role of traditional leaders were not clearly resolved, and are important issues today as the law begins to make its presence felt through being implemented in practice. In this context its strength is precisely its relative lack of detail, and its role as a statement of basic principles that allows for future modifications without the need for a major revision of the law itself.

VII. THE LAND LAW REGULATIONS

Although the new law had been approved, there was still ample evidence coming from the field that land disputes and large scale land claims by more powerful socio-economic groups were continuing. In 1998, field studies were still reporting huge requests for land, covering up to 80 percent of the land area in some districts. Instances of overlapping requests were also reported, with two requests in one district amounting to 125 percent of the entire land area if the overlapping portions are double counted⁵⁶. NGOs were still reporting that 'peasant farmers in general, and women peasant farmers in particular are now at the losing end of an increasing monopolisation of land in a few, private hands⁵⁷'.

The technical and political debate therefore was far from over. To implement the new law, Regulations had to be drafted, a process which presented many opportunities for 'bending' the new law one way or another in practice. The complexity of the issues still surrounding land access and management were demonstrated by the fact that the Regulations took another 18 months to draft. The TS was however able to maintain the inter-sectoral and careful, step-by-step dialogue that had led to an acceptable level of consensus over the Land Law in 1997.

As before, delegates from the nine member ministries of the Commission took part, as well as civil society, academics and specialist support available through other

⁵⁶ Eliseu et al (1998)

⁵⁷ Action Aid (1998)

donor programmes⁵⁸. FAO technical assistance came back into the picture in mid-1998. By this time the draft Regulations were complete, international and national technical specialists were able to review them and provide comments⁵⁹. The end result of this long process of feedback and adjustment was a strong document that filled many holes left by the law and facilitated most aspects of implementation.

Several issues demonstrate the continuing link between good social science input and the legislative process. Firstly, there were questions linked to analyses of the farm and social systems discussed above. These include rights of way, a treatment of 'partial protection zones' that nearly undermined the rights of small farmers over key river bank resources, and the process whereby a community member could 'withdraw' land from the local community and go on to seek a more individual land use right.

Secondly, the Regulations address issues with important implications for the success of the whole policy and legislative package as an instrument to promote development. These are the question of ownership and the transfer of rights, and the development of a new tax regime covering land use rights

Systems and Land Rights

Rights of Way

The Regulations have a specific article (No 17) that deals with rights of way. Initially this discussion was limited to the passage of public utilities and the payment of compensation to an existing use rights holder if his or her right were restricted as a result. Analysis of farm systems and close knowledge of rural areas however reveals that there are many important footpaths and other rights of way (*servidões*) established by generations of customary use that might go unrecorded. In the case of a newly conceded use right to a private project for example, this could result in communities being cut off from access to rivers, or being told that they can no longer use part of this land for traditional seasonal grazing.

The case for including these rights of way in any assessment of local community rights, and in the overall process of allocating new rights to investors, was agreed by the TS committee after considerable debate. The Regulations now state:

'Rights of way relative to public or community access routes and herding routes for cattle established by customary practice, will be recorded in the National Land Cadastre'. (Land Law Regulations, Article 17/2).

Protection Zones

The Regulations also deal with 'Total' and 'Partial' Protection Zones. These are areas designated as having special status for reasons of either environmental conservation or state security. Total Protection Zones do not allow any kind of economic activity to be carried out within their borders, and include National Parks. Partial Protection Zones allow *licenced* economic activity, but land use rights cannot be acquired within them.

⁵⁸ Special tribute is paid to Scott Kloeck-Jenson, an untiring contributor whose tragic death together with his family in June 1999 was a great personal and professional loss to his friends and colleagues.

Eugenio Moiane, from State Administration, is also remembered for his dedication to the work of the TS.
⁵⁹ For example, Kloeck-Jenson (1998b).

Separate legislation such as the Environment Law (Law 20/97) and the Forest and Wildlife Law (Law 10/99) regulate the use of total protection zones, but the Regulations do list the kinds of area that are considered to be 'partial protection zones' and addresses land access issues within them. The list includes the banks of major rivers that are used for navigation and maritime transport, which in the final approved version reads '*the strip of land that borders navigable fluvial waters and lakes up to 50 metres from the highest level of these waters*' (Article 5 (a)).

Further on, in Article 7, the Regulations also plainly state that a land use right cannot be acquired in areas of partial protection. The initial version of Article 5(a) did not include the word 'navigable', raising the possibility that 50 metre strips along *all the rivers and lakes* in the country would have to be left out of any area demarcated as being used by a community or a private investor. In this case, communities were in real danger of being denied full protection under law of key riverine resources that form a central part of their production strategy (see Diagram One).

This point was raised during discussions of the draft Regulations when they were very close to being finalised, and was based precisely upon the underlying analysis of farm systems that had until now guided much of the policy and legal development. Inserting the word 'navigable' into the text resolved the issue.

Communities with *existing rights* could argue that the later Article 7 only refers to new rights, and their existing occupation of river banks and lakesides gives them a secure use right that precedes the legislation. The clarification offered by including 'navigable' does however clarify the intention of the Regulations – reserving areas that the State might want for ports and other maritime needs – and makes it clear that the majority of river bank cultivation in Mozambique is in fact legitimate and is not covered by the restrictions imposed on partial protection zones.

Withdrawing from the Local Community

The question is still often asked, 'what happens if someone wants to withdraw his or her land from the context of customary law and request a formal title document over just their specific area?'. The Regulations foresee this eventuality, but with two important provisos. Such 'dismemberment' is allowed but '*does not dispense with the consultation process and cannot include areas of common use.*' (Article 15/1) In effect it is treated like any new land request – the person wanting to withdraw must first consult the community like any other investor.

Through co-titling, a lower unit of social organisation below the community – an extended household for example – can also do this. The reality of most customary systems is that such sub-units of the community enjoy what are virtually private rights over their specific areas, and that in practically all matters they are the ones who take all the resource used decisions (including allowing a newcomer to settle and use a piece of their specific part of the wider community controlled area).

Families or individuals may want to do this for any number of reasons, but the principal situations are likely to be a) where they specifically feel threatened; b) where they want to enter in agreement with some third party over use of a piece of their specific land; or c) where they want more secure documentation to use as a means to raise bank or other credit for investment in production.

This issue underlines an important feature of the whole legislative package – its consistency and relative simplicity, and its adaptability to situations that do not need

to be explicitly legislated for. Constant reference back to the same underlying sociological and land use analysis facilitates clear guidelines when needed, and an overall coherence to the legislation.

Generating Resources for Development

At no point in the law is there any mention of what can be done on the land where rights exist – this question is instead left to specific other legislation (Environmental Law for example). The Land Law is about rights, access and use, and the relationships between different rights holders, and between them and the State.

The new Land Law is nevertheless an explicit and powerful development instrument. It does not however talk of development zones and other concepts rooted in the socialist approach of earlier governments, but instead provides a series of mechanisms through which local people and investors can unlock the potential in the natural resource base of the country.

Ownership and the Transfer of Rights

The new Land Law does not provide a clear right of private property, but it does create very important and legally defensible private rights over land use. The use right conceded by the State to all land users is renewable and inheritable in the case of requests for new rights from the State, and is indefinite and inheritable in the case of existing rights acquired through customary occupation. Moreover, any investment made on the land *is* private property, and can be bought, sold or mortgaged.

The complications begin to emerge with the process of transmission of land use rights when investments are transferred to a third party. In urban areas this is not that important, as construction normally occupies most of the land in question and transmission of the right along with the buildings that are sold or mortgaged is automatic in a *de facto* sense⁶⁰. In rural areas this is not the case, and the investments that are transferred to third parties may occupy only a small part of the land area over which the previous owner has land use rights. Land in modern Mozambique *does of course have real value as a productive asset*, as evidenced by a very active under-the-counter land market, especially in urban areas.

The land market, when it is visible, is in fact a market in private land use rights, and in principle should only deal in land that has already been registered and upon which real investments have been made. *It is the investments that are being transacted, not the land.* This is made clear in the Law itself. The Regulations do go one step further and provide for land rights changing hands *without the need to return the use right to the State and go through an entirely new process of requesting land rights.* The transmission of the right is *not* automatic, but the process is far simpler than was previously the case.

Meanwhile it is impossible for rural land to serve as any kind of formal collateral or credit guarantee, not only because the law does not allow this, but also because there is no way of imputing any real value to it when investments made on it are bought and sold. The transmission process is also a means by which the State can ensure that land taxes have been paid, and that the land in question has been used

⁶⁰ Specific urban regulations for the Land Law have still not been approved, but have been completed by the Technical Secretariat and submitted to the Interministerial Commission. They are currently being reviewed by the Ministry of Public Works and Housing, a member of the Commission.

as intended by the 'seller'. The final sale of the investments on the land cannot legally go through until formal State approval to transfer the right has been given.

This process may appear complex but does represent an effective compromise that on one hand, maintains the supervisory role of the State as custodian of national resources, and on the other, allows for market based transactions in specific circumstances. It is important to note in this context that the 1997 Law does not offer any intrinsic obstacle to the development of a land market, or to the use of land for credit and mortgage collateral. It already provides the legal basis for a level of mortgage business on investments, credit guarantees and the other paraphernalia needed to stimulate and consolidate economic growth on the back of real national assets.

The underlying question of private ownership of land remains however, and has in fact already surfaced in the shape of new debate that received a huge impetus from pro-privatisation remarks by the Minister of Agriculture and Rural Development himself⁶¹. Again, the Law does not need to be changed significantly to accommodate such change. What is important is that before any move is made to privatise land, the presence and whereabouts of *all* existing rights – community or otherwise – must be established and recorded on official atlases. It will then be up to the State to decide how these rights are to be privatised, if at all. Meanwhile, negotiations over the use of land rights by third parties are already allowed and facilitated by the new law as both a precursor to later more radical change, and as a motor for development today.

A New Tax Regime

The Regulations also address a key development tool of the new Land Law, namely the levying of taxes on land use. This is dealt with under Articles 41 to 44. Tables in an annex specify the rate per hectare – currently fixed at 30,000 Meticals, or around US1.50 at present exchange rates - and apply an adjustment for specific circumstances. These provision are interesting for what they say about perception of the underlying social and economic assumptions of those who put them in place.

Looking first at the tax regime itself, all those who hold rights acquired through customary occupation are implicitly exempted by Article 41/1, which states '*authorisation and annual taxes are payable by all those requesting land and use right title holders*'. In other words, only new and existing private sector land rights are included. This is partly in keeping with the view that 'family sector' land users are all poor, but it also reflects an underlying feeling that only farms and projects that have a clear profit-based motive should pay taxes. If land use is to support one's family, then it is exempt. This may seem fair enough, but the reality of the countryside is far more heterogeneous than many might imagine. There are in fact many 'customary' land users who are extremely well off. In a country where income data are very poorly recorded and unreliable however, such a distinction is a best-case first step towards a genuinely progressive tax regime that taxes according to ability to pay.

The adjustment tables also say much about perceptions of the underlying sociology and economic situation of land users. Firstly there is an implicit recognition of an underlying market force at work, with different values for land in certain locations. The basic rate is doubled for land in Maputo Province, reflected the inherently higher value of this land with its close access to a large urban market and good regional transport into South Africa. Land near to conservation and other partial protection

⁶¹ Interviewed in Domingo, 8 July 2001

zones – including the key asset of beachfront property – is taxed at 1.5 times the basic rate, again reflecting the higher economic value of these assets and the tourism potential.

Secondly there is some differentiation based upon a presupposed ability to pay or the objectives of the land user. Charities and non-profit organisations (*associações com fins de beneficência*) pay only half the basic rate. Those with rights of 100-1000 hectares pay 1.5 times the basic rate, while those with rights over more than 1000 hectares pay double the rate. An incentive to investors is provided in 'priority development zones' - which might include areas designated for tourism for example – where land right holders pay half the basic rate.

These scales reflect legitimate concerns for the poorer section of the agrarian population. They were also designed however to limit requests for huge areas by taxing them more heavily. Animated debates about tax levels resulted in quite low rates, though international specialists argued that the rate finally set was not high enough to be a disincentive. Impact would also be very limited if taxes were either not collected at all, or collected in an irregular way and with glaring exceptions. For the cadastral services, with land-tax collection now their responsibility, it has become even more important that they focus on practical implementation issues and leave policy and legislative issues to specifically mandated agencies.

Early signs are that the new fiscal regime is beginning to have an effect however, and certainly it is beginning to generate modest but significant new public resources. The big question then is how these resources are used.

Use of Tax Revenues

Article 43 of the Regulations determines that 60 percent of tax revenues will be allocated to the Cadastral Services. The rest goes into central public revenues administered by the Ministry of Planning and Finance. Later decrees determined that certain percentages of the 60 percent should be spent at provincial and district level. A small proportion of the revenues should also go to district administrations.

These measures go some way towards meeting the underlying development objectives of the new law, but not nearly enough. Proposals from the FAO team and others were that some share of revenues be allocated directly to local communities to give them a fund for small projects addressing priorities that they themselves identify. These could be local social services – teachers salaries, some part of health costs, water pump maintenance, secondary road repairs etc. – or some other project entirely. This would be a major political step however and also raises again the nature of the local community created by the law: is it a private or public body? The prevailing feeling at this moment appears to be 'wait and see', and first acquire some solid experience of how this all works.

Dissemination: the Key Role of Civil Society

While not technically part of the new legal package, mechanisms for disseminating information about the new law and regulations are extremely important for their ultimate success. It is evident from field visits and much anecdotal evidence that knowledge of the new package is extremely limited amongst key officials who oversee the implementation of law at local level. District Administrators and others will need extensive training in the new legislation and how to use it correctly, guided by TS and other experts and by a newly trained and better resourced judiciary.

At the other level, communities too must be aware of their new rights and how to both protect and exercise them. A direct result of the opening up of the policy and legal discussion was the much higher profile of the NGO movement from 1996 onwards. A large number of national NGOs subsequently formed the 'Land Campaign' to produce graphic and other material about the law in an accessible format, and disseminate its basic principles down to village level. This process has also brought those close to the legislative process into active collaboration with the NGO sector and continues to sustain an effective dialogue and working partnerships⁶². The Land Campaign achieved notable successes in areas where it worked with dynamic and committed local and international NGOs, revealing that even at this level people are able to take on board the complex messages of the new law and see immediately how it can help them in their struggle to develop.

The dissemination process is continuing and should also include training exercises for senior officials, district administrators, and others charged with overseeing implementation but who may not yet be fully briefed on how the model works in practice.

VIII. THE OPEN BORDER MODEL AND TECHNICAL ANNEX

A core development objective of the new policy and law is to stimulate collaboration between local people and new investors. The law clearly spells out the role of the local community in land management decisions relating to incoming projects. Firstly, communities should be consulted to determine what areas are really 'free' or not. Secondly, as discussed above, communities 'participate' in natural resource management, conflict resolution and in the process of titling and setting the limits of new areas requested by private investors.

These provisions still raised many questions amongst those who were either critical of the new law, or were concerned to know how communities would be defined in practice⁶³. This is especially so given that a farm and social systems analysis can mean that communities have rights over very large areas. If their rights over these areas are protected by law, and are subsequently registered in the name of the community, potentially valuable land and resources might then be denied to investors with capital and skills to put them into production.

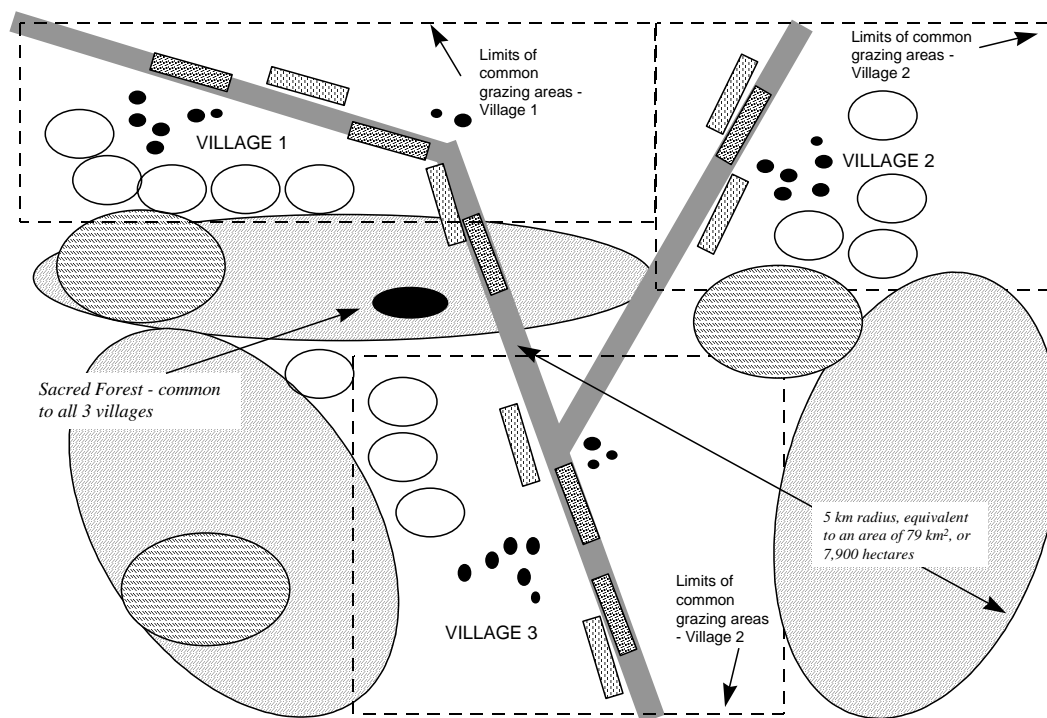
The issue is illustrated in Diagram Two below, where fieldwork can reveal many horizontal linkages at one level, and vertical linkages at another.

⁶² See for example, Quadros (1998).

⁶³ Waterhouse and Kloeck-Jenson (1998)

DIAGRAM TWO

TYPICAL AFRICAN RURAL AREA - MIXED AGRICULTURE/LIVESTOCK, SEMI - HUMID TROPICS,
WITH SEASONAL RAINFALL FILLING RIVERS:
COMMUNITY REVEALED BY FARM SYSTEM AND SOCIAL AND POLITICAL ANALYSIS



Source: Tanner 2000a. See Diagram One for details of land use

In the first instance, marriage and other kinship ties link the villages and also underpin important labour and other exchanges (food, goods, equipment, credit and services etc). It might also be discovered that the villages all share the same forest and water resources, and manage them collectively. They might also share the same sacred sites.

In the second instance, all three villages may be vertically integrated within a common land management structure that in turn is part of the wider 'administration' of the local community. This administrative system might reflect old tribal structures such as the *regulos* and *cabos de terra* (land chiefs); or it might be a hybrid of old structures and modern developments such as the FRELIMO Party cells and base level local government.

Whichever of these it might be, the implications for defining the land area occupied by these three villages are clear. It is far more extensive than that covered by conventional approaches – some 7,900 hectares in the example shown - and includes substantial areas that are either not being used *at this moment*, or are being safeguarded for future generations. If the vertical political structures that handle land management are also included in the analysis, these areas can even be several times larger. Recognising the exclusive rights of these communities over such a large area might protect them against unscrupulous investors. It would also probably turn the private sector and a State preoccupied with growth and national development firmly against such an approach.

These concerns were directly addressed in a National Seminar on Delineating Community Land, held in Beira in August 1998, in a keynote presentation⁶⁴ that explained that the key question is not the delineation of community areas *per se*, but rather the nature of the border drawn around them. This observation is based in a systems approach that makes a distinction between 'closed' and 'open' systems. In human societies the former practically never exist, and indeed the very brief overview of the colonial period above makes just this point in relation to perceptions of distinct 'traditional' and 'modern' sectors. To quote one anthropologist writing on this issue some twenty years ago, 'Although human systems may sometimes be seen to maintain a degree of systemic integrity, they are almost invariably engaged, to a greater or lesser extent, in transactions with an ambiguously demarcated wider environment⁶⁵'.

In the specific context of land use and land tenure, there are many ways in which the farm system interacts with the outside world, even if outsiders are not allowed in: trade, market relations, environmental effects caused from afar (pollution, flooding caused by poor dam management elsewhere, etc), labour relations, and so on. Two critical elements needed by these farm communities in Mozambique are however in short supply: credit (capital), and *appropriate* technical assistance. Although this may be simplifying things too far, there are two basic ways of getting these resources into the community. One involves a dependence upon external agents being generous (favourable exchange relations allowing a strong accumulation process to take place, or the endless local projects that small communities have been subjected to for decades); the other does not (using the locked in capital value of their one major asset, land, to generate new resources they can use as they see fit).

Both of these imply a strong degree of openness of the border drawn around areas where community rights are identified. The former is historically shown to be very unlikely in the absence of direct state intervention, which today is unacceptable as a distortion that results in the inefficient allocation of factors of production and ultimately a weaker farm community. The latter however requires that outsiders can come in and use 'community land' in some way, on the basis of an agreed contract between the investor and the local community in question.

This idea is summed up in the 'open border' model that was also presented at the same Beira seminar. In the specific context of Southern Africa, where the 'communal land' model of Zimbabwe for example expressly prohibits outsider access to *communal* land, the open border model was set against a fictional 'closed border' alternative where land rights are exclusive and thus receive the ultimate form of protection in law (notwithstanding the possibility that the State may of course take over land for public projects, in which case compensation must be paid).

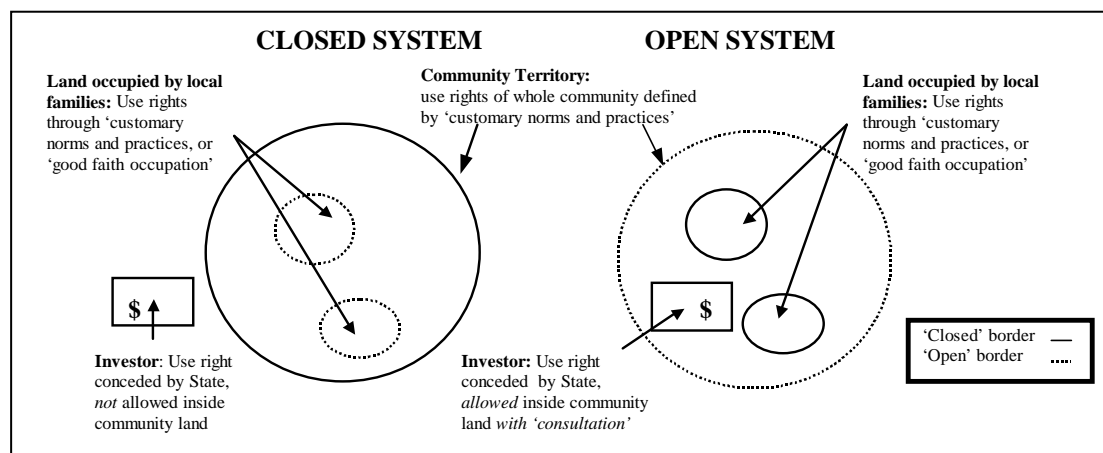
In the closed situation, the *only* way a community can grow out of poverty is basically through dependence upon (usually unfavourable) external factors. They have very little voice over how their resources are extracted and what they get in return. This essentially was the colonial model, where borders were very open for certain things, but very closed in *de facto* terms for others.

The 'open border' model proposed – and accepted as a policy choice by the Beira Seminar - is shown below in Diagram Three. The implications of this approach are clear: In the Closed case, communities may enjoy the fullest protection possible, as

⁶⁴ Tanner et al (1998)

⁶⁵ Ellen (1982:186)

in Zimbabwe, with exclusive rights over extensive areas. Investors stay outside, together with their resources, skills, and taxes. In the Open case, they are allowed in, but only – by law – after consultations with the communities which also have natural resource and land management role that is legally attributed to them.



Source: Tanner 2000a, adapted from Christopher Tanner, Paul De Wit and Sevy Madureira: *Proposals for a Programme of Community Land Delimitation*. National Seminar on Delimiting and Managing Community Lands, Beira, August 1998

In exchange for the use of community land rights, the new investor then gives something back in return. The usual response here is that they should build something – a school, a road etc. But this does not really help a community that cannot pay the salary of a teacher or maintain the road. An income stream is also desirable. This can be achieved in three main ways: an agreement that the investor will pay for the resource use in some way (rent or a share of profits for example); or some share of local land taxes going directly to the community; or both.

This is the basic development motor foreseen from the initial stages of policy development and drafting of the Law. It recognised the inevitable open nature of the local farm and social system, but radically alters its relationship to those in the outside world who want to either use its resources, or extract its surplus. Instead of being the objects of development, local people participate actively in the process and can genuinely begin to move away not only from poverty, but also from dependence.
The Technical Annex for Delimiting the Land of a Community

The Beira Seminar also looked at how to establish the borders around community land rights, or in other words, how to define a 'local community' in spatial terms. Case studies of delimitation work carried out in Nampula Province and elsewhere showed how important it was to work closely with local people to a) establish that rights do in fact exist, and b) where the borders of these rights are. The FAO presentation also included a detailed account of a field methodology developed by Paul De Wit, a team member who had been FAO Chief Technical Officer (CTA) with the INIA 'Pre-programme' project. De Wit later tested and refined 'participatory rural diagnosis' in Guinea Bissau, incorporating 'participatory mapping' and the use of GPS and formal cadastral techniques to complement what is essentially detailed social and anthropological rather than cadastral work⁶⁶.

This approach was shown to work admirably in both social and cultural settings, and a strong case was made for formally adopting it as the prescribed approach in

⁶⁶ See De Wit (1996); and De Wit et al (1995 and 1996).

Mozambique. Further emphasis was given to the use of appropriate participatory techniques by another FAO team member, Sevy Madureira, to stress again the importance of allowing communities themselves to define their land occupation and borders, each in accordance with their specific historical, cultural and land use story.

The wider context of the Beira Seminar is also important to understand the significance of this material. At the time, the government was under strong donor pressure to finalise the Land Law Regulations as a condition for advancing with the new Agricultural Sector Programme (PROAGRI). It was also clear to critics of the TS/FAO approach that the local community definition in the Land Law would be almost impossible to implement without some clearer idea of how to define it in practice. The TS/FAO team knew that a lot of fieldwork was needed to develop an appropriate method, but they were convinced that the participatory diagnosis approach was the only feasible approach. The underlying point was, instead of having a single all-embracing definition of 'a community' that could be applied across Mozambique, there should be a single, legally prescribed methodology. If applied correctly, this methodology would result in a definition of a local community that was relevant and useful in the cultural and geographic contexts.

Confronted by pressure to come up with an answer quickly, a second FAO lawyer working with the team suggested that the matter be left to a 'Technical Annex' and that references to this could be made in the new Regulations. These could then be finalised, with the proviso that the Technical Annex still had to be developed on the basis of practical fieldwork and case study material.

The overall package – open borders, participatory diagnosis and mapping, participatory field techniques and training – was endorsed by the seminar as the basis for a model to be tested and modified if necessary through case studies and pilot trials. The final model complete with methodological approach and procedures would later be incorporated into a Technical Annex by a TS working group that also included senior DINAGECA technical staff.

A period of 18 months of intensive training, fieldwork and provincial and national level discussions followed. The outcome was the Technical Annex to the Land Law Regulations, approved by the Minister of Agriculture and Fisheries in December 1999 and coming into effect formally on 17 March 2000. The Annex details a process of participatory rural diagnosis as the procedure through which rights are a) proven and b) delimited. The community in question participates fully all the way, and in effect produces its own maps. The role of the technical team is to facilitate this process, not to do it for them. At a key later stage neighbouring communities are then consulted, and final agreement over where borders lie is reached. The final topographic map – itself derived from several, hand drawn maps produced by different groups within the communities – is then recorded in the Cadastral Atlas and a Certificate produced to confirm that a delimitation exercise has been carried out.

The Annex is perhaps the most important document in the legal package from the point of view of practical implementation of the basic model of customary integration and partnership with other socio-economic groups and the State. It is also still perhaps the least understood by a wide audience beyond the immediate circles of the TS and its supporters. There is still tremendous suspicion of the idea of community delimitation and recognition of existing use rights over what are usually quite extensive areas (numbering sometimes in the tens of thousands of hectares).

It is evident that the prevailing view of the whole model is based upon assumptions rooted in a 'closed' border view of things. This view in turn often betrays a rather simplistic view of what private property or at least private rights entail. The reality is that even if finally recognised as being held through secure private property rights, community controlled land is still available to outsiders if the law does not expressly prohibit this. The law in fact does not specifically insist on very much, and leaves a whole range of options – joint ventures, rental and leasehold agreements, even sale (where there are already investments on the land) – open to the communities and the investors who want to use their resources.

The new law and its regulations in fact already allow for partnerships and contracts of this kind through the 'open border' model, while still maintaining the State more firmly in the background as the ultimate 'protector' of local rights than would normally be the case in a more developed market economy. Indeed the idea of partnership with investors and even with the State is beginning to take hold. There is now an urgent need to put this whole package into practice across the country and to begin accumulating concrete experience of how it works.

The other essential feature of this policy and legal landscape is having an adequate administrative system in place on the one hand, and an adequate judicial system in place on the other. The latter is particularly important for ensuring that the new law is correctly applied, and for addressing the many legal issues that will inevitably be thrown up by full-scale implementation. To this end, a new project is now underway to train judges and advocates not only in the Land Law, but also in new environmental legislation and the critically important new Forestry and Wildlife Law⁶⁷. This new project has its roots in FAO support to the Land Commission and draws extensively from the same pool of international and national legal expertise that has assisted the policy and legal work of the TS since 1995.

XIX. THE PERSISTENCE OF OLD APPROACHES

This is a useful point to reflect upon a key feature of the policy debate that still influences discussions on implementation and the suitability of the new law for promoting development. Old ideas have had – and indeed still have - strong support in important circles, albeit with a different underlying justification and often guided by sincerely held views of what is best for the country and its people.

This was clear in Guinea Bissau, where earlier attempts at legal reform effectively reproduced the colonial idea of different classes of land, with one type exclusively reserved for local people to carry on their production. Behind this was a view of the family sector as purely subsistence oriented and somehow not an appropriate motor for development. This view was at one level rooted in a simple lack of understanding of the rural economy amongst urbanised political leaders. At another level however the end objective was very similar to that of the colonial power – keep people on the land while maintaining State control over most of the natural resource endowment and its management. Naturally those close to the State or most able to navigate through and pay for complex administrative and cadastral procedures would benefit accordingly, while 'national development' goals were also promoted.

While it is never advisable to make direct comparisons, Mozambique since Independence and especially since 1992 has also exhibited many of these

⁶⁷ Project FAO/MOZ/GCP/069, with Netherlands funding.

tendencies. The political and juridical inheritance is certainly very similar, and even its post-Independence contemporary history has strong parallels. Both countries have experienced very similar political and economic trajectories, with the collapse of the state farm model, macro-economic crisis and structural adjustment occurring at almost the same time. The impact on land demand has been similar while the principle of State ownership has been maintained, ostensibly to prevent foreign interests securing all the land once again. Cadastral services designed primarily to serve colonial and then state interests have also offered a unique advantage to urbanised 'private sector' interests seeking new land rights.

The point of this comparison is to show how difficult it is to escape from the past, even when driven by a strong nationalist ideology after an achievement as impressive as the *Luta Armada* and the ending of colonial rule. Ingrained ideas and a reliance mainly on past and 'close-to-hand' experience to inform policy can so often result in 'new' approaches that are in effect old ones dressed up in new clothes. An excellent illustration of this is in fact in the new 1995 Land Policy.

Having espoused a radical and progressive set of new principles, the implementation model tacked onto the policy document actually took things right back to the old colonial model, overlaid with new arguments about protecting local people while promoting national development. The country was still seen as divided into several clear types of land, not in the western sense of zoning into agricultural, residential or commercial areas etc, but in relation to who can use it. One – Type A – is very reminiscent of the old colonial category reserved exclusively for local agriculture (ie the 'family sector'), and it is only within these areas that customary land law and management was to be applied. The rest of the country is effectively then 'free' for the State to manage, apparently safe in the knowledge that the subsistence needs of rural people are looked after and therefore in a new atmosphere free of conflict.

It is indeed interesting to see how deeply ingrained the 'sectoral' separation of the rural economy is, with its division into 'family', 'private', and 'state' sectors. The accompanying view of land access and use naturally puts each 'sector' into its own distinct areas, as if it were possible to manage each independently and ignore the real linkages that bind them all together into one agrarian economy. The implementation model even appears to show that it is possible to satisfy the new principles of the 1995 land policy through a 'separatist' approach. This view in turn has complicated the way in which many people have since tried to understand how the concept of the 'local community' works in practice: one approach has customary law applying only inside Type A areas; the 1997 Land Law approach has customary law being applied inside 'local communities'. What is the difference?

The major difference of course is that the new law is about rights and not about use. It is *not* a zoning instrument. Regulating *how* land is used is left for other legislation – environmental, planning etc. By recognising existing rights acquired through 'customary norms and practices,' the new law in effect redresses the wrongs of the colonial era, and allows all socio-economic categories to use and develop their land as they see fit, subject of course to appropriate environmental and other regulation as in most other countries. As Negrão put it during discussions preceding the new law, 'the most important element of an alternative model is the recognition of the effective occupation by rural families wherever they may be, independently of whether the land is type A or B⁶⁸'.

⁶⁸ 1996:7

Nevertheless, the separationist view of things persisted and was the focus of much discussion in the TS and outside, in seminars and conferences across the country. Many people still argue that it is necessary to give local people exclusive rights behind secure borders in order for them to be adequately protected. Given the overall constellation of power and economic interests however, this approach would inevitably place the majority of rural people either on the more marginal land (as happened in colonial times), or within much smaller areas than those indicated by the farms – and socio-economic - systems approach.

It is in this context that the instruments developed by the TS/FAO team for delimiting community land are so important. On the one hand they clearly identify areas within which local land rights can be proven and managed according to customary norms and practices. On the other hand, *within these same areas*, other land users are allowed access to resources through consultation and agreement with local people. In this case, *the same, unique use right is legally recognised*, but through a different channel as prescribed in Article 12 of the Land Law. The result is integration not separation, and the chance for a real cross-fertilisation of ideas, benefits, and resources between the 'family' and the 'private' sectors.

X. CONCLUSIONS

The Land Law in Mozambique contains some important lessons for similar processes in other countries, and not just those in the developing world. First and foremost, it is based upon a thorough analysis of the social and economic norms and practices that dominate the activity in question – land access and management. Being largely 'customary', these had never been adequately incorporated into the legal framework of either the colonial or newly independent state. The 1997 Mozambican Land Law redresses this balance, and thus contributes to an important debate in the African context particularly, namely how best to integrate customary and 'formal' law.

Much of this analysis was done by sociologists and anthropologists and was focused firmly on the indigenous farm systems and the social organisation of rural communities. It was nevertheless also set explicitly in a wider social and political reality with its own sociology and its own norms and practices. These too had to be considered and addressed. The socio-economic analysis did not lead straight onto a new law however. A full policy review by an inter-sectoral and multi-interest team was carried out first.

Legal analysis was of course an important part of the overall process, and in areas such as proposing the co-titling option for dealing with use rights within communities, played an indispensable role. This expertise was only brought in however after the social and other research on the ground had been completed, and at a very late stage in the development of the final policy document. Once this process was complete, the lawyers were instructed to commence drafting a new law that reflected the principles of the new policy and its underlying social analysis.

Once this process had begun, an extremely active dialogue was maintained between those actually drafting the law on the one side, and the wider inter-sectoral committee of the Land Commission on the other. In this way the Legal Group was able to ensure that its work reflected the underlying social science, and that there was an acceptable level of consensus over the way in which difficult issues were handled.

Drafts were subjected to review by a wide range of interested parties at central and local level, including the social scientists who had carried out the original research, NGOs and farmers representatives. The new law has thus also avoided becoming a legally acceptable but irrelevant piece of legislation reflecting the misconceptions and prejudices about the rural economy that are characteristic of urban-based policy makers all over the world. What has come out of this process is a modern law in which sound legal concepts and mechanisms *reflect an underlying reality that is genuinely African.*

The Situation Today

Mozambique now finds itself not only with a new Land Law, but also the complete package of Regulations and additional instruments needed to implement it. This is an unusual situation, for it is more often the case in many countries that new laws lie unused in practice because the necessary regulations are never subsequently completed. Moreover, this new law is seen by most who come into contact with it as an important and innovative approach to the range of social and economic issues that make up 'the land question' in many African countries. It is widely regarded as progressive, democratic, and worthy of being put to the test.

Meanwhile, it is clear that the issues discussed at the beginning of this paper are still as acute as ever in many areas. Key regions such as Zambezia, so long the focus of land struggles, are still facing the problems generated by huge land claims from private investors that directly threaten community land and production systems⁶⁹. The tenure rights of women are also still far from being fully addressed⁷⁰, and even staff from the more enlightened NGOs need support to fully achieve the kind of mental transition that is needed if the 1997 Land Law is to achieve its potential as an instrument for development and social change.

In many areas where community rights have been delimited, it is clear that new investors are still getting new use rights without adequate consultation and with no real regard to the idea that they are actually using local community resources. In other areas however, where the Land Law is understood equally by local administrators and investors, the impact is clearly visible - on community perceptions of their resources and what they can do with them, on relations between local people and outsiders⁷¹. The economic impact is not yet that clear, but the social and human development impact is already evident in those areas where strong support has ensured effective implementation of the new law.

All of this underlines the urgent need to move the new package of policy and legislation out into the countryside and implement it in practice. Implementation has not got underway across the board for several reasons. This first is broadly described as 'institutional problems'. Institutional fragmentation and overlap is still a major concern, with several institutions still dealing with land in one way or another. Key agencies such as the National Institute of Geography and Cadastre Institute (DINAGECA) are grouped within the 'land component' of the PROAGRI Agricultural Programme.

⁶⁹ Zambezia still is. See Norfolk and Soberano (2000a,b).

⁷⁰ Waterhouse and Braga (2000); Waterhouse and Vijfhuizen (Eds) (2001)

⁷¹ This observation is based on personal fieldwork at the time of writing, and conversations with those involved in important community management projects, notably Eduardo Mansur and his colleagues from FAO Project GCP056 in the National and Provincial Directorates of Forestry and Wildlife.

Others remain outside PROAGRI, notably the Ministries of State Administration, Environmental Coordination, and Planning and Finance, all of which have distinct roles in land management. The Ministry of Justice also has an obvious role in conflict resolution and ensuring that the law is fairly and justly applied. The TS/Land Commission mechanism has provided an excellent forum for bringing these interest groups together around the task of legislative development. It is now set within the PROAGRI Land Component however, and has seen this coordinating and consensus-building role curtailed by the actions of larger institutional partners.

The second reason for slow implementation is more clearly political. In the specific case of the Land Law, there are distinct differences in approach and understanding of basic principles between key institutions, notably the TS of the Land Commission and important implementing partners such as DINAGECA (National Geographic and Cadastral Institute). This situation has complicated efforts to secure the full support of provincial cadastral services for implementing key aspects of the law, notably the delimitation of local community borders. Behind this in turn is a range of positions held by key interest groups within Mozambican society and beyond. Some simply see community consultation as an impediment to investment. Others are more aware of the radical decentralising and democratic potential of the land law if it were fully implemented and upheld across the board, and either fear or favour it for this reason.

The fact is however that pilot cases and NGO projects are showing that the new legal framework can work. Delimitations already carried out are raising local awareness of the resources a community controls and what can be done with them, and are helping to resolve longstanding problems between local people and outsiders. Consultations are not all being carried out as they should be, but the basic legal requirement to do this is also helping to resolve potential conflict and engendering a sense that real local rights do exist, notwithstanding the formal constitutional principle of State ownership.

Moving ahead to ensure full implementation of the participatory development model built into the Land Policy and 1997 Land Law is more complex however. Questions still abound about how the partnerships between communities and investors can work. Others question the capacity of largely illiterate communities to manage land and natural resources, while questions of local level representation and the legitimacy of consultation and delimitation processes are also constantly raised.

Recent fieldwork is however showing that across Mozambique, the Land Law is at work. There are now probably well over a hundred cases of communities that have been delimited, while the legal requirement to consult with local people before granting a new land use right is at least forcing some kind of recognition of local rights into the calculations of new investors. Many of these processes are far from perfect, and questions of representation are still, quite rightly, one area where a lot of work still needs to be done. Yet all these efforts are showing that the law has strong support from the people of Mozambique, and that it can work in practice and with some room for adaptation and imagination.

Institutional uncertainties are being resolved, partly within the context of the PROAGRI and public sector reform programmes, and the TS is preparing a more comprehensive implementation programme with FAO core support. Yet the new policy and legal environment is by no means set in stone and there are many who would challenge its practical application. The comparison with Guinea Bissau and Mozambique's own colonial past show how deep rooted conservative views of land policy can be. Ideas are again circulating in Maputo about pre-selecting land for

investors albeit with some attention paid to community consultation. A new National Land *Management* Policy, and a National Land Use Plan both appear to be heading back towards identifying where 'community land' is by encircling existing cultivated plots, and declaring the rest 'free for investors'⁷².

While senior government ministers are genuinely concerned to promote new investment and to put unused land into production, any shift in policy focus at this stage runs the risk of undermining the clear but fragile implementation process now underway. It would also inevitably marginalize local people from any active engagement with the development initiatives being planned in their backyards.

In this context it is encouraging to see that in the case of the new scheme to allocate land to Zimbabwean farmers in Manica, the Minister most closely linked to land issues is also aware of the need to integrate new investors into local economies and society. Talk of huge blocks of land has been replaced by smaller, diversified areas set within and amongst local communities and their farms⁷³.

Big investment schemes are still common however, and are attractive to governments that are tempted by 'quick fix' solutions to *national* economic problems. Investment is of course necessary, as the 1995 Policy clearly recognises. It must however be *equitable and sustainable*, managed in a way that benefits local people and investor alike. A failure to fully implement the 1997 Land Law and instead follow the traditional dualist path of promoting the interests of a small number of private enterprises will deny local people the right to use their own resources to pursue their own development. The trick instead is to show how using the Land Law can produce thousands of far smaller investments up and down the country that can result in *local* development that directly attacks the causes of poverty, *and* contributes directly to national growth and economic independence.

The Wider Development Agenda

The new law and its instruments are an excellent example not only of making new laws to regulate and achieve socially just objectives, but also of using new legislation as a powerful new development tool. Implementation of the law is still highly problematic however, as it comes into direct conflict with urban-based interests who seek to maintain their control over natural resources, or appears to complicate the process of allocating and managing land rights with its strong focus on community consultation and participation.

Such concerns are commonly heard today, especially in the political and economic hothouse of Maputo. Behind all of them are ideas and fears with deep roots - in the weakness of a Portuguese colonial state forced to seek its own solutions to 'the land question' by leasing huge areas to British and South African interests, in the failure of State-directed post-Independence state-farm models, and now in a country that is *apparently* short of capital and the technological resources needed to develop its own natural resources.

Even those who fully support the new approach often express doubts about how partnerships and other key features can work in practice. Many people still also expect the law to answer all their questions, and are not familiar yet with a system

⁷² See for example, an interview given by HE Helder Muteia, Minister for Agriculture and Rural Development, in the newspaper *Noticias*, 29 October 2001

⁷³ Interview with HE Minister Helder Muteia (Agriculture and Rural Development), in *Domingo*, July 2001

where law, the administration and the judiciary function together to address and resolve issues as they arise.

There is of course abundant capital locked up in the land and natural resources, which is why investors and others want access to it. If properly implemented, the new legal framework offers real opportunities for local communities in Mozambique to unlock the capital value of their major resource – their land and its natural resource endowment – and use it to achieve their own development goals. It will reduce the potential for conflict not by separating the protagonists into the ‘family’ sector on one side, ‘private’ sector on the other, but by promoting dialogue and the cross-fertilisation of ideas and resources. Most importantly, local rights are respected, not simply by being left untouched, but by being implicitly recognised through profit shares, rents or taxes that local people can receive when they allow others to use their land.

Allowed access to this locked up value and with the freedom to use it in more imaginative ways, ordinary Mozambicans – with some technical assistance, but not that much – can also respond, as in the past, to new markets. They can end their own poverty, *and* drive national development forwards. This same process has the potential to end dependence at local level, and by extension, end the present national dependence upon external assistance.

Looking Ahead: Continuity and Capacity Building

The approach adopted since 1995 has had a deep and sustainable capacity building impact. External assistance has been used in a way that has ensured continuity of support through long term working relationships with national and other donor community colleagues. This continuity is matched on the national side, and has spread far beyond the Land Commission. Extensive training exercises have been linked to the legislative process⁷⁴, as well as several challenging exercises in provincial and local level consultation. The experience of the 1996 National Conference is a landmark for how to carry out this kind of public consultation when sensitive issues of national importance are being debated. Involvement of civil society and the subsequent emergence of the national level ‘Land Campaign’, taking six basic principles of the Land Law out to local communities, have extended this impact still further.

While the TS remains a weak institution in real terms – few personnel, a tiny operational budget and a restricted and time constrained mandate – it has developed mechanisms for facilitating a complex policy and legislative process that have touched many people and resulted in an extremely positive view of its role amongst government and international observers alike. As a network of contacts and a mechanism to generate dialogue, transparent debate, and consensus-building, it is an extremely strong and cost-effective institution indeed. Consolidating this mechanism, this network, and extending its reach down to provincial and local level, should constitute a major priority for government at this moment.

Institutional reform and the strengthening of key implementing agencies charged with land management is another priority. The focus must however be on the needs of the majority of Mozambicans, or in other words the more than three million who live in rural communities and exploit a range of different soils and resources through the year. This is not to ignore the needs of the several thousand ‘private sector’ interests

⁷⁴ See Comissão de Terras 2001

who currently also want to see a more efficient and responsive public land management system. But as a *public* agency it is clear where the focus of public land management services should be.

Fortunately, through the participation of two hundred or more national technical and other staff at different stages in the legislative process, including the pilot testing of key instruments such as the Technical Annex, awareness of the complex setting of land issues has increased tenfold. While still not set within a single clear institutional setting, these human resources together now represent a strong reservoir of accumulated experience and knowledge that is now an invaluable asset for the country as land policy evolves.

Good projects are in place to consolidate this work, including an important initiative to train judges and public prosecutors in the basic principles not just of the new Land Law, but also of the new Environmental, and Forestry and Wildlife Laws⁷⁵. Support to the TS of the Land Commission has been focusing on provincial and local level implementation, with an extensive programme planned for training public officials, technical staff, and local community representatives. Civil society is continuing its commitment to see the Land Law implemented. The 'Land Campaign' is evolving into a new 'Forum da Terra', bringing together dozens of international and national NGOs in all parts of the country. The Forum is now examining new ways to get the message of the Land Law out into the countryside and to use it in support of local level development. Meanwhile, beyond PROAGRI, other ministries are experimenting with local level planning exercises where land management is a key input.

Effective implementation of the Land Law can do much to help local people recognise the value of their own resources. This knowledge must now be used to help them unlock the value of their land to promote a sustainable local development process. This does not necessarily mean getting them to cultivate more land or harvest trees themselves. It can equally involve joint ventures with external investors, or rental and other payments from outsiders seeking to use their land. More simply still, the recognition of local rights over land and other resources could later justify a share in land taxes and other public revenue generated by allocating these same resources to outside interests.

This kind of approach will require a change in mentality on the part of many government and other leaders, to see local people as stakeholders who have real rights and assets to bring to the negotiating table. Such change requires not just training, but also exposure to the sorts of social and economic processes already being generated at local level where effective implementation of the law is being supported. The process will also require consistent and committed support to local people, upgrading their skills in those areas that are essential for dealing with the outside world – negotiation, representing and standing up for their rights, developing local agendas for development reflecting local as well as national priorities.

At this point however, with implementation only haphazardly underway, it is relatively easy for opponents of the new law to argue that it is not effective and cannot be implemented. For this reason it is of paramount importance to get a few joint-ventures, a few partnerships, a few *local* private investments off the ground. It is imperative to have a few court cases heard and judged by judges who understand the law and apply it fairly. It is imperative to make the case, through practical

⁷⁵ FAO Project GCP/MOZ/056, with the Judicial and Juridical Training Centre of the Ministry of Justice/Supreme Court, funded by the Netherlands Government

demonstration, for some share of land taxes accruing to local people, to use in support of local development initiatives. The 1997 Land Law was developed on the basis of a thorough analysis of what is done in practice in most rural areas of Mozambique, after a long process of an unparalleled dialogue and collaboration between government, civil society and technical specialists. The people of Mozambique now need and deserve a chance to put it to the test in practice.

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