Applying a Community-Based Approach to Tenure Formalization

A Case Study from Northern Mozambique

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1. INTRODUCTION

1.1. The community-based approach to tenure formalization

There is today a growing recognition internationally of the importance of securing tenure rights to land and other natural resources in those regions of the world where a majority of the population depend on these resources for a livelihood.[1] Partly this is related to the escalating global demand for land for commercial investments of various kinds, which threaten to deprive poor rural populations of their most important subsistence resource, i.e., land, unless their rights to it are better secured. Partly it is a result of the climate change and environmental agenda, which, it is now being realized, will not be effective unless tenure rights to forests and other terrestrial resources are clarified.

At the same time there has been a rethinking of approaches for securing local tenure rights in practice. Experience has shown that the conventional approach i.e., individual freehold titling, has often not worked well in areas where communal forms of customary tenure predominate, which research has shown is still the case in many parts of the world.[2] This insight, in turn, has led to an interest in what could generically be referred to as the "community-based" approach to tenure formalization, i.e., where rights to own or manage land and other natural resources are formalized at the level of the community as a collective landholding unit.[3]

Building land tenure formalization on already existing customary communal tenure systems is not a new idea. This, for instance, was put forward already in the early-1990s as an alternative to systematic titling in a classic volume on land in African agrarian systems edited by Basset and Crummy (1993), and it was also discussed in another much cited book edited by Toulmin and Quan (2000) on the same subject. Also The World Bank, otherwise a leading proponent of individual land titling and privatization of land tenure relations in Africa,

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[1] An illustration of this are *The Voluntary Guidelines on the Responsible Governance of Tenure of Land, Fisheries and Forests (VGGT)* adopted by the Committee on World Food Security (CFS) in 2012, followed by the adoption of *Principles for Responsible Investment in Agriculture and Food Systems (CFS-RAI)* in 2014, which also pay attention to the issue of local land rights. In addition, African Heads of State in the context of the African Union have adopted their own land policy guidelines (AU-ECA-AfDB Consortium 2010).

[2] A recent global baseline study by RRI estimated that more than 50% of the world's land area today are held under such customary tenure regimes and in sub-Saharan Africa the proportion is as high as about 80% (RRI 2015).

[3] For useful discussions of this approach see Fitzpatrick (2005); Hoekema (2012) and Alden Wily (2013). See also Krantz (2015) for a literature review of this and other new approaches to tenure reform in sub-Saharan Africa.

recognized in its 2003 land policy paper that at least in some situations supporting the institutionalization of customary group rights to land might be a more socially advantageous and cost-effective solution than individual assignment of property rights.[4] More recently, a similar approach to securing Africa's land has been advocated by Frank Byamugisha, former Lead Land Specialist in Africa Region at the World Bank.[5]

So what are the advantages with this alternative approach? Firstly, focusing on the formalization of community lands as collective holdings makes it possible to cover quite extensive areas and populations in a relatively short period of time and at a limited cost. In other words, it is a cost-effective way of providing local rural populations with some basic tenure security over their customary territories, which is especially important in today's escalating global competition for land.

Secondly, at least in principle, this model ensures certain equality in tenure by providing community members with the same legal rights as co-holders of the community landholding.

Thirdly, including all types of land, e.g., individual as well as commons, agricultural as well as forest land, under one and the same tenure regime, conforms better with the integrated character of many smallholder farming systems in developing countries.

Mozambique is one of the countries in Africa that has adopted this approach in its land policy and legislation, based on a land law promulgated in 1997, which is now being implemented at a gradually expanding scale throughout the country. The purpose of this paper is to assess the outcome as well as to identify some critical issues and challenges when implementing this law in practice, based on a case study from the Province of Niassa in Northern Mozambique. Before presenting the results of this case study in Chapter 2, it is however necessary to explain more in detail what the 1997 land law in Mozambique is all about. This is the topic of the following section.

1.2. The Mozambican Land Law

The Mozambican Land Law of 1997 has been praised as one of the most progressive and innovative land laws in Africa. Its origin goes back to the postwar situation in the early 1990s, when land conflicts were rampant and tenure insecurity prevailed as a result of the many displacements of people during the war but also the uncontrolled land grabbing that occurred with the divestiture of the state farming sector.[6] Faced with a situation of growing inequity and tenure insecurity in rural areas, a reformation of the entire land governance system was seen as urgently needed. A nation-wide and highly participatory consultation process led to a new Land Policy in 1995, followed by the promulgation of a new Land Law in 1997.[7]

So what is it that makes this land law so remarkable? Put simply, the law seeks to combine two goals: to safeguard the diverse rights of the Mozambican people over the land and other natural resources, while at the same time making it possible for external investors to get secure access to land for their investments. Like before, all land belongs to the state and

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[4] Deininger (2003).
[5] Byamugisha (2013).
[6] Myers (1993)
[7] Detailed descriptions and analysis of the Mozambican Land Law are found in Tanner (2002) and Norfolk and Tanner (2007).

cannot be sold, alienated or mortgaged. What was new however in the 1997 Land Law was the stipulation that both private citizens and investors (both nationals and foreigners) could acquire long-term legal usufruct rights, referred to as DUAT[8], to the land. This could happen in either one of three ways:

•   Through customary occupation;

•   Through good faith occupation;

•   Through request of a new land use right.

The first was meant to secure the land rights of all those groups who for some generations had been living on and using the land and other natural resources in a particular geographical area and therefore considered themselves the rightful owners of it by custom. In this case the DUAT was acquired automatically, and, at least in principle, there was no requirement for having it recorded and registered. The same applied in the case of good faith occupation, which referred to all those rural people who had been forced to leave their home areas during the war and then could not return home but had to go somewhere else in the country to take up farming. The only condition for getting a DUAT to the land they now occupied was that they could show that they had been using it for at least ten years. As in the case of customary landholders, there was no requirement to record and register the land to acquire the legal right to it.

In order to identify and give legal form to rights acquired through customary occupation without having to codify them for each individual holder, the legal notion of "local community" was developed, defined as:

"…*a grouping of families and individuals, living in a circumscribed territorial area at the level of locality 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, sites of socio-cultural importance, grazing lands, water sources and areas of expansion*".[9]

The DUAT in this case thus referred to the local community as a collective landholding unit. Within this unit, however, customary norms and practices were acknowledged as the legitimate way in which local residents acquired and managed their individual land rights, at least as long as it did not violate constitutionally sanctioned principles, e.g., women's equal rights to land.

In the case of outside investors, however, they would have to request a new land use right from the state. A novel approach in the Mozambican land policy and law was the so called "open border" model, meaning that even if a particular land area is occupied by a community with a legally recognized right to it, an outside investor can still get access to this land but on condition that the community is consulted and accepts to relinquish its use right to (part of) the land. The investor can then request a long-term leasehold (new DUAT) of this land for 50 years (renewable for another 50 years) which has to be approved by the competent government authority depending on the size of the land area requested. However, for this DUAT to be legally valid the area must be surveyed, demarcated and

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[8] Acronym for "Direitos de Uso e Aproveitamente da Terra" in Portuguese.
[9] Tanner (2002:29)

registered in the national property register, a process referred to as "demarcation" and which would provide the holder with a formal title.

As mentioned above, land rights acquired through occupation do not have to be recorded and registered in order to be legally valid. As a matter of fact, these rights have the same legal protection as formally demarcated and titled DUATs. This is however in theory. In reality it soon became apparent that for a local community to be able to defend its interests and negotiate with external investors, it needed to have at least the outer boundaries of its community land area mapped and registered as proof of its legal existence. To that end a procedure called "delimitation" was included in a technical annex to the land law, which, over time (together with the "investor-community consultations"), has become the most important aspect of the implementation of the law. The process is supposed to be highly participatory and should include both a self-identification of the local community by its members, a joint inventory and mapping of its resources and outer boundaries, plus the training of community members (both men and women) about their legal rights. Once the process is completed (and endorsed by the provincial government authorities) a delimitation certificate is issued in the name of the community, which together with the community land map is registered and filed in the provincial cadaster.

Finally, it should be pointed out that even if most rural residents acquire their rights to land through the customary tenure system of the local communities to which they belong, this does not mean that they cannot "withdraw" their land from the context of this system if they so wish. For instance, a group of community members may want to establish some kind of joint project or business enterprise and therefore wish to have more independent control over their land. Or they want to enter into an agreement with some third party over use of a piece of their specific land. While such "dismemberment" is legally possible, the requirement is that the rest of the community gives its consent (consultation) and the land to be separated is surveyed and demarcated according to the same technical and administrative procedures as if it was a new DUAT.

This in a nutshell are the basic elements of the land law. Twenty years have now passed since the law was promulgated. While implementation in terms of community land delimitations has been slow during most of this period, in recent years it has picked up speed due principally to donor-supported programs such as the Community Land Initiative (iTC), which today supports community delimitations with associated activities all over the country.[10] While Government initially seemed somewhat reluctant to actually promote the formalization of community land rights in this manner, presumably because it feared that it gave the local rural population too much control over the country's valuable land and land-based resources, the attitude seems to have changed as shown by the recent launch of the so called *Terra Segura* government program, which actually favors the formalization of local land rights though perhaps in a somewhat different manner. I shall return to this question at the end of the paper.

With these introductory remarks let us now turn to an examination of the law's implementation at the local level in Niassa.

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[10] This initiative, which has now been institutionalized as a permanent national organization in the form of a foundation, is supported by UK, The Netherlands, Sweden, Denmark and Switzerland.

2. IMPLEMENTING THE LAW IN PRACTICE: THE CASE OF NIASSA[11]

The following presentation is based primarily on qualitative data and observations from three consecutive periods of field-work in Niassa of approximately one month each between March 2015 and April 2016. Field-visits were mostly concentrated to two districts, i.e., Muembe and Majune in the central parts of the province. Both traditional leaders and groups of ordinary male and female members of selected communities, whose community lands had been delimited and registered, were interviewed about this experience as well as about land related issues in the community in general. In addition, staff of involved NGOs, development projects, local government authorities, representatives of farmer organizations and private sector companies were interviewed about their views on the outcome of the law and its challenges.[12]

I shall begin by describing some general features of the setting for the study, with particular emphasis on the traditional rural socio-political organization, since this, as we shall see later on, has implications for the outcome of the land law at this level.

2.1. **The Setting**

2.1.1. Population and livelihood patterns

The Province of Niassa is located in northwestern Mozambique (see Map 1). It is the largest province of the country with an area of 129 056 sq.km (including Lake Niassa). In terms of population, however, it is the smallest, with only 1.4 million inhabitants. While average population density consequently is quite low, only 12 inhabitants per sq.km, there are marked differences between the central-northern and the southern parts of the province, where the latter tend to be more densely populated due to its proximity to commercial centers, transport infrastructure such as railways, etc. Administratively, the province is divided into 15 districts and 4 municipalities. The provincial capital is the city of Lichinga located on the central plateau, while Cuamba in the south is the center of commerce and a junction of important transport routes.

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[11] The study was undertaken in collaboration with WeEffect and its partner organization ORAM in Niassa, though the analysis of results and conclusions are entirely the responsibility of the author. Thank's are especially due to Lena Kalmelid, Edgar Ussene and Diamantino Nampossa at WeEffect in respectively Lichinga and Maputo, and to the late Felix Kossa, Leonardo Abílio and Silvia Manquene at ORAM-Lichinga, as well as to Nelson Jackson, the iTC representative of Niassa.
[12] A framework chart of questions guiding the research is presented in Annex 1, while the field-work methodology is further described in Annex 2.

Map 1 *The case study area*

The population is ethnically diverse with two dominant groups: Macua, representing 47%, inhabiting primarily the southern and eastern parts of the province; Yao, representing 36%, living in the central/northern parts of the province. A third smaller ethnic group, Nyanja, have their traditional habitat in the area bordering Lake Niassa. As a result of internal migration especially during the Civil War (1982-1994), there has been some mixing. Groups of Macua in particular have moved into areas traditionally occupied by the Yao, which, as we shall see, has had implications for community land delimitation in these areas.

Approximately 80% of the population in Niassa are small-scale subsistence farmers. While cropping patterns vary depending on local soil and weather conditions, most tend to cultivate a seasonally varying combination of corn, sorghum, manioc, sweet potato and sugarcane for own consumption. Surplus corn is also often sold. Those who have access to riverine land also often cultivate a variety of vegetables, some of which are sold, e.g., tomatoes, carrots, cabbage. In some parts of the province farmers also cultivate tobacco and cotton as cash-crops, usually on contract with private purchasing companies. Farming technology is rudimentary with manual hoe ploughing and little application of fertilizers. An extensive system of shifting cultivation is practiced, where the same plot is cultivated for a few years before it is left fallow for a considerably longer period of time. While women are responsible for much of the ordinary farm work, their husbands or other male household members take care of the clearing of new land.

Agriculture is the basis of local livelihoods, while surrounding natural forests allow for hunting and gathering providing households with important supplementary food items such as meat, herbs, wild fruits, etc., but also with wood for cooking and building material. Furthermore, from the forest comes the raw material for the production and selling of charcoal, which is an important source of cash income for many of the poorest households. Finally, fishing in rivers provides a welcome supplement to dietary standards during the rainy season.

2.1.2 Traditional socio-political organization

In order to understand why the definition of what constitutes a local community has sometimes been problematic in the delimitation process, it is necessary to explain some basic features of traditional socio-political organization among the Yao, which is the predominant ethnic group in the areas where the study was conducted.[13]

The Yao, like the Macua and most other ethnic groups in Northern Mozambique, practice a system of matrilineal descent. The basic settlement unit is the village or hamlet (*povoacão*), which in turn is made up of several matrilineal family groups (*mbumba*) whose members often reside together in the same compound but as separate households when consisting of married couples with children. In accordance with matrilineal principles of descent, the oldest brother of the senior woman of the group is considered the head (*chefe de familia*) with responsibility for e.g., resolution of conflicts within the group, allocation of land among the other family members, representing the family in relation to the larger village, etc. The latter in turn is headed by a village headman (*chefe de povoacão*), who, in accordance with customary practice, should be a nephew, preferably the oldest, of a women belonging to the lineage of those who first occupied the area and founded the village. He is considered the ultimate authority whose decisions other ordinary villagers must respect. He also has overall responsibility for the land and other resources of the village, especially those areas which have not yet been appropriated by individual families.

Each village in turn belongs to the jurisdiction of a paramount chief (*sultão*). This arrangement goes back to pre-colonial times when the Yao territory of Northern Mozambique was dominated by powerful tribal leaders, who, through warfare and commerce, managed to subjugate large territories with populations under their control. For practical reasons these territories were often sub-divided into smaller areas with a brother or nephew of the sultão as the appointed leader, who in turn eventually sub-divided the area under his control among his matrilineal kin when the latter wanted to set up their own independent settlements. In that way a three-tiered hierarchical leadership structure came into being which the Portuguese colonial administration eventually built its governance system for indirect rule on. In short, the latter consisted of territorially defined jurisdictions, *regedorías* or *regulados,* controlled by chiefs (*regulos),* which in turn were divided into *grupos de povoaçoes* under sub-chiefs (*cabos),* and, finally, *povoados* led by village headmen. As a rule, the regulos were appointed by the colonial authorities, often, though not always, in accordance with established and locally accepted customary rules and criteria for leader selection.

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[13] The account on Yao socio-political organization is based on my own field observations, supplemented with information from some of the few written sources that exist on the Yao: Gama Amaral (1990); Mitchell (1956); Alpers (1969).

The basic elements of this traditional socio-political structure have remained until today in parallel with the formal political administrative structure of Localities, Administrative Posts and Districts with their respective government officials. However, there have been some important modifications: while regulos and other traditional authorities were banned during the socialist era following independence in 1974, they did not really disappear but went underground and were again given official recognition about 25 years later with a change of policy of the FRELIMO Government regarding what were now called "community leaders". Three levels of regulos were now formally recognized: Regulo 1º corresponding largely in Niassa to the traditional sultão; Regulo 2º with authority over a group of villages but subordinated to the Regulo 1º; and Regulo 3º as chief over a village or part of a larger village (barrio) but reporting to Regulo 2º as his immediate superior. I shall later on discuss in more detail the role and power exercised by these traditional authorities today.

Before ending this summary account of the traditional socio-political organization, it is however necessary to say something more about the close relationship that exists between descent and territorial control among the Yao. The basic principle is that the matrilineage whose ancestors first took possession of an area is considered its "owner", represented by its head, who, among the Yao, is often the eldest living son (or brother) of a female lineal descendant to the original founders. He is therefore as a rule considered the legitimate *"Dono"* (landlord) over the area and the people who live there and is today often synonymous with the regulo. As mentioned above, sub-division of territories has often taken place, with the chief delegating relatives, e.g., brothers or nephews, control over their own areas where they could settle, eventually leading to the creation of new villages. Over time, this has resulted in a situation where all the land, from the village level upwards, is under the control of a select group of people belonging to the lineage of the first occupants.

Yet not all inhabitants of an area belong to this "royal" lineage. It has always been common practice among Yao chiefs to attract other people to come and live in their territories since not land per se but having a large group of followers was what used to make the chief a prestigious and powerful leader. The fact that regulos under the Portuguese administration were responsible for tax collection and recruitment of forced labor in their regulados, probably contributed to the maintenance of this practice. To this should be added internal migration, especially during the civil war that broke out shortly after Independence, when many left their villages of origin to take refuge and never returned.

As a result the local population in Niassa in terms of social origin (and ethnicity) is often quite diverse. Sometimes this diversity cuts right across villages where part of the population (often a minority) are "autochthonous", i.e. related to the founding lineage, while the rest have no such direct relations. But one also finds situations where the two groups inhabit separate villages, something which is especially common when the in-migrants belong to a different ethnic group, e.g., Macua, who, as already explained, can be found living in Yao dominated territories today. But even if the latter have their own "legitimate" traditional leaders, i.e., appointed among the descendants of those Macuas who first arrived there, at least when it comes to overriding control over the land they remain subjugated to the authority of the Yao area chief because it was from him (or his predecessor) that they (or their forefathers) got the land they now occupy. In this way there is a certain exclusiveness in control over land built into the system.

2.2.   Community land delimitation in Niassa

Formalizing a community's land rights through delimitation constitutes one of the most tangible aspects of the land law's implementation on the ground. It is regulated in a technical annex to the law, which includes steps such as: education about the law for local people; participatory appraisal of basic historical, socio-economic and agricultural features of the community; participatory mapping exercises; border confirmation with neighboring communities. The latter results in a sketch map of the community area which is registered in the provincial cadaster, after which a delimitation certificate is issued to the community in question. In iTC sponsored projects, which (as in other parts of Mozambique) support the bulk of community land delimitations in Niassa, the process also includes other elements such as the elaboration of community development agendas and the organization of Natural Resources Management Committees (CGRN).

Community land delimitation has been going on in Niassa since 2006/2007, but it was not until iTC began operations in the province in 2010 that it was scaled up. As of 2015, 143 communities had, according to the Provincial Office for Geography and Cadaster (SPGC), been delimited, covering an area of slightly more than 3 million hectares. This represented about 23 percent of the total surface area of the province, or 1/3 if the Niassa Reserve and the Lake of Niassa are excluded. See Map 2 where the delimited areas are indicated in dark green.

The decision to undertake community land delimitation in a particular area is usually taken by the provincial or district government authorities, nowadays usually in close dialogue with iTC. It is initiated for a variety of reasons. One might be that a particular development project is planned in an area involving the local population and requiring a clarification of community land borders. Another reason might be that external investors are showing particular interest in acquiring DUAT in an area where there may be communities with claims to the same land. Finally, community delimitation is sometimes made for environmental reasons with the intention of promoting a more sustainable local use and control of natural resources. An example is delimitation of communities affected by forest degradation due to uncontrolled local charcoal production. These are some of the factors behind the somewhat scattered distribution of delimited community areas in the province so far as shown in Map 2.

Map 2. Community Land Delimitations in Niassa - 2015
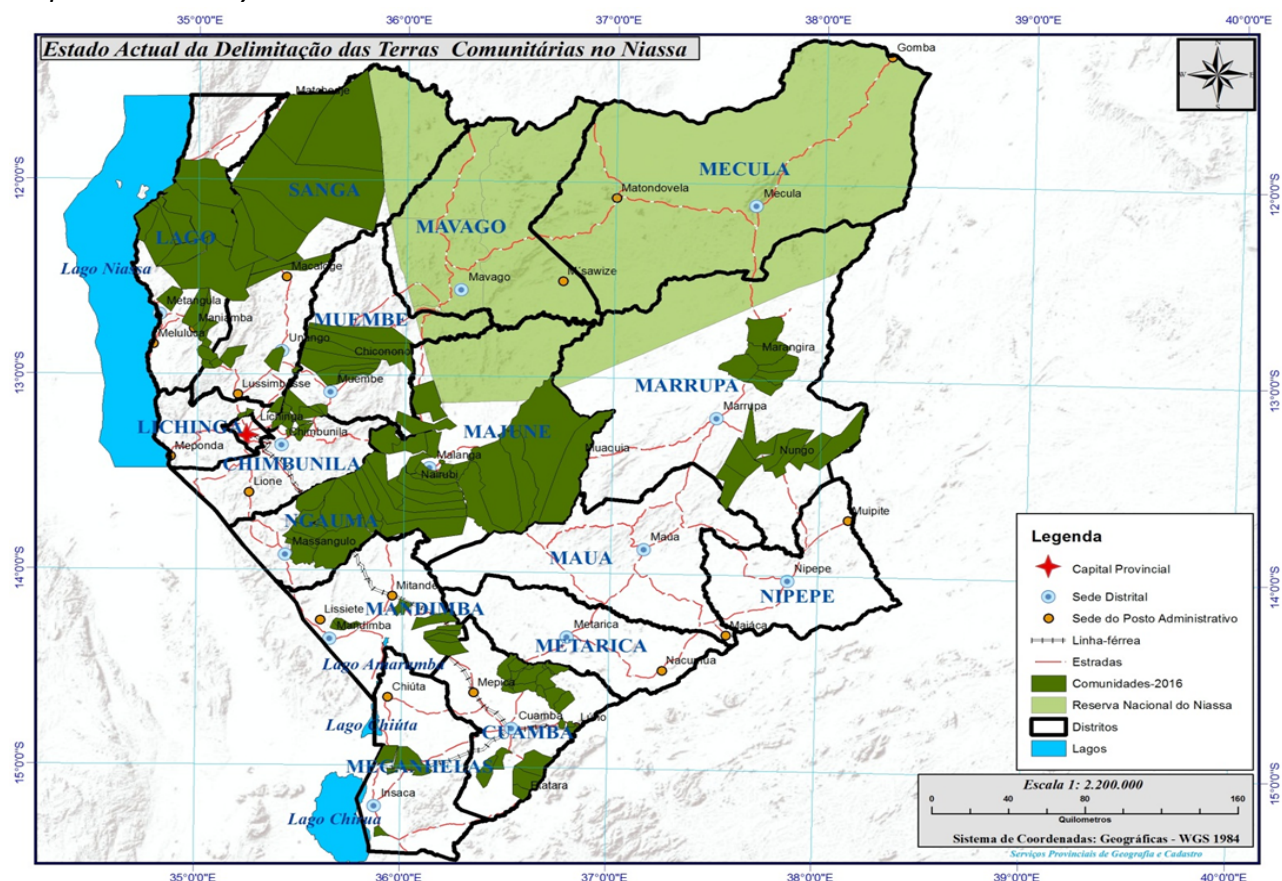
Source: Servicio Provincial de Geografía e Cadastro (SPGC), Niassa 2016

Community areas tend to be relatively large in Niassa. Based on figures from the 132 communities delimited by the iTC project up to 2015, the average community area was 19,764 ha. This, however, conceals the fact that there was a lot of variation between communities. Some had less than 5,000 ha while others had got more than 50,000 ha. This is illustrated in Table 1 below, which also provides population figures for the respective community-area categories. As could be seen, almost 1/3 of the population belonged to communities of less than 5,000 ha which in turn represented only 3 percent of the total delimited area. Conversely, 28 percent of the population lived in communities of a size of 20,000 ha or more, occupying 71 percent of the delimited area.

Table 1. Size and population of delimited communities

Community area (ha)	Number	%	Total area (ha)	%	Population	%
< 5,000	37	28	75,576	3	63,015	32
5,000-10,000	25	19	188,660	7	39,031	20
10,000-20,000	31	23	489,225	19	39,118	20
20,000-50,000	31	23	918,100	35	48,204	25
>50,000	8	7	923,555	36	6,409	3
Total	**132**	**100**	**2,608,913**	**100**	**195,777**	**100**

Source: iTC Niassa

The land law only defines in very general terms what constitutes a local community and does not specify how this collective landholding unit should be identified on the ground. Instead community identification is done in conjunction with the delimitation process.

A characteristic feature in the case of Niassa is that local communities as a rule are delimited on the basis of the territories of traditional leaders at various levels.[14] As explained earlier, the traditional socio-political organization among the Yao (as well as among other ethnic groups in Niassa) consists of a three-tiered nested hierarchical structure of territorially based chieftaincies, where each level is headed by a Regulo of respectively the 1º, 2º and 3º order. When community delimitation first began in Niassa, the intention was to delimit on the basis of the areas under control of Regulo 1º.[15] But even if a few delimitations were made of territories at this level, especially in the thinly populated north-western corner of the province, it was soon realized that undertaking delimitation at the Regulo 1º level would result in "communities" that were both very large, often comprising more than 100,000 ha, and made up of too many villages to be feasible to administrate as one collective landholding unit. Attention therefore shifted to delimitation of communities at the level of the areas under control of Regulo 2º, and sometimes even those of Regulo 3º.

So why is community delimitation based precisely on the territories of traditional authorities and not on some other type of socio-spatial unit? The answer seems to be that it is a legacy from the system of territorial jurisdictions under chiefs, *regulados,* introduced by the Portuguese during the colonial period. Although this system including the institution of traditional authority was officially abolished at Independence, it seems that the notion of chiefly territories persisted as deeply ingrained cultural conceptions and norms. Traditional authorities (again) received official recognition and status, now under the label of "community authorities" in Decree 15 of 2000. They were therefore recognised by government, NGOs and others as the legitimate representatives of the rural population within their jurisdictions, and therefore had much influence over land and other natural resources there.[16]

This then explains why these "new" landholding communities are constructed on the basis of the areas of influence of these leaders. It is a reflection of the de facto existing structure of landed authority on the ground. In addition there might be some strategic political thinking involved. In the same way as the official recognition of traditional authorities could be interpreted as a way for the FRELIMO government to enlist the support of these leaders and their followers, delimitation of community lands based on the territories under their control could be seen as a way of strengthening their position and thus power in rural areas.[17]

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[14] As a matter of fact Niassa does not seem to be unique in this respect, as the same practice has been reported also from other parts of Mozambique where community land delimitation has taken place. See Norfolk et al. (2003); Tornimbeni (2007); Quan et al. (2013).

[15] This, for instance, was the approach of Malonda when promoting community land delimitation in the context of large-scale forest plantations in Niassa. See Åkesson et al. (2009).

[16] For a discussion how the recognition of traditional authorities related to notions of "community" and "territory", see Buur and Kyes (2007).

[17] See for instance Cedete Forquilha (2009).

One might think that the logical option would have been to base delimitation on the areas under control of Regulo 3º, that is, the community areas of individual villages, considering that the latter constitute the principal residential and social unit in rural areas. However, when discussing this issue with the local representative of iTC in Niassa, he explained that in their experience it is better to delimit at the level of the sub-territories of Regulo 2º.[18] Part of the reason, he said, is that traditional leaders at this level tend to have more authority over the land because they belong to the founding lineage, something which is not necessarily the case among the lowest level regulos. But also that regulos at this level more often count on official recognition by the government and therefore have a more stable position as leaders. Finally, there are costs to consider. Since the sub-territories of Regulo 2º often include several villages with their respective areas, it is more cost-effective to delimit at the former than at the latter level. See Box 1 for a fairly typical example.

Box 1. Matukuta Community in Majune

Matukuta was delimited as a local community in 2012, with a total land area of 17,015 ha and a population of 2,060 individuals. It is led by Regulo 2º Matukuta who is a descendant on the maternal side of Regulo 1º Matola, whose ancestors were the first to take possession of the larger territory of which Matukuta forms part. The latter in turn consists of 5 villages, each with its own discrete land area, which however were not delimited as separate communities at that time. Matukuta Sede is the biggest in terms of population and is also the home village of Regulo Matukuta. The other 4 villages have their own headmen, also with the status of Regulo 3º, but they treat Regulo Matukuta as their superior authority. The delimitation process was concentrated to Matukuta Sede and involved principally the leadership and other inhabitants of that village. Inhabitants of the other villages were less directly involved with their leaders attending the initial information meetings in Matukuta Sede, but not taking part in the rest of the actual delimitation process.

This does not exclude the possibility of some villages being delimited as independent landholding communities, since, in some situations, this might be the only feasible solution. This happens sometimes in southern Niassa, where because of population pressure fragmentation of regulados over time has resulted in a multitude of rather autonomous villages, each with relatively little land but which nevertheless eventually were delimited as separate communities. See Box 2 for an illustrative case.

[18] Interview with Nelson Jackson in November, 2015.

Box 2. Community delimitation in Napacala, Cuamba district

When iTC first decided to support community land delimitation in Napacala in Cuamba District in southern Niassa in 2011, the idea was to delimit the whole territory under Cabo Mphita as one community. A survey of the area revealed that it amounted to approximately 68,000 ha with a total population of 20,508 individuals divided among 14 villages. Since the provincial authorities did not accept the delimitation of such a large area, and the number of constituent villages was too large to be manageable as one community, it was decided to redo the delimitation process but now with each of the 14 villages as an independent community under the leadership of its respective headman – usually a Regulo 3º.

Map 3 shows the communities delimited with the support of iTC by the end of 2015. As the map shows, delimited communities are generally much larger in the central and north-western parts of the province than in the south. A case in point is the district of Majune, on which this study is partly based, where the average community area size is 32,216 ha. By comparison, the district of Cuamba in the south, where about the same number of communities have been delimited, the average size is only 5,338 ha. Partly this is because population pressure has historically been much lower in Majune, resulting in a less accentuated sub-division of traditional territories over time. But also because the traditional socio-political structure is still relatively intact in this part of Niassa and it has therefore been common practice to delimit communities on the basis of the larger jurisdictions, especially of Regulo 2º.

However, this only gives a very simplified picture of a more complex situation. For instance, in the less densely populated areas of central Niassa one can also find communities which have been delimited on the basis of the territory of just one village. Some of them cover large areas, while others are of about the same size as the ones in the south. Meanwhile, in other cases, individual villages have been delimited as separate landholding communities but the influence of higher-level regulos is still quite strong, suggesting that there are other more circumstantial factors at play in this context. See Box 3.

Map 3
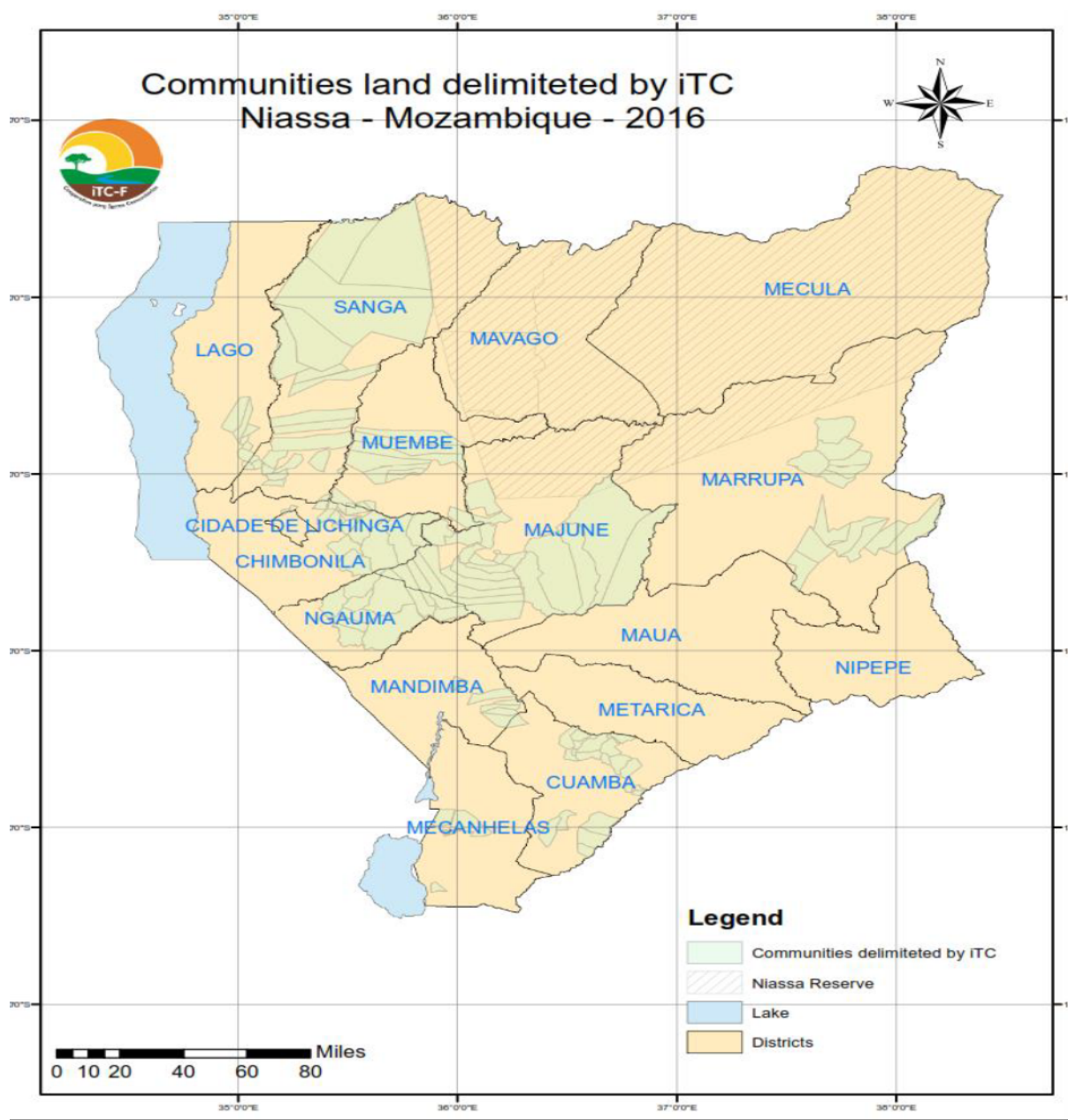
Source: cortesy of iTC, Niassa

Box 3. Four communities in Muembe Sede

These four communities are located in the southern part of Muembe district and were delimited in 2011. They are all offshoots from the same chieftaincy territory under the control of a Regulo 1º Salange, though with different background histories:

Lutuesse: Consists of one relatively large village of 2,560 inhabitants with a community land area of 5,878 ha. This is the home village of Regulo 1º Salange, where he is also the village headman.

Chitálo: Was originally founded by a younger brother of the first Regulo Salange. It is today headed by a Regulo 2º who is a descendent of the original founders. The community area consists of 8,870 ha and when it was delimited had a total population of 981 inhabitants. In reality, however, it consists of one main village (Chitálo Sede) and four other villages or hamlets. Two of these are made up of family groups who moved out of the main village when they started to grow to settle on their own on land indicated by the regulo. The other two are the result of in-migration of people from the outside who asked permission from Regulo Chitálo to settle and take up land within his territory.

Mussafa: Was originally created by a group of people from the outside who came to this part of Muembe in search of better land, and with the consent of Regulo Salange occupied the area which today constitutes this community. It consists of 2,317 ha with a population of 892 individuals all living in the same village. The community is headed by a Regulo 3º who responds directly to Regulo 1º Salange.

Licuve: Like Mussafa this community was founded by "in-migrants" who settled there on land assigned them by Regulo Salange. It is made up of two villages with a total population of 1,403 individuals but has a total community land area of only 892 hectares. It is headed by a Regulo 3º.

The purpose of this section has been to provide some basic data on community land delimitation as this process is evolving in Niassa and to draw attention to some particular features of how local communities are defined on the ground. I shall return to this later on because it has implications for how land in practice is controlled and governed in these legally established collective community holdings. But before that we shall take a look at the effects of community delimitation on local people's perception of security of tenure in these communities.

2.3. Implications for tenure security and future accessibility of land

In those communities visited where land delimitation had taken place people unanimously declared that they now felt more secure in their possession of land and other natural resources, especially against outsiders making claims on their land. "No-one can now take the land away from us" – was an expression frequently heard. Even if they were not necessarily against the idea of ceding land to investors from the outside, they felt that the fact that the community's landholding had now been certified and registered on a map considerably strengthened their position of negotiation in such deals. Similarly, they said that now they had the legal authority to control and when necessary denounce illegal loggers and hunters in their forest areas. They would also now be able to claim 20% of any taxes or fees from licensed logging and hunting on their land in accordance with the terms of

the Forest Law. Moreover, they reported that the clarification of community borders implicit in delimitation helped to resolve existing or avoid future border conflicts with neighbouring communities.

Another positive aspect mentioned by both men and women was that the training imparted during the delimitation process had given them a much better knowledge of their rights to land in general including improved awareness of the law's stipulations regarding obligatory community consultations. Furthermore, both as a result of the environmental training received but also due to the organization of Natural Resources Management Committees (CGRN), an integral element of the delimitation process, they were now more aware of the importance of protecting their forest resources. In some cases concrete steps had been taken in that direction with the help of the CGRN, e.g., control of forest-fires, limitations imposed on extraction of forest resources.[19]

Community land delimitation, however, only secures the outer boundaries of a community's landed area. It does not have any implications for how access rights to land and other natural resources are allocated within that area; these remain based on customary principles and procedures. In general people in the communities visited seemed to perceive land as almost an unlimited resource – despite the extensive land-use system of shifting cultivation. Farm land ("machamba") was considered the property of the household or extended family which first brought this land under cultivation, and this also – at least in principle – applied to land in bush fallow. Since people in these communities, like most other Yao, practice a system of matrilineal inheritance, the accepted way for a young couple to acquire land for farming, was by getting it from the family holding of the wife while the husband relocated to form part of her extended family group. Alternatively, and more commonly in recent years, the young couple settle on their own and take up new land since there is still much unoccupied land available. One only has to make sure the land is not claimed by someone else, in which case this person's or the corresponding family head's permission must be obtained. Alternatively, one asks the regulo to indicate where free land is available. If there is no unoccupied (or suitable) land available in the own community, there is always the possibility of looking for free land in a neighboring community. The only requirement being that the regulo of this community grants his permission.

As for forests and other common property resources, these can be freely accessed by all community members provided that they are for own subsistence needs, which in this case would include e.g., small-scale charcoal production even if the latter is for sale. It is only when someone from a neighboring community wants to make use of these common resources that the permission of the regulo is required.

Despite the fact that people did not have titles to their land, their sense of tenure security, at least within the community, seemed quite high. Land conflicts were reported to be relatively rare. Those that did occur were mostly because someone had planted on a neighbor's machamba without asking for permission, or were cases of disputes over land inheritance or quarrels between spouses over the division of the joint property in case of a divorce. Usually, such conflicts were resolved within the community with the aid of the most

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[19] These observations were confirmed in a more in-depth study in three delimited communities in Muembe by a student at the local Lurio University for his thesis in collaboration with this study: Mateus Manuel Mucussete. *Percepção Do Efeito Da Delimitação De Terras Comunitarias Na Gestão Dos Recursos Naturais*, Faculdade de Ciencias Agrárias, Universidade Lurio.

proximate local leader, i.e., the village headman, or the superior regulo depending on the seriousness of the case. Very seldom was there a need for bringing in the formal legal system.

This notwithstanding, women's land rights were something of a paradox. As explained above, family holdings belong to the matrilineage, and daughters inherit land from their mothers when they marry. In that sense Yao women in Niassa have a higher security of tenure than women in patrilineal societies, who obtain access to land through their husbands. In case of a divorce or the husband's death, the land remains with the wife. Or at least this is the case with that part of the family holding which the wife brought with her into the marriage. The situation differs in the case of new land that a husband and wife cleared and brought under cultivation themselves. In divorces this is often kept by the husband with the argument that he was responsible for the most arduous work when clearing it.

One thing is however to have secure access to land and another is to actually have the power to decide over its use and the disposal of the proceedings. This is illustrated by Anna Aradóttir's ethnographic study of women's land rights in four communities in Majune. Although women reported having no problems in getting land to farm, they still felt subordinated to their husbands when it came to decisions about what to plant and above all how to use the money for crops that were eventually sold. More generally, she found that despite the fact that women have the same rights as men to participate in decisions over community land under law, they seldom actively exercise that right in community meetings and other public events.[20]

The impression one gets is thus that of a highly inclusive and flexible tenure system where everyone can get access to the land and other natural resources required for subsistence provided that the household has available labour to make productive use of these. Part of the explanation for this rather unique situation is that central/northern Niassa is an extremely sparsely-populated region despite being well-endowed with fertile land, forests and other natural resources. In other words, there is no land-scarcity and therefore no need for a more restrictive and exclusive tenure system.

Another factor is that the rudimentary farming technology, i.e., manual hoe cultivation, only makes it possible to cultivate at most 1,5 – 2 ha per family at a time assuming an average family size of 5-6 persons where both spouses contribute with work. In other words, a relatively small proportion of the community's total land area is required for farming each year. Finally, even if many local farmers sell some of their agricultural products to gain cash they remain subsistence-oriented. And for the same reason the hiring of waged labor in local production is not common. Hence there are no commercial incentives or pressure from within the community to expand the cultivated area.

Nevertheless, two potential problems with community land delimitation in Niassa were identified. The first one has already been touched upon and has to do with the strategy of delimiting communities at the level of Regulo 2º, that is, delimiting several villages as one community.

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[20] The study on women's land rights by Aradottír was undertaken in collaboration with this study project and the results have been presented as a Master thesis at the University of Gothenburg (Aradottír 2016).

During the last period of field-work in Niassa, a particular effort was made to visit some of the other villages in this type of communities than just the central one ("sede") where the community chief resided. People in these other villages were often not aware of the fact that their village land had been included in the community area delimited in the name of the central village. Either because they had not been invited to participate in delimitation, or because they had not fully understood its implications. In any case they got very concerned when informed about the situation and thought that it diminished their security of tenure. In one village respondents went as far as accusing the community chief of having deprived them of their land. In another village people said there was a danger that their successors in future generations would lose their assured access to land because nobody will remember and thus respect the old village boundaries.

Behind this problem, it seems, lies the fact that these "other" villages often consist of families who are immigrants to the area and who got land assigned to them on condition that they respected the chief's overriding right of determination over the land in his capacity as "owner" (*dono*) of the territory. Hence already from the beginning these "newcomers" got a somewhat dependent and inferior position in their control of land, a situation that was complicated by the fact that they often belonged to a different ethnic group. This because of civil war displacements when many Macuas moved into Yao controlled areas in Majune and other parts of central Niassa. When community land delimitation of the larger area under control of the Regulo 2º - of which their village land was a part – was conducted, they saw this as an official confirmation of the superior rights of this leader and his relatives and other associates to the land. For them, therefore, community land delimitation brought increased tenure insecurity rather than increased tenure security.

It is not easy to tell how widespread this problem is since there are no systematic data available on the composition of delimited communities in terms of constituent villages. However, the fact that we in the course of our study visits to a few randomly selected communities came across this problem, suggests that it may be common. Besides, when discussing this situation with the representative of a provincial farmer organization, he confirmed that it was a problem they had noticed as well with the way community land delimitation was done in practice and which they were afraid would create many difficulties in the future. In particular, they were concerned that it would lead to increased tensions between "autochthons" and "newcomers", making the whole idea of the community as one unified collective landholding unit untenable over time.

The other potential problem refers to the possible restrictive effect that community land delimitation might have on the flexibility of accessing land across community borders. It has always been common practice in Niassa that people take up land in the territories of other communities when needed. Partly this is because there is no shortage and thus competition for land per se at the local level. But partly it also seems to be a legacy from the times when the power and prestige of a local leader depended on the number of followers he had under his command. Whatever the case, the question arises as to whether formalization of community borders implies any change in this respect.

According to concerned government authorities, delimiting a community's borders should in no way prevent other people from taking up land there if they so wish – provided that the members of the host community give their consent. Similarly, people in some of the communities visited did not report this to be a problem either. For instance, in one

community which had got relatively little land delimited compared with neighboring communities of a similar population, people said that this was not a problem because they could always ask for land to cultivate in the other communities when their own landed resources had been exhausted.

However, while this may be the way local people see things today, it is possible that their views might change over time. In point of fact, in some of the communities visited we could already discern a tendency of leaders to be more cautious about accepting new people into the community. For instance, in one community in Muembe which recently had received an influx of people from a neighboring community whose land at home had been occupied by a commercial forest plantation, the regulo explained that this was just a temporary arrangement and that these other people would have to return to their own area when people in his community needed the land themselves. Hence, at least in the long run, an unintended effect of community land delimitation might be reduced flexibility in the accessibility of land across community borders and which might be problematic above all for those communities which for some reason got the smallest holdings delimited relative to their populations.

2.4. Traditional authorities and land governance

The land law does not specify how the community as a collective landholding unit should be represented and governed, only that it should be done in accordance with customary norms and procedures, with specific mechanisms to be established in a separate law. This, in combination with the fact that communities in practice are delimited on the basis of territories under the control of traditional authorities, has meant that the latter automatically retain their role as leaders and representatives of these "new" landholding communities.

2.4.1. The restoration of traditional authorities

As explained earlier, traditional authorities, institutionalized by the Portuguese colonial administration as chiefs (regulos) with state-sanctioned power over discrete territorial chieftaincies (regulados), were banned at Independence by the new FRELIMO Government. This was because they were considered reactionary collaborators of the colonialists. However, they were re-established 25 years later by the same government, but now under the label of "community authorities".

It is beyond the scope of this paper to detail the underlying reasons for this turnabout in FRELIMOS's government policy. Suffice to mention that it was primarily motivated by the need to strengthen the state's control over rural areas, which had been severely weakened during the protracted civil-war. This, it was thought, could only be achieved by winning back the support and collaboration of the traditional chiefs, which in turn required that their status as local leaders be formally recognized again.[21]

The key legislative piece in this context was Government Decree 15 of 2000, which regulated the articulation between local state organs and community authorities. The decree stipulated that both former traditional chiefs and so-called village secretaries, who were local FRELIMO party members that replaced the traditional authorities during the socialist

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[21] A more elaborate analysis of this can be found in Buur and Kyed (2006).

era, as well as other local leaders legitimized as such by their respective communities, were eligible for the position of "community authority". Those who aspired to this position first had to get the approval of other community members at special "community legitimization" events organized by the state. After this they were legally recognized by the latter and provided with uniforms and other symbols of their official position. It is noteworthy that at least in Niassa, but, as it seems, also in many other parts of Mozambique, it was mostly former regulos or other descendants of chiefly lineages who filled these new positions.

These "community authorities" were expected to function both as community representatives and as local assistants of the state. The decree contains a long and detailed list of duties these authorities have of basically a state administrative nature, such as being responsible for taxation, population registration, justice enforcement, civic education, rural development, etc. On the other hand, scant attention is paid in the decree to their role as community representatives and what this implies in terms of rights and duties with respect to their constituencies. What the decree basically states is that they have the right to be recognized and respected as representatives of their respective local communities; to be consulted on any matter of fundamental importance for the life and well-being of their communities; to receive a monetary compensation (*subsidio*) for their involvement in tax collection, and to wear uniforms and other symbols of their official position.[22]

It is often assumed that Decree 15/2000 constitutes the supplementary law referred to in Article 30 in the land law, where the mechanisms for representation and governance of the community as a collective landholding unit were to be regulated. In other words, the law that confirms that these are responsibilities legally mandated to these newly instituted community authorities. However the decree is not explicit in this regard. It only states that community authorities are responsible for informing state administration about any illegal extraction or commerce with natural resources in their areas of influence; for promoting the participation of their communities in environmental education on various topics; for mobilizing local people for various rural development activities. It says nothing regarding their mandate when it comes to the local community as a legally established collective landholding unit.[23]

The re-establishment of traditional authorities as leaders of their communities has contributed to the creation of a system of "indirect rule" by government in rural areas, which, at least in some aspects, resembles the one practiced during the colonial period. Hence government officials we met during our field visits, explained that in their work relations with the local rural population they usually operate through the regulo rather than deal directly with the community population, partly because it is more practical considering their own lack of logistical resources and personnel, partly because the regulo knows best how to deal with the local population and their culture. Conversely, by acting as intermediary between rural people and local government organs, the regulo gets privileged

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[22] Section II and III in Decreto no. 15/2000, de 20 de Junho (Formas de articulação dos órgãos locais do Estado com as autoridades comunitárias), in Serra (2012).

[23] This issue has in fact provoked a legal debate, where it is called into question whether "community authorities", being a public body, really have any authority over local communities as defined in the land law, i.e., as private collective landholding units. See Tanner (2011).

access to contacts and resources, which, if used strategically, could strengthen his power and prestige in the own community.[24]

It should be emphasized, though, that formal state recognition per se is not sufficient for guaranteeing the authority of these restored regulos at the local level. The person appointed for this position must also be considered legitimate in terms of local customary rules and norms to be accepted and respected as leader by the rest of the community. An illustration of this is the confusion that often broke out when the new community authorities stipulated in Decree 15/2000 were to be identified, and someone claimed to be the rightful regulo but without, as it turned out, having the required legitimacy for this in the eyes of the other community members.[25] Similarly, in some cases there were customary rules regarding land which were considered more legitimate locally than the land law or Decree 15/2000. So whilst neither the land law nor Decree 15/2000 give traditional authorities a clear legal mandate over the land and other natural resources of their communities, they are often considered by their subject populations to have this mandate because it is part of the local tradition.

In what follows I shall elaborate on these latter two points based on field observations from Niassa. In particular I focus on the role of traditional leaders in the governance of land at community level, since their authority in this context is indisputable at the same time as it raises certain doubts regarding the applicability of the basic principles of the land law at grassroots level.

2.4.2. Traditional leaders´ authority over land – some observations from Niassa

All communities visited in Niassa in the course of this study were headed by regulos - i.e., traditional authorities, of one rank or another – who were formally recognized by the state. Where the community consisted of just one village, he usually had the rank of Regulo 3º. In cases where it consisted of several villages under his command, his rank was Regulo 2º, or, occasionally, even Regulo 1º. In their home villages, however, they simply acted as the village headman. Meanwhile, other villages which formed part of larger communities had their own local leaders, also known as regulos, though not necessarily having state recognition. The following observations refer above all to the village level since it is at this level that traditional leaders´ authority over land and other natural resources is most directly manifested. However, first, some general observations on how these leaders are perceived by other villagers and what it is that gives them legitimacy.

The general impression is that regulos enjoy much respect and legitimacy as leaders, especially if they have been appointed in the culturally proper way and live up to people's expectations of a "good leader". Traditional leadership positions are hereditary, meaning that the position of regulo (of whatever rank) is inherited from the previous holder at his death. Among the Yao in Niassa, who, as explained earlier, practice a system of matrilineal descent, the successor should be the son of one of the deceased regulo's sisters, preferably the oldest one. Genealogical position is definitely the most important selection criterion but it is not the only one. The person chosen should also be honest and known for his good

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[24] This "dual" and somewhat ambiguous role of chiefs in Mozambique are discussed in Blom (2002). See also West and Kloeck-Jensen (1999) for a discussion of traditional authority in the context of democratic decentralization in post-war Mozambique.

[25] See Buur and Kyed (2006)

behavior. The actual selection is made by a group of elders (male and female) belonging to the founding lineage, who, after a short probation period, communicate the new leader's name to the district government authorities for official recognition.

The appointment as a regulo is in principle for life and it is rare that a leader is removed from office other than for reasons of old age or illness. However, it can happen. In the course of this study we came across one case where the regulo, who happened to be of the 1º rank because he was the superior chief over several villages in the area, was forced to resign after complaints of misbehavior from people in his village to his superior, the *sultão*. Interestingly he was not replaced by someone else from this village but by a nephew of the paramount chief, who was sent there to take over from the dismissed regulo.

When asking people in a community about who owned the community's land, they often had difficulties in understanding the question but eventually replied that it belonged to the regulo in the sense that the latter had the ultimate authority in deciding how the land should be used and allocated. At the same time each family had their own pieces of land, which they were considered the owners of because they themselves or their forefathers had been the first to bring these plots under cultivation. The regulo does not usually interfere with how these individual families dispose of their land. This is a realm where the head of the extended family, often a maternal uncle, takes the decisions.

The authority of the regulo in this context is instead manifested at other levels. One is land conflict resolution. Whenever there is a dispute over land that the involved parties cannot solve amicably, they go to the regulo to let him decide on the issue at hand. Aside from the fact that he is endowed with certain judicial powers in his capacity as a state-recognized community authority, especially a senior regulo is also considered expert on what is appropriate and fair according to "customary law". Regulo's verdicts are therefore normally accepted.

Another area where the regulo might intervene concerns allocation of unused farming land. In some communities people said that it was not necessary to ask the regulo for permission when one wanted to bring new land under cultivation, only to make sure it was not fallow land belonging to someone else in the community. In other communities people said that in such situations it was the regulo who indicated where free land was available.

Accessing common pool resources such as forests, does not normally require permission from the regulo provided it is for subsistence purposes. However, people from neighboring communities normally have to ask permission from the regulo of the host community.

Are leaders using their power to appropriate more land for themselves and their lineage kinsmen? No attempt was made during this study to survey land distribution within the communities visited. However, the issue was raised in informal conversations with both community members and NGO field staff, who all maintained that usually there are no big differences in terms of landed wealth or otherwise between the regulo and his group of relatives, and the rest of village people. They are all equally poor. Where discrepancies in landholdings existed, they were explained with reference to other factors such as differences in the labour capacity of individual households. This does of course not exclude the possibility of some kind of preferential treatment in land allocation in favor of the regulo's

own relatives. Only that this was not something borne out in our conversations with local people on the subject.[26]

So far we have focused on the role and power of the Regulo 3º, which tends to be the category of traditional leader closest to the village population. Higher-level chiefs such as the *Sultão* and Regulo 1º are usually less involved in the actual administration of land within their territories. Typically they only intervene when there is an issue or conflict that their subordinate chiefs cannot handle on their own. An exception to this is when someone from the outside, be it a group of rural immigrants or an investor, request permission for acquiring land on a more or less permanent basis in the area. The latter also play an important role as arbitrator whenever there is a dispute in the appointment of chiefs, especially at the secondary level, since they are supposed to know who the genealogically most legitimate candidate for the position is.

Secondary sub-chiefs, Regulo 2º, have an intermediate position in this structure. On the one hand, they have the overriding authority over several villages – not just the one they are living in. On the other hand, they are directly accountable to their superior, the paramount chief. In comparison with the latter these sub-chiefs have more contact with the villages of their jurisdictions, though usually through the village headman, the Regulo 3º. The former often have the most direct contact with local government authorities - as representatives of their "communities".

An important difference between the Regulo 2º and the Regulo 3º, is that the former usually belong to the same founding lineage or clan as the paramount chief for the area, which is not necessarily the case among the latter who might originate from immigrant groups who settled and established their villages there at a later stage. This, in turn, explains the somewhat closer relationship that seems to prevail between the Regulo 2º and the Regulo 1º, i.e., they belong to the same group of "landowning" families.

Does community land delimitation in any way affect relations within this chiefly structure? Considering for instance that most delimitations are made of communities corresponding to territorial units under the control of regulos at the 2º or 3º level, one might expect that the paramount chiefs, i.e., Regulo 1 or Sultão, would feel that their power is threatened when the communities under their direct control are established as legally independent landholding units. While there are some indications that this is indeed happening, one should however not forget that the jurisdictional areas of these superior leaders, the *regulados*, at least in Niassa tend to be very large often covering several hundred thousands of hectares and a multitude of villages. Hence their possibilities to exercise effective control over these areas and the local population therein, are extremely limited in practice and their power is therefore more symbolic than real today.

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[26] This is however a phenomenon which has been noted in studies from other parts of Northern Mozambique. For instance, de Marrule, who did a study among the Macua in Nampula whose traditional system of land governance bear a close resemblance to that of the Yao in Niassa, found that being member of a "strong" (i.e., chiefly), lineage was definitely an advantage when "reserve" land was to be allocated and is one of the factors which explains why farm land, even in this otherwise land-abundant part of Mozambique, may be unequally distributed. See de Marrule (1998). A similar conclusion was arrived at in another though ethnographically less informed economic study by Bruck and Schindler (2009).

Instead, it seems that it is above all between the lower-level leaders that community land delimitation tends to create certain frictions, especially between the Regulo 2º and his subordinate village headmen. Historically, this has always been a somewhat problematic relationship stemming from the fact that new villages often came into being as a result of a group splintering off from the original village, not seldom after a conflict with its leader. The increased immigration of families from the outside during and after the civil war, complicated the picture further since areas under the same leader now became inhabited by people who did not share either kinship, history or sometimes even ethnic identity. This at least partly explains the tensions we sometimes perceived existed between the governing regulo and his village sub-chiefs in the delimited communities we visited. It seems that the problem was not just a matter of competition for personal power or authority, but that it also had to do with old family conflicts or social identity and belonging. Whatever the case, the point is that if not handled carefully there is a risk that community land delimitation might aggravate rather than mitigate this kind of pre-existing problems in local social and political relations.

2.4.3. Contradictions with the land law

The advantage of using the already existing traditional governance system as a basis for these new legally established collective landholding units, is of course that the former represents an order local people are well acquainted with and find legitimate. As a matter of fact, considering the influential role of traditional authorities in most rural areas any attempt at introducing an entirely new system of governance outside their control would probably have been a mistake. The drawback with this approach is, however, that certain customary practices and norms which go against fundamental principles of the land law thereby may be preserved. There are especially two problematic issues I wish to draw attention to in this context:

The land law stipulates that the collectively-held DUAT of a local community should be managed according to principles of "co-ownership", meaning that all members of the community should have the same rights to the land and to participate in decisions over its disposal. Ideally, this would require a governance structure where leaders are democratically elected by the members and downwardly accountable to them. In reality, as explained above, what we instead have is a rather oligarchic system, where leadership positions are hereditary with leaders having first and foremost loyalty with their own lineage group while being accountable to their superiors in the chiefly hierarchy. Even if this state of affairs is not necessarily seen as a problem by local people themselves, at least not as long as their leaders are "legitimate" and behave in a "responsible" way, one cannot ignore the fact that it does introduce an element of subjectivity as well as unaccountability in the governance system. And perhaps most important of all, it denies other community members the right to elect the person who should lead them as a landholding collectivity and represent them when dealing with other authorities and external interests.

The other problematic issue refers to how rights to land are de facto controlled in practice, i.e., that even today the land of an area is seen as belonging to the descendants of those family groups who first occupied the area in question, with ultimate control vested in the living lineage head who is also often synonymous with the higher-level regulo for the area. I have already explained how this over time has created a situation of inequality in de facto tenure rights to land between "autochthons" and "newcomers", something which in turn

might lead to difficulties when they are all delimited as members of the same legally established collective landholding community.

However, there is also another dimension to this issue which has to do with the process through which land concessions are granted to outside investors. I shall come back to this in more detail in a later section. Suffice to mention here that one of the most serious sources of conflict between traditional leaders and their subject village populations in recent years in Niassa, has been when the former have consented to give away community land to investors without first consulting or even informing the headmen or populations of those villages most directly affected. While this type of arbitrary behavior of especially the higher-level regulos is often interpreted as a sign of their selfishness and corruption, one might however argue that it also has a deeper structural foundation, namely that it reflects a culturally ingrained conception where these leaders consider themselves the rightful "owners" of the land and therefore with the exclusive right to decide over its disposal.

2.4.4. Alternative mechanisms for resource governance at community level

It was during this study not possible to observe directly in the field how the process of community delimitation is carried out in practice. However, judging by the written reports from the facilitators of these exercises, governance issues do not seem to figure prominently in the process. The existing traditional system seems instead simply to be taken for granted without much further thought to critical questions such as how governance of these delimited landholding communities could be made more democratically representative, participatory and equal in terms of rights in line with the principles of the land law.[27]

This is not to say that no attempts have been made in this direction. NGOs like ORAM have sought to promote the Natural Resources Management Committees (CGRN) organized in conjunction with the delimitation of a community, as an institutional mechanism for participatory resource governance at the local level. That is, giving these committees a broader role than just promoting sustainable use of the community's natural resources by adding other tasks such as participation in land conflict resolution, representing the community in consultations and negotiations with investors, as well as fostering community development in general.

To what extent has this strategy been successful? Our observations from Niassa suggest that very few CGRN have actually been able to take on this broader role. For instance, in some of the communities visited we found that this committee just existed on paper but was no longer active in practice. Or it was operative but had so far had little opportunity to involve itself in, e.g., negotiations with outside investors, simply because no such investors had appeared. But apart from this there is also a series of more profound structural constraints to consider:

First of all, there is some uncertainty regarding the legal status and mandate of these committees. While some argue that they have their legal basis in the so called "Group of Nine" (G-9) stipulated in Article 6 in the Technical Annex to the Land Law, others contend that it is the community-based co-management structure (COGEP) established in the Forestry and Wildlife Law, which constitutes their legal basis. The G-9 however is a group of

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[27] One of the few published studies which has actually documented such a delimitation process in the field, is Kaarhus and Dondeyne (2015) who confirm this observation though basically with reference to women's participation in the process.

community members (ranging from 3 to 9 men or women) appointed in public meetings with the task of signing the minutes of the delimitation process when completed on behalf of the community. There is nothing in the law which indicates that this group should have a role after that. As for the COGEP, its role is primarily to administer the 20% of taxes collected from the exploitation of the community's forestry resources which legally should accrue to the latter. However, it has no legal mandate over the landed resources of the community as such.

Another shortcoming is the fact that there exist no standardized regulations or similar which could guide the CGRN in its work and clarify the latter's role and authority both within the community and visavi external actors. It is true that ORAM in Niassa has developed a set of model by-laws for the CGRN which are introduced in those communities where they are working. However, these by-laws contain nothing in reference to the broader land governance role of these committees mentioned above, but are restricted to the environmental aspects of their work.

Thirdly, there is the problem of weak institutional capacity. As mentioned, these CGRNs are organized as part of the delimitation process in a community, which is initiated by an external organization, usually an NGO, facilitating the process as a time-limited project. During this project, which in effective time may last a couple of weeks in each community, the idea of the CGRN is introduced, members appointed and trained, etc., culminating with the registration of the committee as a legally established non-profit organization. After that the CGRN is however pretty much left on its own. There is usually very little monitoring and follow-up support by the implementing project organization or the state for that matter. This is one of the principal reasons why these committees have often not functioned as intended, we were told. They have not been given the continuous follow-up support that is required.

Finally, there has been certain resistance from the traditional leadership in accepting some of the proposed tasks of these new institutions. While it seems that the regulos have no problems with the idea of forming a special committee of community members with responsibility for environmental protection and similar issues, it has been considerably more difficult to get them to accept that this group should also be involved in negotiations with investors and other external agents, which they consider is their prerogative to handle.

In conclusion, while it is not inconceivable that the CGRN could be developed into the kind of community-based institution for ensuring a more equal and participatory governance of land and other natural resources at this level, at least in Niassa there are many constraints that need to be removed before this can become a reality.

2.5. Effects on local economic development

From a development policy perspective, providing smallholder farmers with tenure security is not just an end in itself but also a means for promoting local economic development. When individual titling is the approach chosen, the idea is usually that this will give the farmer better incentives to invest in his/her farming enterprise; it will facilitate the development of a local land market; it makes possible using land as collateral for bank loans. In other words, focus is on creating the tenure conditions under which farmers as individual producers could improve their productivity and in that way contribute to local economic development.

In the case of community-based approaches such as the one in Mozambique, i.e., where tenure rights are formalized at the level of the community as one collective landholding unit, the thinking on how this could facilitate local economic development is different. Either emphasis is placed on community members themselves bringing about their own economic development through various types of collective actions, based on their common interests as co-owners of the land and other natural resources. Or it is seen as stemming from externally induced processes such as large-scale commercial land-based investments, where the community's chances to negotiate social and economic benefits from such investments are increased when it has formal tenure rights to its land.

I shall in a following section discuss some experiences in Niassa with the effects of large-scale investments on local communities. In this section I shall focus on two ways of promoting a more locally induced development, namely the establishment of so called community development agendas as part of the land delimitation process, and the demarcation and provision of group-title to land to producer associations within communities.

2.5.1. Community development agendas

Although not strictly part of the land law, the establishment of so called community development agendas is today praxis in at least the delimitation projects sponsored by iTC. Ideally, they are the outcome of a participatory process of social preparation of the community during which the latter's development needs and options are analyzed, resulting in the identification of priorities for action.

In theory, these agendas should focus on the land and other natural resource-based economic activities that need to be improved or could be developed at the community level, since this is what the delimitation project is all about. A perusal of about 10 such agendas reveal that they do indeed have such a focus, although not seldom including also other needs of a more social character relating to e.g., health, education, potable water. See Box 4 for a typical example of identification of problems with associated activities in the economic sphere.

Box 4

Mecualo Community Development Agenda

Vision: *During the next 5 years (until 2017), the community of Mecualo, with a functioning organization, will participate and take charge of its local development through a rational and sustainable management of its natural resources based on existing potentials*

Priorities for development:

Economic area:

1. Improve the commercialization of local products
2. Employment generation projects with financing from the District Development Fund (FDD)
3. Promote partnerships with the private sector
4. Promote favorable environment for integration of NGOs in the community

Principal activities:

- Market study for selling of locally existing products
- Identify and negotiate with buyers from outside the Districts for marketing of the principal products of the community
- Establish written agreements with identified principal markets
- Negotiate regular and systematic technical assistance in the field by the extension workers of the District Agricultural Service Office (SDAE)

Area of natural resources:

1. Improve tenure security
2. Ensure sustainable use of land and forests

Principal activities:

- Establish community associations for joint registration of land (demarcation)
- Organize a functioning Natural Resources Management Committee (CGRN)
- Negotiate with the Provincial Service of Forests and Wildlife as well as with NGOs support for training and technical assistance in the area of community-based natural resources management.

It is of course positive that community members through the development of such agendas get the opportunity to discuss and prioritize what they together perceive are their most important economic development problems and needs, including how these could be addressed through concrete action. This notwithstanding, it however also raises some question-marks. One is whether these agendas really reflect the interests of the entire community, especially considering that communities in Niassa often consist of several villages. While the documentation of these agendas usually include a short description of the methodology employed, number of male and female participants, etc., there is no information on the origin and status of these participants, if they emanate from the same

village, etc. The impression one gets, also confirmed in informal conversations with the facilitators of these events, is that they tend to be dominated by people from the chief's own village, which is usually where the meetings for producing the agenda take place. There are thus reasons to be skeptical about the extent to which the more marginal villages in a community have been involved in this process or are even aware of its outcome.

Another question-mark refers to the achievability of these agendas. To begin with, it should be noted that the delimitation projects sponsored by iTC do not as a rule support the implementation of the activities prioritized in these agendas, only the initial participatory process of identification. As for implementation there are three possibilities: One is that the activity in question is undertaken by local people themselves, without any outside support whatsoever. Though in theory this is possible when an activity does not imply any large monetary costs, particular technical expertise or administrative experience, internal organization and local initiative might still be a problem (See Box 5). Another possibility is that required technical and financial support will come from other development projects or NGOs, following in the wake of iTC. This, however, presupposes the existence of such other projects or development actors to take on follow-up support, something which at least in Niassa so far has been difficult to mobilize.

Finally, there is the most logical solution of all, namely that such follow-up support is provided by the district administration. The latter for instance has its own District Economic and Agricultural Development Service (SDEA), with the task of providing agricultural extension and other technical support to farmers in the district. Moreover, there is a particular District Development Fund (FDD) from which community groups and others can apply for funding for their development projects. One problem in this context is that these resources, both in terms of manpower and funds, are extremely limited and therefore insufficient to cover the growing demand for support stimulated by these community agendas. But another problem is a lack of coordination between the latter and the district budgetary planning process in general, meaning that there are no resources earmarked in the district budget for support to these community agendas.

Box 5

The Charcoal Producer Association in Lutuesse

Artisanal production of charcoal for sale to Lichinga City represents an important supplementary source of income for people in Lutuesse Community but has led to depletion of its forest resources over time. Therefore the creation of a charcoal producer association was included as one of the priority actions in their community agenda. Since association members would extract forest resources for charcoal production according to a management plan, this would make it easier to control deforestation. And since the association is a legal entity, it could obtain a license from the district authorities for selling charcoal in bulk. This would make it possible for members to negotiate a better price than when selling on their own. With the help of the technical staff of an NGO, which facilitated the delimitation project in Lutuesse, a charcoal association was formally established with about 20 members. They were instrumental in seeing that the association got a license for selling 1500 sacks of charcoal per year. For a start this arrangement apparently worked relatively well, although there seems to have been some internal disagreements over the distribution of the annual quota of permissible sales. When the study team visited the community about 3 years later, however, the association had for all practical purposes ceased to function. Part of the reason, we were told, was that the license had expired and people did not know how to renew it. They therefore could not go on selling charcoal in bulk. But another reason, it seems, was that already since the beginning it had been difficult to get the majority of charcoal producers in the community to join the association since a membership fee was charged which many did not want to pay. Instead they preferred to go on selling individually as before and take down trees at their own discretion, something which the community leadership felt it could not prevent.

Taken together, there is therefore a risk that these agendas remain unimplemented, something which was confirmed in the communities visited during this study, where it was common to find that few and sometimes none of the activities listed in the community development agenda had been realized.

2.5.2. Demarcation of land for farmer associations

Another way in which one seeks to promote economic development from "within the community", is by providing smaller groups of community members organized into farmer associations with their own collective title to land through so called demarcation, with the purpose of stimulating a more productive use of the land.[28]

While the organization of smallholder farmers into associations has been the preferred strategy among especially NGOs in Mozambique for a long time, the idea of combining this

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[28] As explained in section 2.1., "demarcation" is the legally prescribed procedure through which an individual or legal person can obtain a formal DUAT title to land, which is commonly perceived as giving the holder a higher degree of security of tenure than just a "delimitation certificate". The procedure is basically the same for outside investors and local people, though simplified for the latter. Once the land has been demarcated and titled, referred to as "dismemberment", it is no longer under the control of the larger community.

with group-titling of land is of a more recent origin introduced by iTC. In principle, the issuance of a DUAT title to land, individual or collective, can be made to members of a community whether the latter's total land area has been formally delimited or not. And this is also how iTC started its operations in southern Mozambique, where focus was on demarcation of land for associations rather than delimitation of community areas. Since then, and as iTC has expanded its operations to include the central and northern parts of the country, the policy has become to prioritize DUAT titling within communities that have already been delimited and then in the form of group-titles only.[29]

In Niassa, demarcation of land for associations is today undertaken as part of the delimitation project in a community and only involves already existing associations, i.e., associations organized in conjunction with some NGO project at an earlier stage. By 2015, 121 associations in the province had got their own land demarcated with group-title. These were however not evenly distributed among the 131 delimited communities, since the location of established associations varied depending on where NGOs had previously been active. This explains why in some cases there were up to 11 associations with own demarcated land in the same community, whereas in other communities there were none. While the size of the associations in terms of membership varied, the majority had between 10 and 20 members, mostly of both sexes, though nearly 10% (12 out of 131), consisted of female members only.[30]

An intriguing question and one we shall come back to, refers to the big differences in amount of land demarcated for these associations. While about half of them had got relatively small areas demarcated, i.e., 10 hectares or less, in other more extreme cases collective holdings had been demarcated with an extension of 100 hectares or more though the number of association members was about the same.

So what has been the outcome of these associations so far? Unfortunately, there exists no systematic follow-up of these demarcated associations in Niassa which could shed light on this question. What is presented below are some observations from meetings with associations in the communities visited in Majune, with no claim to be representative of all demarcated associations in the province.

Firstly, there were a few associations which had been quite successful in developing their own farming enterprise. For two examples see respectively Box 6 and 7 below. As explained in the text there, their success was the result of a combination of factors, e.g., personal initiative, strong leadership, close social relations within the group, political contacts. These two associations were, however, rather exceptional cases. Most of the other associations we met were at a more rudimentary level, often just producing some vegetables for sale on patches along the river. Or they used their association land for own subsistence production, in the same way as they had been doing before, or still did, on their family land.

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[29] Quan, Monteiro and Mole (2013).
[30] Data on demarcation from iTCs data-base for the period 2010-2015.

Box 6.

Association Futuro Melhor

One of the most successful associations was "Futuro Melhor" in Matukuta Community. It consisted of 9 female members, who had specialized in fish farming in ponds on part of the land (30 hectares) they had got collective title to. So far production was relatively insignificant and they mostly kept the fish they harvested for own consumption or sold it within the community or to by-passers on the road. But the plan was to expand marketing of fresh fish to outside the community once production levels and other logistical conditions, i.e., cold store and transport, made this possible. These achievements, it seems, owed much to the enterprising spirit but also political connections of Dona Cristina, the woman who initiated the group and now the association's president. The idea of fish farming initially came from an NGO working in the community, when 3 ponds were constructed for this association. Later on, during a visit of the Minister of Fisheries to the community, Dona Cristina said she managed to obtain financial support directly from the government for the construction of 10 more ponds. In addition, this association also cultivates vegetables and some other cash crops collectively on irrigated land along the river.

The principal objective of providing farmer associations with group-title to land, is that this will give them a more secure and independent control over their own landed resources within the community, which, it is hypothesised, will stimulate them to invest in a more intensive and productive use of this land. An additional objective is to facilitate joint action in related areas such as marketing, processing, input supply, etc.

Practically all association members we talked to during this study agreed that having a DUAT title to the land increased their sense of tenure security, although some said that they would have preferred an individual rather than a group-title if that had been possible. When asking them to explain why exactly having a title was so important, most answered that it protected them from outside claims on their land. "With a title nobody can come here and take our land away from us", was an expression we frequently heard. This was apparently seen as less of a danger within the community, where they said that traditional rights were usually respected.

Box 7.

Association Mwaloledje

This association located in Metomone Community consist of 5 men and 4 women and was established in 2003-2004, when this type of organization was promoted by the Provincial Governor. From the beginning the group only disposed of about 6-7 hectares which they took possession of and brought under cultivation on their own initiative. In 2013, however, they got 71 hectares demarcated as their collective association holding. What is especially interesting with this association is that the members all belong to the same extended family. It is thus a kind of family-enterprise, which they themselves contend is the principal reason why it works so well today. They farm the land collectively with a variety of both cash- and subsistence-crops and share the proceedings between them. None of them reported farming other land individually but all make a living from this joint enterprise.

While men and women tended to have similar views in this respect, those women who were members of female-dominated associations emphasized their greater autonomous control over land as an advantage. Even if, as explained earlier, women's rights to land are relatively strong in these matrilineal communities, they still depend on the men, e.g., their uncles or brothers, for getting access to a parcel from the family holding when marrying, while the income from their farming is often controlled by their husbands. The advantage of being member of an association with own title to its land, they explained, is that they then have full control themselves over this land and the proceedings from it. They can also be sure that it will one day be inherited by at least one of their children.

Having a secure title to one's land is thus seen as an advantage. But does this also mean that it plays a decisive role for one's decision to invest in a more intensive and commercially oriented farming? When discussing this question with people they said that secure title might play a role but that other factors were more important. Specifically they referred to lack of markets for their agricultural products as a serious impediment, making cash crop production both pointless and risky. Besides, there was no rural credit facility to enable the financing of the seed and fertilizer required for intensive farming.

This then explains why cultivation patterns often did not differ much between association- and non-association members. It reflected that farming decisions were more influenced by these other constraints than whether one had title to the land or not. For these reasons, with the possible exception of the two success-stories described above, few of the associations we met felt the need for collective action of any sort. As a matter of fact, most of them, after a short initial period when they farmed together, had split up their joint holding into separate plots which they now farmed individually.

This is, however, only part of the picture. What also needs to be explained is that, at least in Majune, only a fraction of the land demarcated for these associations was used for farming while most of it was just lying idle. To understand this somewhat paradoxical situation, it is important to clarify that the land that was demarcated for group-titling, only to a minor extent was the same land as that upon which these associations were originally founded. The latter usually consisted of rather small parcels of already cultivated land which

members' contributed from their family holdings or borrowed from somebody else in the community. The bulk of the land that was later on demarcated, however, was taken from the community's reserve of unoccupied and often uncultivated forest land. This explains why only a small proportion of the total land area titled was actually used for farming. Either it was because association members did not have the labour and other resources to cultivate more of the total holding, or they simply lacked incentives for doing so given the constrained market conditions.

There still remains the question why such large areas, often in the order of 50-100 hectares or more, were demarcated for an association when in reality perhaps only about 10 hectares or less were actually used. When asking the association members themselves about this, there was no clear answer. Instead they referred to the project staff facilitating the whole delimitation process, who they said were the ones who had suggested that since land was so abundant anyway, it might be a good idea to demarcate quite large holdings. Both for the sake of having sufficient reserve land for allocation to future association members, but also for leasing out land to outside investors in case the opportunity arose. Whether or not this would be compatible with the notion of the community as one integral landholding unit, did not seem to have been an issue for them.

2.5.3. Property rights without material benefits

In so called "access-theory" a distinction is made between property rights as legitimized claims to resources, on the one hand, and the ability to derive any material benefits from these resources, on the other hand.[31] This kind of reasoning is applicable also to the case of Niassa.

It could be argued that the formalization of land rights in this part of Mozambique, at least so far, has had limited development effects at the local level. Concerning delimitation, the fact that the external boundaries of a community's landed area are formalized does not automatically mean that the holders, i.e., the community members, have the knowledge and other means to make use of the land and other resources within it in a sustainable and for them profitable manner. For this additional development support is usually necessary, which however only to a minor extent is provided during the delimitation process or afterwards. There is therefore a tendency that communities get their land areas delimited but that this is of little practical use to them in terms of their own management of the resources inside these.

In the case of titling of land for associations, one might argue that the wrong problem is being addressed. At least in the central parts of Niassa, where this study was conducted, the customary system still provides local people with reasonable tenure security. Lack of title to land is not the most significant constraint for these associations' productive development, but rather the difficult market conditions and virtual non-existence of rural credit to be able to invest in improved farming technologies and land-use patterns generally. This is not to deny that titling of land for associations at some stage might be a very important measure for boosting their economic performance and entrepreneurship. This, however, should be undertaken only when these associations have reached a certain degree of development and thus can show that the land area requested for titling is justified in productivity terms. If the reverse procedure is followed, i.e., relatively large land areas are assigned to associations

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[31] Cf. Ribot and Peluso (2003).

and titled for their exclusive control before they can actually make productive use of these, as seems to have been the case in some instances in Niassa, there is a risk that such titling only leads to hoarding of land within associations for basically speculative purposes.

However, it can also be argued that Niassa and then especially its central and northern parts, is not an environment apt for a development model which seeks to promote economic development based on the local smallholding farmer sector as the driving force. Firstly, these represent some of the most sparsely populated parts of the country, with long distances to market centers and a generally undeveloped transport system. Secondly, the economy is still rather undifferentiated and very much dominated by subsistence production, meaning that market demand for basic food and other livelihood necessities is generally quite low. Hence it is not easy to promote economic development from within the communities under such circumstances.

At the same time, one of the biggest comparative advantages of these parts of Niassa is the abundance of uncultivated land, making this region potentially ideal for large-scale land-based commercial investments, and, thus, for an approach which seeks to promote local economic development from the outside through such external investments. In the next section I discuss some of the experiences and lessons learned from applying this model in Niassa.

2.6.   Community-investor relations in Niassa

As already explained in section 1.2., the fact that communities' rights to their customarily held land are recognized in the Mozambican land law does not mean that outside investors cannot get access to this land. Only that the former's consent must first be obtained in what the regulations to the law stipulate as a mandatory consultation process, commonly referred to as "community consultation". Such community consultations should be organized by the District Authorities once an investor has expressed interest in acquiring DUAT to land in a particular area. The purpose of the consultations is to establish whether there are other claimants with rights to this land or not, and, if there are, under what conditions they are prepared to relinquish from their rights to the land in question.[32] These consultations are thus intended to provide communities with an opportunity to negotiate with investors about benefits in exchange for their land.

So have these legal mechanisms resulted in mutually beneficial community-investor relations in Niassa? To seek an answer to this question the team visited communities that had experience from such private investments on their land and talked to representatives of some of the investors themselves. We further interviewed staff of the agencies which are responsible for promoting private sector investments in Niassa, i.e., Investment Promotion Center (CPI) and Malonda, as well as collected some additional information from the Provincial Office for Geography and Cadaster (SPGC) regarding completed community consultations. In what follows we summarize the results of these explorations, beginning with a brief account of the current state of investments in Niassa.

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[32] Since the land law recognizes customary rights to land through occupation whether the land has been formally delimited or not, most community consultations will reveal that there are indeed local claimants to the land requested.

2.6.1. Large-scale land investments in Niassa

First of all a point of clarification. When we talk of "large-scale land investments" in this context we are referring to investments which take place on land acquired from communities in the form of long-term DUATs. In other words, we are excluding from the analysis other types of investments such as tobacco contract farming, which is quite an important source of income for smallholder farmers in Niassa, but which does not require that the latter relinquish their rights to the land and therefore is a type of commercial investment not directly affected by the land law.

According to figures presented by SPGC, until April 2016 long-term DUAT had been issued for about 440 000 hectares in Niassa for large-scale commercial investments in respectively forestry plantations, tourism & wildlife and agriculture.[33] Of these, forestry plantations dominated with about 203 000 hectares. The latter type of investment goes back to 2005/2006, when Malonda, then a private-sector development project supported by Swedish Development Cooperation, was active in bringing foreign investors to Niassa with a particular focus on forestry. Initially about 6-7 companies tried to establish themselves in this sector. While some of them got their DUAT to land in partnership with Malonda, who, as it seems, had been given the right of disposal of approximately 100 000 hectares in a special arrangement with the government, others acquired their DUAT in the normal way through application directly to the government authorities, allegedly after some kind of community consultation.

This initial group of forestry investors had in 2016 through mergers or closing-down of activities been reduced to basically two which were still active: Green Resources (GR) and Floresta de Niassa (FdN). The former had DUAT to 150 000 hectares of which approximately 24 000 hectares had been planted.[34] Similarly, FdN had DUAT to 40 000 hectares but had only planted about 7000 hectares. To these could be added a third company, New Forests, which still owned a forest plantation of 3650 hectares (out of a DUAT of 13000 ha) in the Chiconone area but this seemed to be dormant.

As mentioned the other types of large-scale land investments which were common in Niassa were in the areas of commercial agriculture and wildlife & tourism. An example of the former was the Tenga Farm Ltd visited by the team which cultivated macadamia nuts on 2000 hectares of land acquired from a neighboring community. The company provided regular employment to 70 workers all year around and to an additional 70 workers during harvest season. Most of these workers were recruited from local communities in the area we were told. We did not have the opportunity to visit any of the tourism & wildlife establishments but were told that even though they often occupy quite extensive land areas they usually do not provide much employment to local people.

According to the Investment Promotion Center (CPI), while the interest for land-based commercial investments in Niassa continues to grow in overall terms there had been a shift in the sense that the interest for investing in industrial forest plantation was going down

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[33] Governo da Provincia do Niassa, SPGC. Estado actual da Delimitação de Terras Comunitarias e DUATs na Provincia do Niassa, Workshop, Hotel Girassol, Lichinga, 06 Abril de 2016
[34] Green Resources had initially got a relatively small DUAT in Niassa through Malonda, but later on merged with Chikweti, another of the initial investors but who operated on its own with a large concession obtained directly from the government, which was later on transferred to GR.

while agriculture in particular, but also tourism & wildlife continued to attract investors' interest. In agricultural investment projects there was a tendency for the land areas requested to be smaller than in the case of the forest plantations.

2.6.2. Community benefits from investment projects

There are basically three ways in which communities can benefit directly from relinquishing their rights to land to commercial investment projects in Niassa:

Employment

Perhaps the most important expectation local people have on these investment projects is that they should offer wage-work opportunities for them. To our knowledge there exists no systematic study in Niassa to date on the employment effects of these projects. There is undeniably employment creation, although its extent and impact on local income levels is not known.[35] However, at least in the case of forest plantations, interviews in affected communities we visited revealed that most employment had been during the establishment of the plantation but dropped considerably once the trees were standing and just needed protection and periodical maintenance. In this sense agricultural investment projects such as the one of Tenga Farm Ltd probably generate more continuous employment though these types of projects are not yet so prevalent in Niassa.

Social responsibility support

Aside from providing employment it was common that investors engaged in various kinds of direct support to communities as part of their "corporate social responsibility", e.g., the financing of public social infrastructure such as health posts, school buildings, roads, bridges, etc. But also other types of "collective goods" such as the rebuilding or decoration of the local mosque, the installation of mechanical corn mills, and sometimes even the building of a new house for the regulo. Many of the communities in Niassa which had ceded land to investors had in varying degree benefited from this kind of support. Over time, however, the larger and more established investors such as GR/Chikweti and FdN, had become reluctant to engage in such support which they considered was rather the responsibility of the State. Besides, the building of schools and health centers needed to be supplemented with longer term financing of staff and other running costs which the companies saw as a government remit. These companies as a matter of policy therefore no longer provided funding to such social infrastructure.

Community development funds

The idea of creating some kind of community development funds with financial contributions from concerned investors originally came from Malonda, and was first put into practice among the communities in Chiconone on whose land New Forest had established a forest plantation. The deal was that New Forest would pay 1 USD/ha/year for the area to which the company had got DUAT and that this money was put into a community development fund administered by a committee set up by the affected communities with the technical support of Malonda. This fund operated for a few years until New Forest for unknown reasons decided to close down its activities in the area and therefore discontinued

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[35] This is confirmed by a recently published study which shows that the forest plantations in Niassa has both positive and negative effects on rural people's livelihoods there. See Bleyer et al. (2016)

the annual payments. Although we did not have the opportunity to study this experience in detail, according to the committee members we interviewed in Chiconone it resulted in several locally run development projects of benefit to people there.

Another variant of this model was developed by Chikweti and was later adopted by GR when the two companies merged. The idea in this case was to link payment of an "incentive" (5 USD/ha/year) with the protection of the company's tree plantations so that payments would only be made after an annual evaluation showed that no harm had been made to the plants during the previous year. The annual payment in this case thus only applied to actually planted area, not the entire area for which the company had got DUAT. According to the managing director of GR in Niassa, they would continue with this model since it had proven to be effective as a means of protecting their plantations at the same time as it provided resources for the communities´ own development.

2.6.3. Problems experienced

The establishment of these investments had not been problem-free. One issue which aroused protests from affected local populations was the location of the investments. While in theory there is sufficient land in Niassa to meet the demands of both investors and local smallholder farmers, in reality they tend to compete for the same areas; close to roads, rivers and areas with the best agricultural conditions. Hence one of local people's complaints of for instance the forest plantations, was that the latter had been established too close to their villages, hampering their access to farm land, rivers, common forests, etc. Or plantations had invaded areas currently used by local people for own farming, forcing them to take up new land for cultivation elsewhere, often without compensation from the company.[36]

There are several explanations why these problems occurred. One is simply that people were not sufficiently informed and therefore did not understand what these industrial forest plantations would imply in terms of area occupied when they first accepted the investments. Insofar as there was any community consultation at all, this was often an expeditious affair with little concrete information (such as maps etc) about the proposed investment proposed. Furthermore, many rural people have rather vague notions of abstract areal measures such as hectares, so imagining what a forest plantation of so and so many hundred or thousand hectares would mean in practice, was virtually impossible for them. In this respect it is not strange that people got upset when the planting of forests begun and they realized the scale of the consequences it had for them.

This is however only part of the explanation. Another and possibly more important factor in this context had to do with the way in which at least in the beginning land was released for these investments. When Malonda with partners, but also other companies such as Chikweti, began the process of negotiating land for their investment projects, it was common that they only approached the higher-level traditional leaders, the Sultão or the Regulo 1º, since they were the ones considered to have the authority to decide in these matters. Sometimes such negotiations took place in the guise of a formal community consultation but only involved the aforementioned leaders and some of their closest associates together with district authorities and other government staff plus the investor. Or

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[36] Especially the forest plantations in Niassa have received much criticism by NGOs and others over the years. For more details see FIANI (2012); Justiça Ambiental & UNAG (2011); Åkesson et alt (2009).

they were conducted in an informal way directly between the investor and the leaders though with the tacit consent of the government. Either way the upshot was that agreements and promises were made among a very restricted group of people without involvement of those who in the end would be the most affected. It was only later, when decisions had already been finalized, and sometimes not until the actual plantation work begun, that local people discovered what had been consented to by their leaders.

What aggravated the situation was that the leaders apparently derived personal benefits from this. For instance, it was not uncommon that the companies provided the leaders with bicycles and other material items to gain their support. In the case of Chikweti, rumors hold that they even went as far as putting regulos on their payroll. They were given tasks such as selecting workers for the plantations, which gave them the added advantage that they could give preference to their own family members and other relatives for these much wanted jobs. Misconduct in the management of the community development funds also allegedly existed, when the leaders used their influence over these funds to finance projects of interest or benefit only to them and to other family members in the community.

It appears that several of the sometimes violent protests (e.g., uprooting of plants, burning of company equipment) that occurred, especially during the first years, were influenced by these types of injustice. In other words, it was not just a reaction to the investments per se but also to the manner in which these were handled by the local leadership. In some communities this resulted in a crisis as local people accused their leaders of being corrupt and betraying their confidence.

Another issue which caused much discontent in the communities which had ceded land to investors, was what the former regarded as unfulfilled promises made during the community consultation. It is of course possible that investors promised all kinds of compensatory support to communities during the consultation just to get the latter accept their request for land but which they had no intention to live up to. Often however it seems that the problem was more complicated than that. As explained above, what was agreed in these consultations was often kept within a small circle of people who did not necessarily share all the details with the rest of the local population. Or what the leaders told their people did not correspond exactly with what had been agreed, either because the former had misunderstood the commitments made by the investor, or they simply inflated the outcome of the negotiations for fear of telling their people how little they had actually obtained. Whatever the case, the net result was that people often became very disappointed when they discovered how little they got in exchange for their land.

There was however also a more structural problem involved in this context and which had to do with the rather unspecific and arbitrary way in which the consultation protocols, which represented the only formal documentation of the outcome of these consultations, were drawn up. First of all, these protocols were not signed by the person representing the investor, only by the community representatives and the government staff present at the consultation. Hence they could not be seen as a legally binding contract between the two most directly interested parties: the investor and the concerned community. Secondly, none of the protocols examined by the team clearly specified what had actually been agreed between the parties in terms of conditions, benefits, etc., only that the community accepted to cede the requested area to the investor.

It is true that most of the protocols contained long citations of what individual community members participating in the consultation wished would come out from the investment in terms of benefits. But these were just subjective wishes and did not specify what had actually been consented to by the investor. Communities therefore had no legally binding written agreements that they could refer back to.

What has been discussed above represented some of the problems experienced with these investments from the perspective of involved communities. Let us now turn to what the investors themselves saw as the most problematic issues in this context.

Forest company representatives reported that one of the greatest challenges when dealing with the communities was that they could never be certain that what had been agreed with community leaders was also acceptable to the rest of the community. In fact, sometimes they were not even sure that they were negotiating with the right local leader. On the other hand, dealing directly with each and every community member was not an option either, they said. It would be too complicated and require too much administrative work.

Regarding the risk of misappropriation of community development funds, they were aware of the problem. One of the companies reported trying to reduce this risk by decentralizing control over the funds to village-level, but this proved difficult to administer. While another company had arrived at the conclusion that this type of problems would always be there and that it therefore was better not to put any money into this type of locally managed development funds at all and instead give support directly to small development projects.

The principal complaint put forward by these company representatives was however of a different order and had to do with the role of the state. In general they felt that the state was putting too much of the burden for negotiating access to land and resolving conflicts with the communities onto the companies, tasks which in their opinion should rather be the responsibility of the state.

As an example they mentioned that forest plantations are typically built up gradually over time while the company already from the start must be able to show that it has control over the total area that eventually will be planted to attract investment capital for the project. The problem, they said, is that even if the company has DUAT to the entire plantation area, as long as it is not planted local people will regard it as "free" and thus available for their own cultivation. When the company later on needs to access this land they invariably run into problems with the farmers there, forcing them to enter into a new round of lengthy and difficult negotiations.

In their view, this was a typical situation where the state should step in to resolve the matter with the local population. They thought that ideally investors should have no involvement whatsoever in the process through which land is released to investors. This should entirely be the responsibility of the state, since, after all, the latter is the ultimate owner of the land. Their preference was therefore that investors should come in afterwards and just negotiate with the state for access to the land.

2.6.4.   Is there scope for more inclusive community-investor partnerships?

The forest plantation projects referred to above were all initiated before community delimitation had begun at any scale in Niassa. An important question, therefore, is whether the situation is different today, when almost one-third of the available land area of the

province has been formally delimited as community lands and thus registered as controlled by local communities?

One effect of community delimitation is that local people have become more aware of their legal rights to land and more aware of the land law in general. Our field visits to communities revealed that people who had undergone the process often had a fairly good idea of what the law implied not only in terms of their ownership rights to land and other natural resources such as forests, but also other aspects such as the obligation of investors to consult with them before they could get access to their land. Whereas in those communities which had not gone through a delimitation process, people often did not seem to even know that a land law existed.

Possibly as a result of this, another change today is that more community members tend to participate in community consultations. This was revealed in our scanning of protocols from community consultations, where lists of participants tended to have grown during the last couple of years, a trend that was confirmed by the NGO and SPGC staff we interviewed. Similarly, it seems that the traditional leaders have less freedom today when it comes to giving away land to investors. Community members are more aware of their right to have a say in these matters, and they don't allow their leaders to act on their behalf in the same manner as before. Meanwhile, the leaders themselves seem to have learned from previous mistakes of acting too high-handedly in this context and understand better the price they are likely to pay in terms of loss of legitimacy and respect among their subjects.

Finally, there are indications that the state is now prepared to take more responsibility in seeing that the law is adhered to. First of all, there is today virtually always a community consultation organized when an investor expresses interest in acquiring land in an area. Secondly, in an addendum to the land law the regulations for community consultations have been made more rigorous, stipulating for example that a consultation should be divided into at least two meetings (instead of just one as before) with a time-lapse of at least 30 days between them to give the community sufficient time to reflect on the proposal.[37]

In general it appears that community-investor relations are less conflictual today in Niassa than when the forest plantation investments begun. Both concerned communities and investors seem to have learned how to adjust to each other. This, however, does not change the fact that the benefits that communities receive in exchange for giving away land to investors are still fairly insignificant, at least if one compares with the commercial value of this land. In theory, one way in which communities could gain more from these transactions is by becoming more of an equal partner with the investors, using their land as a commercial asset to be shared or leased out to the latter on strictly businesslike conditions. There is a lot of interest internationally for this kind of "inclusive" community-investor partnership as a way forward.[38] It is beyond the scope of this report to analyze in detail the feasibility of promoting such a model in Niassa. Instead I shall limit myself to briefly outline some of the factors that render the establishment of such partnerships difficult, at least under present conditions.

A first difficulty was pointed out by the provincial head of iTC in Niassa: it is hard to find investors who are interested in involving themselves seriously as partners with the

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[37] Ministério da Agricultura, Diploma Ministerial No. 158/2011
[38] See Vermeulen and Cotula (2010); Cotula and Leonard (2010); Vermeulen (2003).

communities. Possibly with the exception of Green Resources and FdN, which are established international forest companies, many investors who emerge today in Niassa are short-term opportunists interested in getting access to land as rapidly and easily as possible. This tendency has become especially noteworthy in more recent years with a shift in the profile of investors in Niassa, as they are more likely than before to be nationals with relatively modest investment plans.

Another obstacle is communities' lack of experience and preparedness for taking a more active role. Until now the standard pattern has been that communities just wait passively for an investor to show up and it is the latter who has the prerogative of deciding which part of the community land they are interested in acquiring. This needs to be changed so that it is the community which decides which part of its land area might be made available to an investor – if the compensation in terms of material benefits and other conditions are satisfactory. Among other things, however, this pre-supposes that some kind of land-use plan exists for the community's total land resources, to ensure that if land is ceded to an investor this will not threaten the long-term food security and other subsistence needs of the local population. Few of the communities which have been delimited have such land-use plans, however, since their elaboration is not an obligatory part of the delimitation project.[39]

A third constraint is legislation. As pointed out in the beginning of this section, the regulations for community consultation open up a possibility for communities to negotiate benefits from investors in exchange for their land. This, however, is more of an inference of the paragraph in question than explicitly stated in it.[40] There is no specific legislation that regulates community-investor partnerships as such.[41]

Moreover, investors' obligations to compensate communities for their land tend to be regarded as voluntary by government staff involved in these consultations, i.e., as part of their "social responsibility" but not enforceable by law. Partly for this reason, and perhaps also because they do not want to frighten away investors, government staff we discussed this issue with said that they try not to encourage communities to be too demanding in their requirements on investors.

Finally, the state agencies which have the responsibility for promoting commercial investments in Niassa do not have any policy or instructions to facilitate more balanced community-investor partnerships by e.g., directing investors to communities which have gone through the delimitation process and therefore presumably are the best prepared to enter into such partnerships. This was clear from interviews with staff of the local CPI office in Lichinga, who explained that they just inform prospective investors where there might be land available for the kind of investment they have in mind, but do not indicate any specific communities. It is simply not their task. Even if it were, the CPI staff reported that they did not know which communities were delimited and which were not and that only the SPGC or the Provincial Director of Agriculture would know that.

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[39] It should be mentioned though that ORAM, on its own initiative, has recently begun to develop rudimentary land-use maps as a first step for the communities where they are facilitating delimitation.

[40] Regulamento da Lei de Terras, Artigo 27:3

[41] An already existing legal mechanism ("cessão de exploração") which could facilitate for communities their long-term leasing of land to investors without losing their DUAT rights to the land in question, has been discussed for some time in Mozambique but so far without formal approval by the Government. See Cabral and Norfolk (2016).

To summarize, the model where economic development at community level is expected to follow as a result of the inflow of external commercial land-based investments has so far had relatively few positive effects in Niassa. Partly this is because of the sometimes irregular manner in which land was released for such investments, which often only benefited the leaders and other elite members of the community. But another reason is that concerned government authorities, due to lack of capacity or perhaps political will, have done little to ensure that communities can maximize their benefits from this model. This is not to say that the formalization of communities' land rights have had no positive effects in Niassa. Only that this is just the first step in a process of empowering communities which needs to be accompanied by other complementary measures to be effective.

3. EMERGENT ISSUES AND CHALLENGES

The purpose of this paper is to critically examine the so-called community-based approach to tenure formalization based on a case study from Northern Mozambique. The case study identified a number of positive outcomes but also issues and challenges with the way the approach was applied there. An overall assessment of the approach will be made in the concluding chapter. Before that I shall in this chapter elaborate a bit more on some of the issues and challenges identified in the case study since they are of a broader relevance for the discussion.

Community definition

Defining the relevant area and group that should constitute "the community" as a legally established collective landholding unit, is a first fundamental step of the approach. In the case of Niassa (as well as in the rest of Mozambique), while not prescribed specifically in the land law, these units are in practice defined on the basis of the territorial jurisdictions of traditional authorities (so called *regulos*), though at varying levels in the chiefly hierarchical structure.

One implication of this is that these "new" communities are sometimes very large, in the case of Niassa often in the order of 20 000 - 50 000 ha or more. While it is of course important that a community is allocated a sufficiently large area to cater for its current and likely future needs for both agricultural land and forest resources, there are also logistical and organizational aspects to consider. Simplifying the matter, one might say that the larger the geographical area, the more difficult it is for the community members to control and manage it.

Another aspect of this issue refers to the social composition of these units. As we have seen from Niassa, especially when a community is defined on the basis of the territory of a first- or second-level *regulo*, it often consists of several villages, each with its own land under the control of a village headman. Sometimes these different villages are offshoots from one original central village where the supreme chief for the area resides and are thus interconnected by kinship, social history, etc. But there are also situations where these other villages consist of immigrants whose connection with the original population is basically just that they are under the authority of the same superior leader.

The point I want to stress is that these local communities, as a result of the manner in which they are constituted, are sometimes quite heterogeneous entities in terms of constituent village populations with all that this might imply in terms of differences in social identity and interests, competition for power among leaders, etc. This is a situation with potentially problematic implications for their future cohesiveness and management as collective landholding units.

Nothing of this is of course new to those working on the ground with community delimitation in Mozambique. As a matter of fact, concerns of this kind have led iTC, the principal actor supporting community delimitation in the country, to reconsider its strategy. Instead of taking whole "regulados" as the default territorial scale, as was common practice during the first years, ITC are now prioritizing delimitation at the village (*povoado*) level (Quan et al. 2013). While this seems to be a sensible strategy, there is a question-mark over its feasibility (and cost-effectiveness) considering the large number of villages in the country.

Furthermore, there is the question of whether traditional authorities above the village level will find it acceptable. These are issues that require more follow-up research.

Let me finally mention that it is not only in Mozambique that community definition is an issue. For example, in Liberia, which recently adopted a new land rights policy which recognizes communities as legal landholding units, there is an on-going debate about the most appropriate level for defining a community: at the level of "Clan Chieftaincy" or at the more local level of "Town Chieftaincy" (Kaba 2015).

Representation and leadership

Another potentially problematic issue emerging from the Niassa case, is representation and leadership of the new landholding communities. As already explained, one important consequence of the way the former are constituted, i.e., on the basis of chiefly territories, is that the chief who traditionally rules over the area automatically becomes the leader and representative of the resultant community when formalized. Again, this is not a legal stipulation but more of an established practice. At least in Niassa, there is no doubt that both the traditional authorities themselves and outsiders such as government representatives, NGOs, project staff, etc., regard the *regulo* as the legitimate representative and leader of these legally established landholding communities.

The problem of having these traditional leaders as heads of landholding units where all members are now legally recognized "co-owners", is that they are not democratically elected, but appointed according to kinship position by a small group of representatives of the leading lineage of the area. This has two consequences: firstly, it reduces the pressure on leaders for downward accountability in decision-making since they do not depend on their subjects for their position. Secondly, it denies other community members the right to select the person who should lead them as a landholding collectivity and represent them in dealings with other authorities and external interests.

This is particularly problematic in Mozambique, because the land law does not establish any specific regulations or institutional mechanisms to ensure that its provisions in terms of members' equal rights, are actually adhered to by community leaders in their governance practices. This is a point made by legal expert Rachael Knight in her comprehensive study of different approaches to statutory recognition of customary land rights in Africa, where she commends the Mozambican Land Law for its flexibility in the recognition of customary rights, but criticizes it for lacking in detail and precision when it comes to counteracting possible negative aspects of customary land governance practices (Knight 2010).

At least in sub-Saharan Africa, any reform policy that seeks to formalize land rights based on customary tenure regimes must find a way of coming to grips with the issue of traditional authorities. This, however, constitutes something of a dilemma: on the one hand, chiefs often enjoy a high degree of legitimacy and influence as local leaders in rural areas and are therefore difficult to by-pass in these reforms. On the other hand, the fact that they also have a reputation for being authoritarian and prone to misuse of power for own personal interests, means that it is important that the reforms also include checks and balances to curb such misuse of power.[42]

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[42] That traditional leaders still enjoy much legitimacy and appreciation in many parts of Africa, was confirmed in a survey undertaken by Afro Barometer (Logan 2008). That chiefs today sometimes use their position to further

While there is no standard solution to this dilemma, a few principles of "best-practice" could be cited from other studies dealing with this question. Firstly, when there is already a functioning system of local land governance under such traditional leaders that is acceptable to local people, it is preferable to involve these leaders in the management of the new landholding units that are being created as a result of the reform. Their role and mandate in this context however needs to be clarified and regulated by law. Furthermore, there is a need to balance the power of such traditional leaders with some kind of legally established democratically elected group of men and women from the community in question to co-determine land matters in concert with the traditional authorities. Importantly, both instances should by law be downwardly accountable to the rest of members. Finally, local land and natural resource management practices as well as other governance principles should preferably be grounded in a framework of by-laws developed in unison by the community members themselves which could serve as guidance for their leaders and elected representatives in the management of the community's resources.[43]

In Mozambique, the Natural Resources Management Committees (CGRN) discussed earlier, go some way in this direction but need to be strengthened in several respects to have any real effect. For instance, both their mandate and role with regard to the traditional leadership of the community, i.e., the regulo, should be specified in law. Furthermore, regulations need to be developed for their elections and terms of office as well as procedures for downward accountability to the rest of community members. Finally, to be able to execute their functions properly these committees need both capacity-building support and the backing of government authorities.

A differentiated membership

A particular challenge for community-based models such as the Mozambican one, is how to deal with situations where customary norms and rules discriminate between members not only in terms of rights to land but also participation in decision-making on community land matters. Two categories of community members stand out as particularly vulnerable in this context, namely female members and those of an immigrant origin.

It is well-known that women's rights to land tend to be inferior to those of men in customary tenure systems in Africa and Mozambique is no exception.[44] This is particularly salient in the southern and central parts of the country, where a patrilineal system of inheritance predominates and women thus obtain access to land through their husbands when they marry and go to live with the latter's family group. In matrilineal northern Mozambique, the situation is a bit different because daughters inherit land from their mothers and remain

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their own economic interests has been reported in a number of studies. For a recent discussion of this problem in relation to tenure reforms based on customary land administration institutions, see Collins and Mitchell (2017). For a more general analysis of traditional authorities in customary land tenure regimes in Africa, see Boone (2014).

[43] For a more elaborate discussion along these lines, see Knight (2010); Clarke (2009); Freudenberger et al. (2011). The idea of having community members developing their own by laws for the management and governance of their collectively held land and other natural resources, was originally tested in an applied research project led by Rachael Knight in several African countries (Knight et al. 2011). The methodology has subsequently been presented in a technical guide published by NAMATI (Knight at al. 2016).

[44] There exists a large literature on women's land rights in Africa. An overview of the issues with focus on implications of recent policy shifts towards "the customary", is provided by Whitehead and Tsikata (2003). See also Daley and Englert (2010).

with their maternal family when marrying. Although women's security of tenure tends to be higher in Niassa, they nevertheless are often subordinated to their husbands when it comes to important farming decisions and above all decisions on the disposal of income from produce that is eventually sold. Besides, as members of an extended matrilineal family group, they are subject to the landed authority of its head, which in this system is usually a maternal uncle.

The point I want to stress is that such culturally entrenched gender inequalities in tenure relations do not disappear just because communities are formalized as collective landholding units. It is true that the Mozambican land law grants women the same rights to land as men. These equal rights, however, do not automatically lead to equal access or control because there are a number of cultural barriers and institutional obstacles, ranging from patriarchal attitudes and norms to deficiencies in the judiciary system, which have to be removed before this legal provision for women's equal rights to land can be of any real effect. This presents a long-term challenge.[45]

A similar picture can be drawn with respect to women's participation in community decision-making on land. According to the land law, women as members of a community and thus co-owners of its lands have the same rights as male members to take part in decisions regarding the management and disposal of this collective holding. In practice, cultural norms inhibit women from at least openly playing a very active role this context.

Interestingly, an exception to this pattern is female participation in producer associations, which often is as high if not higher than that of men. Part of the explanation is that NGOs have often prioritized supporting women to participate. Another reason is that the women themselves see this as a way of gaining a more independent control over land and the proceedings from it, at the same time as it strengthens their self-esteem by collaborating in a joint project with other women.[46] It is perhaps symptomatic that land assigned to such associations was usually not taken from already established family holdings but from unallocated community land.

The other category of community members of concern in this context are "immigrants", i.e., those who belong to families who arrived in the area after its original occupants and whose rights to land therefore according to local norms are of an inferior status. This differentiation in de facto tenure status between first-comers and immigrants can result in problems when communities are formally delimited and only the leaders of the first-comers are involved in the decision-making process. This is especially problematic in those instances when the two groups live in separate villages, each with their own village area, but which are delimited as one collective landholding. There is the risk that those whose access to land depend on the leaders of the other village, will feel that delimitation actually deprives them of control of their land, as seems to be the reaction among people from villages in this situation we visited in Niassa.

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[45] Several donor supported organizations and projects focus on strengthening women's rights to land in Mozambique. Approaches ranges from demarcation of land titles specifically for women, to training of paralegals and other personnel of the legal system to make them more knowledgeable about women's land rights. See Kaarhus and Martins (2012) and Christopher Tanner and Marianna Biccieri (2014).

[46] ITC (2014)

There exists little research on this phenomenon in Mozambique so it is difficult to tell how widespread it is. However, considering that internal migration was common in most rural areas not least during the prolonged civil war, it would not be surprising if the same dichotomy in tenure status between locals of different origin can be found also in other parts of rural Mozambique.[47] As pointed out by Boone (2014), such internal differentiation is typical for customary tenure systems where rights to land are based on membership of "descent-based corporations", i.e., those who do not belong to such corporations in a particular locality have per definition weaker rights. Furthermore, several studies from especially West Africa have reported on the long-standing differentiation in customary land tenure status between "autochthons" and "strangers". This is a division which in more recent years has been the cause of open and sometimes violent conflicts, especially when land has become scarce and there has been a demand from the younger generation of autochthons that the land be reserved for them. [48]

The key question here is whether this type of pre-existing internal differentiation in tenure status between locals will remain within the newly established collective landholding communities. It is true that the Mozambican land law protects the customary rights to land of those who do not originate from an area, provided that they have occupied their land in good faith for at least ten years. This however is just a legal stipulation. Although more research is needed, the impression I got from my field studies in Niassa was that little attention was paid to this issue in the community delimitation process. Instead officials seemed to assume that "the communities" to be delimited were basically homogeneous in terms of customary rights to land. Hence, unless specific measures are taken to ensure that immigrants also in reality are granted the same rights to the collective landholding as other community members, there is a risk that these internal differences will persist resulting in a division of the membership into a class of "primary" and "secondary" members.

Land rights protection vs. development

The Mozambican communitarian tenure reform could be said to have a twofold purpose: to protect rural people's customary rights to land and other natural resources on the one hand, and to facilitate an equal and inclusive economic development at the community level on the other hand.[49] This raises the question of whether both of these goals can be achieved simultaneously? If not, what are the implications in terms of the reform's usefulness for local people?

While there have been relatively few studies of the outcome of the reform at the local level, those that exist – including this case study from Niassa – all agree that one of the principal results so far is that members of delimited communities, as a result of social preparation during the delimitation process, are more aware of their legal rights to land as well as of other related stipulations in the land law, e.g., that the concerned community must be consulted before land can be allocated for outside investments, than people in communities which have not yet gone through this process. This, in combination with the fact that

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[47] Opinions among land experts in Mozambique however differ about the seriousness of this issue there. See cf. Schreiber (2017).

[48] Chauveau (2006); Peters (2012); Amanor (2012).

[49] A third objective is also to facilitate external commercial investments by providing a mechanism for third-party investors to obtain long-term secure DUAT rights to land, which, however, is not assessed here where focus is rather on the effects of the reform for the local rural population.

delimited communities are provided with both a certificate and a registered map of their collective landholding, has according to what they themselves say led to a sense of increased tenure security among them, especially against external threats to their land.[50]

When, however, we look at the reform's effects in terms of economic development the picture is more disappointing. As explained in section 2.5 above, there are basically two ways in which community-based tenure formalization models such as the one in Mozambique could facilitate economic development at the local level: through various types of collaborative or collective productive activities initiated by the community members themselves, or through beneficial business partnerships with external investors.

As for the first route, the landholding community as it is being defined in Mozambique is often too big a unit in terms of constituent population and villages to serve as the basis for collective economic enterprises. Instead, emphasis has been put on the organization and demarcation of land for smaller producer associations within the bounds of the community as vehicles for such locally initiated development. As mentioned earlier, it was during the field-study in Niassa only possible to assess the outcome of a limited number of such producer associations. What this revealed was that while there were a few which seemed to have been relatively successful in developing their joint enterprise, most of them were either laying idle or the members had reverted to individual farming for own subsistence on the collective land. Reasons given for this rather bleak outcome by the association members themselves, was lack of follow-up technical support but also difficulties in finding market outlets for their produce as well as the financial means, e.g., rural credit, for the association's own investments.

As explained, these observations did not pretend to be representative for all demarcated associations in Niassa since the sample was quite small. It should also be noted that studies from other provinces provide a somewhat more positive picture in this respect. Nevertheless, these other studies also tend to conclude that the overall strategy of promoting local economic development through producer associations has been relatively ineffectual, basically for the same reasons as those identified in Niassa, plus that the pace of expansion of demarcated associations has sometimes been unduly hasty due to pressure from donors, NGOs and other external actors. [51]

Turning to the other pathway, i.e., business partnerships with external investors, the outcome has been even more unsatisfactory. Although Mozambique has attracted a lot of large-scale commercial land-based investments in recent years, benefits for affected communities, to the extent that they exist at all, have usually been confined to certain public social infrastructure built by the investor plus some employment opportunities for local people. None of which however come anywhere near the real value of the land surrendered by the communities. Many of the reasons for this unfortunate situation have already been discussed and need not be repeated here. Suffice to say that there are in fact very few

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[50] Aside from my own observations in Niassa, this is based on the findings from two larger studies of the impact of the iTC programme covering also several other provinces (EDG 2013); (Sitoe et al. 2014).

[51] Cf. EDG (2013); Cavane et al. (2014).

examples of such mutually beneficial community-investor partnerships in Mozambique today.[52]

The fact that formalization of communities' tenure rights has not so far facilitated their economic development, has led community members themselves to have less belief in the reform and in rural development at large. One could of course argue that improved security of tenure to land and other natural resources has a value in itself for people who depend on these resources for their livelihoods and cultural identify. However, even if this is basically true, one could also argue that such tenure security is of limited practical value to them if they cannot use it to improve their livelihoods.

That this is not just an academic problem is shown by the frustration often expressed by community members in Niassa that expectations built-up during the actual delimitation process, both regarding support to their own development agendas and regarding benefits from deals with in-coming investors, had not been realized later on when they were left on their own. They said they were grateful for the support they had received from iTC and other similar projects which had helped them to better understand their rights under the law and for getting their community land delimited. But beyond that they did not feel that much had changed in their livelihoods. For them having just their land rights formalized was not sufficient.

A fundamental problem in this context is the passivity of GoM in backing up the realization of its own land law. Very few of the community delimitations undertaken to date have come about on the initiative and with the direct support of GoM. Instead, the bulk are the result of the work of NGOs like ORAM and special programs such as iTC, all with financing from the international donor community. Typically such support is confined to the actual delimitation process, or, if it includes also training and other preparatory capacity-building of communities and associations beyond that as in the case of iTC, it is of short duration and does not include material support.

Similarly, there does not seem to exist any governmental strategy for how to support communities once they have been delimited and registered as formal landholding units, e.g., with public agricultural extension, allocation of district development funds. In other words, there are no regular mechanisms in place for providing these communities with follow-up development support. Finally, neither are delimited communities prioritized as potential partners in GoMs private sector investment promotion activities, which tend to focus on attracting foreign investments as the primary goal.

It is beyond the scope of this paper to go into any detail on the underlying reasons for this contradictory situation. Suffice to say that it is partly caused by deficient institutional and financial capacity among concerned governmental agencies, but partly also, as it seems, a reflection of certain divisions within government regarding the country's rural development strategy in general, i.e., whether it should be based on small-scale farmers or large-scale commercial investors.[53] Whatever the case, the upshot is that a growing number of communities are being delimited with positive consequences for people's tenure security but without this having any real effects for their economic development.

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[52] The experiences of using private investments as an engine for rural development with Mozambique as an example, has recently been analysed in German et al. (2016). See also the paper by Boche et al. (2013).

[53] See Hanlon (2004)

Let me however finally point out that there seems to have been a change in GoMs engagement in land tenure matters in recent years. An indication of this is the so called "Terra Segura" Program launched by GoM in 2015, with the goal of issuing 5 million DUAT titles to land over the next 5 years. Unfortunately, it has not been explained how this is going to be realized in practice, nor whether the intention is to continue the strategy of community land delimitation, replace this with a strategy of individual titling or perhaps a combination of the two. Hence it is for the time being not possible to tell whether this program is indicative of a major change in GoMs tenure reform strategy or not. This is a question for future research to answer.

With these reflections I close the discussion of the Mozambican tenure reform and proceed to a summing up of the study's main conclusions.

4. CONCLUSIONS

The community-based approach to tenure formalization is today gaining ground as an alternative to conventional individual titling, not least in Africa where several countries have adopted variants of this approach in their land policies and legislation.[54]

There are several reasons for this growing interest in the approach. One is that it is relatively straightforward and cost-effective, making possible the formalization of rights over quite large geographical areas in a short period of time and with limited inputs of technical resources. It is also comprehensive in the sense that it allows the formalization of both individually held farm land and common resources such as forests under one and the same tenure regime. Another advantage is that it builds on already established and culturally legitimate land allocation and governance practices at the local level, something which is particularly important in Africa where customary tenure regimes still predominate in many rural areas. Finally, providing communities with formal rights to their land makes it easier for them to enter into business partnerships with external investors. At the same time as it may stimulate different types of collective economic enterprises initiated by the community members themselves.[55]

However, as this study from Northern Mozambique shows, the approach also raises some difficult issues and challenges when applied on the ground. A particular feature of customary tenure regimes in especially sub-Saharan Africa, is their embeddedness in territorially defined hierarchical socio-political structures under the leadership of traditional chiefs who have the ultimate power over land. While the origin of this state of affairs goes back to the colonial period, when such "chieftaincies" were an essential part of the system of indirect rule, remnants of the latter including the role of chiefs have survived in modified form to this very day as the de facto system of rural land governance in many African countries, including Mozambique.

One implication of this is that it renders the definition of community as a collective landholding unit problematic, since, among other things, it depends on the territorial level at which traditional leaders exercise effective power, i.e., at village or supra-village level. Another consequence is that hereditary traditional authorities thereby almost automatically become the leaders and representatives of these "new" communities when formalized, something which is questionable from a democratic and equity point of view. Other problematic issues which have their roots in the customary system, include the often inferior and vulnerable tenure status of women and "immigrants" in this system.

These are potentially problematic issues which are seldom recognized in the policy discourse on community-based approaches. Instead, the community is conceived as an essentially homogeneous entity whose existence and configuration is more or less taken for granted. That traditional authorities have so much influence over land matters at the local level, is not problematized but instead seen as an advantage since it makes land administration both more cost-effective and locally informed than when outside state agencies handle such

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[54] Among the first were Mozambique and Tanzania, which included the basic elements of this approach in their respective land laws of 1997 and 1998. Since then the approach has also been included in the land policies or land laws of Uganda, South Sudan, Burkina Faso and Liberia, though the level of implementation varies. The most recent example is the Community Land Act adopted by Kenya in 2016. See Alden Wily (2018).

[55] For a recent discussion of the approach, including a review of experiences from its application in different countries, see Jhaveri et al. (2016).

matters.[56] While it is true that women's equal rights to community land are supported in law, there is no guarantee that such legal provisions will change cultural practices on the ground, at least not in a short-term perspective. As for the possible discrimination of other categories of vulnerable community members such as immigrants, this is seldom taken into account at all.

With this I do not mean to imply that customary land tenure systems as found in Africa today are unsuitable as a basis for community land formalization. My argument is rather that if one takes a too simplistic and uncritical attitude towards "the customary" in this context, and does not recognize and in some way address the inequities in decision-making and control over land that traditionally may exist within these systems, there is a risk that these differences will just remain, or, worse, are consolidated, when the community's status as landholding unit is formalized.[57]

To this should be added yet another challenge, namely to make sure that the opportunities for local economic development made possible with this approach, i.e., basically through locally initiated joint economic activities of some kind or through beneficial partnerships with external investors, are realized in practice. While this is something which strictly speaking lies outside the scope of the approach per se, it nevertheless is a fundamental and inseparable aspect of the latter because it is what in the end makes this type of tenure reform meaningful to local people, i.e., that it results in any concrete benefits for them, in terms of improved livelihoods or otherwise.

One of the lessons learned from the Mozambican case is the importance of supplementing the formalization of community land rights with development support of various kinds to enable community members, as a collectivity or organized into smaller groups, to make best productive use of their jointly possessed land and other resources, e.g., forests. Such support should preferably be provided on a regular basis by the government and be an integral part of district development plans and budgets. Regarding community-investor partnerships specifically, a basic condition is that communities have the capacity to defend their interests and act as equal partners in such transactions. However, this is just one side of the coin. The State also has an important role to fulfil in this context by providing a supportive policy framework for such mutually beneficial partnerships, as well as the legislation and control mechanisms to ensure that agreements entered into by the partners are respected. Experiences from Niassa and Mozambique at large suggest that it is in relation to this matter, i.e., realization of the reform's developmental potential, that some of the greatest challenges have been encountered.

Let me finally emphasize that these conclusions are based on a rather superficial study of the implementation of the reform in just one small part of Mozambique, i.e., central Niassa, with its particular socio-economic, cultural and other location-specific characteristics. In other words, it is possible that some of the problematic issues observed there would not be of the same significance or relevance in other parts of the country where community delimitation

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[56] A typical exponent of this rather "positive" attitude towards customary institutions and practices, is Byamugisha (2013). A somewhat more nuanced but essentially similar perspective, is presented in Sikor and Muller's discussion on the limits of state-led land reform (Sikor and Muller 2009). For a critique of especially Byamugisha and the World Bank's current view on this, see Collin and Mitchell (2017).

[57] For a more general discussion of the strengths and weaknesses of customary tenure systems in Africa, see Krantz (2015)

has taken place. And this is of course even more true for other African countries where this approach to tenure formalization has been adopted. Hence more research on the experiences of implementing the approach in practice, both in Mozambique and in other African countries, is needed to better understand the conditions under which it is an appropriate and feasible solution to the problem of securing land and resource rights in rural areas.

Results and experiences from land law implementation in Niassa

Effects on income and economic growth at community level

As a result of endogenous local economic development

-Has the increased tenure security implicit in delimitation (or demarcation) of community lands had any positive effect on the willingness of the farmer to invest in his/her own individual farming?
-Have the community agendas produced during the delimitation process led to any concrete development or business activities of the community?
-What has been the result of the associations which were provided with own land through demarcation? And what precisely was the significance of having the land demarcated with an official DUAT title?
-To what extent have these associations contributed to an equitative (and gender balanced) economic development of their communities?

As a result of partnerships between communities and investors

-To what extent have the large-scale agricultural investments in the region contributed to an economic development of the communities?
-Does delimitation of community lands strengthen the power/capacities of communities to defend their rights and negotiate for them beneficial deals with outside investors?
-What has been the result in practice of the stipulation that investors should consult with communities before they are granted concessions to land?

Effects on governance of land and other natural resources within communities

-Does the formalization of local communities as collective ownership units have any effects on how rights of access to land and other natural resources are allocated and controlled within these units? How are the rights of women and other vulnerable members of the community affected?
-Does community land delimitation affect territorial jurisdictions of traditional authorities, freedom of movement between communities in search of new land, accessibility of forest resources as a common resource between communities?
-What is the role and mandate of traditional authorities in these "new" communities? Has the delimitation process or creation of new institutions such as the CGRN implied any change in this respect?
-Have delimitation of community borders and elaboration of land use plans during the delimitation process implied any change in the way land and other natural resources are used and managed at community level?
-What is the role and mandate of the CGRN in this context and how are its members recruited?
-In relation to demarcation of land for associations, what is the relationships in practice between these smaller landholding units and the community in general, in terms of ultimate ownership and control over the land, distribution of profits and benefits, socio-economic level and status of association members versus the rest of community members, etc.?

Annex 2

Field-Work Methodology

Field-work was undertaken during three periods of approximately one month each and focused on five communities, two in Majune District and three in Muembe District, which were visited repeatedly throughout the study period. These communities were selected on the basis of three criteria: that at least 3 years had passed since they were delimited; that in terms of size they were relatively representative for communities in respective district, and, finally, that they were communities where ORAM or WeEffect had previously worked to facilitate contact with the local population. In addition occasional visits were paid to seven other communities in central Niassa for comparison or for obtaining information on specific issues, e.g, experiences of dealing with outside investors.

The field-team consisted of myself and Silvia Manquene from ORAM's regional office in Lichinga, at times supplemented by Leonardo Abílio, also from ORAM. During the third field-work period, a local university student accompanied the team whilst working on his own thesis.

In the communities qualitative data were collected through interviews with key informants such as local leaders as well as through semi-structured interviews with groups of ordinary community members. Group interviews were as a rule set up by the local regulo upon request by the team. He was sometimes present at the actual meeting. The team also held interviews with members of existing producer associations, where possible these were at the site where the association had its land.

Interviewers spoke Portugese and interviewees as a rule spoke Yao with Silvia Manquene translating. She also facilitated special group interviews with women. Additional information was obtained from reports relating to participatory appraisals undertaken as part of the delimitation process in each community.

Representatives of district and provincial government agencies, implementing NGOs, development projects, farmer organizations and commercial investors active in the region were interviewed for supplementary information and viewpoints. In connection with each field-work period a feedback seminar was organized with the aforementioned stakeholders at WeEffect's premises in Lichinga to present and discuss study results so far.

At the end of the third and last field-work period, a workshop with approximately 70 participants including the Governor of Niassa was organized by WeEffect and ORAM in Lichinga, for discussing the land tenure regularization process in the province based on the findings of the study as well as the work of SPGC and iTC.

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