

**FORMALISING LAND RIGHTS BASED ON CUSTOMARY TENURE:
COMMUNITY DELIMITATION AND WOMEN’S ACCESS TO LAND IN CENTRAL
MOZAMBIQUE***

RANDI KAARHUS
*Centre for Practical Knowledge
University of Nordland, Norway*
randi.kaarhus@uin.no

STEFAN DONDEYNE
*Department Earth and Environmental Sciences
University of Leuven, Belgium*
stefaan_dondeyne@yahoo.co.uk

ABSTRACT

The Mozambican Land Law of 1997 intends to provide flexible rules of access to land, while securing local people’s customary rights, as well as equal rights for women and men. Drawing on participant observation during a ‘land delimitation’ process in central Mozambique, this article analyses the complex negotiation ensuing from the implementation of the land law in a local community. It shows how the delimitation process provided spaces for asserting – male – roles of power and authority, while local women were increasingly marginalised in the process. By presenting oral testimonies from women in the community, the authors seek to balance the account, providing women’s perspectives on the highly gendered character of interests in, access to, and exclusion from land. The analysis ends with the question: What would be required to provide a space for local women to articulate their interests in a secure access to land during the delimitation process itself?

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INTRODUCTION

While heated debates over the last years have been concerned with the increasing pressure on land – and ‘land grabs’ – in sub-Saharan Africa (Cotula *et al.* 2009; Borras *et al.* 2011), a new generation of land policies and land tenure reforms seeking to integrate and adapt ‘customary’ land rights to modern legislation has been in the process of implementation across the continent (Alden Wily 2000; Deininger 2003; Cousins 2008; Toulmin 2008; Anseeuw & Alden, eds. 2010). The pace, procedures and coverage of these implementation processes vary a great deal between countries, and there is considerable variation not only in how national legislation codify the formalization of existing forms of ‘customary’ land tenure,¹ but also in approaches to secure women’s rights to land (Ik Dahl *et al.* 2005; McAuslan 2010). In Mozambique, a new National Land Policy was passed in 1995, and a new Land Law was enacted in 1997. Both intended to provide flexible rules of access to land, while securing local people’s customary rights, as well as equal rights for women and men. Knowledge on how the new land policies and legal reforms work in practice is in Mozambique still based on few empirical studies of the local implementation processes. More generally, however, critical research literature point at the challenges involved in efforts to protect local people’s customary land tenure rights while also seeking to secure – in practice – the ‘normative success’ of legally established equal rights for women and men (Whitehead & Tsikata 2003; Banda 2006; Claassens 2013).

As cogently pointed out by Peters (2013), ‘the land question’ in Africa is both crucial and complex. It is not only about more effective governance, agricultural growth, capital accumulation, and economic development. It is about agency and power, politics and representations at both at national and local levels (Peters 2013: 556). For rural people living on the land, the land itself is imbued with social and cultural values, which in turn may be contested, leading to recurrent negotiation and conflicts over land both within families and at community level (Peters 2004). In these contexts, access to land is clearly gendered; with ongoing research and policy debates concerned with how women’s rights and interests in land can best be supported and strengthened (Whitehead & Tsikata 2003; Peters & Kambewa 2007; Claassens & Ngubane 2008; Kaarhus & Martins 2012).

In this article we focus on the implementation of the Mozambican Land Law's provisions for formalising land rights acquired through *de facto* occupation of land according to customary norms and practices. When we present an empirical analysis of a process of legally prescribed *land delimitation*, we may be said to enter what Migdal (1994) labels 'the trenches' – with reference to the local levels of the modern state apparatus where state officials are expected to execute laws and directives in practice, sometimes facing 'possible strong societal resistance' (Migdal 1994: 16). With regard to Land Law implementation, the Government of Mozambique has over the last years primarily been concerned with creating conditions to attract investors to exploit and develop the country's natural resources, and has in this context supported the implementation of the Land Law's provisions for awarding land rights to investors through renewable 50-year state leaseholds. By contrast, it is basically civil society organisations – with support from foreign donors – which have taken the lead in implementing the Land Law's provisions for formalising rural people's customary land rights through 'delimitation' (Norfolk & Tanner 2007).

The implementation process we describe in this article sheds light on the dynamics at the 'interface' of national legal principles and provisions represented by state officials on the one hand, and local knowledge, norms and practices drawing on local tradition, history and experience on the other (Arce & Long 1993). Our analysis focuses on how customary land rights in a rural community in Central Mozambique are represented, regulated, and legitimised through the process of land delimitation. We show how the process unfolds as an opportunity for self-definition of a 'local community', which according to the Land Law's definition has 'common interests' in land, which is occupied and used according to customary norms and practices (Norfolk & Tanner 2007: vi).² We also show how the process in our case serves to strengthen – what turns out to be a locally contested – authority and legitimacy of the traditional leader, both in his formal role as community authority and in relation to the control and management of land resources. We observe that during the delimitation process local women's role became more marginal. Furthermore, women's interests and legally established equal rights to land were not represented in the self-definition of the local community as a land-holding entity. Our analysis shows how a

legally established opportunity to regulate and legitimise women's land rights was lost in a setting where traditional norms and male power positions were at stake. Finally, we ask what would be required to provide a space for local women to articulate their interests in a secure access to land?

When Mozambique passed a new Land Law in 1997, it was within the context of post-conflict economic and social restructuring. With legislators aiming to protect the rights of local people while at the same time creating conditions for secure investments to promote development (Tanner 2010), the Land Law can be seen as a bold attempt to codify into one official tenure system both customary rights and equal rights for women, together with flexible rules of access, and the promotion of external investments in agriculture. As stated in the Mozambican Constitution, the underlying principle is that all land is property of the state. On this basis, the Land Law recognises local people's user rights to land to sustain their livelihoods, and foresees that local 'communities' can have their land rights formally recognised through what is called a 'delimitation process'.

The local and customary land rights recognised in the Mozambican Land Law are called 'the right to use, and benefit of, the land', and are referred to by the acronym DUAT.³ Land rights in a Mozambican legal context are thus defined in line with Ribot & Peluso's (2003: 153) concept of *access*, i.e. 'the ability to benefit from things'; here the ability to benefit from land. Sikor & Lund (2009) have argued that access and property rights to land are closely linked to questions of power and authority, since property, be it over land or natural resources, also hinges on legitimate institutions to sanction the claims. In the land delimitation process to be described here, we are concerned with how land rights are represented at the local level in a context where the legal recognition of local people's rights to use and enjoyment of land is to be formally recorded and registered, resulting in a DUAT document issued by the State. In our analysis, we draw upon the concepts of 'regulation' and 'legitimation', as presented by Hall *et al.* (2011). In their terminology, *regulation* refers to the formal and informal rules that govern access to land, but also to exclusion from the ability to use and benefit from it (Hall *et al.* 2011: 15). Regulation defines boundaries – which is central in a 'land delimitation' process – but also prescribes kinds of acceptable land use, and 'determine the kinds of *ownership* and *usufruct* claims

that may be made with respect to different areas of land' (Hall *et al.* 2011: 15; emphasis in original). Regulation further defines *who* are entitled to make such claims, which is an aspect of regulation with clearly *gendered* dimensions in African rural communities. Women's and men's claims to land tend to be legitimated in different ways, and especially in patrilineal societies, women's claims tend to be 'socially embedded' in and dependent on marriage (Whitehead & Tsikata 2003: 78). *Legitimation* both refers to 'what is' and 'what should be'; referring to the normative expressions of what is right and appropriate in terms of regulation. Concerned with exclusion, Hall *et al.* (2011) further emphasize that legitimations are never unopposed. In our analysis, we are particularly concerned with *how* legitimation is contested and negotiated during the delimitation process itself, and *who* are in positions to do so.

Traditionally, people in the central Mozambican province of Manica define their identity, as well as their land rights through *patrilineages*, which also include ancestral spirits associated with specific locations in natural space (Dondeyne *et al.* 2012). In debates on women's land rights in Africa, the predominance of patrilineal norms and practices is often taken for granted. However, both in northern Mozambique and southern Malawi, as well as in parts of neighbouring countries such as Zambia and Tanzania, matrilineal norms and practices at community level still structure individual access to land, in spite of colonial administrations' measures to privilege male household heads and patrilineal arrangements more generally (Chanock 1985; Dondeyne *et al.* 2003; Peters & Kambewa 2007; Kaarhus 2010). In the regional and local setting where our study was carried out, patrilineal norms and practices are dominant. *Patriline* not only defines who has the power to allocate and manage land at community levels, but also how a 'balance of privileges and duties' are reached within households (Richards 1950: 208). The interviews with women presented in this paper indicate that women living in a community shaped by patrilineal norms may accept these norms as legitimate, and recognise their expression in local structures of authority and power. But in order to sustain their own and their children's livelihoods – in compliance with local norms – they need access to land for cultivation. When other norms are used to exclude women from the benefit of user rights to land, they may also respond by contestation. Still, they lack public arenas to voice their interests in land and their concerns with access and exclusion.

In the following, we first give a brief account of the methodology used in data collection; then a short presentation of the relevant legal framework in Mozambique. The main part of the article describes and analyses the process of community land delimitation in which we participated. This account is complemented with testimonies from four local women, shedding light on their experiences with access to land in the community. We conclude with some reflections on women's possibilities to articulate their interests in land in a context of re-constituted 'customary' leadership institutions at the local level.

FIELDWORK AND DATA COLLECTION

Participant observation has been the main methodological approach used to collect the information that provides the basis for this article. As researchers – combined with informal roles as facilitators – we followed a substantial part of the land delimitation process in a 'community' we here call *Mchele*⁴, located in the central Mozambican province of Manica. We were able to follow the process over time, since in the period 2007-2013, we partly lived in, and most of the time regularly visited Manica Province. Through repeated fieldwork visits, we followed and participated in the land delimitation; starting in 2008, with most of the practical work, meetings, negotiations, geo-referencing and mapping being carried out during 2009. The area was revisited in 2011, 2012 and 2013.

In the community of Mchele, more than 50% of the area is still forested. On cleared land people grow cassava and maize for subsistence, while bananas, cocoyams and tomatoes are grown as cash crops. In practice, carrying through the delimitation process in this setting involved a long series of meetings, small and large; including preparatory field visits and appointments where nobody turned up, followed by visits to remake appointments, new preparatory meetings, and at crucial moments, larger open meetings for 'the whole community'. In principle, the process was structured by participatory exercises as prescribed in the Technical Annex to the Land Law Regulations. It involved events of cultural translation, but also the negotiation of positions of power and authority at the interface of community and local state institutions. In no way can we claim to have

participated in all the meetings that were held locally to prepare, discuss, plan, and discuss again how to go about in the land delimitation process in Mchele. Though we participated in a fair number of such meetings, there have been many more; in addition to, no doubt, series of informal and formal discussions only among local people.

Our observations during the delimitation process increasingly drew our attention to the virtual exclusion of women from ‘regulating’ roles in the exercise. In order to get further insight into the mechanisms through which women actually get access to land within the community – or are excluded from it – we decided to collect oral testimonies from local women through informal interviews. These interviews were conducted by two female research assistants,⁵ guided by a local young man who also translated the interviews from Ndaú to Portuguese.⁶ The women were in the interviews particularly asked to narrate how they had obtained, or lost, the right to use land. A total sample of 21 women were selected through a simple, purposive sampling procedure. We got a non-random sample, but efforts were made to cover different groups and settlements, in order to represent internal diversity in the extensive and sparsely populated community area.

LEGAL FRAMEWORK

The Land Law

The Mozambican Land Law (*Lei de Terras, Lei No 19/97*) guarantees customary access to, and use of, land for local populations. Article 12 in the Land Law more specifically states that land rights can be acquired in the following ways:

- Through occupation by individuals and local communities, according to those customary rules and practices that do not contradict the Constitution;
- Through occupation by Mozambican individuals who have been using the land in good faith for at least ten years;
- As a grant by the state, authorizing an application presented by individuals or corporate bodies in a form defined in the Land Law.

The first point recognizes and accommodates ‘community’ land rights according to local customs and practices, as well as individual rights based on traditional use and occupation.

The second point opens for recognising rights to land acquired through other forms of use and occupation. Originally, it provided a basis for recognising rights to land for the large numbers of internally displaced people during the civil war (1978-1992) in Mozambique. Finally, the third point opens for access to land through long-term leases to nationals, as well as to foreign investors and companies with concrete investment plans (cf. Tanner 2001). Regulations on the implementation of the Land Law in rural areas were passed in 1998, with a Technical Annex approved through a *Diploma Ministerial (No 29-A/2000)* in March 2000. Article 13 in the Land Law states that the absence of a title shall not prejudice traditional rights of land use, but also provides for a procedure for formalising local communities' customary land rights. The Annex sets out the procedures for identifying and formalising these rights through a 'delimitation' process (Quadros 2004).

With reference to its inclusive orientation and participatory approach to local consultations and its procedures for delimitation of community land, the Mozambican Land Law has been referred to as 'the best in Africa' (DfID 2008). Its objective was to transform the legal framework for land tenure in a situation of post-colonial, post state-socialism, and post-war devastation in ways that could secure the livelihoods of the majority of people in a country categorised at the time as the poorest in the world. In some circles, however, it has remained a controversial law. The Mozambican Government has been concerned that local communities end up controlling large areas of land, and in October 2007 an amendment to article 35 of the land law Regulations was passed as a Presidential Decree (*Decreto No 50/2007*). The Decree redefined the Government's role in relation to land rights, in the sense that instead of formal *recognition*, the Government's role should be the *approval* of formal 'land use and benefit rights' (DUATs). A DUAT certificate for an area up to 1000 ha would, according to the Decree, require approval by the Provincial Governor, while a DUAT certificate of rights to an area exceeding 10,000 ha would require the approval of the central Council of Ministers. In practice, these approvals sometimes end up taking very long to materialize.

Local state organisation and traditional authorities

After Mozambican independence in 1975, the 'offices' of traditional authorities were officially banned. Since the early 2000s, however, as part of a more general

decentralization policy, traditional authorities have been formally recognised as ‘community’ leaders and representatives, as well as assistants of the State. The role, functions and responsibilities of these local authorities are stipulated in the Law and Regulations on the ‘State Local Authority Units’ (*Lei n° 8/2003; Decreto n° 11/2005*). The Decree of 2005, however, operates with a ‘local-community’ definition which differs from the ‘community’ of the Land Law; the Decree stipulating ‘...a collective of people comprised in *a unified territorial organisation*’ (Kyed & Buur 2006: 576, our emphasis). The result may be that traditional authorities in practice play a more important role in ‘community’ land delimitations than what was foreseen in the 1997 Land Law. At local levels, traditional authorities are usually recognised in their mediation role whenever there are conflicts between community members. When land is available, they also have the authority to allocate land when requested by individuals or families, and can thus authorise people from the outside to settle within ‘their’ community area. Besides, they may have important spiritual and religious roles, ranging from ceremonies in honour of ancestral spirits to rainmaking ceremonies (Tornimbeni 2007; Dondeyne *et al.* 2012).

Succession rights and the Family Law

In 2004, a new Family Law (*Lei de Familia*) substituted a Portuguese Civil Code (*Código Civil*) dating back to the colonial era. Under Portuguese law, women were dependants of their husbands, and divorce was not allowed. The new Family Law asserts the equality of men and women and, in accordance with the principle of non-discrimination in the Mozambican Constitution of 1990, it prohibits discrimination based on gender (Ik Dahl *et al.* 2005: 46). The Family Law also provides that both women and men have rights to administer marital property, and have equal rights to devolve and inherit property. Thus women and men have equal access to hold transferable (inheritable) rights to land and natural resources.

Before this law was passed, the possible legalisation of polygamy was subject to much debate. According to Cooper (2011), one third of women in Mozambique live in polygamous unions, while over 55 percent live in unmarried but cohabiting relationships. The Family Law that was finally passed neither provides legal recognition of inheritance

rights for partners in cohabitating relationships, nor for women living in polygamous unions.

THE DELIMITATION OF MCHELE COMMUNITY

For outsiders arriving in the community we here call Mchele, it may appear as a very ‘traditional’ grouping of people, settled in a remote and sparsely populated locality in Manica Province. Bordering Zimbabwe, historically the people in the province have had to adapt to diverse Portuguese and British colonial policies of land and labour, as well as changing post-independence state policies. On the Zimbabwean side, a history of land alienation and technical land-use planning has, according to Hughes, directed rural conflicts toward conflicts over *land* in general, and land claims and ‘cadastral boundaries’ in particular (Hughes 1999: 538). In Mozambique, the colonial administration regulated its power over the territory through the mediation of local traditional authorities and their power and authority over *people*. The legacy of this policy implies that a ‘rural community’ is often conceived as a group of people who recognise a particular ‘traditional authority’. Based on their research in Manica province, Schafer & Bell report on ‘a basic acceptance of the idea that a chief ruled over a portion of territory, as well as over people who were bound to him as subjects through a symbolic contract, mediated through spiritual practices’ (Schafer & Bell 2002: 405).⁷

Modern history in the area is marked by periods of warfare, dislocation, and violence, as well as fairly high levels of migration (Lubkemann 2008). During the Mozambican civil war, the Mchele area was one of the strongholds of the RENAMO combatants. The legacy of this period has later been expressed in limited support for the governing FRELIMO party during elections, and weak confidence in the state officials appointed to operate in the ‘trenches’. On the Zimbabwean side, we currently find a modern African state in crisis (Derman & Kaarhus, 2013), while on the Mozambican side, external investments in land and agricultural development are increasing. This trend contributes to changes in local livelihoods and an increasing pressure on land (Veldwisch *et al.* 2013). In this situation, land formalisation processes may contribute to shifts in the local power balance towards

increasing, not only the local value of land, but also the value of *power* over land – including the powers held by local traditional authorities.

Over the last years, both local and national NGOs have taken initiatives to organise and implement land delimitation processes in Manica Province. Such processes have in particular been carried out in the communities close to conservation areas or areas targeted for larger land investments. A central actor in these land delimitation initiatives has been the Community Land Fund (iTC); a multi-donor funded project organization with offices in Manica facilitating the formal registration of community land.⁸ In 2007, one of the locally-based NGOs, here called ACACIA⁹, applied to iTC to carry out a land delimitation of Mchele community. This was the first land delimitation process that ACACIA had set out to lead. The proposal was linked to a community development project which also involved private investors. The initiative and its prospects for local income generation opportunities had gained support among – at least some of the most influential – local people in the Mchele area, and the delimitation initiative also got funding from iTC.

Concrete steps in the delimitation process

In April 2009, ACACIA initiated some ‘social preparation’ work in the larger locality where the Mchele area is located. This social preparation consisted in Participatory Rural Appraisals (PRA) with both local men and women present, during which uses of natural resources were discussed and ‘participatory maps’ were drawn. The maps indicated the community land of Mchele and its subdivisions, as well as the neighbouring communities. ACACIA’s initial plan was that the delimitation process could build on this work, and proceed with the identification of Mchele community’s boundaries in the field. At this stage, however, technicians from of the Provincial Cadastral Services were called in to comply with the requirements of the Technical Annex to the Land Law Regulations. The technicians insisted that the participatory mapping should be done over again; as it had been done in their absence, they could not ascertain its validity. At this point, the delimitation process turned into various days of discussion amongst the delimitation team members: that is, the ‘community representatives’ selected by Mchele, and the ‘technical team’ consisting of the government-employed technicians, a facilitator from the NGO, and

us. The outcome was that a new local meeting was called to make a new map, which could then be verified in the field in the presence of the whole delimitation team.

The team agreed on a day for starting up this more technical part of delimitation, involving community boundary identification in the field and consolidation with neighbouring communities. The ‘boundary identification group’ would this day consist of *mambo* Mchele¹⁰ and neighbouring *mambos* at different levels, who represented local knowledge about borders and land use on their side. The group also included three elected representatives from Mchele, one representative of the Provincial Cadastral Services, the NGO facilitator, and the two of us. As ‘participant observers’ we also contributed to facilitating the process, assisted with technical aspects of participatory mapping and georeferencing, and could sometimes assist with transport in the field. During the first stages of the delimitation process, including the preparatory meetings and the initial PRA map-making exercise, several local women had been present. But when we proceeded to the border identification, only men appeared as community representatives.

The technical team spent the night before the boundary identification in tents at a local forest campsite, being kept awake by chants and drumming. The following morning we learnt that *mambo* Mchele had been carrying out a ceremony for the ancestral spirits. This may have been a ‘spiritual mediation’ necessary to carry out the boundary identification, but also resulted in a substantial delay in relation to the planned work for the day. Only when *mambo* Mchele finally turned up at mid-day, the team was able to set out to meet the other *mambos* at the agreed meeting place – in the shadow of a large tree close to the road. When we arrived, nobody was there. It turned out that those who had been waiting had gone to have some drinks. When they were located, a first dispute arose among the *mambos*: How could they start drinking when the plan was to work on the delimitation? And conversely: How could *mambo* Mchele spend the night drinking and arrive so late when the agreed plan was to work on the delimitation? After some heated discussion, we all went off to meet the higher-ranking *mambo* for the larger area. Arriving at his place, a new dispute over the same issue arose: how could *mambo* Mchele not comply with commitments and keep even a superior *mambo* waiting? Again he struggled to explain

that he had to carry out ceremonies to communicate with the ancestors the night before; and then he necessarily got drunk.

After some time, it was agreed that we should proceed to identify a key site defining the boundary between Mchele and the neighbouring area to the south-east, which was a crucial point for the geo-referencing and mapping of the area. The exact point should be somewhere between the road and a small river. There was some argument about exactly where; and when it was finally identified in a swampy place with reeds, cultivated rice, and running water, the site was actually at the source of a small stream. As such, it also had ritual importance; and arriving there we had to perform a local ‘greeting ceremony’ of hand-clapping¹¹. Then one of us did the GPS geo-referencing, and the site was identified by the representative of the Provincial Cadastral Services on a topographic map. After that, we proceeded to walk along the paths that by common agreement by all present – that is, the local representatives from both sides of the boundary in this day’s ‘boundary identification group’ marked the legitimate boundary between Mchele and the neighbouring community to the south-east. Thus we walked from the source of the stream to its confluence with a larger river marking the boundary of the Mchele area to the west. This western boundary had been registered in an earlier delimitation carried out in the neighbouring community, and was accepted by all. The south-western point of the Mchele area on ‘our’ side of the river was then identified on the ground by the group of local people, identified on the map of the Cadastral Services, and geo-referenced; and we started walking back to the road.

Then, towards the end of a long day, the local participants in the boundary identification group brought up the question of food: Why was there no proper food? Why did the organisers not provide food to those who had participated in the day’s long walk? Was it not we – the two foreigners – who should be responsible for this? Which again raised the question: *Whose* process was this actually? While *mambo* Mchele kept quiet, we said that it was not ‘our process’; we were accompanying their process, just assisting with some transport and geo-referencing. Through this dispute we were, apparently, all made aware that the question of ‘ownership’ to the process was not yet clear. Local norms and expectations linking ownership of the process with the responsibility to provide

participants with food, expressed in a group of tired and hungry people, made us acutely aware. As it turned out, after this day we could observe a more active appropriation of the delimitation as a locally situated process to regulate land access and legitimate powers. Parallel to this local appropriation, however, the women seemed to have disappeared from the scene. We observed that very few local women attended the following ‘whole community’ meetings.

The local appropriation was, however, first expressed through a new delay a couple of days later. A large meeting of ‘all stakeholders’ had been planned and agreed upon by the NGO facilitator and the *Chefe de Localidade*¹² of the administrative unit of which Mchele forms part. But early in the morning, a group of influential men in Mchele, including the *mambo*, had brought up the question if all influential community members, as well as local *mambos* to the north had, in fact, been properly informed about the delimitation process. After hours of intense discussion they concluded that this was not the case. A couple of lower-level *mambos* to the north had not yet been properly informed. This meant that the larger ‘stakeholder’ meeting had to be postponed, in order to ascertain that these key persons in the north were involved in the process. Meanwhile, the staff from the Provincial Cadastral Services had reached the conclusion that the PRA exercise delineating the historical profile of the community also had to be repeated – insisting that the regulations required that it should be done exclusively for the community subject to delimitation, while the history recorded during the PRA exercise had also included neighbouring communities. At this point *mambo* Mchele decided that it was essential to contact his elder sister, who was married and lived outside the locality.

A new meeting was organised by the NGO facilitator in order to get the history right. It was attended by 20 men and three women. One of them was the sister of *mambo* Mchele, who was recognised as particularly knowledgeable of the history of Mchele.¹³ The history was now recounted as follows:

The event furthest back in time was the war of Ngungunhane¹⁴... Places where this happened [in the forest] are now sacred areas. Mchele land is the traditional area of the clan to which *mambo* Mchele belongs, and their claim is based on their

ancestors being the first to come and settle in this area. After that came the period of ‘Senhor Ferreira’, the first Portuguese to arrive in the area...¹⁵ Around the turn of the 19th century, forested areas rich in the plant *Mhungo* [*Landophia kirkii*] were identified and surveyed, and rubber was harvested from it. In that period timber was not yet exploited. This started later with the construction of a sawmill by the Portuguese. This activity stopped with the start of the liberation war in the 1960-70s. People suffered a lot during this war; but above all during the war of the ‘*dois irmãos*’,¹⁶ when people went hiding into the forest.¹⁷

When the results of the PRAs, including this last version of the history, the maps, and the field verification were presented to a plenary meeting in which neighbouring *mambos*, as well as a representative from local state authorities and technicians participated, everybody agreed and confirmed that they were correct. Then the representatives from the neighbouring communities signed the forms certifying the accurateness of the maps and reports. Only one minor controversy cropped up, concerning a portion of land to the south-east. A lower-level *mambo*, seeking to use the occasion to strengthen his own position, and thus his power over land, claimed that an area located between the road and a river crossing belonged to ‘his community’, and not to Mchele. On this point, however, he was not supported by other *mambos*. They argued that the area belonged to Mchele, since *mambo* Mchele’s father – the previous *mambo* of Mchele – was buried on this land. This argument provided irrefutable legitimation for a final consensus on Mchele’s boundary to the south-east.

Before reaching this point of consensus, however, the process had once more been halted, this time by the officials at the level of both *Localidade* and *Posto Administrativo*. They signalled that they would not collaborate as long as *they* had not been ‘properly informed’ about the process; that is, in writing. This message was played into the ongoing negotiation of positions and roles in the regulation and legitimation of power over Mchele land. A legitimate delimitation required the participation of ‘community members’, but also the participation, or at least formal support, of local state officials at ‘the trenches’ (Migdal 1994). Key actors, such as the local community representatives, the *mambos*, as well as the staff from the provincial offices had already demonstrated their ‘gate-keeping’ powers

through halting the delimitation process. With the local state officials at the 'Locality' and 'Post' levels thus communicating their knowledge of correct procedures, they also showed that they had the power to halt the process. In this way they could demonstrate that their support was crucial for a legitimate regulation process, and at the same time they could use the opportunity to play in their particular messages or conditions for the process to continue.

While we could observe that a range of actors were able to assert the importance of their role and participation in the process, it became increasingly clear that local women were not in a position to do so. While the legal framework provides equal rights for men and women, in practice the delimitation process provided no real space for women – as women – to put their need for access to land on the agenda. Women played a marginal role; with one exception. When the history of the area had to be 'redrawn' to comply with the requirements of the Technical Annex of the Land Law, *mambo* Mchele insisted on involving a person from his own lineage reputed to be knowledgeable of local history. This person was his elder sister. She was received with a lot of respect. Based on her knowledge of the history of her own and her brother's patrilineage, she could contribute to having the 'history rightly recorded'. She could thus support the claim of 'first occupancy' of the area for her brother's lineage, and legitimise *mambo* Mchele's position as a local leader representing the dominant patrilineage in the community. The sister's role in the process was to provide legitimation for her brother's claims and authority, not to represent her own.

By the end of 2009, a final public meeting was organised during which the boundaries, now indicated on maps, were presented to the members of Mchele community. The meeting was attended by representatives of the neighbouring communities, the *mambos* or their designated delegates, as well as by District officials and the technicians of the Provincial Cadastral Services.¹⁸ Those who attended this meeting were *all* men.

WOMEN'S ACCESS TO LAND

At this point, as researchers we found that it was important get more insight into women's land relations in Mchele. Thus a sample of 21 women were interviewed to gain knowledge on how women get access to land, and under what circumstances they could be excluded from such access. The reported age of the 21 women ranged from 18 to 47 years.¹⁹ Seventeen were married, three were widows, and one was separated, having just left her husband because of mistreatment. The information obtained through informal interviews showed that the women in our sample got access to land through men, and primarily through marriage. However, more than half of the women in our sample had actually moved into the community together with their husband to occupy 'new' land, and were thus using land allocated to the household by the *Mambo*.

A majority of the women in our sample (12 of 21) were, or had been, living with polygamous men. Except for three women who had either no land, or were just sharing land with their husband, most of the women (18 of 21) were cultivating and managing their land themselves; primarily for the subsistence of their own household, but sometimes allowing them to sell some of the surplus. Most of the women interviewed were born outside Mchele (13 of 21). Of the women who were born in Mchele (8 of 21), only one had married a local man. A clear pattern in our sample is thus the predominance of *exogamy*²⁰ and the high level of *polygamy*. It is well known that polygamy is still a strategy used by men to build their standing in the community. Several of 'our' women were not particularly happy with their own position in polygamous relationships. A couple of co-wives actually told that they would like to leave their husband – collectively – and go somewhere else to set up a household and cultivate land together. But the possibility to do so would depend on getting access to land. They saw that the likelihood of them being allocated land in a neighbouring community was in fact very low. It may have been further weakened by the fact that they were married to the *Mambo*, and that his position among the traditional authorities in the area had been strengthened through the delimitation process.

Below we present individual testimonies from four women in our sample. They illustrate the precarious character of women's access rights in the local setting, and the extent to

which women are dependent on their relationships with men to sustain a living. The testimonies also illustrate the role of the *Mambo* in local land allocation in an area with low population density. For the married women, to what extent they have secure access to the land they actually use may vary. Their relations to land appear closely connected to their relationship with their husbands; relationships that could be characterised in terms of ‘unequal interdependence’ (Clever 2012). In the case of a spouse’s death, the women become more vulnerable, and subject to rather unilateral decisions and priorities in the spouse’s patrilineal family. In our sample, most women who were still in stable marriages were rather confident that if their husband died, they would still be able to retain access to the land they were now cultivating, together with at least half of the belongings acquired as a couple. However, the testimonies of the three widows in our sample indicate that in practice women’s user-rights to land are not secure. Especially after a spouse’s death, women’s rights to access land become contested in the area where the community of Mchele is located.

ORAL TESTIMONIES FROM FOUR WOMEN IN MCHELE²¹

CASE 1 – My name is Angelica. I was born in community B²². I have eight children, and I am married to Mr Daniel who was born in C. I am the first spouse of two. We married in B and came to live here in Mchele already a long time ago. When we settled in this area, my husband contacted the *Mambo* for getting land. In total we have three fields and each of us [husband and two wives] is responsible for one field. We grow beans, cassava, tomatoes and maize. My husband sells bananas from his field, and he manages the revenues on his own. I run a small business from the bananas and maize I am producing. I have to present the money I am making from this trade to my husband for us to share it. In case my husband would come to pass away, we the spouses, would keep the land and continue to live here and look after the belongings and the children. If his relatives would want to claim part of the property, we will not allow them to do so.

CASE 2 – My name is Josina. I was born in D. I have six children and we are four spouses, of whom I am the first; in total there are 16 children. I came to live here in Mchele when I got married. My husband got this land from the *Mambo*; before that he also used to live in D. The major part of the land that you can see belongs to my husband, and on it we produce bananas. The sale of the bananas helps us to care for daily expenditures. Myself, just as the other spouses, I have only a

small parcel of land, where we produce maize for our own consumption. In case my husband would pass away, everything would depend on his relatives whether we would stay on this land. I only know that I together with my children we are entitled to inherit this land. In case that he would want to get separated, I would return to the community of my parents, but still fight for my rights through the court as well as through the *Mambo*. If I would want to get separated, I wouldn't have any right over any of the goods, nor would I have the right to fight for it.

CASE 3 – My name is Amelia. I was born in Mchele and I am a widow. I had six children, of which five died. I am the second wife out of four spouses. I used to live in D with my now deceased husband... When my husband got ill, we had to move to the house of his parents, where the three other spouses were already living. We had to sell our field for paying the treatment, but still he passed away. After some while, through the *Mambo*, we managed to get another parcel of land to live on in D, as we couldn't stay indefinitely at the place of my parents in law, and I have in this community two fields where I grow maize, bananas and vegetables. As the field with the bananas remained under my responsibility, I share the income I am making from selling bananas with the other spouses. Currently, however, the brother of my deceased husband is threatening me, as he wants the banana fields. Despite being in my full rights, I don't see how I can prevent him [from taking the fields].

CASE 4 – My name is Dulcinea. I am a widow and have three children. I am ill, suffering from tuberculosis. At the moment I live under very difficult circumstances as I don't have a house and live with my children under a tree, already for 6 months. I got this site from my brother. But myself I don't have any field, as I am not able to cultivate given my poor health. I am considering going to another community, where I have relatives. I know that my [other] brother will give me some land there. I was the first wife out of two spouses. Together, we had built two good houses with roofs of corrugated iron sheets. But immediately after the death of my husband, his relatives seized all property. When he was ill, it was said that I would be able to stay with all the things and so would be able to look after our children. But, none of the two spouses managed to retain anything from those houses. I really tried to fight for my rights, but my husband's relatives just said that all belongings were property of the deceased, as it is the man who makes more efforts to acquire everything. Under these circumstances I didn't have any rights.

DISCUSSION AND CONCLUSIONS

Relations between state and community

In her review on land tenure reform in eastern and southern Africa, Alden Wily (2000: 4) concluded that:

The very nature of nation states is such that people will never be free of the regimes they create or tolerate but neither will the state ever be free of the demands of the people for whom they act. Getting the balance right is what current democratisation in the subcontinent is all about.

The case we present here illustrates that the balance is not yet struck. The delimitation process designed to secure local people's rights of access to land and natural resources can easily get caught in a complex web of vested interests, negotiations, and power struggles. Both state institutions and their employees, as well as local authorities may use the delimitation process to strengthen relations of power and unequal interdependence, demonstrating to all the stakeholders involved that their knowledge, as well as their support are crucial for the legitimacy of the process. At critical points we saw that individuals with such 'gate-keeping' powers would use it to halt the process, thus asserting their power and authority over land and people, but also using the opportunity to play in specific conditions to be fulfilled for the process to continue.

After the final meeting with the community in 2009, the process of land delimitation was in principle completed, and the documents were submitted to the Provincial Authorities for obtaining the DUAT certificate. It turned out that the delimited area of Mchele was just a little larger than 10,000 ha. Thus, following the Government's Decree of 2007, the documents had to be forwarded to the capital for final 'approval'. At this point, it seemed that the Government also chose to use its 'gate-keeping' powers in the final stage of this formalisation process. Conceding formal DUATs to large community areas can be considered to limit the possibilities for the government itself to negotiate and assign large tracts of land to external investors, who increasingly make such requests for commercial farming, forest plantations, or the cultivation of crops for the biofuel industry. Norfolk & Bechtel (2013: 29) have reported that nationwide, on this account the implementation of delimitation processes was halted for months. The processes re-commenced in 2011 when

the amendment in the Government's Decree of 2007 was clarified in a new Circular from the Government, stating that no *political authorisation* of the process was required for delimitation processes.²³ The latter implies that the Provincial Head of the Cadastral Services could actually sign off the Mchele process as complete and correct. At the time of writing, however, for the case of the Mchele community delimitation, this still remains to happen.

Reflections on women's equal rights to land in Mozambique

It can be argued that the principal concern underlying the Mozambican Land Law of 1997 was group rights, rather than women's rights or individual land rights. As observed by Fitzpatrick (2005), the law can be seen as primarily designed to secure the rights of local groups – as 'communities' – to protect their rights in relation to external agents or others who could be in a position to alienate local people's 'informal' land-holdings. At the same time, it provided a reasonable tenure security for external agents who would want to invest in rural communities. The land law regulations foresee, and actually encourage that land delimitation processes be undertaken in 'critical areas', such as areas where conflicts between external interests (an investor, an entrepreneur or a conservation agency) and a local community could emerge.

When the Land Law did include provisions for guaranteeing women the right to access and use land, it confirmed the basic principles of equity and non-discrimination stated in the Mozambican Constitution (Ik Dahl *et al.* 2005: 47). Article 13 in the Land Law further states that individuals, men and women who are members of a local community, can apply for individualised land titles within delimited community land (Ik Dahl *et al.* 2005: 48). So far this provision has rarely been used to strengthen women's land rights in rural communities, and external support for land-rights formalisation in rural areas has primarily targeted communities as such (Quan *et al.* 2013).

In their review of gender aspects in land-law implementation in Mozambique, Forsythe & Chidiamassamba (2010) report on clear limitations in women's access to and control over land compared to men. Quan *et al.* (2013: 19) argue that ensuring women's participation in land delimitation processes requires further efforts towards 'specific gender sensitive training and capacity building', targeting NGO facilitators as well as Government staff.

Our analysis of the Mchele delimitation process further points to a need for specific mechanisms to provide spaces for articulating *local women's* interests in relation to land *during the process*.

In Mchele, we found that formalising community rights under a non-discriminatory legal framework in itself does not lead to securing individual women and men rights to land based on non-discriminatory principles. Individual women's testimonies on access and use of land in Mchele indicate that 'customary' rules are still used to assert men's rights to, and control over, land. However, had our description of land rights in Mchele only been based on the interviews with women, we might have ended up indicating how rights to land in this community, and women's exclusion from direct access to land, are determined by traditional patrilineal norms and the – irrefutable – power of the traditional authorities. Since we also followed the delimitation process through participant observation, we witnessed an on-going power struggle, where local relations of power and influence were asserted, but also contested and re-negotiated. We observed that *mambo* Mchele himself struggled throughout the process to maintain his position and authority, but as he carried on, he no doubt saw the delimitation process as an opportunity to consolidate and strengthen his own position through the regulation and legitimation of his power over land. Likewise, other people in positions of power and authority in the area – who all turned out to be men – used the delimitation process to assert their particular knowledge and 'gate-keeper' conditions, as well as their own crucial role in legitimating the delimitation.

When the 'community's ownership' of the process got stronger, local men ended up occupying virtually all the roles as representatives of 'the community'. When the *Mambo's* sister was drawn into the process, it was to legitimise existing patrilineal power structures, not to assert or claim rights on her own or other women's behalf. As representatives of a state with an enacted non-discriminatory legal framework, local government officials did not in any way question male biases in local land-tenure arrangements, but rather used the delimitation process to assert and – if possible – strengthen their own positions and powers in relation to people and land. In practice, the process we witnessed in Mchele did not provide a space for women to express their interests or put their concerns with access to – or exclusion from – land on the agenda.

There is an on-going debate within institutions and organizations working to secure community land rights in Mozambique on how women's rights to land can be further supported and strengthened. Providing support to formalise individual DUATs for women is seen as one option (Kaarhus & Martins 2012: 44). Our analysis of the delimitation process in Mchele, pointing to the inherent power in 'gate-keeping' positions could, however, also provide a basis for a more conscious and well-planned use of specific mechanisms to make a space for local women – *as women* – to put their concerns on the agenda, or else halt such a process. This would mean that the implementing agencies in their planning of delimitation processes introduce at least one 'stopping point' for local women to act as 'gate-keepers'. That is, a point where representatives of local women are provided with a space and authorised to propose some elements of land 'regulation' of particular importance for women, which must be discussed before the process is allowed to continue. In this way, women could also be given a key role in the legitimisation of the process.

'Making space' for women in this way would of course bring up new dilemmas. The account given here no doubt indicates that introducing such a 'gate-keeping' role for women could further complicate and delay a process that is already complex and a real challenge to manage. However, if an acceptable balance is not struck during the community land delimitation process itself, the negotiation of land access for women will have to continue in other fora. This applies to Mchele, but certainly concerns communities far beyond Mchele. Our case study shows that there is still a need to establish mechanisms to secure women's access rights also within already delimited community land.

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NOTES

- ¹ The concept of 'customary' land tenure has been an issue of debate, especially with reference to the dual legal systems characterising British colonial rule in Africa (Chanock 1985; Whitehead & Tsikata 2003; Cousins 2008). As used here, it is meant to refer to local land tenure arrangements, which may be based on 'traditional' norms and practices, but have also been responding to historical process of change in the area.
- ² The 1997 Land Law, Article 12, defines a 'local community' as 'a grouping of families and individuals, living in a circumscribed territorial area ... which has as its objective the safeguarding of common interests

through the protection of areas of habitation, agricultural areas, whether cultivated or in fallow, forests, sites of socio-cultural importance, grazing lands, water sources and areas of expansion' (Norfolk & Tanner 2007: vi).

³ DUAT stands for *Direito de Uso e Aproveitamento da Terra* in Portuguese, and can be translated as 'the right to use and benefit of the land'.

⁴ We are using pseudonyms for proper names of localities and people, to protect informants' privacy. This provides us with more space to discuss the more problematic aspects of a land delimitation which in many respects is considered highly successful.

⁵ Benilde Nhabomba and Tina Krüger

⁶ Zacarias Jemusa Gumbo

⁷ British Indirect *Rule* in Africa worked through 'chiefs', while *régulos* in Portuguese East Africa played a similar role. Here we have chosen not to use 'chief' – or *régulo* – as generic terms, and instead use the local Ndaou term *mambo* to refer to a person occupying the position of 'traditional authority'.

⁸ The Community Land Fund, (*Iniciativa para Terras Comunitárias – iTC* – in Portuguese) has been focusing on central Mozambique. With DfiD as a lead donor, it has been managed by a consortium led by KPMG Mozambique, assisted by NRI (University of Greenwich UK), and from 2011 by the Mozambican NGO Centro Terra Viva (CTV). In 2008, a parallel US-funded 'Millennium Challenge Account' Land Tenure Project was initiated to cover the northern provinces. Another key actor has been ORAM – *Associação Rural de Ajuda Mútua*; a national NGO created to promote and implement the Land Law.

⁹ ACACIA is also a pseudonym. Our participation in the delimitation was approved by the NGO, as well as by the other delimitation team members.

¹⁰ That is, the Traditional Authority in the Mchele area.

¹¹ In principle, this hand-clapping is performed only by men. Women are expected to bow their heads while the men clap their hands in a specific sequence and rhythm.

¹² In the local governance structure, a *Localidade* (Locality) will usually contain several Communities. Several localities, in turn, are governed by a *Posto Administrativo* (Administrative Post), which in turn forms part of a District within a Province.

¹³ Her expert knowledge on local history was ascertained by James Bannerman, an historian with established expertise on the area, who attended the meeting.

¹⁴ Or Gugunhana, the third Gaza Nguni King and grandson of Soshangane, the leader of one of the violent migratory Nguni (Zulu) groups that invaded Mozambican territories, starting in the 1830s, and only defeated by the Portuguese in 1895.

¹⁵ Probably referring to a colonial administrator.

¹⁶ The ‘war of the two brothers’; the civil war that started a few years after Mozambican independence in 1975.

¹⁷ Interestingly, the previous history exercise – with more women present – had recorded events that were now left out. One of these was the ‘abolishment of polygamy’ (sic) in Mozambique.

¹⁸ The delimitation described here is often referred to as exemplary by local NGOs, Government officials, as well as by politicians for its success in both securing community land rights and fostering private investment.

¹⁹ Less than half of them knew their own age.

²⁰ Here meaning that spouses originate from different communities.

²¹ The women’s names are also pseudonyms.

²² Codes instead of pseudonyms for communities and localities.

²³ *DNTF Circular No 1/2010*, from the National Directorate of Land and Forest of the Ministry of Agriculture.