

Protecting Community Lands and Resources

Evidence from Mozambique



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Community meeting.

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By Rachael Knight, Alda Salomao, and Issufo Tankar

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FRONT COVER © Nelson Alfredo. Community leaders planting trees to demarcate harmonized boundary.

BACK COVER © Nelson Alfredo. Community ceremony to document the community's lands.

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Partnerships

Centro Terra Viva (CTV) (www.centroterraviva.org.mz)

Centro Terra Viva (CTV) is a Mozambican NGO whose vision is of a national natural resource management policy and practice that is environmentally sound, scientifically-based, economically viable, and institutionally responsible. CTV's mission is to contribute to improved national policies and legislation and to increase the capacity of civil society to participate in environmental management through informed and relevant contributions.

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Letter from the Directors

As Mozambique's economy grows, it is more important than ever to support communities to delimit their lands and take empowered action to enter into negotiations with potential investors. Yet since the passage of the *Lei de Terra* in 1997, only a few hundred communities across Mozambique have been delimited. Starting in 2009, Namati and CTV investigated how to facilitate community land delimitation processes more efficiently. Our findings identified a potentially high-impact solution: by teaching communities to undertake the delimitation process on their own – led by trained local paralegals and supervised by a legal and technical field team – government actors and land rights advocates can support the delimitation efforts of many more communities. This low-cost and community-driven approach allows one regional technical team to support and supervise multiple communities' efforts simultaneously, opening the door for community land delimitation at scale.

Based on this finding, CTV and Namati now employ dozens of locally-based paralegals to lead communities through the delimitation process. These trained and supervised paralegals, or 'Community Mobilizers,' convene and facilitate community meetings, answer questions about land tenure rights in Mozambique, and support their communities to complete each aspect of the delimitation process.

The study described in this report provides crucial insight into how to improve NGO and government facilitation of community land delimitation processes. The data clearly indicate that delimitation efforts that end merely with a certificate and a map may do an injustice to communities; it is necessary to go beyond technical delimitation to ensure that communities have the tools to create, plan for and actualize their own vision of a prosperous future. It is critical to frame community land delimitation efforts as a comprehensive package of work that combines mapping and delimitation with improving governance and safeguarding the land rights of women and other vulnerable groups. To ensure that community members are equipped to enter into authentic consultations and fair negotiations with investors, the delimitation process must also promote legal literacy and empowerment, and include steps designed to ensure good governance of community lands and natural resources.

To this end, CTV and Namati now pair on-going legal education with a multi-step community rule-drafting process, in which communities list their customary rules, amend them as necessary to ensure that they do not contravene the Mozambican Constitution, and then formally adopt them as local 'by-laws' for the management of land and natural resources. Drafted by communities, these by-laws help to hold community leaders downwardly accountable, ensure that

women's land rights are protected, and support local sustainable management of natural resources.

As part of this same study, data from Uganda and Liberia illustrate how integrated, comprehensive community land delimitation efforts have the potential to foster profound changes that go far beyond documentation. Since adding a governance component to our work in Mozambique, we have observed the same remarkable changes: communities are debating local rules for the first time in living memory, then revising them to align their community norms and practices with national and human rights law.

In the long run, however, community-driven land delimitation processes cannot succeed without the commitment and support of the Government of Mozambique. To this end, CTV and Namati work closely with district and provincial governments throughout the delimitation process and at specific points in the by-laws drafting process. We ask that governments not only recognize communities' by-laws, but also assist with their implementation and enforcement. Government officials could also: help to defend communities against elite encroachment or bad faith appropriation of customary lands; act as a check against abuses of power by corrupt community leaders; enforce investor fulfillment of benefits promised in return for the use of community lands; and enforce the land rights of women and other vulnerable groups.

The findings described in this publication provide an excellent foundation for stronger, smarter efforts to protect community land rights and improve local land governance. We now understand the risks of delimitation in isolation, and have broadened our intervention to ensure a comprehensive strategy that has the potential to support rural communities throughout Mozambique to claim their land rights, establish accountable governance, and shape their own future development and prosperity.



Vivek Maru
Chief Executive Officer
Namati: Innovations in Legal Empowerment



Alda Salomão
Executive Director
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Executive Summary

Mozambique currently has one of the highest rates of land concessions throughout Africa. In the coming years, if large-scale land concession grants to private investors are not carefully controlled, the amount of land still held and managed by rural Mozambicans will decrease significantly, with associated negative impacts on already impoverished rural communities. Such potential negative impacts may include displacement and dispossession of communities, environmental degradation, increased competition for land, and an associated increase in land conflict, which may have wide-ranging destabilizing effects.

Positively, Mozambique's *Lei de Terras*' (1997) community land delimitation process has enormous potential to safeguard community land and promote equitable, integrated local development. Yet sixteen years after the law was passed, the *Lei de Terras* has not been well or widely implemented: in 2010 the Mozambican government reported that only 323 communities out of an estimated 3,000 had had their lands delimited. This has largely been due to weak political will and lack of state resources: the government has not allocated adequate funding, training, or personnel to community land delimitation efforts and has instead focused primarily on promoting investment. Meanwhile, studies have found that rural Mozambicans' awareness of their land rights is weak: even in those instances where people do know that they have strong land rights under Mozambican law, communities often have little idea of how to claim these rights in practice or defend and enforce their land rights during interactions with investors, state officials, or other powerful outside interests.

To address these difficulties and understand how to best support communities to follow Mozambique's community land delimitation process, Centro Terra Viva (CTV) and the International Law Development Organization (IDLO) undertook a two-year study in Inhambane Province, entitled the "Community Land Titling Initiative" or *Proterras Comunitarias*. The intervention's primary objectives were to:

- ▶ Facilitate the documentation and protection of customary lands by supporting communities to successfully complete community land delimitation processes;
- ▶ Understand how to best and most efficiently support communities to complete Mozambique's land delimitation process;
- ▶ Pilot strategies to leverage Mozambique's land delimitation processes to protect the rights of women and reduce intra-community discrimination; and

- ▶ Craft recommendations for how Mozambique’s delimitation process might be modified to better facilitate community development and ensure the success of communities’ land delimitation efforts.

To fulfill these objectives, CTV supported 20 communities to complete Mozambique’s land delimitation process. The study was simultaneously carried out in 38 communities in Liberia and Uganda to allow for comparison between various legal processes. While the three nations’ legal and administrative procedures differed significantly, the community land documentation processes followed by the 58 study communities included the following six general steps:

1. Creation and election of a coordinating committee (to drive the process forward within each community);
2. Boundary harmonization with neighbors (to define the limits of the community land being documented);
3. Drafting and adopting community rules for land governance and administration;
4. Drafting and adopting community natural resource management and zoning plans;
5. Election of a “governing council” responsible for community land and natural resource management;
6. Completion of necessary administrative steps, including formal surveying/GPS-ing and submission of relevant application forms, etc.

To understand what kind of legal and technical assistance may best support successful community land delimitation efforts, all 58 communities were randomly selected and assigned to one of four treatment groups:

- ▶ A control group that received only manuals and copies of relevant legislation;
- ▶ A group that received monthly legal education;
- ▶ A group that received monthly legal education and “paralegal” support; and
- ▶ A group that received the full assistance of legal and technical professionals.

In Mozambique, CTV’s field team provided these varying levels of support and then observed and recorded the communities’ progress through the requisite steps, noting: all obstacles confronted, all intra- and inter-community land conflicts and their resolutions, and all community debates and discussions. A cross-national pre- and post-service survey of over 2,225 randomly selected

individuals and more than 250 structured focus group discussions supplemented these observations.

MAIN FINDINGS

The investigation's central finding is that community land delimitation activities should combine 1) the *technical* task of mapping and titling community lands with 2) the *peace-building* work of land conflict resolution and 3) the *governance* work of supporting communities to strengthen land and natural resource management and promote intra-community equity.

Cross-national analyses of the data indicate that community land documentation activities present an exceptional and rare opportunity to create positive change that extends beyond documentation for customary and communal land claims. Community land documentation efforts may help to:

- ▶ Resolve long-standing land disputes and reduce future land conflict;
- ▶ Increase downward accountability for local leaders and promote good governance in community land and natural resource management;
- ▶ Increase community participation in local land and natural resources decision-making;
- ▶ Establish intra-community mechanisms to protect the land rights of women and other vulnerable groups;
- ▶ Promote sustainable natural resource management practices and conservation;
- ▶ Align customary laws and practices with national laws and open a space for community members to challenge inequitable rules and practices;
- ▶ Increase community members' legal awareness and empowerment;
- ▶ Heighten community capacity to negotiate for and actualize equal partnerships with outside investors, such that external investment brings authentic local prosperity; and
- ▶ Increase community capacity to vision, plan for, and realize locally-defined community development.

Yet in comparison to the study communities' experiences in Uganda and Liberia, the magnitude of these impacts was significantly reduced in Mozambique. The primary reason for the difference in outcomes proved to be the lack of a structured process — embedded as a required component of Mozambique's delimitation

procedures (as it is in Uganda and Liberia) — for communities to catalogue, discuss, amend, and formally adopt community rules for land and natural resource management.

The findings indicate that the aim of a community land claim formalization process should not only be to obtain documentation, but also to stimulate community-wide, participatory discussions of how to best manage and govern community lands and natural resources. By failing to include a community rule-drafting process for land governance and natural resource management, Mozambique’s land delimitation process misses a critical opportunity to align local rules with national law, protect the land rights of women and other vulnerable groups, and strengthen communities’ power to hold their leaders accountable to sustainable and equitable management of community lands and natural resources.

The study’s seven main findings are as follows:

1. Community land delimitation is efficient and cost-effective and should be prioritized over individual/family titling in the short term.

As facilitated by CTV, the total costs of land delimitation per community were at most US \$3,968, even with the provision of full service support by CTV’s trained technical team. This figure includes all staff salaries, office rent, petrol, office supplies, per diems for government technicians, lunches for community members during the geo-referencing process, and other costs. For communities provided with only monthly legal education, the total cost per community was US \$1,717; for communities receiving paralegal support, the total cost was US \$3,563 per community.

Considering that between 100 and 1000 families live in each of the study communities, community land delimitation is an economical way to protect large numbers of families’ land claims at once: **as undertaken in this investigation, for a hypothetical community of 500 families and large common areas, registering the community would cost less than half of efforts to register individual or family lands.** Once the community as a whole has been protected, the focus may then turn to community-driven documentation of family and individual lands.

2. Mozambique’s land delimitation process lacks safeguards to ensure local accountability for good governance of community land.

In Uganda and Liberia, the communities were supported to complete a rigorous,

highly participatory, four-part by-laws drafting process that included: a) an uncensored “shouting out” or brainstorming of all existing community rules, norms and practices; b) analysis and discussion of all existing community rules in light of national legal frameworks and evolving community needs; c) the writing of second and third drafts of these rules (including the amendment, addition or deletion of rules); and d) formal adoption by full community consensus or super-majority vote. The Ugandan and Liberian findings indicate that this process fostered:

- ▶ A transfer of decision-making authority from local customary and state leaders to community members themselves;
- ▶ The institution of new mechanisms to improve leadership and hold local leaders downwardly accountable;
- ▶ The establishment of consistent norms and the institution of clear, publicly known penalties for infractions; and
- ▶ The alignment of local custom and practice with national law; after learning about national laws relevant to community land and natural resources administration, community members took steps to modify local rules so that they no longer contravened national law.

Because this by-laws drafting process is not a required part of the delimitation process, the Mozambican study communities did not do more than brainstorm an initial list of their existing community rules, norms and practices. As a result, in contrast to the Liberian and Ugandan respondents, Mozambican respondents did not report that the delimitation process had any positive impacts on intra-community governance.

These findings indicate that **a community land delimitation process that does not include mechanisms to improve local governance and increase leaders’ accountability to their community members may at best be described as a lost opportunity to effect powerful intra-community change, and at worst may make land dealings more unjust.** While a document for land rights is an excellent protection against abuse by outsiders, a document alone can do little to protect against intra-community threats to common lands and the land claims of vulnerable groups.

To permit a community to apply for a land delimitation certificate without carefully creating and implementing systems for transparent, just and equitable management of that land is an invitation for mismanagement, corruption, and local elite capture. In its lack of comprehensive land governance-review processes, Mozambique’s delimitation process misses a powerful opportunity to establish safeguards to protect communities against corruption or bad faith actions taken by their leaders.

3. Mozambique's land delimitation process lacks protections for women's land rights.

The Mozambican study communities' brainstormed catalogues of existing local norms and practices include rules that directly contravene Mozambican law on women's land inheritance. Moreover, focus groups reported that as land becomes increasingly scarce and grows in value, women, widows, and the poorest community members are most vulnerable to land-grabbing by family members and community elites.

The transcriptions of the study communities' rules illustrate that merely mandating that communities may govern themselves according to customary rules (with the implicit mandate that these rules may not contravene Mozambican law) is an insufficient strategy for protecting vulnerable groups' land rights. By failing to establish proper checks by government officials to ensure that customary norms and practices do not violate the Mozambican Constitution or facilitate women's land disinheritance and dispossession, the *Lei de Terras* essentially abandons widows and other vulnerable groups to the mandates of intra-family and intra-community discrimination. Much of this discrimination may not actually reflect customary norms, but rather the bad faith adulteration of such norms in a climate of increasing land scarcity and rising land values.

In contrast, in Liberia and Uganda, the findings clearly indicate that a **well-facilitated process of drafting community by-laws/rules opens up an authentic space for women to question practices that disadvantage them and advocate for rules that strengthen their land rights and tenure security.** In Uganda and Liberia, women used the rule drafting process to actively challenge discriminatory customary norms and practices and to argue for the inclusion of stronger protections for their land and inheritance rights. Their efforts resulted in the strengthening of existing women's rights, the rejuvenation of customary norms that had existed in the past to protect women's land claims but have recently eroded or been abused, and the alignment of local rules with national laws that protect women's land rights. Such findings lead to the conclusion that a **process of cataloguing, discussing, and amending community rules is essential to efforts to protect women's rights during community land delimitation activities.**

4. By failing to include a mandated process for community review and amendment of local natural resource management rules, the delimitation process misses an important opportunity to support communities to address community natural resource management and proactively plan for future interactions with outside investors.

In the Mozambican study communities, pre-service focus groups described how “old” rules designed to ensure sustainable natural resource management were eroding or no longer enforced. For example, some focus groups described how traditional community practices for keeping local rivers clean are increasingly ignored. Yet because the Mozambican communities did not complete the full rule-drafting process — including a process for revising and amending rules for land and natural resource management — they did not have an opportunity to sit together and discuss whether to revive old rules for conservation or create new mechanisms to ensure equitable and sustainable natural resource use. In contrast, the Liberian and Ugandan study communities adopted a range of community by-laws designed to conserve forests, water sources, and areas where community members go to gather fuel, natural medicines, and building materials for their homes, among other resources.

Notably, as part of the rule-drafting discussions in Liberia and Uganda, communities took the opportunity to discuss together how they would or would not share their natural resources with potential outside investors. These **communities’ land and natural resource management plans demonstrate communities’ receptiveness to outside investment**, but within a regulatory and participatory framework which ensures that:

- ▶ The community is involved in discussing and negotiating all aspects of the investment;
- ▶ Restrictions are made to ensure community health, environmental, and cultural protections;
- ▶ Benefits/fair compensation accrue to the community; and
- ▶ A contract is drafted to ensure that all community benefits are paid.

Critically, Mozambique’s delimitation process does not establish any forum that would give communities an opportunity to discuss how they would respond to requests for community land by outside investors, should the opportunity arise.

5. Community land delimitation is a land conflict resolution process.

In Mozambique, the process of harmonizing boundaries with neighbors unearthed every latent, unresolved land conflict — long dormant or festering for years — and ignited new boundary disputes that flared up in response to the impending delimitation efforts. Boundary harmonization was therefore the beginning of serious intra- and inter-community conflict, even in communities that had previously reported having no boundary disputes and generally peaceful relations with their neighbors. As a result, CTV’s field team found it necessary to dedicate a significant amount of its time to land conflict resolution and mediation, oftentimes calling in local, district and provincial leadership for support.

Yet while the potential for conflict was significant, communities’ desire to delimit their lands created a strong impetus for them to peacefully resolve long-running boundary disputes. To this end, communities adopted a wide range of conflict-resolution and compromise strategies, sometimes settling decades-old land conflicts. Post-service focus groups and survey respondents reported that the resolution of long-standing land conflicts both within and between communities appears to be having an overall positive impact on land tenure security and intra- and inter-community conflict.

6. The provision of paralegal support helped communities to most successfully progress through the community land delimitation process.

Cross-national statistical analysis of the study communities’ progress suggests that communities led by local, elected “paralegals” progressed farther through the community land delimitation process than all other communities, including those communities given full legal support by lawyers and technical experts. In Mozambique, community-based paralegals proved to have a significant, positive impact on communities’ capacity to complete land delimitation activities. They appeared to do this by:

- ▶ Helping communities to address intra-community obstacles that were not always evident to or solvable by outside technicians or lawyers;
- ▶ Increasing community participation by mobilizing their communities on a daily basis;
- ▶ Fostering empowerment and creating a sense of community ownership over the land delimitation process; and

- ▶ Strengthening not only their own communities' capacity, but also the capacity of neighboring communities who proactively sought out their help.

This outcome may indicate that leaving communities with the responsibility of completing most project activities on their own motivated them to take the work more seriously, integrate and internalize the legal education and capacity-building training provided more thoroughly, address intra-community obstacles more proactively, and claim greater “ownership” over the community land delimitation process than when the work is done for the community by outside lawyers and technicians. As such, state or civil society agencies facilitating community land delimitation efforts should train selected community members as “land paralegals” who can support their communities throughout the land delimitation processes.

However, the findings indicate that while motivated communities can perform much of this work on their own, they need targeted legal and technical assistance to successfully complete community land delimitation efforts. In addition, it is critical that a legal team closely supervise each community paralegal's efforts, not only to ensure that their work product is of high quality, but also to step in when necessary and to be able to demonstrate to all stakeholders (government officials, investors, local elites, and others) that the community's efforts are being supported by a team of professionals who have the capacity to take legal action if necessary.

7. If a community starts the community land delimitation process and does not see it through to completion, the process may increase conflict and tenure insecurity in the region.

The field teams' observations illustrate that communities that struggle with elite sabotage, intractable boundary disputes that cannot be resolved through intensive mediation, internal discord, and weak leadership or power struggles between leaders may not be able to successfully progress through community land delimitation processes, irrespective of how much support they are offered. Should a dysfunctional community initiate land delimitation efforts and not be able to complete them, the process may invigorate tensions and create or exacerbate conflict, leaving the community in a worse situation than before the intervention began. To proactively prevent unanticipated negative outcomes, supplemental conflict resolution training, community-building, and leadership-enhancement activities may be necessary before a community begins land delimitation efforts.

RECOMMENDATIONS FOR POLICY

1. Make community land delimitation and protection a prerequisite to investment.

In the context of the Mozambican government's continued granting of large-scale land concessions over large regions of the country, community land delimitation should be made a prerequisite to investment. A focus on documenting family and individual lands will not only be expensive and time-consuming, but will leave rural communities vulnerable as a group, as they do not protect the common and reserve areas upon which communities depend for their livelihood and survival. In contrast, community land delimitation efforts safeguard an entire community's land at once, including all forests, grazing areas, and waterways. Delimitation exercises also may help to prepare communities to manage their natural resources more sustainably and enter into more equitable contracts with investors: as described above, land delimitation exercises that create a forum for communities to plan for potential investment opportunities may support improved development outcomes and better community-investor relations.

To ensure improved outcomes, **before an investor comes to negotiate with a community, the community's lands should be delimited and a social and legal preparation process undertaken to ensure that the community is negotiating with the investor on more empowered, informed, and participatory grounds.**

2. Amend the delimitation process to make improved local land governance a central component of the process.

Community land delimitation efforts should not only aim to register community land in the national cadastre, but also to affect positive intra-community changes to local land and natural resource governance such as sustainable and equitable natural resource management, leaders' downward accountability, and more participatory local decision-making. **To effectuate this, the *Lei de Terras*' Regulations and Technical Annex should be elaborated to include procedures that ask communities to examine, analyze, and amend existing local rules for intra-community land and natural resource governance.** To leverage the land delimitation process to improve community land governance, policy makers and legislators should:

- ▶ Mandate procedures through which communities must catalogue, discuss, amend and adopt community rules, norms, and practices pertaining to local land and natural resource management.
- ▶ Establish procedures through which government officials complete a mandatory check that the community's rules comply with the Mozambican Constitution and national law before approving a community's land delimitation application.

Once the community formally adopts its agreed rules, community members and state officials can hold local leaders accountable to fair rule enforcement and the sustainable and just management of community lands and natural resources.

3. Amend the delimitation process to conclude with the election of a governing body that includes all trusted local leaders and representatives of vulnerable groups.

The *Lei de Terras'* Regulations and Technical Annex should be modified so that the delimitation process concludes with the creation of an elected group of men and women who co-determine land matters in concert with the wider community. Mozambique's land delimitation process currently does not culminate in the creation of an elected group responsible for the management of community lands and natural resources. The Coordinating Committee elected at the beginning of the delimitation process is not the same as a permanent, elected governing body whose composition changes according to periodic elections and who has consciously and specifically been given authority by their community to manage community lands and natural resources according to the community's best interests.

To ensure downward accountability and a community check on the powers of local authorities, Mozambique's land delimitation process should:

- ▶ **Mandate that intra-community governance structures are elected at the conclusion of the community land delimitation process, and that re-election processes occur every few years.** Communities should compose these governing councils to include both existing local leaders (and/or members of pre-existing land governance bodies), as well as representatives of vulnerable groups. Facilitating NGOs or government agencies may need to carefully monitor the election of these bodies to ensure that the elections are participatory, transparent, fair, and representative of full community participation, and that all positions

are not captured by elites. Communities might also create parallel “watchdog” groups to monitor the elected group’s decisions and actions.

- ▶ **Protect against intra-community discrimination and elite capture by ensuring that communities’ rules provide for universal suffrage and regular all-community meetings to review the governing body’s actions and decisions, particularly for decisions to grant or lease community land to outside investors.**

4. Establish systems to protect the land rights of women and other vulnerable groups.

By failing to establish safeguards to ensure that a community’s customary norms and practices do not violate the Constitution and other national laws, Mozambique’s *Lei de Terras* misses a critical opportunity to preemptively protect women, widows and members of other vulnerable groups from intra-family and intra-community discrimination. To remedy this, **the *Lei de Terras* and the accompanying Technical Annex should mandate express protections to ensure that women’s and other vulnerable groups’ rights are realized and enforced at the local level.** Such amendments could mandate:

- ▶ Community-wide discussions analyzing local rules for women’s land rights that:
 - Analyze local rules concerning women’s land inheritance rights and natural resource use,
 - Create the space for women and other vulnerable groups to argue for rules that enshrine and protect their land rights, and
 - Make all revisions necessary to align community rules, norms and practices with the Mozambican Constitution and other relevant laws.
- ▶ A mandatory state check (before a community’s land delimitation certificate is issued) to ensure that community rules do not violate Mozambique’s legal protections for women and other vulnerable groups’ rights.
- ▶ Training for local leaders to support them to play a more active role in protecting the land claims of women and other vulnerable groups.
- ▶ The creation of local, accessible, and culturally acceptable mediation mechanisms (composed of both customary and state leaders and elected women representatives) to resolve cases concerning the violation of women and other vulnerable groups’ land rights.

If the *Lei de Terras* and accompanying regulations cannot be amended, state and civil society actors should at the very least incorporate the above practices when facilitating community land delimitation efforts.

5. Mandate enforceable community-investor contracts that effectively hold investors accountable to fulfilling promised “mutual benefits.”

The *Lei de Terras*’ accompanying Regulations and Technical Annex do not establish appropriate enforcement mechanisms or oversight structures that can protect against unjust and inequitable interactions between communities and investors. Appropriate protection and enforcement mechanisms to ensure investor accountability should be put into place. Such mechanisms might include:

- ▶ Mandatory provision of free legal representation for communities during negotiations concerning land-sharing agreements with investors, including full and transparent information about the planned investment, such as anticipated annual profits, etc.;
- ▶ The enforcement of all community-investor agreements as detailed legal contracts, subject to the mandates of national contract law, that clearly set out timelines and deliverables for community receipt of benefits;
- ▶ The creation and enforcement of regulatory mechanisms to hold investors accountable for delivering agreed-upon compensation to communities;
- ▶ The creation of expedited complaint procedures and appeals processes, should investors fail to deliver the agreed benefits or rental payments;
- ▶ The establishment of penalties for investors who fail to fulfill their terms of the contract with the community, among other supports.

6. Establish support, facilitation, and oversight roles for government officials both during and after the community land delimitation process.

Local and regional government officials have an important role to play as supporters of community land delimitation efforts. Because Mozambique’s *Lei de Terras* devolves control over land and natural resource management to rural communities, the central government should empower district and regional officials previously in charge of local land administration to assume capacity building and oversight functions. Local and regional land officials could be tasked with:

- ▶ **Providing support to communities during community land delimitation efforts.** With proper training and funding, local and regional officials can:
 - Provide legal education to improve communities' awareness of their land rights and develop community capacity to complete relevant administrative and judicial procedures.
 - Provide conflict resolution support during boundary harmonization efforts.
 - Witness ceremonies documenting harmonized boundaries.
 - Supervise all GPS, surveying, and boundary demarcation activities.
 - Provide support during community rule-drafting processes, including expertise on relevant national laws and constitutional principles.
 - Provide support during the natural resource management plan drafting process, including expertise on relevant natural resources, conservation laws, and sustainable management practices.
 - Verify that community rules align with national law and uphold constitutional guarantees.
 - Be available to answer community land delimitation-related questions and provide technical support on an as-needed basis, among other activities.

This assistance should be request-based, rather than mandatory, as requiring state oversight may stall or impede community progress.

- ▶ **Providing long-term support for community land and natural resource management after the delimitation process is complete.** Such assistance might include:
 - Providing technical support for community land and natural resource management.
 - Providing land dispute resolution assistance for particularly intractable land conflicts.
 - Protecting community lands from encroachment by elites and local power holders.
 - Acting as a check against abuse of power by community leaders and elected governing bodies. Upon a community's request, state officials should monitor and supervise community land management bodies to ensure that the elected officers are fulfilling their fiduciary duties and acting in accordance with constitutional principles.



Community members work with provincial officials to delimit their lands.

- Enforcing women's and other vulnerable groups' land rights. Such support may include training customary leaders in relevant national law, working alongside customary leaders to jointly address rights violations, and making justice systems and formal rights protections more accessible to rural women and other vulnerable groups.
- Conducting capacity-building trainings for elected governing councils and community leaders, among other help.

Such government assistance should be made readily available and accessible via mobile clinics and other means of bringing state support directly to rural communities. These efforts should include both the executive branch of government (ministry officials, technicians, and the police), as well as the judicial branch. To carry out these roles, state administrators may require training on relevant land legislation and related procedures. To create the political will and capacity to fully support communities to document, protect, and develop their lands, state actors may need to be incentivized to support delimitation efforts. These measures should be undertaken in combination with the allocation of increased state resources allocated specifically for community land delimitation efforts.

RECOMMENDATIONS FOR IMPLEMENTATION AND PRACTICE

1. **To maximize resources and ensure community commitment to the land delimitation process, the work should be demand-driven, with support predicated on communities' proactive request for legal and technical help to document their land claims.**

Facilitating agencies should give priority — and immediate support — to any community facing an imminent external threat to its land claims.

2. **Carefully assess whether the community is an appropriate candidate for delimitation.**

Should a dysfunctional community initiate but be unable to complete the land delimitation process, the effort may invigorate tensions and exacerbate conflict, leaving the community in a worse situation than before the intervention began. Once a community has requested support documenting its lands, an assessment should be carried out to determine existing conflicts and threats, community leaders' strength and capacity, the degree of community cohesion and ability to work together, and whether the community is likely to be easily demobilized or reject the project. Civil society and government advocates preparing to support a community's land delimitation efforts should first assess the community's internal dynamics and existing conflicts and work to resolve serious underlying conflicts before facilitating the land delimitation process.

3. **Let the community drive the content, pace, and progress of the delimitation process according to local knowledge, skills, and pacing.**

Authentic community change cannot happen in a one-month, isolated land delimitation process. To ensure long-term structural change, the community land delimitation process may best be carried out over the course of a year, giving community members time to carefully think through all aspects of community land and natural resource governance.

Moreover, giving a community the direct responsibility to complete land delimitation work — with guidance from legal and technical professionals and under the leadership of trained community paralegals — appears to be

the most empowering method of facilitating community land delimitation processes. To support community-driven processes, facilitating agencies should:

- ▶ **Let go of expectations of a fixed time period by which a community should complete the community land delimitation activities**, and allow the community to drive the forward momentum of all delimitation activities.
- ▶ **Train selected community members as “paralegals” or “community mobilizers”** to guide their communities throughout community land delimitation processes and liaise between their community and the legal and technical support team.
- ▶ **Let communities define themselves.** Defining a “community” is a complex political process with associated socio-cultural implications at the local level. Communities should be supported to define themselves after extensive, highly participatory discussions.
- ▶ **Include and involve all local leaders.** The findings indicate that communities’ capacity to successfully complete land delimitation processes was directly related to leaders’ integrity, management skills, commitment to the project, and ability to mobilize their communities through the various steps of the land delimitation process. Leaders may need special training and capacity-building to enhance this role. Before land delimitation activities begin, efforts should be made to identify and address power struggles between community leaders and ensure that there is cooperation and coordination between and within all local power structures, both customary and state.
- ▶ **Help communities create balanced, inclusive coordinating committees.** An elected interim coordinating committee should be diverse and include strong, competent representatives of all interest groups, including youth, women, members of groups that practice a range of livelihoods, and all clan/tribal minority groups. These individuals may then be given the responsibility for:
 - Mobilizing members of their interest group to attend community land delimitation meetings and take part in all related activities;
 - Seeking out the viewpoints of members of these groups and representing these interests during community land delimitation activities; and
 - Reporting back to members of these groups on the content of community discussions as well as the community’s land delimitation progress.

- ▶ **Encourage full community participation in all community land delimitation activities, taking care to include all stakeholders.** To this end, facilitators should:
 - **Enter communities with complete transparency, calling for full community participation.** At the inception of all community land delimitation work, the entire community must be convened to identify community leaders to work with, elect a diverse interim/coordinates committee, draw maps, take an inventory of ongoing land conflicts (internal and external), and gather all other necessary and pertinent information. Information should be solicited publicly and cross-checked by all stakeholders, including neighboring communities. Discrepancies should be publicly debated and transparently resolved.
 - **Create space for all stakeholders and vulnerable groups to speak up during delimitation activities.** Attendance at meetings does not always lead to verbal participation, particularly when intra-community power and authority imbalances privilege the opinions and concerns of some groups over others. Facilitators should proactively take measures to ensure that women and other marginalized groups feel comfortable speaking during land delimitation activities. Facilitators can convene women, youth, and elders in separate groups in advance of these meetings to help them to articulate their interests.

- ▶ **Leave communities to do much of the community land delimitation work on their own, according to local knowledge and skills.** While communities need legal and technical assistance to successfully complete land delimitation efforts, they should be left to complete community land delimitation activities on their own as much as possible. To support communities' individual processes, facilitating agencies should:
 - **Introduce each community land delimitation activity, build the capacity of the community to complete it, and then leave the community to do the work as “homework,” guided by community mobilizers/paralegals** who can call on the facilitating legal/technical team for support and assistance on an as-needed basis.
 - **Create workbooks detailing all the community land delimitation steps.** The workbooks could include space for communities to take meeting minutes, draw maps, write down accounts of their community's history, record drafts of community rules/norms, record debates, and otherwise keep all of their work in one place. After filling

out these books, communities can invite civil society and government technicians to review these workbooks and offer support to improve all work products until they reach the standards necessary for approval of a land delimitation application.

- **Recognize that while motivated communities can perform much of this work independently, they need targeted legal and technical assistance to successfully complete community land delimitation efforts.** CTV observed that for a community land delimitation process to progress smoothly, lawyers and technicians must:
 - Introduce the land delimitation process, support the election of the coordinating committee, train the coordinating committee, and provide general community-wide legal education and capacity-building training;
 - Provide mediation and conflict-resolution support during particularly contentious land conflicts that communities are unable to resolve on their own;
 - Provide legal support and technical assistance during the completion of the community's second and third drafts of their community rules;
 - Implement a women's empowerment/inclusion strategy to ensure women's full participation in all land delimitation activities; and
 - Support communities during all administrative procedures, including: contracting and liaising with government agencies, working with government GPS technicians, and completing and filing all application forms and related documents.

4. Prepare for boundary harmonization and demarcation processes to be conflict-resolution exercises.

Facilitating agencies and government actors should proactively prepare for land conflict resolution to be a central component of community land delimitation efforts, and should craft trainings designed to support open, non-violent boundary negotiation. To promote peaceful boundary harmonization efforts, state and civil society agencies should support communities to:

- ▶ **Map publicly and comprehensively.** Map-making is not a neutral activity. It exposes all previous encroachments into or bad faith appropriation of



Community map.

community lands and identifies all of the community's natural resources and their locations. It therefore should be introduced and undertaken very carefully. The entire community should be convened for all mapping-related activities until all boundaries are harmonized, all land conflicts are resolved, and all boundary trees planted or markers placed. When mapping, women and men should draw maps in gender-based groups to ensure that all voices are heard, and communities should publicly discuss the maps to ensure that they are fair and accurate.

- ▶ **Ensure that all relevant groups' ownership, use and access rights to the land being delimited are protected.** Before beginning work with a community, facilitators should carefully assess exactly which groups have ownership rights to a given piece of land and which groups have use and access rights, and confirm this at a regional public meeting at which representatives and leaders of all neighboring communities are present. Strong interventions by the field team may be necessary to ensure that representatives of the villages with use and access rights are involved in all project activities, and to guarantee that all pre-existing,

good-faith land rights and claims are protected. Government officials processing community land delimitation applications should also verify that all neighboring communities' rights of use and access have been properly preserved.

- ▶ **Address boundary conflicts creatively and stand ready to provide mediation support.** Facilitating agencies should train paralegals, leaders, and community members in conflict resolution and mediation techniques before a community begins boundary harmonization discussions. These trainings might include teaching communities to employ a range of compromise strategies and mediation/dispute resolution tactics, such as: agreeing to share the land as a common area and documenting it as such; dividing the land down the middle evenly; and allowing disputed zones or households to choose where they feel they most belong; among others. Facilitators should stand ready to support the resolution of particularly entrenched land conflicts and to call in local government officials as necessary.
- ▶ **Allow communities as much time as they need to arrive at authentic boundary agreements.** Facilitators should ensure that all boundary agreements are authentic; if the root causes of a boundary dispute are not aired and resolved, it is likely that the conflict will reignite at some point in the future.

5. Leverage the community land delimitation process to support communities to improve intra-community governance.

To do this, facilitators should:

- ▶ **Support communities to undertake an iterative, fully participatory process of cataloguing, discussing, amending, and adopting their local rules for land and natural resource management.**
- ▶ **Ensure full community participation in rule-drafting process.** Civil society and government facilitators should actively create the opportunity for women and other vulnerable groups to challenge rules that they feel to be discriminatory, or to argue for the inclusion of rules that protect and promote their interests.
- ▶ **Allow communities to base the form and content of their rules on existing custom, norms, and practices.** Facilitating civil society and state agencies should not edit or revise a community's rules to reflect their own prejudices and legal sensibilities. Each community should be allowed to

include in its rules whatever content it feels is necessary for its equitable and efficient functioning. Facilitators should only encourage communities to modify customs and practices when necessary to ensure that the rules:

- Do not contravene the Mozambican Constitution and relevant laws;
- Establish clear substantive and procedural rights for all community members, including women and members of vulnerable groups;
- Protect neighboring communities' existing use rights and rights of way;
- Include provisions establishing the creation of an elected governing body to be responsible for community land and natural resource administration and management;
- Include provisions that particularly important and weighty decisions, such as whether to cede land to an investor, should be made by supermajority vote, rather than by local leaders acting alone;
- Include provisions for annual review and amendment, to avoid the potential calcification of customary rules that writing them down might imply; and
- Are approved by all households in the community by consensus or super-majority vote.

6. Leverage the community land delimitation process to support sustainable natural resource management and conservation.

To support communities to establish and implement rules for sustainable natural resource use, facilitating civil society and state agencies might:

- ▶ Train communities on a wide range of sustainable natural resource management techniques;
- ▶ Foster local “remembering” and reinstitution of customary natural resource management rules, norms and practices that promote conservation;
- ▶ Support communities to monitor and control use of their natural resources by community members, neighbors, and local investors alike; and
- ▶ Support communities to enforce their rules against poaching, illegal logging, and other unsanctioned extraction efforts and to request police support for enforcement when deemed necessary. Communities

may also be supported to extract fines for infractions that could be put towards community improvement projects such as road maintenance or the construction of community meetings houses, etc.

7. Leverage the community land delimitation process to strengthen women's land rights and establish mechanisms for their enforcement.

Mozambique's community land delimitation process is an excellent opportunity to support communities to review local customary norms and practices and amend them to protect women's land and natural resource rights.

To effectuate this, facilitating agencies should train community members on international and national laws protecting women's rights and then support them to critically evaluate local norms in light of national law. Where there are differences between customary norms and the national constitution, community members may be guided to analyze and debate their local rules and then amend them so that they no longer violate national law. To ensure broad-based local support for women's land rights, civil society and government facilitators may also need to:

- ▶ Carry out a gender analysis and work with communities to craft strategies to proactively address gender inequities that have the potential to negatively impact community land delimitation activities;
- ▶ Convene special women-only meetings to help women identify and advocate for their interests in the broader community meetings;
- ▶ Plan community land delimitation meetings to take place at convenient times and locations, after women have completed their house and farm work;
- ▶ Support communities to elect female representatives to local governing bodies;
- ▶ Establish paralegal support, ensuring that one of the paralegals is a woman who can organize community women to take part in all delimitation efforts; and
- ▶ Train and support local men and leaders to be protectors and enforcers of women's land rights.

Such efforts to create intra-community mechanisms to protect and enforce women's and other vulnerable groups' land claims will become increasingly

necessary as land grows in value and becomes more scarce, and as intra-community competition for land intensifies disenfranchisement of vulnerable groups' land rights.

8. Leverage the community land delimitation process to support communities to proactively prepare to negotiate with potential investors.

Community reports of interactions with investors in the study region of Inhambane and across Mozambique indicate that consultations are not carried out equitably or fairly, communities do not feel they have an authentic choice to accept or reject an investor, investors are not providing the “mutual benefits” promised, and the long-term presence of investors is proving to have a primarily negative impact on their host communities.

To improve the quality and equity of future consultations with investors and ensure that the promise of equitable “integrated development” envisaged by Mozambican policymakers is actualized, facilitating agencies should ensure that the community land delimitation process includes community-wide discussions concerning, among other topics:

- ▶ How the community will use, govern, and administer community lands and natural resources in the future;
- ▶ What land the community might choose to share with an investor, should one arrive;
- ▶ Plans for how the community will negotiate with any potential investors seeking land, including: on what terms and conditions the community would share its lands and natural resources and what “mutual benefits” it will request in exchange for the use of community land;
- ▶ How the community will document any resulting agreements with investors or government; and
- ▶ How the community will hold investors or government actors accountable to fulfilling their agreements.

These discussions should be held proactively, in advance of any investment requests. Civil society agencies should also be prepared to support all community-investor interactions and negotiations. Then, should an investment be realized, communities will need support both holding investors accountable to promised mutual benefits as well as managing any benefits accrued in a responsible, transparent, and equitable manner.

* * *

The data illustrate that well-facilitated community land delimitation exercises may result in important impacts that go beyond increased land tenure security. Once a community has successfully documented its land claims, the hope is that it may then work hand-in-hand with government agencies and local organizations to fully leverage its lands for locally driven development, prosperity, and human flourishing.



Community members work with SPGC officials to take GPS coordinates of the boundaries of the community's land.



CTV field team teach a community about their land rights under the *Lei de Terras*.

I. BACKGROUND AND LEGAL CONTEXT

WHILE ALWAYS A CONCERN, the issue of how best to protect the land holdings of rural communities has become a matter of pressing concern in recent years due to sharp increases in African governments' grants of vast land concessions to investors for agro-industrial enterprise and mineral and timber resource extraction.¹ Often, the concessions are granted with a view to creating commercial, agricultural, or industrial development and strengthening the national economy.² Yet across Africa, such concessions are further exacerbating a trend towards growing land scarcity and weakening the land tenure security of rural communities who live within or near the concession areas. These communities often have little power to contest such land grants, particularly where they operate under customary law and do not have formal legal title to their lands. Even when communities welcome private investment, they may not be consulted about the planned endeavor, properly compensated for their losses, or given a say in how their land and natural resources will be managed once the investment is launched. Alternatively, such investments may be undertaken in ways that lead to environmental degradation, human rights violations, loss of access to livelihoods, and inequity.

Mozambique currently has one of the highest rates of land concessions in Africa.³ Between 2004 and 2009 alone, the Mozambican government granted 405 large-scale investment projects (over 1,000 hectares), totaling more than 2.7 million hectares of land — a full 7% of the nation's arable land.⁴ Most of these investments have not yet been fully operationalized.⁵ In the coming years, as these investments are realized and further concessions are granted, the amount of land still held and managed by rural Mozambicans will decrease

1 For further discussion, see Lorenzo Cotula, Sonja Vermeulen, Rebeca Leonard, and James Keeley, *Land Grab or Development Opportunity? Agricultural Investment and International Land Deals In Africa* (London: IIED/FAO/IFAD, 2009).

2 All large land concessions are time-limited (for periods of up to 50 years, renewable for 50 years). During this time, they often preclude or limit local communities from accessing or using the conceded land, or any natural resources it contains.

3 World Bank Group, *Rising Global Interest in Farmland: Can it Yield Sustainable and Equitable Benefits?* (Washington, DC: World Bank, 2011), available at http://siteresources.worldbank.org/INTARD/Resources/ESW_Sept7_final_final.pdf.

4 *Supra* note 8, at xxi; The Oakland Institute, *Understanding Land Investment Deals in Africa: Country Report Mozambique* (Oakland, CA: The Oakland Institute, 2011), http://www.oaklandinstitute.org/sites/oaklandinstitute.org/files/OI_country_report_mozambique_o.pdf. Of note is that international attention tends to focus on the large tracts of land being sought and allocated, but the large number of smaller land claims also add up to a significant threat to local livelihoods, especially where prime land with water is the target.

5 The World Bank report found that "it was difficult to identify any projects operating on the ground. Among the projects that had started, the areas in operation were typically much smaller than those allocated. This lag in implementation was normally attributed to unanticipated technical difficulties, reduced profitability, changed market conditions, or tensions with local communities...For example, none of the biofuel operations in Mozambique were operating at the envisaged scale and all of them reported delays of at least three to five years." *Supra* note 8, at 67.

significantly, with associated negative impacts on already impoverished rural communities. The potential negative impacts may include displacement and dispossession, environmental damage, loss of livelihoods, increased competition for land, and an associated increase in land conflict, which may have more wide-ranging destabilizing effects. Indeed, research has found that investors in Mozambique have damaged non-renewable natural resources (such as

Between 2004 and 2009 alone, the Mozambican government granted 405 large-scale investment projects more than 2.7 million hectares of land — a full 7% of the nation's arable land.

water sources), created significantly fewer jobs than were promised,⁶ and transgressed the agreed boundaries of their concessions, displacing communities' access to their farms and grazing lands.⁷

These trends also have negative intra-community impacts. Community members described a recent situation of growing land scarcity: while in the past, land could be acquired by simply meeting with community leaders and requesting a piece of land that did not yet belong to anyone, then clearing and claiming the land offered, this is no longer possible. The groups explained that there is no longer any “free” land available and that within communities, land is now frequently sold and rented.

Studies have shown that increased land scarcity, rising competition for land, and resulting land commoditization tend to precipitate a breakdown of the customary rules that generally govern the equitable and sustainable use of common resources — rules which functioned in the past to protect the land rights of vulnerable groups and support the sustainable management of local ecosystems.⁸ While scholars disagree over the relative strength of women's land claims under customary systems, the consensus is that as land becomes scarcer,

6 For example, World Bank research found that although one biofuels project in Mozambique had promised to hire 2,650 workers, by the time of this study only 35 to 40 people were employed full-time, as well as 30 seasonal workers. Moreover, the wages provided were insufficient to compensate for the loss of livelihoods resulting from loss of farmland and access to natural resources. *Supra* note 8, at 69.

7 *Supra* note 8, at 65; *supra* note 9, The Oakland Institute, *Understanding Land Investment*.

8 Ann Whitehead and Dzodzi Tsikata, “Policy Discourses on Women's Land Rights in Sub-Saharan Africa: The Implications of the Return to the Customary,” *Journal of Agrarian Change* 3, no. 1-2 (2003): 91; Paulene E. Peters, “Inequality and Social Conflict Over Land in Africa,” *Journal of Agrarian Change* 4, no. 3 (2004): 269-314; Ingrid Yngstrom, “Women, Wives, and Land Rights in Africa: Situating Gender Beyond the Household in the Debate Over Land Policy and Changing Tenure Systems,” *Oxford Development Studies* 30, no. 1 (2002): 21-40. The increasing commercialization and commoditization of land has also influenced the operation of customary systems of land administration and management. Chimhowu and Woodhouse observe that even during standard customary land transactions, there is a shift towards making reference to market values, evident in the “increasing weight placed upon cash, relative to symbolic elements of exchange, and an increasing precision in the seller's expectation of what they should receive.” Admos Chimhowu and Phil Woodhouse, “Customary vs. Private Property Rights? Dynamics and Trajectories of Vernacular Land Markets in Sub-Saharan Africa,” *Journal of Agrarian Change* 6, no. 3 (2006): 359.

existing customary safeguards of women's rights to land erode.⁹ Evidence has emerged that when land is scarce, customary leaders and families move away from more flexible systems of land holding (which take into consideration a woman's need to support herself and her children) to more rigid interpretations of women's land claims. In some contexts, families are reinterpreting and "rediscovering" customary rules that undermine women's land rights. In short, despite the strength and inherent negotiability of kinship-based land claims, in the context of land commoditization, women's land rights weaken significantly among both their husbands' kin and within their own families. In Inhambane, women's focus groups reported frequent incidents of land dispossession from widows; community members explained that widow dispossession and the bad faith appropriation of land from the elderly were the cause of a high percentage of land-related problems within their community. Community leaders also noted that "land conflicts in the community are in relation to the division of land within families, and the expropriation of land from the most vulnerable community members."¹⁰

Positively, Mozambique's *Lei de Terras* (1997), has significant potential to help safeguard community land.¹¹ The *Lei de Terras* automatically grants *de jure* "rights of land use and benefit" to individuals and communities living on land acquired by custom.¹² Importantly, such rights do not need to be registered or formally delimited to have legal status; the law holds that, "the absence of registration does not prejudice the right of land use and benefit acquired through [good faith or customary] occupancy... provided that it has been duly proved."¹³ Communities may however, elect to undertake a delimitation and registration process. The *Lei de Terras* allows that, "areas over which a 'right of land use and benefit' has been acquired by occupancy according to customary

9 To understand this phenomenon, it is necessary to explain how women's land rights function under customary tenure. Broadly speaking, under patrilineal/patrilocal systems, daughters do not inherit property from their fathers or uncles, but move onto their husbands' lands after marriage. They are not permitted to inherit their husband's land, because, according to custom, it is passed through the male bloodline from fathers to sons and/or because it belongs to the husband's family or tribe. Within this paradigm, women's land claims hinge on their relationships with male relatives. Women cannot own land, may lose their land when widowed, may be considered the property of their husbands (who in some cultures have paid a 'bride price' for their wives), and may have little or no decision-making power over questions of household agricultural production and sale. While various customary rules previously functioned to protect the land rights of women and widows, in the current context, families may conveniently remember more exclusionary rules, and forget more protective rules. Indeed, Woodhouse notes, "When competition for land intensifies, the inclusive flexibility offered by customary rights can quickly become an uncharted terrain on which the least powerful are vulnerable to exclusion as a result of the manipulation of ambiguity by the powerful." Philip Woodhouse, "African Enclosures: A Default Mode of Development," *World Development* 31, no. 10 (2003): 1715. See generally Renee Giovarelli, "Customary Law, Household Distribution of Wealth, and Women's Rights to Land and Property," *Seattle Journal for Social Justice* 4 (2006): 801-825; Whitehead and Tsikata "Policy Discourses."

10 See Section III.E. for greater detail.

11 The Mozambican Constitution also affirms that "the use and enjoyment of land shall be the right of all the Mozambican people" (Constitution of the Republic of Mozambique, 1990, Article 46(3); 2004, Article 109(3)), and moreover, that this right can be granted to individuals or to groups/corporate persons (1990, Article 47(2); 2004, Article 110(2)). Importantly, the Constitution also mandates that in awarding land use titles, the State should respect existing "rights acquired through inheritance or occupation" (1990, Article 48; 2004, Article 111) although the 2004 version adds the caveat, "unless there is a legal reservation or the land has been lawfully granted to another person or entity."

12 *Land Law 1997 Regulations*, Decree 66/98 of 8 December (1998), Article 9, Section 1.

13 *Land Law 1997*, Article 14, Section 2.

practices may, when necessary or at the request of the local communities, be identified and recorded in the National Land Cadastre.”¹⁴ Although delimitation and registration of community land claims does not create any *new* rights, communities may choose to pursue this option because it does provide *documentary evidence* of community lands, which offers stronger protection of these rights.¹⁵ To effectuate this, the *Lei de Terras* accompanying Regulations and Technical Annex set out a “community land delimitation process” through which communities may register their customary land claims.

Once registered, the community holds a single “right of land use and benefit” (*direito de uso e aproveitamento da terra* or DUAT) with respect to its land. As a DUAT holder, the community acquires legal personality and can thereafter enter into contracts with investors, open bank accounts, and undertake other legal actions.

Under the *Lei de Terras*, local communities¹⁶ are the lowest level of land and natural resource management and administration, with the community free to choose and create the leadership structures and rules (customary or otherwise) by which it will administer and manage its lands. Under this framework, customary principles of land management (including land transfer, dispute resolution, inheritance, and demarcation) that do not contravene the Mozambican Constitution may govern community land use and allocation within the local community.

Importantly, the *Lei de Terras* establishes a model for integrated development and rural investment designed to protect communities’ customary land rights: investors may only lease lands for periods of 50 to 100 years, and must consult with and seek the permission of the communities whose land they seek to use. Communities are granted legal personality and may negotiate with investors for “mutual benefits agreements” in exchange for investors’ use of their lands.¹⁷ In this way, the *Lei de Terras* is structured to both allow for investment as well as to protect rural livelihoods and contribute to community prosperity.¹⁸

14 *Land Law 1997 Regulations*, Article 9, Section 3.

15 Titling and registration may be perceived as important for several reasons. In the event of a land conflict, or in circumstances where a community stands to lose some of its land or natural resource claims, it is sometimes necessary to document and provide proof of the community’s land claims. Further, after being formally delimited and registered, the community is recorded as a private legal entity, capable of entering into contracts with outside investors.

16 *The Lei de Terras* defines a local community as “a grouping of families and individuals, living in a territorial area that is at the level of a locality or smaller, which seeks to safeguard their common interests.” Under this wide definition, a community may be a traditional unit based on clans or chieftainships, extended families, or simply a group of neighbors. Community interests in land may include “areas for habitation or agriculture, whether cultivated or lying fallow, forests, places of cultural importance, pastures, water sources and areas for expansion.” (*Land Law 1997*, Article 1, Section 1).

17 *Lei de Terras*, Act No. 19/97 of 1 October, 1997, The Republic of Mozambique, Article 24, 25, inferred.

18 A.J. Calengo, J.O. Monteiro, and C. Tanner, *Mozambique Land and Natural Resources Policy Assessment, Final Report* (Maputo, Mozambique: Centre for Juridical and Judicial Training, Ministry of Justice: 2007).

The law also explicitly recognizes women's right to own land; women have equal rights to hold, access, and derive benefits from land independent of any male relatives.¹⁹ The *Lei de Terras* specifically mandates that this principle overrides any contrary customary rules and norms. The Mozambican Constitution also sets out that “men and women shall be equal before the law in all spheres of political, economic, social and cultural life.”²⁰

However, despite widespread education and sensitization efforts by civil society organizations and the *Centro de Formacao Juridica e Judiciaria* (CFJJ),²¹ fifteen years after the law was passed, the law has not been well or widely implemented. These implementation problems have their roots in weak political will and lack of resources. As a result of fifteen years of inadequate funding, lack of trained personnel, and the absence of other necessary resources, the National Land Cadastre, overseen by the National Directorate of Land and Forests (DNTF) of the Ministry of Agriculture, has been unable to extensively delimit and record — and therefore safeguard — community landholdings across the country. By 2010, a DNTF briefing indicated that out of an estimated 3,000 or more communities in Mozambique, only 323 communities, covering 7,993.8 km² (less than 10% of the area of the Mozambique), have had their lands delimited.²² As a result, land rights acquired by custom and occupation remain invisible on official maps and thus vulnerable to expropriation and elite capture.²³

Meanwhile, over a decade after the *Lei de Terras* was passed, it appears that that rural Mozambicans' awareness of their land rights under the law is weak. Even in those instances where people do know that they have land rights under law, they often have little idea of how to claim these rights in practice, or defend and enforce their land rights during interactions with investors, state officials, or other powerful outside interests.²⁴

19 Within the text of the *Lei de Terras*, women's right to hold land is established three times. First, Article 10 makes clear that “National individual and corporate persons, men and women, as well as local communities may be holders of the right of land use and benefit” (Article 10(1)). Second, in regard to individual titles, Article 13(5) asserts that, “Individual men and women who are members of a local community may request individual titles, after the particular plot of land has been partitioned from the relevant community land.” Third, Article 16(1) decrees “The right of land use and benefit may be transferred by inheritance, without distinction by gender.”

20 Constitution of Mozambique, Article 36.

21 *The Centre for Legal and Juridical Training* is a legal training institution under the aegis of the Mozambican Ministry of Justice.

22 *Direcção Nacional de Terras e Florestas*, Government of Mozambique, *Relatorio Nacional sobre Delimitacao de Terras Comunitarias* (2010).

23 Simon Norfolk and Christopher Tanner, *Improving Tenure Security for the Rural Poor: Mozambique Country Case Study*, Legal Empowerment of the Poor Working Paper 5 (FAO, 2007), available at [ftp://ftp.fao.org/docrep/fao/010/ko786e/ko786e00.pdf](http://ftp.fao.org/docrep/fao/010/ko786e/ko786e00.pdf). Given the definition of “community” in the *Lei de Terras* (1997) and the resulting implication that all land in Mozambique is already and always has been held according to custom by communities, according to the law's precepts, if all communities had been delimited, cadastral maps would now show most, if not all, of Mozambique already occupied and with secure community-held title, leaving little, if any, “free” land.

24 Carlos Serra Jr. and Christopher Tanner, “Legal Empowerment to Secure and Use Land and Resource Rights in Mozambique”, in *Legal Empowerment in Practice: Using Legal Tools to Secure Land Rights in Africa*, ed. Lorenzo Cotula and Paul Mathieu (London: IIED, 2008), at 61-70.

Furthermore, the law itself fails to deal with certain key issues. Specifically, there are no state oversight systems to ensure against intra-community injustices, no village-level mechanisms to help women enforce or protect their land rights,²⁵ no penalties for discriminatory intra-community practices, and no rules to protect the poor and other vulnerable groups from unconscionable land transactions. In combination with other factors, these lacunae in the law have meant that women's and other vulnerable groups' land rights have not been adequately protected and enforced. Despite the many provisions in the *Lei de Terras* that affirmatively assert and protect women's rights, research has shown that women's land rights remain vulnerable. According to one report: "Very often the 'customary norms and practices' recognized by the Land Law do in fact go against Constitutional principles. This is especially the case today with increasing numbers of cases where women are widowed at a younger age than usual. Traditional mechanisms to provide security for [older] widows then do not come into play. Their rights are then vulnerable to capture by male community members who use customary systems to take over land."²⁶

Mozambique's *Lei de Terras* also does not create any measures to establish downward accountability for community leaders. There is no state oversight to ensure that local leaders are managing community lands in good faith. Should a community leader administer and manage community land and natural resources in a manner that disadvantages the community, or with which the community does not agree, there is no local/accessible forum articulated in the law in which community members can seek redress. The law also fails to establish complaint procedures that communities can use to overturn the action or decision, or to make that leader responsive to the community's demands and interests. Communities can bring the matter to court, but this process is expensive and burdened by bureaucratic procedures that are often difficult for rural villagers to navigate.

Most importantly, under the *Lei de Terras*, although communities must approve an investor's application for rights of use and benefit over communally held lands, there are no mechanisms (short of filing a lawsuit) to ensure that investors fulfill any benefit-sharing agreements that they enter into with

25 Should local leaders fail to stop a family from dispossessing a widow from her lands, the widow would have to take the matter out of the village to *localidade*, or district officials, or to the lowest functioning level of the state justice system, located at the district headquarters. Taking the matter outside of the village is a difficult step for widows and other vulnerable community members, who often do not have either the knowledge of or the resources to challenge land-grabbing within the formal legal system.

26 Seuane (2005) cited in Norfolk and Tanner, *Improving Tenure Security*, *supra* note 28, at 15-16.

communities.²⁷ The agreements are not recorded as formal contracts; an investor may arrive in a community and make significant promises of employment or infrastructure development and then fail to fulfill these promises without any negative repercussions. Indeed, when asked “what mutual benefits they would ask for from a potential investor,” focus groups in communities where investors are currently operating replied:

“We would not ask for anything in return for our lands because it is not useful to ask for anything — these investors never fulfill their promises;” “Investors do not fulfill their promises, so it would only complicate things to ask them for anything when we know that they will not comply — we would ask for schools, hospitals, piped water, employment — but we know they would not deliver;” and “Well, we could ask for something in return [for our land], but we feel that it is no use asking for anything, because investors promise to build this or that but do not fulfill their promises.”



Community meeting to discuss the land delimitation process.

²⁷ Research indicates that almost every application by an investor for a right of land use and benefit does indeed include a community consultation. However, the extent to which the aims of community consultations have been achieved in practice is somewhat mixed. A review of 260 community consultations found that communities were not provided with a genuine opportunity to negotiate and bargain with investors for mutual benefits, payments, or the provision of amenities in exchange for their land. Christopher Tanner and Sergio Baleira, *Mozambique’s Legal Framework for Access to Natural Resources: The Impact of New Legal Rights and Community Consultations on Local Livelihoods*, Livelihood Support Program Working Paper 28 (Rome: FAO, 2006). In the vast majority of consultations, there was only one meeting, lasting only a few hours, with no time allowed for the community to discuss the matter among themselves. The borders of the land being requested were rarely walked or physically verified. Norfolk and Tanner, *Improving Tenure Security*, *supra* note 28; Tanner and Baleira, *Mozambique’s Legal Framework*. Calengo et al. find that such brief community consultations merely served to give the “whole process a veneer of legitimacy.” Calengo, Monteiro, and Tanner, *Mozambique Land*, *supra* note 23, at 13-14. The research concluded that both investors and government officials tended to view consultations not as a mechanism to promote community development and partnership, but rather as an administrative hurdle to “check off” before an application for a right of land use and benefit can be granted. Likewise, anecdotal evidence collected by Calengo et al. indicate that during community consultations government officials often appear to be aligned with investor interests rather than focused on protecting community interests, promoting partnership ventures, or ensuring that communities are appropriately compensated. Calengo, Monteiro, and Tanner, *Mozambique Land*, *supra* note 23, at 13-14.



Community meeting.

II. RESEARCH DESIGN AND METHODOLOGY

TO INVESTIGATE how to best support the implementation of Mozambique’s *Lei de Terras*, the International Development Law Organization (IDLO) partnered with Centro Terra Viva (CTV) to support communities to follow the community land delimitation process and to study the challenges and successes that transpired in the course of these efforts.²⁸ The first study of its kind worldwide, the intervention’s goal was to better understand both the type and level of support that communities require to successfully complete community land delimitation processes, as well as how to best facilitate intra-community protections for the land rights of vulnerable groups.

The study’s primary objectives were to:

- ▶ Facilitate the documentation and protection of customarily held community lands through formal community land documentation processes;
- ▶ Understand how to best and most efficiently support communities to protect their lands through legally established land titling processes;
- ▶ Devise and pilot strategies to guard against intra-community injustice and discrimination during community land titling processes and protect the land interests of vulnerable groups; and
- ▶ Craft country-specific recommendations for the improvement of community land documentation laws and policies in order to improve fairness and make titling procedures easier for both communities and land administrators to follow.

To undertake the objectives, CTV supported 20 communities in Mozambique to complete the community land delimitation process set out in Mozambique’s *Lei de Terras (1997)*. CTV conducted this research in the Province of Inhambane, in the Districts of Jangamo, Homoine, and Morrumbene. Inhambane Province is characterized by fertile lands and an extensive coastline with high tourism potential. Eighty percent of the population lives in rural areas, practicing a

²⁸ The study was also undertaken in Uganda and Liberia. For the full comparative report of the Community Land Titling Initiative’s findings, see <http://www.namati.org/work/community-land-protection/phase-one-findings-and-reports/>.

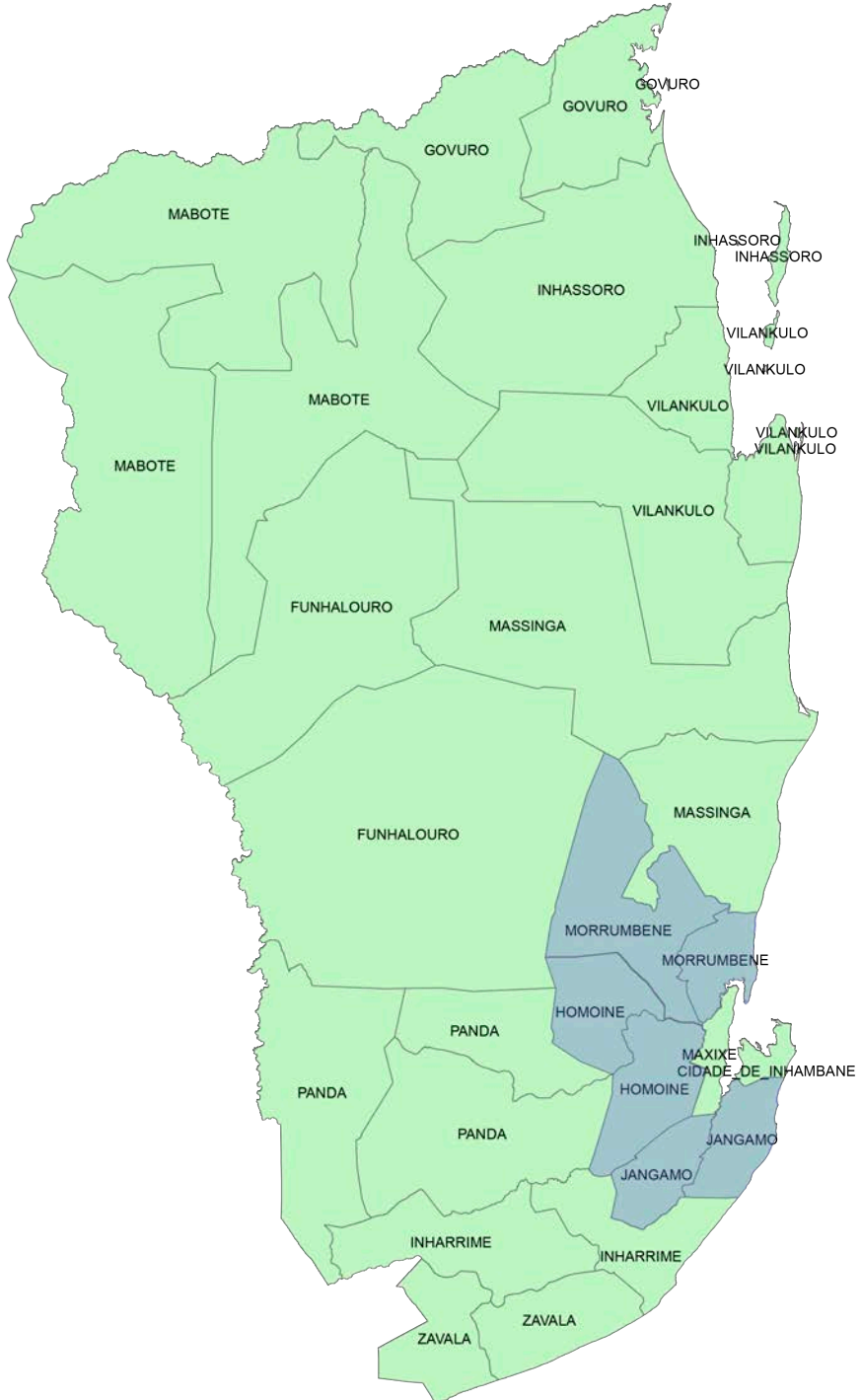


Image 1 - Region of project implementation

combination of agriculture and fishing as their means of livelihood. The main ethnic groups are the Betonga and the Matsua,²⁹ who stake individual and family land claims by planting coconut trees, which are therefore predominant throughout the region. In recent years, the Inhambane Province has seen a remarkable increase in foreigners seeking land for both agriculture and the development of tourist activities, which have resulted in a rising number of land conflicts. Despite the high number of hotels and guest houses springing up along the coast of Inhambane, at times blocking villager's beach access and interfering with their livelihoods, the region had issued very few community land delimitation certificates, as compared to other provinces in Mozambique. Anticipating that communities were therefore experiencing a high degree of land tenure insecurity, Inhambane was selected as an optimal location for the project activities.

A randomized control trial³⁰ was conducted: 20 communities³¹ were randomly selected and then randomly assigned to one of four different treatment groups, each of which received a different level of legal services provision.³² The various levels of support provided were:

- ▶ **Control/Minimal Legal information (Control):** These five communities were assigned to be the “control” group. However, they were not “pure”

29 Alternative spellings are also Bitonga and Matswa.

30 Intervention studies are used to determine the effectiveness of an intervention. The primary goal of conducting a randomized controlled trial (RCT) is to test whether an intervention works by comparing it to a control condition, usually either no intervention or an alternative intervention. RCTs are considered to be the gold standard of intervention studies, as they are the most reliable form of testing the effectiveness of programs and policies, and the only known way to avoid selection and confounding biases. Random assignment and the use of a control group ensure that any extraneous variation not due to the intervention is either controlled experimentally or randomized. That allows the study's results to be causally attributed to differences between the intervention and control conditions. If properly designed and conducted, RCTs are likely able to determine even small and moderate impacts of an intervention, something that is difficult to reliably establish in observational studies. For these reasons, the Community Land Titling Initiative was designed as a randomized controlled trial.

31 The project's definition of “community” was a careful choice made jointly with local officials and leaders. It was also based on the structure of local governance and land administration and management in Inhambane Province. In the region, the customary *Regulado* is the largest community grouping. In some regions of the country, it can encompass vast areas. The *Regulado* often corresponds with the state unit of *Localidade*. The *Regulado/Localidade* is generally composed of three or four sub-regions, each of which is called a *Povoado* (which is both a state and customary unit). Past community land delimitation efforts have worked at the *Regulado* level. However, the vast regions being delimited in this fashion caused some consternation within the Mozambican government. As a result, changes were made to Regulations Article 35 that have created procedural obstacles to the delimitation of areas over 1000 hectares. Furthermore, delimiting community lands at the level of the *Regulado* generally involves upwards of one to two thousand households. The project deemed that full community participation would not be feasible at that level. Weighing these factors in consultation with the field team, all but one of the project communities elected to delimit themselves at the level of the *Povoado*. Interestingly, the one community that chose to seek delimitation at the *Regulado* level was not able to complete the project activities.

32 To select the communities, the team worked through a local, Inhambane-based NGO called ACUDES, which is trusted by rural communities in the study region. The team traveled with ACUDES staff throughout the area, meeting with local customary leaders and government officials and describing the project. Prospective communities were selected to ensure a diversity of landscapes and livelihoods. Leaders were instructed to go back and discuss the project with their communities and, if interested in participating, come to a meeting in Maxixe, which was planned in November 2009. Over 40 community leaders from exactly 20 communities attended this meeting. To randomly sort the communities into their treatment groups, small slips of paper inscribed with a treatment group were placed into a large straw hat, and community leaders were called to select a piece of paper, thus determining their treatment group. This was done publicly for transparency and to place responsibility for the assignment of treatment group onto the leaders themselves.

controls, in that these communities received one project introduction meeting, at which time they were given copies of Mozambique’s land and natural resources laws, a detailed “how-to” guide written by CTV specifically to help support communities throughout the community delimitation processes, and other relevant training manuals in the local language. Efforts were made to encourage these communities to do their best to follow the process on their own. The intent behind this group was to observe how much of the community land delimitation process a community could accomplish on its own, given that it both 1) knew that the process existed and what actions to take and 2) actively desired to document and protect its land.

- ▶ **Monthly legal education and training (Education-only):** These five communities received one three-hour training session each month for 14 months, as well as copies of all relevant laws and regulations and “how to” guides prepared by CTV for the study communities. The training sessions were conducted by CTV’s field team, which was composed of a lawyer and a land delimitation technician/facilitator. All community members were invited to take part in these sessions and specific measures were adopted to ensure the participation of women.³³ Specific training methodologies were developed to ensure that information was transmitted in a culturally appropriate manner, taking into account literacy levels and the time and resource constraints of different community members. The training sessions were designed to both teach communities about their substantive land rights under the *Lei de Terras*, as well as to build their skills and capacity to successfully carry out each phase of the land delimitation process.³⁴ After the training, these communities were given “homework” assignments to undertake sections of the land delimitation process, with the expectation that they would complete the work by the following month’s meeting.

33 Measures included the scheduling of meetings in places and at times convenient for women’s attendance, sending community leaders and community mobilizers door-to-door to specifically request that women attend and husbands bring their wives with them to meetings, and other strategies.

34 The training included information and capacity-building on: customary and other tenure land rights for men and women; national inheritance law, natural environmental and natural resources law; relevant sections of the national constitution; the existence of local legal services and how to access them; the position of customary law within the statutory legal framework; the structure of the national court system; the practical skills required to delimit lands, including conflict resolution tactics, boundary harmonization techniques, the location and role of all relevant government agencies; how to access and complete government forms; how to access required documentary proof; and other necessary skills and information. Training methodologies included practice exercises and question-and-answer sessions, handouts of simple materials on the land delimitation process (copies of Mozambique’s land and natural resources laws, regulations and the *Lei de Terras*’ Technical Annex, a detailed ‘how-to’ guide written by CTV specifically to help support communities throughout the community delimitation process, and other relevant training manuals in the local language), and other techniques.

- ▶ **Paralegal support and monthly legal education and training (Paralegal):**³⁵ These five communities received the monthly legal training described above, as well as the added support of two community-based, elected³⁶ “paralegals” who received monthly training and supervision by CTV’s field team.³⁷ In Mozambique, these individuals were termed “community mobilizers” or “*mobilizadores comunitarios*.” These communities were also given homework assignments to complete between the monthly training sessions.
- ▶ **Full legal and technical support and monthly legal education (Full-service):** These five communities received the monthly legal training described above, as well as the full support of CTV’s field team of legal and technical professionals. In this treatment group, CTV’s field team provided direct support to communities throughout the land delimitation process. This assistance included: support with all map-making efforts and participatory appraisal activities; mediation support during any land conflict resolution meetings; assistance with boundary harmonization efforts (as requested) and all technical geo-referencing activities; help drafting and revising community rules; support in the preparation and presentation of required land delimitation reports; help contacting and liaising with provincial land administrators; and all other support requested.

According to their treatment group, CTV’s field team supported the study communities to follow the process set out in the regulations and accompanying Technical Annex to the *Lei de Terras*.³⁸ These steps are detailed below:

35 Note that the terms “community mobilizer” and “paralegal” will be used interchangeably throughout this paper. These individuals were not certified paralegals according to Mozambican legal standards, but rather trained and supervised community members.

36 In guiding communities to elect their community mobilizers, the field team recommended only a few selection criteria: the mobilizers should be literate, have a high degree of integrity and honesty, and represent a gender balance (one man and one woman should be elected in each community to ensure gender equity). The election methodology was generally determined by the communities themselves. The community mobilizers elected were all young adults (likely due to the requirement that they be literate) and some were the children of community leaders. Their education levels ranged from 7th to 12th grade. While the mobilizers were characterized by both their eagerness and enthusiasm for the job, their youth appears to have disadvantaged them at times. Indeed, over the course of the project their authority to convene meetings was at times challenged by community leaders.

37 The paralegals were elected in November 2010 and trained roughly once a month through January 2011. At the start of the project, the community mobilizers received an intensive two-day training covering the basic tenets of the *Lei de Terras* and the delimitation process, as well as additional training on: meeting facilitation skills; strategies for the inclusion of vulnerable groups; human rights principles; strategies for aligning customary rights with national laws; and strategies for working with customary leaders to integrate national legal principles into local conflict-resolution methodologies; and other topics.

38 Technical Annex to the *Land Law 1997 Regulations*, Article 5, Section 1.



CTV field team teaching community mobilizers about the land delimitation process during the monthly supervision meetings.

Community land delimitation process

Step 1: Formation of a working group

First, an advisory ‘working group’ is first be established to coordinate and lead the community through each step of the delimitation process. The composition of the working group is not defined in the law or regulations although Article 11(2) of the Technical Annex mandates that it should “include a technician with basic knowledge of topography and who shall have the information contained in the Cadastral Atlas.” To ensure that the results of the delimitation process are equitable, just and representative of the community as a whole, the working group must “work with men and women and with different socio-economic and age groups within local communities” and “ensure that they arrive at decisions through consensus.”

Step 2: Education, awareness-raising and election of community representatives

The working group begins by convening meetings and communicating important information about the delimitation process to community members, including:

- The reason for and objectives of the delimitation process;
- Relevant provisions of the law and regulations;
- The methodology of the delimitation process; and
- The advantages and implications of community delimitation.

These meetings culminate in the election of community representatives who will be directly involved in the delimitation process. The minutes of all delimitation-related community meetings must be signed by these representatives.

Step 3: Participatory appraisal and map-making (DRP)

The law defines participatory appraisal as “information given by a local community regarding:

- Its history, culture, and social organization;

- The use of the land and other natural resources and the mechanisms for its management;
- Spatial occupation;
- Population dynamics; and
- Possible land conflicts and the mechanisms for their resolution.”

In addition to generating and compiling this information, as part of the participatory appraisal process the community draws two “participatory maps” of the community. Each is made by separate community sub-groups (usually one male and one female). Participatory maps are defined in the law as: “Drawings designed by an interest group of the community, namely men, women, young people, elders and others, which shows in an initial and relative way, not to scale, the permanent natural or man-made landmarks used as boundaries, the identification and location of natural resources, reference points where conflicts regarding natural resources take place or any other boundaries or relevant features.” Neighboring communities must verify the accuracy of the maps and contribute to a descriptive report of neighboring lands.

Step 4: Boundary definition

Once agreed upon by all neighbors and other stakeholders, boundaries are formally marked on all participatory maps. Where there are no natural or man-made boundaries, communities may reference “other physical markers, such as trees or piles of stones, which indicate the boundaries of the area it occupies.” In such instances, in order to define clearer boundaries, communities may plant new hedges, trees, or shrubs in the presence of their neighbors. The two maps are then compiled by Provincial Geographic and Cadastral Services³⁹ (SPGC) technical staff into one computer-generated ‘cartogram.’ A ‘sketch plan’ and accompanying ‘technical report’ are then generated by state technicians. The sketch plan is a transcribing of the community-generated maps into terms that enable it to be located on the cadastral maps, including geo-referenced points and boundary lines.

39 *Serviços Provinciais de Geografia e Cadastro* (SPGC, Provincial Geographic and Cadastral Services) is the institution responsible for the administration and management of land at the provincial level. It is subordinate to the *Direcção Nacional de Terras e Florestas* (DNTEF) (National Directorate of Land and Forests), which is part of Mozambique’s Ministry of Agriculture.

During this time, the community also creates a ‘descriptive report’ derived from the participatory appraisal that details the structure and history of the community and all of its natural resources, communal areas, scared spaces and important infrastructure.

Step 5: Feedback

The sketch map, technical report, and descriptive report are then presented to the community and all neighboring communities for their verification and approval. All community members should be present, including elders, women, and youth. Once approved, the documents are entered into the national cadastre.

Step 6: Entry into the National Cadastre and Certificate Issuance

Within 60 days, the cadastral service must issue a Certificate of Delimitation in the name of the community. This certificate provides formal evidence that a delimitation exercise was carried out in accordance with the law and certifies the existence and boundaries of a community.

CTV tracked the communities’ monthly progress through the delimitation process, observing and recording their progress through the requisite steps. The field team noted all obstacles confronted and their resolutions, all intra- and inter-community land conflicts and their resolutions, and all internal community debates and discussions. In Mozambique, a pre- and post-service survey of over 900 individuals and more than 100 structured focus group discussions supplemented CTV’s observations. (In total across the three study nations, 2,225 respondents were surveyed and over 250 focus groups were held.)

To ensure that relevant district and regional land administration officers had adequate knowledge of community land titling laws and procedures, CTV conducted workshops to train local, district, and provincial land officials. CTV’s field team also met with provincial and district officials quarterly to keep government apprised of the communities’ progress, at which time CTV briefed officials on the project work to date and all relevant findings.



Community members and SPGC staff work to record the boundaries of the community's land.

III. FINDINGS

THE SEQUENCING of all project activities was driven by the land delimitation process set out in the *Lei de Terra's* Technical Annex. To this end, CTV supported the communities to undertake the following steps:

1. Establishing a group of community representatives (Coordinating Committee) responsible for leading their communities through the community land documentation process;
2. Drawing participatory maps and meeting with neighbors to harmonize all community boundaries, then documenting the agreed boundaries;
3. Drafting a “descriptive report” that describes the community’s history, details the community’s social/governance structure, and lists all community natural resources, among other relevant details (DRP);
4. Drafting and adopting community rules to govern intra-community land and natural resource management;
5. Drafting a natural resources zoning plan;
6. In partnership with SPGC officials, taking GPS coordinates of the limits of the community; and
7. Electing a permanent governing council and reviewing the final technical file.

These procedures gave the project an internal momentum and clear direction: CTV educated the communities about the full arc of the process and then guided them to successfully complete each successive step. The work was exceptionally time-intensive and difficult, necessitating hours of meetings each month, many of which, due to the project’s design, took place without CTV’s direct involvement.

This section sets out the central findings of the investigation. It first provides a brief overview of each of the treatment groups’ experiences following the land delimitation

With adequate legal education and capacity-building, communities can successfully complete many of the community land documentation activities on their own; the data suggest that communities were most successful when supported by trained community paralegals supervised by a legal and technical team.

process, and details the cross-national⁴⁰ and Mozambican findings relative to the question “What type and degree of support is required in order for communities to successfully complete community land titling processes?”

The section then reviews various initial impacts of the land delimitation process in the Mozambican study communities, comparing the Mozambican results with those results from Liberia and Uganda, and makes initial conclusions concerning the potential impacts of community land delimitation activities, including:

- ▶ Conflict resolution and prevention (the mapping and boundary harmonization process);
- ▶ Intra-community governance (the rule-drafting process);
- ▶ Sustainable natural resource management (the natural resources zoning and management plan); and
- ▶ The creation of intra-community protections for women’s and other vulnerable groups’ land rights.

The section concludes by briefly describing the central obstacles confronted by the study communities as they worked to complete the necessary community land documentation processes.

It is important to reiterate that the following conclusions are necessarily preliminary. Further research is currently being undertaken to determine the long-term social and economic impacts of documenting community land rights. Moreover, continued engagement is required to ensure that delimited community lands claims are truly protected over the long-term.⁴¹

A. The Paralegal Support Model: Optimal Assistance For Successful Community Land Delimitation

The following section details the cross-national findings relative to the question “What type and level of support is required in order for communities to successfully complete community land titling processes?”

The findings, derived from comprehensive statistical analyses of the pre- and post-service survey responses and CTV’s field observations, lead to two central conclusions:

⁴⁰ These findings are reported cross-nationally due to the small sample size in each nation; an aggregate analysis of the experiences of all 58 study communities was required to produce findings of statistical significance.

⁴¹ To undertake these activities, Namati and CTV have joined together under the aegis of Namati’s Community Land Protection Program. See <http://namati.org/work/community-land-protection/> and the afterword, below, for more details.

First, the **paralegal support model of service provision proved to be the most successful**. The field teams' observations indicate that community-based paralegals make a positive impact on communities' capacity to complete land delimitation activities by:

- ▶ **Helping communities to address intra-community difficulties that may not be evident to or resolvable by outside technicians or lawyers.** The statistical analyses indicate that the paralegal and education-only communities had more success in overcoming these problems than the full-service group communities. Cross-nationally, paralegal communities remained engaged throughout the project despite intra-community obstacles, while full-services groups tended to reject the work or drop out when confronted with internal tensions.
- ▶ **Increasing community attendance.** The field teams observed that having trusted community members integrally involved in — and hired by — the project helped to galvanize community participation in land delimitation efforts, particularly in comparison to the education-only treatment communities' participation.
- ▶ **Fostering empowerment and creating a sense of community ownership over the community land delimitation work.** The paralegals appeared to further their communities' feeling of empowerment by allowing the process to be more internally driven; leaving communities to complete most project activities on their own motivated them to take the work more seriously than when a legal and technical team completed the work on a community's behalf.
- ▶ **Strengthening both their own community's capacity as well as the capacity of neighboring communities.** Unlike the field teams, the paralegals were locally available on a daily basis. In addition, CTV observed education-only and control group communities proactively seeking out information and support from neighboring community paralegals.

However, CTV observed that community-based paralegals had very low initial capacity and needed frequent training, supervision and support from a legal and technical team.

Second, it became clear that **while paralegal support was efficacious, communities unquestionably need legal and technical support at certain specific times in the community land documentation process.**

The section first describes findings relative to the progress of each treatment group and then briefly outlines the correlation between the level of legal

assistance provided and communities' effectiveness in completing the land delimitation process. The section concludes by summarizing the potential benefits of the paralegal support model and detailing exactly which components of the community land documentation process require active legal and technical support.

1. Overview of community progress by treatment group

Progress of the full-service communities

With CTV's support, four out of the five full-service communities completed the process of submitting their descriptive report to the provincial government for processing. One community, however, abandoned the process very early on due to intra-community difficulties. The community's failure to take part in the project appeared to be due to community members' lack of trust in both district government officials and their own local customary leaders; community members explained, "The [government and our leaders] act against members of the community when we try to claim our rights" and "We are tired, many projects promise things and fail, and we're tired of fighting. The whites will no longer let us pass to the beaches; everything is for them, all our resources."

Although all the communities benefitted from full legal assistance, the full service communities' capacity and performance varied widely, leading to the conclusion that the level of legal service provided may not always be a significant factor in a community's successful delimitation efforts. Rather, CTV observed that strong, credible community leadership, effective community mobilization, and a high degree of community cohesion and participation were the most salient factors in the communities' success.

Progress of the paralegal communities

Communities in the paralegal group made good progress through the land delimitation exercises. In coordination with community leaders and CTV, the community mobilizers scheduled community meetings, built community capacity, and helped their communities to overcome obstacles that arose throughout the process. On average, the community mobilizers were each able to successfully hold six to eight project-related meetings in addition to the monthly meetings run by CTV. As a result of the paralegals' efforts (among other factors) these communities were uniformly able to complete all of the project activities successfully. Notably, all the paralegals managed to lead their community to complete the participatory rural appraisal and to draft the final descriptive report, which the majority of the education-only and

control groups were unable to do. In these efforts, the paralegals' contributions were instrumental. Paralegals also served as important liaisons between the community and CTV, working hard to mobilize community members and raise awareness of community members' legal rights under the *Lei de Terras*.

Importantly, the paralegals/mobilizers demonstrated an ability to hold meetings that were always attended by community members, even if participation was sometimes low. CTV observed that the paralegals' continuous presence in the community allowed them to disseminate project information and schedule meetings more easily than the field team. Moreover, in communities that had weak leadership, CTV observed that the paralegals were able to circumvent some of the leadership-related obstacles and successfully address issues of motivation.

Of particular importance is that the **paralegals were often called on to assist neighboring education-only or control group communities**. Leaders in these communities knew of the paralegals' training and often called on them for help completing project activities in their own communities. In this way, the paralegals not only positively impacted their own communities, but also strengthened and improved the progress of neighboring communities.

However, CTV observed that project activities were not always carried out in a participatory manner, with community leaders and paralegals often driving the process and oftentimes completing much of the work. In some instances, the paralegals experienced conflicts of power with community leaders, who resented that the (relatively young) paralegals were given a leadership role in the land delimitation process. In one community, CTV had to intervene to address a fairly serious conflict between the paralegals and the *Lider Comunitario*, who felt that the paralegals' work undermined his authority. After this conflict was resolved, the community was able to successfully complete all of the project activities under the joint leadership of the paralegals and the *Lider Comunitario*.

Furthermore, while the paralegals were able to record community members' 'shouting out' of all community norms and practices to create the first draft of the community rules, they were not able to lead their communities in a complete analysis or discussion of these existing rules and norms. CTV also noted that the paralegals were not always able to assist their communities during interactions with government officials, particularly during the geo-referencing phase.

Finally, most of the paralegals did not have adequate technical capacity to successfully produce coherent, readable and properly structured descriptive reports. To remedy this, CTV trained, supported and supervised the paralegals

and provide all requested assistance in preparing the reports. With the field team's help, the communities' descriptive reports improved over time.

Progress of the education-only communities

The communities in the monthly legal education-only group were very successful at holding meetings and disseminating information about the land delimitation activities throughout their communities. All communities in the education-only group successfully carried out the elections of their coordinating committees, the participatory mapping and the creation of the cartogram. Three of the communities also successfully completed the boundary harmonization activities, geo-referencing, zoning plan creation, and preparation of parts of the technical file. However, only one education-only community managed to complete the community history and the other components of the DRP.

In general, CTV found that the greatest difficulty faced by the education-only group was the failure to identify someone in the community who could competently write up the participatory appraisal and lead the process of documenting the community's current rules and norms for community land and natural resource management. Another major obstacle affecting all communities in this treatment group was the communities' reticence to interact with provincial-level state agents and government technicians. The education-only communities repeatedly requested CTV's support and intervention when it was necessary to contact SPGC and other government actors.

Critically, in the education-only communities, the elected coordinating committees did not receive sufficient specialized training (outside of the monthly meetings) to play a major part in the process. In their place, community leaders assumed responsibility for their communities' progress, supported by district secretaries, *chefes de zona*, *chefes de 10 casas* and local farming association leaders. This outcome speaks to the importance of rigorously and continuously training and supporting the elected coordinating committees throughout the delimitation process — regardless of the level of support provided to the community overall — to ensure that the process is not co-opted and controlled by the community leaders alone. Furthermore, the committee members' election should perhaps have taken into account their capacity to lead their communities through all aspects and phases of the land delimitation process.

CTV's observation of the education-only group communities' progress indicates that this level of service was insufficient for the successful completion of

delimitation activities and the protection of the land rights of vulnerable groups.

Progress of the control communities

The control groups' progress was used as a measure of communities' capacity to undertake delimitation activities without any assistance. These communities also served as a comparison against which the other treatment groups' efforts and outcomes could be measured.⁴²

Two of the control communities made remarkable progress and were able to complete most of the delimitation activities. These two control communities were able to achieve such progress for various reasons, including: past exposure to the delimitation process, a high number of literate, demobilized soldiers living in the communities (who were able to read the manuals and laws and lead their communities through some of the delimitation activities), and the support of neighboring community mobilizers. The leaders of these control communities routinely sought out the mobilizers for assistance during their participatory mapping and boundary harmonization activities. As a result of these leaders' efforts, the communities were able to complete the geo-referencing activities. However, it appeared that the process was not fully participatory, but rather driven by local leaders.

One of the control groups withdrew from the study because it was chosen to be part of a community land delimitation project promoted by the district government. Although this community had already made some advances on its own before the district stepped in, the district's process mandated that the work begin again from the start. Positively, the community reported that the second time around the process went easily, due in part to community leaders' knowledge of the delimitation activities, gained from reading the manuals and guides distributed by CTV. A community leader explained, "We had to start the process over, but as we had already led some activities, such as participatory mapping and initiated the boundary harmonization work [on our own], [beginning again with the district] was not complicated for us because we had already used the material given to us by CTV."

The other two control communities did not complete the delimitation activities. The first because the community leader most suited to lead the process fell ill for months, and the second because the *Regulo* insisted that rather than

42 It bears repeating that these communities were not "pure" controls in the usual sense (i.e., no outside assistance or intervention); rather, these communities benefitted from one introductory project meeting, at which time they were given copies of the *Lei de Terras*, Regulations, Technical Annex, and a detailed "how-to" guide created by CTV to support the study communities, among other materials. The idea behind this group was to observe how much of the community land delimitation process a community could accomplish on its own, given that it both 1) knew that the process existed and what actions to take and 2) actively sought community land delimitation and was indeed working to accomplish the task without any legal support.

working at the level of the *povoado*, he wanted all three *povoados* within his domain to work together and to seek a delimitation certificate at the level of the *regulado*.⁴³ However, this *Regulo* did not call the leaders or the people from the three *povoados* to meet together to begin the delimitation work, and as a result the process stalled and was eventually abandoned.

2. Correlation between the level of legal assistance provided and community progress through community land delimitation activities

Cross-nationally, statistical analysis of the study communities' progress indicate that the level of service had a statistically significant impact on the stage communities attained in the land delimitation process. **Cross nationally, the paralegal group's progress was significantly stronger and more robust than that of both the education-only and the full-service groups.**

Cross-national statistical analysis of treatment group impact

- ▶ Control group: average completed 19% of the process.
- ▶ Education-only treatment group: average completed 50% of the process.
- ▶ Paralegal treatment group: average completed 58% of the process.
- ▶ Full legal services treatment group: average completed 34% of the process.

A non-statistical analysis of the Mozambican communities' experiences completing the land delimitation process set out in the *Lei de Terras* yields similar results: the paralegal treatment proved to be most effective. The Mozambican data is as follows:

Non-statistical analysis of treatment group impact in Mozambique

- ▶ Control Group: average completed 25% of the process.
- ▶ Legal Education-only Group: average completed 62% of the process.
- ▶ Paralegal Support Group: average completed 82% of the process.
- ▶ Full-Services Group: average completed 69% of the process.

43 See *supra* note 37 for explanations of the *povoado* and *regulado*.

These outcomes lead to several conclusions:

1. Both CTV's observations and the cross-national statistical analysis suggest that when communities have the responsibility to complete most project activities on their own, they are motivated to take the work more seriously, integrate and internalize the legal education more thoroughly, address intra-community obstacles more proactively, and claim greater "ownership" over the community land delimitation process than when a legal or technical professional completes the work on behalf of the community.

However, CTV generally observed that the higher the level of support provided, the more quickly and easily communities were able to complete the community land delimitation processes. While CTV's observational data illustrate that the paralegal group was on the whole the most successful treatment group, it is noteworthy that the paralegal and the full-service treatment groups would have completed the project in equal standing were it not for one of the full service communities' early withdrawal from and rejection of the project, which had little to do with the level of legal services provided, and more to do with internal community dynamics, corrupt leaders, and the presence of multiple foreign investors. One conclusion may therefore be that the particular strength of the paralegals may therefore be related to their ability to help communities navigate through intra-community tensions or obstacles that a full-services team of outside professionals may inadequately address, fail to perceive, or accidentally exacerbate. The Liberian and Ugandan observational data also point to this conclusion.⁴⁴

In fact, the statistical analyses indicate that when a community faces one or more intra-community obstacles (elite interference, weak community cohesion, intra-community land conflicts, etc.), offering full legal services makes no statistical difference to that community's ability to successfully complete the delimitation process than offering no services at all.

2. The relative success of certain education-only and control group communities neighboring the paralegal group communities — as well as the evidence that these education-only and control group communities actively sought advice from neighboring paralegals — leads to the conclusion **that well-trained and rigorously supervised paralegals may not only help their own communities, but may also have spillover impacts throughout the region in which they are based.**

⁴⁴ See the full international report, available at <http://www.namati.org/work/community-land-protection/phase-one-findings-and-reports/>.

3. CTV's observations and experiences illustrate that **while motivated communities can perform much of the internal community work on their own, they need targeted legal and technical assistance to successfully complete community land delimitation efforts.** Most of the communities that did not face intra-community tension and conflict were able to complete the boundary harmonization, mapping and participatory appraisal/DRP activities, but not without CTV's help. CTV also noted that in the absence of paralegal or full-service support, communities had difficulty completing all participatory appraisal/DRP activities and writing up the descriptive report. In particular, due to a combination of logistical obstacles and fear/intimidation, all of the study communities needed CTV's support when contacting government offices or requesting SPGC's services in the geo-referencing activities. Furthermore, it appears that CTV's repeated efforts to increase women's participation were necessary to ensure that the process was participatory and included women and members of other vulnerable groups.

Indeed, CTV's experiences indicate that legal and technical professionals must actively provide the following supports throughout the process:

- Introducing the land delimitation process and providing periodic legal education and capacity-building training;
- Providing mediation and conflict-resolution support during any particularly contentious land conflicts or boundary disputes that communities are unable to resolve on their own;
- Providing legal support and technical assistance during the completion of the community's second and third drafts of their local rules, particularly to ensure compliance with national law;
- Implementing a women's empowerment/participation strategy and convening special women-only meetings to ensure women's full participation in community delimitation activities; and
- Providing assistance to communities to follow all of the administrative components of the community land delimitation process, including liaising with government agencies, contracting professional land surveyors, compiling all necessary evidentiary proof of community land claims, and completing all the relevant application forms.

CTV's experiences also indicate that a legal and technical team must closely supervise community paralegals' efforts, not only to ensure that their work product is of high quality, but also to step in to provide additional support when required. The direct involvement of a legal team may also be necessary

to demonstrate to all stakeholders (government officials, investors, local elites, etc.) that the community's efforts are being supported by lawyers who have the capacity to take legal action, if necessary.

4. The findings suggest that a paralegal-driven process may be less costly — and more scale-able — than the full-service approach, as the model allows a few professionals to supervise multiple community-based paralegals. In Mozambique, the costs of supporting community land delimitation were calculated by treatment group. As facilitated by CTV, the total costs of land delimitation per community were at most \$3,968 USD, with the provision of full services support by CTV's trained technical team. For communities receiving paralegal support, the total cost was \$3,563 USD per community; for communities provided with only monthly legal education, the total cost per community was \$1,717 USD. These figures include all staff salaries, office rent, petrol, office supplies, per diems for government technicians, lunches for community members during the geo-referencing process, and other costs.

B. Boundary Harmonization: A Mechanism For Conflict Resolution

The boundary harmonization exercises⁴⁵ provide strong proof that **community land delimitation is not merely a demarcation exercise. Rather, boundary harmonization is as much a conflict-resolution exercise, and should be treated as such.**

The boundary harmonization process was the most challenging component of the land delimitation process for the Mozambican communities, as it unearthed all existing land disputes along each community border, and at times led to the exacerbation or creation of disputes. Although working at the level of the *Povoado*, rather than the *Regulado*⁴⁶ ensured that many of the communities' borders were well accepted by their neighbors, the 15 treatment

45 The boundary harmonization process involved community mapping, boundary negotiation and conflict resolution with neighbors, and boundary demarcation (tree planting and GPS mapping with SPGC officials). To harmonize the boundaries, delegations of leaders and community members visited the surrounding communities and discussed and identified their common boundaries. The *Regulo* (chief) and other customary leaders were critical members of the boundary harmonization team. However, despite CTV's urging, this process was often characterized by the complete lack of women and youth, due to the perception that issues related to community boundaries are the responsibility of community leaders and men.

46 In Mozambique, the customary *Regulado* is the largest community grouping. In some regions of the country, it can encompass vast areas. The *Regulado* often overlaps with the state unit of *Localidade*. The *Localidade* is headed by the *Chef de Localidade* (a government position), while the *Regulado* is overseen by the customary *Regulo* or chief. The *Regulado/Localidade* is generally composed of three or four sub-regions, each of which is called a *Povoado* (which is both a state and customary unit). The *Povoado* is led by a customary leader (or headman) as well as a *Lider Comunitario*, who is the elected state official at that level. Because the boundaries of each *Povoado* within a *Regulado* are clearly agreed, this meant that the study communities only needed to harmonize two or three of their boundaries (those shared with neighboring *Regulado*). See note 35 for further information on Mozambique's administrative units.

communities confronted a total of 19 conflicts, 15 of which were with a party external to the community (either a neighboring community or a neighboring individual/family whose lands shared a border with the community). The parties to the conflict were generally able to come to a consensus, although often only after weeks or months of deliberation, mediation, negotiation, and oftentimes the intervention of the *Regulo* and relevant district officials. In such instances, CTV provided conflict resolution services to *all* treatment groups, as it was deemed risky to deny communities this mediation support in the face of a potentially escalating conflict.⁴⁷ One example of a particularly complex boundary harmonization negotiation is described below.

Throughout the intervention, CTV dedicated a great deal of time and energy to conflict resolution during the boundary harmonization process. Of the 15 inter-community land conflicts and four intra-community land conflicts emerged during the treatment communities' boundary harmonization process, only four of the 19 conflicts remained unresolved at the end of the intervention. **CTV observed that while the potential for conflict was significant, communities' desire to obtain delimitation for their lands created a strong impetus for them to peacefully resolve long-running boundary disputes.** To this end, communities adopted a wide range of conflict-resolution and compromise strategies, oftentimes settling decades-old land conflicts. In sum, the boundary harmonization process resolved many more conflicts than it created.

The boundary conflict between Guiconela-Guifugo and Painsane

The communities of Guiconela-Guifugo and Painsane are located along the coast in the District of Jangamo. They are separated by a common boundary identified by massaleiras trees and concrete markers.

Before Mozambican Independence, the community of Guiconela-Guifugo was led by a man named Thowane who repeatedly raped the wives of men who had gone to work in the mines in South Africa. One zone of the wider community revolted against this behavior, and banned Sr. Thowane from entering the area under penalty of immediate assassination. As part of their revolt against Sr. Thowane, the members of this zone seceded from Guiconela-Guifugo and shifted to become part of the neighboring community of Painsane. Painsane thereafter started counting this zone as part of its community, collecting taxes from residents, registering voters, and performing all other administrative du-

⁴⁷ Although this support adulterated the purity of the group's differences in treatment, CTV and IDLO decided that the need to avert conflict and violence outweighed the sanctity of the experimental design.

ties. Guiconela-Guifugo, however, never accepted the zone's succession, and considered the area to have been "invaded" by Petane, albeit with the consent of the residents themselves. In the ensuing decades, the communities had tried to resolve the matter, but reported that these negotiations always ended in death threats shouted between leaders.

As a result, the entire zone became a point of conflict during the boundary harmonization exercises. Multiple meetings — some including emotional testimony recounting the traumas that led to the succession — were necessary to fully resolve the matter and arrive at a mutually-agreed solution. CTV's field team provided mediation support on a number of occasions. After much discussion of the origins of the schism, CTV led the communities to agree that the zone would thereafter be considered part of Paindane. However, while Guiconela-Guifugo held that the boundary line between the communities was the road linking the city of Jangamo to the sea, Paindane did not accept this as the boundary line, so representatives of both communities went to walk the boundary limit and address this aspect of the conflict. The representatives thereafter spent three days progressing along the boundary, stopping to confirm agreed limits and resolve disputed areas. Various points were brought into conflict by certain families along the border who wanted to be considered part of one community or the other. These conflicts were resolved according to the families' preferences.

The final point of contention concerned a large stone in the middle of the Indian Ocean called "Guissimiane." The leaders of Paindane argued that the stone was considered to be part of their community. This assertion was challenged by the leaders of Guiconela-Guifugo, who maintained that this was a cultural site for their community, where their ancestors had performed traditional ceremonies. After much debate, it became clear that there was an investor interested in developing a tourism venture along the beach, and so both communities wanted to claim the beach as theirs so as to reap any potential benefits of the investment. When CTV asked the leaders of Paindane if they were aware of the cultural significance of the rock to Guiconela-Guifugo, they agreed that yes, they were aware of it, and conceded that Guiconela-Guifugo had ownership rights over the rock, and therefore to the beachfront in line with it. With this concession, the boundary conflicts were resolved, and the two communities thereafter held a large celebration to mark the end of what had been a generations-old dispute.

The success of the conflict resolution efforts were evident in the post-service research: respondents in both the post-service survey and the focus groups reported that CTV's work in their community helped resolve a number of long-



Community leaders shake hands to commemorate the successful resolution of a boundary conflict mediation.

running land conflicts that had negatively impacted their sense of land tenure security. Importantly, no survey respondents or any focus group participants reported that the land delimitation process had created even one new land conflict in any of the 20 study communities. **As reported by post-service focus groups and survey respondents, the resolution of long-standing land conflicts both within and between communities appears to be having an overall positive impact on land tenure security and intra-community conflict.**

A central finding is therefore that facilitating agencies should proactively prepare for land conflict resolution to be a central component of community land delimitation work. They should craft curricula and trainings designed to support open, non-violent communication during boundary negotiation, compromise strategies, and mediation/dispute resolution tactics. Facilitating agencies should also stand ready to support resolution of particularly intractable land conflicts.

However, it is critical to note that once begun, community land delimitation processes should be seen through to their successful completion. If boundary conflicts are not fully resolved and harmonization efforts left incomplete,

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then the delimitation process may contribute to increased conflict and tenure insecurity in the region. Before beginning delimitation work with a community, government or civil society facilitators should carefully screen communities to ascertain whether they are committed to authentically resolving local boundary conflicts. Facilitators should clearly explain the risks of abandoning community land delimitation efforts mid-way through the process and provide extensive conflict-resolution support until all land conflicts are resolved.

C. Drafting and Amending Community Rules: Supporting Communities to Improve Local Land Governance

Article 24 of the *Lei de Terras* recognizes that land rights acquired in accordance with customary norms and practices may continue to be governed by customary practices and norms, provided that they do not contravene the Constitution of Mozambique. Accordingly, when making decisions concerning land administration and management, communities may observe local rules, norms and customs, laws, and regulations approved by the state, or any other rules they see best to create, provided that they are not unconstitutional.⁴⁸ However, the *Lei de Terras* does not establish a mechanism or oversight structure to ensure that community rules do not violate the Mozambican Constitution or other national laws.

Meanwhile, focus groups reported that post-war changes — including population growth, increasing competition for land, and the diminishing ability of the *Regulos* to exert control over community land and natural resource use — had weakened community rules regulating the sustainable use of natural resources. One focus group explained, “Previously our *Regulo* imposed rules for use of our common lands, but after the Civil War, he was not able to control the population who had entered the community seeking refuge from the war.” A number of focus groups lamented that while rules exist in theory, people do not follow community rules anymore. For example, one focus group explained, “In the past, the rules were more severe. Today the rules exist but they are not followed. It is normal to see a lot of grass on community land, in plots that have already been given to community members. It is also normal to see the river dirty, with the animals drinking water in the same place where people are washing clothes and taking water to drink, as if there were no rules at all.” Another group explained, “In our community there have always been rules for

⁴⁸ The *Lei de Terras* sets forth that, “In rural areas, local communities shall participate in: the management of natural resources; the resolution of conflicts; the process of titling... [and] the identification and definition of boundaries of land that the communities occupy. In exercising the competences listed [above]... The local communities shall use, among others, customary norms and practices” (Article 24, Sections 1 and 2).

the use of common areas — the chiefs always instructed the community to not misuse the lakes and preserve the natural resources, but these rules have been neglected by community members.”

Although the Technical Annex does not require the analysis of land-related customary rules and norms, it was deemed useful for the study communities to identify, analyze, and write down all rules and norms governing their community land so as to address head-on issues of intra-community governance, women’s land rights, and sustainable natural resource management. This was also done to create parity with the legal procedures being followed in Liberia and Uganda. The process was designed to have four components:

- ▶ A “shouting out” of all existing laws, in an unedited, community-wide brainstorming session;
- ▶ Analysis of these rules in light of Mozambican laws, evolving community needs and desired amendments, additions, or deletions;
- ▶ The creation of second and third drafts of these rules; and
- ▶ Formal adoption by community consensus.

Due to time constraints, most of the Mozambican study communities were only able to brainstorm and write down a list (first draft) of their existing customary norms, rules, and practices relative to land and natural resources. Of the 20 study communities, 14 managed to produce a first draft version of their customary rules; of these, only one (a full service community) was able to produce a second draft.⁴⁹

Critically, **an important finding is that the “shouted-out” inventories of the communities’ current rules revealed that some communities’ existing rules violate constitutional principles and infringe on the land inheritance rights of women and other vulnerable groups.** One typical example can be seen in the first draft of one community’s rules, which included the mandate that when a male head of household dies, inheritance of the family’s land goes automatically and exclusively to his sons, while his daughters may only use the lands with their brothers’ consent. This rule violates Articles 36 and 83 of the Mozambican Constitution (which concern equality for men and women and equal inheritance).⁵⁰ Unfortunately, because the Mozambican communities did not progress farther than brainstorming a list of their current community

49 Phase II of the work, to be undertaken by Namati and Centro Terra Viva from 2012 until 2015, will support communities to complete this process and formally adopt their community rules.

50 Constitution of Mozambique, 1990, amended 2004, Articles 36, 83. (“Principle of Equality. Men and women shall be equal before the law in all spheres of political, economic, social and cultural life;” Article 83, “Right of Inheritance. The State recognizes and guarantees, in accordance with the law, the right of inheritance.”)

E Não Há outra forma de combater a
 doença aqueles que não tem Provizador.
 NÃO Há Parcela de terra sem confiança da
 comunidade Por isso não TEMOS terreno em Restos.
 Homens e Mulheres gozão das mesmas leis:
 Por essa Razão tem direito a usar a terra e
 outros Recursos naturais como o Homem usa.
 Em caso de falcer o seu marido o encargo da
 fica com a mulher do Falcido:
 • Este é o sinal de gozar mesmos direitos
 Homem e mulher:
 A Viuva na comunidade tem tempo que deixa
~~esperar~~ Passar Para casar com outro Homem:
 Dois Anos.
 Em caso da Responsabilidade, o costume Para o Homem,
 casa depois de um ano.
 • NÃO TEMOS areas sagradas como cimiterios locais.
 mas temos cimiterios familiares.
 NA comunidade existe especies Florestais conque
 fabricamos canvaõ vegetal, mangueira, casueiro
 matuneira etc.
 NA comunidade os chefes junto com a população
 Resolvem o Problemas locais.
 Para garantir o melhor Intendimento.
 A comunidade está organizada a Resolver conflitos:
 chefe do quarteraõ, chefe da zona, o lider comunidade
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Community members meet to discuss community rules for land and natural resource management.

rules, the communities have yet to establish intra-community mechanisms to safeguard women’s land rights.⁵¹

However, in Uganda and Liberia, where communities completed the rule-drafting process — which culminated in the adoption of community “by-laws” in Liberia and community “constitutions” in Uganda — **the process of analyzing and amending community rules, norms, and practices appears to have had significant initial impacts.** In Uganda and Liberia, the field teams observed that the constitution/by-laws drafting and adoption process allowed communities the space to identify, debate, and determine rules in a participatory manner, often for the first time in living memory. In the process, community members had the opportunity to both argue against rules they felt to be arbitrary and discriminatory as well as advocate for the inclusion of rules that would protect or promote their interests related to community land and natural resources.

The by-laws/constitution drafting process appears to have resulted in four significant shifts in various facets of local governance in the Liberian and Ugandan study communities. The findings indicate that the process:

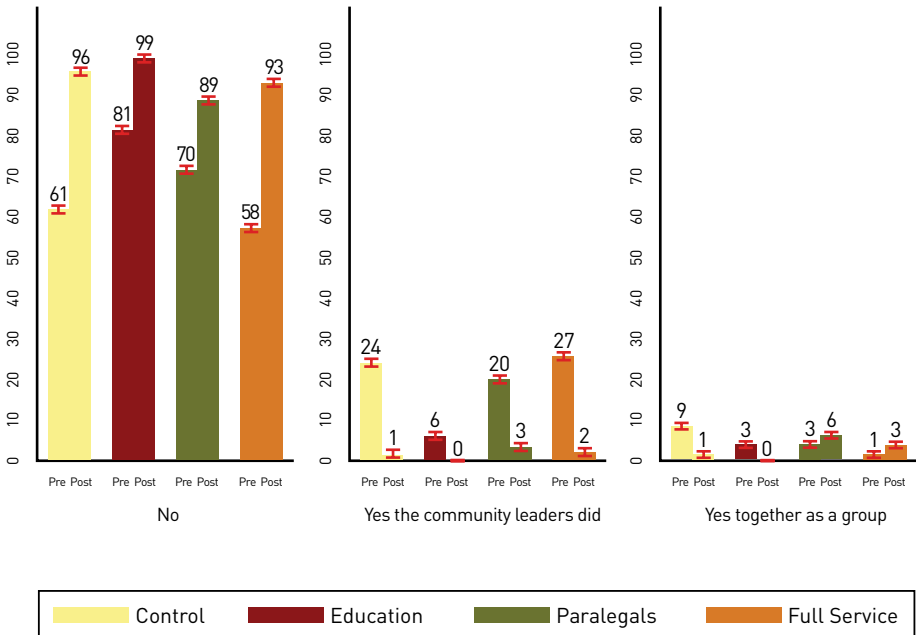
⁵¹ See Section E, Protections For The Rights of Women and Other Vulnerable Groups, for greater detail.

1. Effected a transfer of decision-making authority from local customary and state leaders to the community members themselves;
2. Created the opportunity for community members to institute new mechanisms to hold local leaders downwardly accountable and improve leadership;
3. Allowed communities to establish consistent norms and institute clear, publicly known penalties for infractions; and
4. Helped to align local custom and practice with national law (after learning about national laws relevant to community land and natural resources administration, community members took steps to change local rules so that they no longer contravened national law).

Unfortunately, because the Mozambican communities did not progress past a first draft of their community rules, the Mozambican data does not show similarly positive impacts on intra-community governance. In stark contrast

Table 2: Responsibility for changes to rules governing the common areas

Has the community changed the rules or introduced new rules governing the common areas?
 (% respondents answering "Yes")



to the data from Liberia and Uganda, the data indicate that the community land delimitation process did not create the opportunity for communities to institute new mechanisms to increase community members' participation in local decision-making, hold their leaders downwardly accountable, or to improve leadership and governance of land administration and management.

For example, when post-service respondents in Mozambique were asked if they had changed their community rules, and if so, who was responsible for making these changes, most respondents reported that there were no rule changes in their communities. Interestingly, respondents across all four groups reported more rule changes in the year *preceding* the intervention than during the year that the intervention took place. Focus groups were also unanimous in reporting that their communities had not made changes to community leadership, governance, or decision-making processes during the period of the intervention.

Such data underscore the finding that because Mozambique's land delimitation procedures do not require that communities compile, discuss, and amend their existing rules for land and natural resource management, the magnitude of governance changes resulting from the community land documentation process was significantly reduced. Indeed, the Mozambican experience indicates that land documentation processes that do not include rule-drafting processes may fail to effectuate necessary improvements in local governance.

Such findings support the conclusion that a community land delimitation process that does not include mechanisms to improve local governance may at best be described as a lost opportunity to effect powerful intra-community change, and at worst may make land dealings more unjust or further bad faith land appropriation. The aim of a community land claim formalization process should not only be to demarcate and register community land on national maps, but also to stimulate a fully participatory, democratic review and modification of community land and natural resource management practices.

D. Drafting Natural Resource Management Plans: An Opportunity to Promote Sustainable Use and Conservation

Before the inception of project activities, when asked about the use and management of their common areas and natural resources, Mozambican focus groups described how "old" rules designed to ensure sustainable and equitable land and natural resource management are eroding. Focus group participants explained that as land becomes scarce and increases in value, more

fluid systems of land sharing are giving way to individualized land claims, with widows, the elderly, and the poor most vulnerable to land-grabbing.

Focus groups in all communities explained that their community had common areas used by all, specifically: the ponds, streams and rivers where they fish, gather water, bathe, and wash their clothing, as well as the fertile banks of these waterways where community members cultivate rice and vegetables.⁵² Some communities also described having forested areas where they could hunt for small animals, cut stakes for their houses, and gather firewood. Other communities described open areas or cattle pastures where they practiced agriculture and grazed their animals. The coastal communities explained, “We have the sea as a common area, where ... members of the community go to fish for our own sustenance.”

When asked if there were any specific rules to govern the use of their community’s common areas, the majority of groups described rules that serve to keep lakes and rivers clean and well cared for, as water is not plentiful in the region. Focus groups explained that in their communities, “There are rules that we created ourselves to regulate use of the common areas, for example: ‘do not wash your clothing in the place that we take water to drink’, and ‘do not plant your crops at the source of the river, because it might dry up the river;’” and “All community members must take care of the river, not purposefully dirtying the river, not leaving the margins of the river full of grass, planting along the margins of the river in an orderly fashion.” One community’s focus group explained: “There are rules for the use of common lands: how to use these areas to fish (to discipline the fishermen) and in relation to the forest, there are rules to prevent forest fires. All community members can use the common areas, but the beaches and the streams are usually used by men, and children are advised not to use the larger rivers [because it is dangerous].”

Many communities described having a very structured system for managing cultivation on the riverbanks, overseen by an individual or special group. One focus group explained, “There are people in the community who monitor the use of the riverbanks, controlling the cleaning of cultivation areas; when people leave the area full of grass, these managers call attention to it.” Another group described how, “There are parcels of land, zones, that are ceded to people by the chief who controls the use of the riverbanks. Nobody can access these areas without consulting the *Chef da Zona*, and nobody may transfer this land [to another person] without his knowledge.” Those who cultivate along the

52 Of note is that in a few communities, focus groups explained that they no longer had any common areas: “Here there is no un-owned land, each piece of land has its owner, who takes care of his land. Our animals are grazed on our own land or on the land of our neighbors.” Another community complained: “There are no longer common areas for hunting in the area because all the spaces have already been occupied for the practice of agriculture. The only space that the community shares is the river that serves to draw water, wash clothes and grow on its banks.”

riverbanks often pay a fee to support their maintenance and supervision, and in many communities all residents are mandated to take part in routine river clean up efforts to help ensure that the river water remains clean and that grass or weeds had not been allowed to block up the river and impede its flow.

Every community that had a system of rules described a mechanism for monitoring them. These communities' focus groups explained that their rules were monitored and enforced by: all members of the community, a specially-appointed management committee in conjunction with local leaders,⁵³ and/or government technicians. Focus groups generally described using two or more of these systems in conjunction. Interestingly, many focus groups relayed that the primary mechanism used to ensure rule compliance and enforcement was for community leaders to periodically gather the community together in meetings, explain the reasoning behind the rules and the importance of following them, and allocate the responsibility for monitoring the community's use of the common areas to the community members. Some focus groups said that while this was done in the past, "... Now we don't talk so much about the rules in public meetings because they are discussed by and within families — in each family the elders talk about rules for use of the common areas."⁵⁴

However, a full quarter of the focus groups explained that their community no longer had any rules governing their common areas. They described how "There are no rules for the use of common areas. All community members use the waters of the river without restrictions. There are no rules about who may use them or not." Another group explained how "No rules exist concerning the use of common areas, although in general, it can be said that resources should be used in a way that does not prevent access by other people and so does not contaminate the waters of rivers." A few of these focus groups elaborated that there *had* been rules in their community in the past, but such rules were no longer in force; others explained that while rules exist in theory, people do not follow them anymore. For example, one focus group explained, "In the past, the rules were more severe. Today the rules exist but they are not followed. It is normal to see a lot of grass on community land, in plots that have already been given to the community members. It is also normal to see the

53 In the communities that described having local management committees, focus groups explained that the local management committee often makes periodic visits to the common areas to check up on the community's practices. Focus groups explained how: "To monitor the rules for example pertaining to the riverbanks, we chose *Chefes de Río* ("Managers of the River") to be responsible for exercising control over the use and surveillance of the common areas — these men control the water in the river and make sure that it is being used adequately, and that the agriculture on the riverbanks is being done in good form." In other communities, focus groups described how *Liders Comunitarios* delegated monitoring and enforcement of community land and natural resource management rules to the *Chefes de Zona* or *Chefes de 10 familias*.

54 Similarly, another focus group stated: "...These rules are passed from generation to generation, our children are born and we teach them to use resources in the mandated way." Still others described how "the rules are discussed in places where community members congregate — in community meetings, churches, markets — but the responsibility is on the parents and the heads of each household to teach the rules to their families."

river dirty, with the animals drinking water in the same place where people are washing clothes and taking water to drink, as if there were no rules at all.” Another group explained, “In our community there have always been rules for the use of common areas — the chiefs always instructed the community to not misuse the lakes and preserve the natural resources, but these rules have been neglected by community members.”

Focus groups tended to attribute these changes to population increases, growing demand and competition for land, and decreasing control by the *Regulos*. One focus group said, “Previously our *Regulo* imposed rules for use of our common lands, but after the Civil War, he was not able to control the population who had entered the community seeking refuge from the war.”

Critically, most focus groups described that there is insufficient riverbank land (the most fertile land, as the region is characterized by arid, sandy soils) for all families. Focus groups reported that during those times of the year when community members rely on common areas to meet their household needs, “More influential people usurp the lands of vulnerable groups to plant rice.” Furthermore, some focus groups reported that the distribution of riverbank parcels exacerbates class inequity: in their communities, members-only associations (that one must pay due to join) claim the riverbanks for their activities. They explained, “These rules are not fair to those people who have no money and cannot join an association; they automatically lose the right to cultivate the land which belongs to the whole community.”

Other focus groups described a recent practice of certain community members owning and controlling parcels of what had formally been considered community land. One focus group explained, “The rules have changed because for example, in the past, to use the land on the riverbank you didn’t have to pay any fee, everyone could have access, but today you have to pay to use the banks of the river, as if they had owners!” Similarly, another focus group described how influential community members abused the common areas, claiming them as their own. They argued, “These rules are not fair for those who want to cultivate on the riverbanks and do not have a space — we think that we should return to a process of redistribution of parcels; today some community members sell their parcels along the river as if these land were their personal property!” Such sentiments point to a breakdown of both the shared use of the common areas and the enforcement of customary norms, with certain families improperly claiming common land for their personal, exclusive use, and then selling or renting it as “owners.”

Yet because the *Lei de Terras* and accompanying Technical Annex do not mandate that communities discuss their rules concerning governance of land and natural resources as part of the land delimitation process, these issues

were never discussed in an open community forum. Although CTV facilitated communities to “shout out” a list of all of their current rules, by the conclusion of the intervention the study communities had not yet started the process of analyzing and amending community norms and rules related to natural resource management. While the communities made zoning plans to complete the delimitation process, these plans were more spatial than conceptual, and did not address rules for use of natural resources. As such, the articulated frustrations were not addressed.

Indeed, when asked in the post-service survey if their community had changed or strengthened any rules concerning land and natural resource management over the course of the project, the majority of post-survey respondents reported that either there were no rule changes, or if there had been, they were not aware of them. Furthermore, when asked if they had observed any changes to their community’s land and natural resource use or management practices over the past year, post-survey respondents in Mozambique overwhelmingly reported seeing no changes. **Such results are in marked contrast to the data in Liberia and Uganda, where the drafting and adoption of natural resource management plans were an obligatory part of the community land delimitation process.**⁵⁵

In Uganda and Liberia, the process of drafting land and natural resources plans had two main impacts:

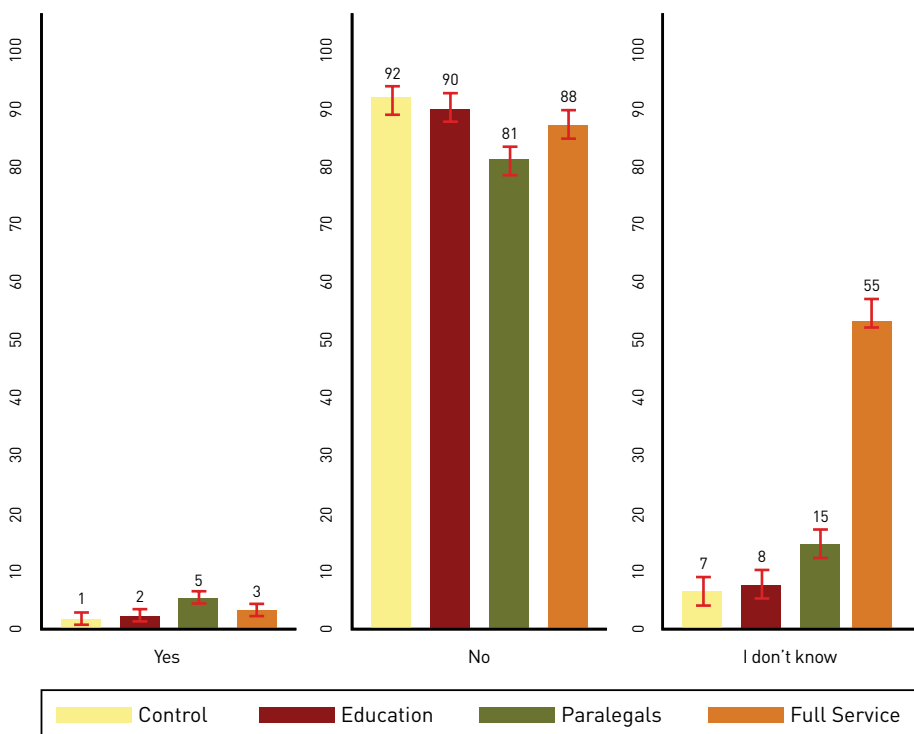
1. **The field teams observed that it prompted communities to craft new rules for conserving resources and to remember and reinforce old rules promoting sustainable use of natural resources.** This included rules to conserve forest resources such as firewood and thatch, to ensure sustainable hunting and fishing, and to ensure proper sanitation and the maintenance of clean drinking water. As a result, community members reported a growing sense of conservation and a resulting dedication to sustainable natural resource use, which they attributed to their revival of “old” rules.
2. The field teams’ observations and the changes to the various drafts of the natural resource management plans indicate that **the process of creating the plans brought increased attention to monitoring outsiders’ use of community lands and natural resources.** These rules generally were not designed to fully impede outsiders’ use of community natural resources, but rather to allow the community to better control, monitor, and tax “outsider activities” to ensure sustainability and community profit. Communities’

55 In Uganda, an average of 78% of respondents across all three treatment groups reported that their community had made changes to their rules, and 46% of these respondents reported observing immediate changes to their communities’ land and natural resources use and management; the corresponding Liberian percentages were 63% and 16%, respectively. See <http://namati.org/work/community-land-protection/Phase-One-Findings-and-Reports> for these reports.

resulting plans include rules that promote and enforce: conservation of key resources like firewood, thatch, and other building materials; forest conservation; water sanitation/maintenance of clean drinking water sites; sustainable hunting and fishing; and other protections.

Table 3: Reported changes to community land and natural resource management rules

In the last year did the community adopt new rules or strengthen old rules about land and natural resources?
(% of respondents)



Indeed, the Ugandan and Liberian communities' land and natural resource management plans indicate communities' receptiveness to outside investment, but within a regulatory and participatory framework that ensures:

- ▶ The community itself is involved in discussing and negotiating all aspects of the investment project;
- ▶ Restrictions are put into place to ensure community health, environmental and cultural protections;

- ▶ Benefits/fair compensation accrue to the community; and
- ▶ A signed contract ensures that all community benefits are paid.

However, because the Mozambican communities did not complete the full rules-drafting process, and consequently did not discuss rules for land and natural resources, no such revival of old rules for conservation, equitable distribution, or sustainable natural resources use occurred. The communities also did not have critical discussions of how they would respond to potential future requests by investors to share their land. Given the trends described by the Mozambican focus groups, such considerations are urgently needed.⁵⁶

In sum, by failing to include a mandated process for community review and amendment of local natural resource management rules, Mozambique's land delimitation process misses a critical opportunity to support communities to address intra-community natural resource management difficulties or proactively plan for future interactions with outside investors.

E. Protections for the Rights of Women and Other Vulnerable Groups

Throughout the community land delimitation activities, CTV adopted specific measures to ensure the participation of women and other vulnerable groups during community land delimitation activities. These activities included:

- ▶ Requesting that each paralegal treatment community elect one male and one female paralegal;
- ▶ Ensuring women's inclusion on the interim coordinating committees;
- ▶ Repeatedly urging communities to include the voices and interests of women, youth, and other vulnerable groups in all activities throughout the project;
- ▶ Scheduling community land delimitation meetings — and requesting that paralegal and education-only treatment communities organize and schedule all of their own meetings — in places and at times that women could more easily attend;
- ▶ Sending community leaders and paralegals door-to-door throughout their villages to specifically request that women attend project meetings;
- ▶ Asking men to bring their wives with them to project meetings; and

⁵⁶ See Appendix C for further detail.

- ▶ Instructing paralegals to mobilize women and other vulnerable groups to attend their meetings.

CTV also worked both to teach communities about women’s substantive land rights and to ensure that women’s participation in community meetings equaled that of men’s participation. The project then assessed whether the level of assistance provided had an impact on: 1) women’s meaningful participation in the various land delimitation activities, and 2) the substance and strength of women’s land rights (whether communities adopted measures or made efforts to protect and strengthen the land rights of woman and vulnerable groups).

1. Women’s participation in community land delimitation activities

Pre-service focus groups composed only of women were asked about women’s participation in community meetings and activities. The general sentiment within each group was that slightly more than half of the women in the groups regularly attended their community’s meetings. However, of those women who did attend meetings, only one third of the women interviewed reported feeling free to contribute their opinions and ideas during the meetings.

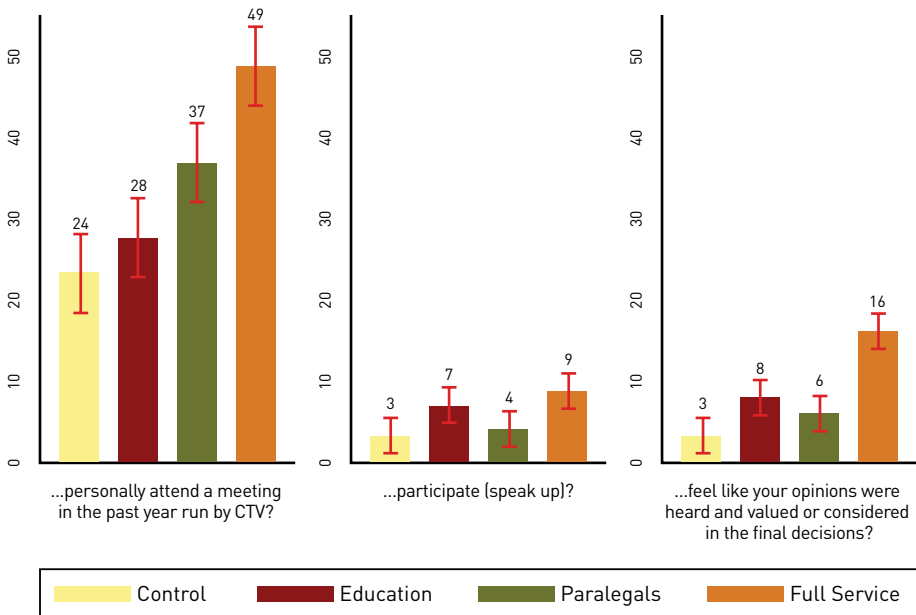
When asked what factors affected women’s willingness to speak at meetings, with some notable exceptions, women’s pre-service focus groups generally described a community environment that was, if not hostile to their voices, unsupportive.⁵⁷ The majority of women’s focus group participants reported that, “Often we are afraid and ashamed to speak at community meetings because people laugh at us when we speak. They say we do not have valuable opinions and when we speak we feel like we’re stealing their time;” and, “Women and youth are considered to be people with nothing to say in community meetings.” Other women explained that, “In this community they give women the opportunity to speak, but we do not feel comfortable talking so we are quiet. The leaders always ask if we have something to say, but we leave our husbands and sons to speak”; and “Men do not consider our opinions, they think that women do not understand certain issues. So we only speak when the discussion concerns issues that are specific to women.”

In this context, CTV’s efforts to rally women’s *attendance* at project meetings were very successful: As a result of both the field team’s and the paralegals’ mobilizing efforts, women’s average attendance in community meetings was equal to men’s average attendance throughout the course of the initiative: an

⁵⁷ Those women who felt free and empowered to speak explained how, “Nothing affects our willingness to talk, women who participate in meetings speak freely, we have no problems and are not ashamed to speak;” and “We speak freely; we state our opinions without fear of the men!” Another group said, “Men often think that women do not serve to give opinions, but in our community women are heard and respected.”

Table 4: Women's participation in project meetings

In the past year, did you...
(% respondents answering "Yes")



average of 49% of meeting attendees were women, averaged across months and across study communities.

Unfortunately, most of the women who reported attending meetings did not speak up during the meetings. Of those women who reported attending a project-related meeting, only 9% of women in the full-service treatment group and only 4% and 7% of women in the paralegal and education-only groups, respectively, reported speaking up to voice an opinion.

When post-service focus groups of women were asked about their participation during community land delimitation activities, women explained that they were frequently busy with farm work and household chores during meeting times and thus often had to arrive at project-related meetings after their work was finished or send their opinions along with their husbands. Some women noted that they did not speak as often as they would have liked because their husbands were in the meeting with them; women explained that if the husband is present at a meeting it is not appropriate for the wife to speak,



Women attend a community meeting to discuss community rules for land and natural resource management.

because the husband is considered to speak on behalf of the household. For example, one woman explained, “It is not for lack of willingness to speak out [that we keep quiet]; it is that the communities do not always give women the opportunity to speak, and also that we feel inhibited to speak because our husbands are present and they speak on our behalf. For us, it is easier to talk with you now because we are in the middle of a group of women.” **As such, it is likely be necessary to hold frequent women-only meetings to stimulate their consistent participation in community land delimitation activities.**⁵⁸

Of note is that CTV observed that women’s active, verbal participation during project meetings increased over the course of the initiative. CTV also observed that women more actively participated in the rule-drafting process: while

⁵⁸ When asked what measures could be taken in the future to ensure women’s participation in project activities and strengthen the weight of their contributions during community decision-making on land and natural resources, the women’s focus groups suggested that NGOs “talk with our husbands to help them to understand that women have to attend meetings” because “each woman has to negotiate with her husband to attend meetings, and the husbands generally prohibit women’s attendance.” Other groups called for women *Chefes de Zonas*, and for a woman to be a member of their community council, who could then bring women’s opinions to the community decision-making body. One group stated that it was necessary “for leaders and men to give more space for women to participate.”

women often refused to take part in the map-making on the grounds that they “could not draw,” during the “shouting out” of communities’ existing land and natural resource rules and ensuing discussions of the constitutionality of these rules, women demonstrated more interest and became very vocal. **CTV observed that women were particularly active in describing and discussing customary rules that related to widow dispossession and the subordination of women’s land rights.** Indeed, the rules-drafting and debating process appears to have been a key instigator of women’s active participation in their communities’ land delimitation process. In both Uganda and Liberia as well, women’s participation in project meetings increased significantly during the rule-drafting activities.⁵⁹ In these nations, women were able to significantly impact the various drafts of their communities’ rules concerning land and natural resource management.

2. Women’s substantive land and natural resources rights

Before the inception of the land delimitation activities, when participants in both men’s and women’s pre-service focus groups were asked about the practical realities of women’s land rights in their community, they generally explained that while women have the right to decide how to manage family lands, men have the authority and right to transact land, have their name on legal documents pertaining to land (even when the wife has purchased the land), or decide how to spend any profits from the sale of produce grown on the lands. Focus groups described, “Women and men have different rights in relation to land; women can decide what to plant on their lands, but they must always inform their husbands to make sure they are in agreement. Women are not the titleholders of land — the land belongs to her husband or his father and brother. In our society women marry and live on the lands of their husband’s family.” Another group summed it up succinctly: “Women have their role in the family, and the men have theirs. In relation to land, it is known that only men are the land owners; the women stay on the lands of their husbands, brothers or parents, but the land does not belong to them.”

Focus groups explained that families in their communities often use this rationale to expel a widow from the land of her husband’s family after his death. They described how “It’s the men who inherit land — when a woman is widowed she is expelled from the lands of her in-laws, because they say that the land does not belong to her;” “Men have more rights to land than women, and can uproot women from the land — this happens a lot with widows and separated women: the brothers of the late husband kick his widow off the land,

⁵⁹ See the final international report for further details, available at <http://namati.org/work/community-land-protection/Phase-One-Findings-and-Reports>.

especially if she does not have sons;” and “The are no equal rights between men and women — for example, men are allowed to be polygamous, and when women are widowed they are very often expelled from their lands and accused of witchcraft.”⁶⁰

Such intra-community land-grabbing from women and other vulnerable groups appears to be a significant source of conflict. When asked about the main causes of land disputes in their communities, community leaders listed, among other causes, “The expropriation of land from the elderly and from widows;” “When people come in bad faith to usurp the lands of the elderly, because they live alone and do not have anyone to defend them;” and “There are family conflicts related to incorrect division of land inherited from ancestors, and the fact that some families expel widows from their lands when their husbands die.”

Interestingly, pre-service focus group participants appeared to know about women’s land rights under Mozambican law. One group made the astute observation that “Women and men have equal rights in theory, but not in practice.” Other focus groups were similarly practical: they were aware of women’s rights according to national law, but were clear that this was more of an ideal than practice. In one group, when a member volunteered that, “The law says that men and women have equal rights and these must be enforced,” another group member responded by saying, “Let’s not delude ourselves, we all know that in reality, even though we consult with our wives, who ultimately makes the final decision in our homes is the man, because he is the real head of the family.” In response, a third focus group member interjected, “In a family there are two parents, but who decides is the male parent.”

As described above, many of the first draft lists of the Mozambican communities’ rules for land and natural resource management reflect these realities: they include rules that undermine women’s land rights and directly contravene the Mozambican Constitution. However, due to the *Lei de Terras*’ failure to include a process of cataloguing, discussing and amending community rules to ensure that they align with the Mozambican Constitution, communities did not discuss how to take concrete action to remedy gender-based injustices

60 When pre-service focus groups composed solely of leaders were asked about the central causes of land conflict in their communities before the project activities began, they explained that there were three main sources of conflict in their communities: 1) the division and inheritance of land within families, leading to widow dispossession and inequitable inheritance; 2) boundary disputes between neighbors, where unclear limits make encroachment possible and cause tension; and 3) the fraudulent or improper buying and selling of land. Of note is that leaders discussed cases of people buying and selling land between themselves or to outsiders without following the proper customary procedures or informing local leaders. They explained that “in the process of buying and selling land without involving the local power structures, conflict is created and the lack of documents certifying the purchase and sale also creates problems between the people involved, as the person selling it may then want to sell the land again to a third person.” One focus group also commented, “Principally, what we have observed is that the expropriation of land [from community members] has created an increasing demand for land, with people buying land that has already had been occupied by other, less influential members of the community.”

or establish intra-community mechanisms to protect women’s and other vulnerable groups’ land rights.⁶¹

Indeed, despite pre-service focus groups’ frequent discussions of how widows’ land claims were often in jeopardy, when post-service focus groups were asked, “Has the community changed its rules about women’s land inheritance or land rights over the past year?” most responses were negative. The vast majority of focus groups said either a simple, “No” or elaborated that “Nothing has changed;” or “We don’t need to change anything;” and “Nothing has changed, and widows pass a very bad time after the death of their husbands, their children send them away and at times call them witches.”

The community land delimitation process (and all of the legal education that accompanied it) is an optimal time to facilitate community discussion of widow dispossession and establish intra-community mechanisms to address it. However, due in part to the relatively short time period for the intervention and the structure of the delimitation process set out in the Technical Annex, this was not undertaken.⁶²

In contrast, in Uganda and Liberia, the process of analyzing and then amending community rules, norms, and practices concerning women’s land rights resulted in a number of positive shifts. **Substantively, the process provided an opportunity for Ugandan and Liberian women and other vulnerable groups to actively challenge discriminatory customary norms and practices, and argue for the inclusion of stronger protections for their land and inheritance rights.** Their efforts resulted in:

- ▶ The strengthening of existing women’s rights;
- ▶ The maintenance of women’s land and natural resource rights that might have been lost in the transition from oral to written rules;
- ▶ The rejuvenation of customary norms that had existed in the past to protect women’s land claims but have recently eroded or been abused; and
- ▶ The alignment of local rules with national laws that protect women’s land rights.

61 In both Uganda and Liberia, the heart of the land delimitation process centered on community deliberation and debate of their customary rules, which in most communities culminated in multiple revisions of those rules in order to align them with national laws, particularly constitutional protections for women’s equal rights. The local constitutions and by-laws of the Liberian and Ugandan communities contained an average of 3.2 provisions that specifically protected and strengthened the land rights of women. Cross-nationally by treatment group in Uganda and Liberia, analysis of the communities’ by-laws/constitutions shows that the control group included an average of 0.8 provisions, the education-only group included an average of 4 provisions, the paralegal support group included an average of 5.5 provisions, and the full legal service group included an average of 2.8 provisions.

62 This work will continue during Phase II of the intervention, to be undertaken by CTV in partnership with Namati, a new global legal empowerment organization.

The by-laws/constitution drafting process in Uganda and Liberia also illustrated that **custom does not necessarily undermine or weaken women's land rights**. Rather, a well-facilitated process of reviewing and amending custom to align with national laws opened a space of dialogue in which it was possible to **strengthen women's existing land rights within customary legal constructs**. To this end, customary leaders may be important allies in the enforcement of women's land rights, as the data indicate that community members consider them to be primarily responsible for the protection of women's and widows' land rights.

F. Obstacles to Successful Land Delimitation Efforts

Cross-nationally, the study communities confronted a wide range of obstacles over the course of the initiative. Analysis of the various administrative and intra-community obstacles faced leads to two main conclusions:

1. **Particularly dysfunctional communities may not be able to successfully complete the complex process of delimiting community land.**

The field teams' observations illustrate that communities tended to struggle when:

- ▶ Community leaders were weak, corrupt, or engaged in power struggles;
- ▶ Local and national elites interfered with or sabotaged a community's process;
- ▶ The greatest threat to community land was coming from within the community, rather than external threats;
- ▶ The community lacked internal cohesion and failed to cooperate (often the case in peri-urban communities or communities with a highly transient population); and
- ▶ An intractable boundary dispute consumed a community's attention and halted progress through the community land delimitation process.

2. **Relatedly, should a dysfunctional community initiate land delimitation efforts and not be able to complete them, the process may invigorate tensions and create or exacerbate conflict, leaving the community in a worse situation than before the intervention began.**

Before beginning an intervention, facilitating NGOs or government agencies should carry out an analysis to determine whether the community can work together productively and is willing to authentically address and resolve intra-

and inter-community land conflicts. **Supplemental conflict resolution training, community-building and leadership-enhancement activities may need to be provided before a community can undertake land delimitation efforts.** In instances where weaker community members initiate land delimitation efforts in order to protect their land from being grabbed by local elites, facilitating agencies should proactively address intra-community conflicts before launching community land delimitation activities.



Community leaders consult their community's map while working with SPGC officials to delimit their community's lands.

IV. CONCLUSIONS AND RECOMMENDATIONS FOR POLICY AND IMPLEMENTATION

THE CROSS-NATIONAL DATA illustrate that community land delimitation activities may present a rare opportunity to create positive intra-community changes that extend beyond documenting and registering the boundaries of community land. If done well, community land documentation efforts that include extensive community-wide discussion of all customary rules for local land governance and natural resources management may help to:

- ▶ Resolve long-standing land disputes and reduce future land conflict;
- ▶ Increase downward accountability for local leaders and promote good governance of community lands and natural resources;
- ▶ Establish intra-community mechanisms to protect the land rights of women and other vulnerable groups;
- ▶ Promote sustainable natural resources management practices and conservation;
- ▶ Align customary laws and practices with national laws and open a space for community members to challenge inequitable rules and practices;
- ▶ Increase community members' legal awareness and empowerment;
- ▶ Heighten community capacity to negotiate for and actualize equal partnerships with outside investors, such that external investment brings authentic local prosperity; and
- ▶ Increase community capacity to vision, plan for, and realize locally-defined community development.

However, because Mozambique's land delimitation procedure does not include a structured process for communities to catalogue, analyze, discuss, and amend existing community rules for land and natural resources management, the Mozambican communities did not experience the same positive impacts as the Liberian and Ugandan communities who followed national processes that

do include this effort. While Mozambique’s *Lei de Terras* is an excellent piece of legislation, by failing to include processes that lead communities to assess and modify local rules, norms and practices, the land delimitation process misses a critical opportunity to support community development and prosperity.

The study’s central finding is that Mozambique’s community delimitation processes should be a tripartite endeavor, consisting of **(1) the technical task of mapping, documenting, and protecting community lands, (2) the peace-building task of land conflict resolution, and (3) the governance task of strengthening local land and natural resource management and promoting equity.**

This section summarizes the study’s seven main findings and sets out recommendations for policy and practice. The policy section suggests changes to national policy and legislation, and may be most useful for policy makers and those involved in advocacy. The implementation section includes practical recommendations for state or civil society agencies that facilitate community land delimitation efforts in the field.

CONCLUSIONS

1. Community land delimitation is efficient and cost-effective and should be prioritized over individual/family titling in the short term.

Community land documentation efforts not only protect large numbers of families’ lands at once, but also the forests, water bodies, and grazing areas that rural communities depend on to survive and are often the first to be allocated to investors, claimed by elites, and appropriated for state development projects.

As facilitated by CTV, the total costs of land delimitation per community were at most US \$3,968, even with the provision of full service support by CTV’s trained technical team. This figure includes all staff salaries, office rent, petrol, office supplies, per diems for government technicians, lunches for community members during the geo-referencing process, and other costs. For communities provided with only monthly legal education, the total cost per community was US \$1,717; for communities receiving paralegal support, the total cost was US \$3,563 per community.

Considering that between 100 and 1000 families live in each of the study communities, community land delimitation is an economical way to protect large numbers of families' land claims at once: **as undertaken in this investigation, for a hypothetical community of 500 families and large common areas, registering the community would cost less than half of efforts to register individual or family lands.**⁶³ Once the community as a whole has been protected, the focus may then turn to community-driven documentation of family and individual lands.

2. Mozambique's land delimitation process lacks safeguards to ensure local accountability for good governance of community land.

In Uganda and Liberia, the communities were supported to complete a rigorous, highly participatory four-part by-laws drafting process that included: a) an uncensored "shouting out" or brainstorming of all existing community rules, norms and practices; b) analysis and discussion of all existing community rules in light of national legal frameworks and evolving community needs; c) the writing of second and third drafts of these rules (including the amendment, addition or deletion of rules); and d) formal adoption by full community consensus or super-majority vote. The Ugandan and Liberian findings indicate that this process fostered:

- ▶ A transfer of decision-making authority from local customary and state leaders to community members themselves;
- ▶ The institution of new mechanisms to improve leadership and hold local leaders downwardly accountable;
- ▶ The establishment of consistent norms and the institution of clear, publicly known penalties for infractions; and
- ▶ The alignment of local custom and practice with national law — after learning about national laws relevant to community land and natural resources administration, community members took steps to modify local rules so that they no longer contravened national law.

Because a community by-laws drafting process is not a required part of the delimitation process, the Mozambican study communities did not do more than brainstorm an initial list of their existing community rules, norms and

⁶³ Although cost estimations vary widely according to the national legal framework and economic context, one multi-country analysis found average costs of first-time individual/household land registration to sometimes be above \$100 USD per parcel, with average costs between \$20 and \$60 USD per parcel. Tony Burns, *Land Administration Reform: Indicators of Success and Future Challenges*, Agriculture and Rural Development Discussion Paper 37 The International Bank for Reconstruction and Development/The World Bank (2007).

practices. As a result, in contrast to the Liberian and Ugandan respondents, the Mozambican survey respondents did not report that the delimitation process had any positive impacts on intra-community governance.

These findings indicate that a **community land delimitation process that does not include mechanisms to improve local governance and increase leaders' accountability to their community members may at best be described as a lost opportunity to effect powerful intra-community change, and at worst may make land dealings more unjust. While a document for land rights is an excellent protection against abuse by outsiders, it alone can do little to protect against intra-community threats to common lands and the land claims of vulnerable groups.**

To permit a community to formally delimit its lands without carefully creating and implementing systems for transparent, just and equitable management of that land is an invitation for mismanagement, corruption, and local elite capture. In its lack of comprehensive land governance-review processes, Mozambique's delimitation process misses a powerful opportunity to establish safeguards to protect communities against corrupt or bad faith actions taken by their leaders.

3. Mozambique's land delimitation process lacks protections for women's land rights.

The Mozambican study communities' transcriptions of their existing norms and practices included rules that directly violate Mozambican laws on women's land inheritance. Moreover, focus groups reported that as land becomes increasingly scarce and grows in value, women, widows, and the poorest community members are increasingly victim to land-grabbing efforts by family members and community elites.

Mozambique's *Lei de Terras*' includes the mandate that customary principles of land management may govern community land use and allocation within the local community. However, the community land delimitation process does not include a required check to ensure that community rules do indeed adhere to constitutional principles. The brainstormed lists of the study communities' rules illustrate that merely mandating that communities may govern themselves according to customary rules (with the implicit mandate that these rules may not contravene Mozambican law) is an insufficient strategy for protecting vulnerable groups' land rights. By failing to establish proper checks by government officials to ensure that customary norms and practices do not violate the Mozambican Constitution or facilitate women's

land disinheritance and dispossession, the *Lei de Terras* essentially abandons widows and other vulnerable groups to the mandates of intra-family and intra-community discrimination. Much of this discrimination may not actually reflect customary norms, but rather the bad faith adulteration of such norms in a climate of increasing land scarcity and rising land values.

In contrast, in Liberia and Uganda, the findings clearly indicate that a **well-facilitated process of drafting community by-laws/rules opens up an authentic space for women to question practices that disadvantage them and advocate for rules that strengthen their land rights and tenure security.** In Uganda and Liberia, women used the rule-drafting process to actively challenge discriminatory customary norms and practices and to argue for the inclusion of stronger protections for their land and inheritance rights. Post-service survey responses and focus group interviews suggest that these discussions led to both a change in community perceptions of women's role in community land administration and management (procedurally) and well as an increase in women's ability to influence the content of community rules to include more protections for their rights (substantively). Community members reported that such changes resulted in the strengthening of existing women's rights, the rejuvenation of customary norms that had existed in the past to protect women's land claims but have recently eroded or been abused, and the alignment of local rules with national laws that protect women's land rights. Such findings lead to the conclusion that a process of cataloguing, discussing, and amending community rules is essential to efforts to protect women's rights during community land delimitation activities.

4. By failing to include a mandated process for community review and amendment of local natural resource management rules, Mozambique's delimitation process misses an important opportunity to support communities to address community natural resource management and proactively plan for future interactions with outside investors.

In the Mozambican study communities, pre-service focus groups described how "old" rules designed to ensure sustainable natural resource management were eroding or no longer enforced. For example, some focus groups described how traditional community practices for keeping local rivers clean are increasingly ignored. Yet because it is not a required part of the delimitation process, the Mozambican communities did not complete the full rule-drafting process — including a process for revising and amending rules for land and natural resource management. As such, community members did not have an

opportunity to sit together and discuss whether to revive old rules for conservation or create new mechanisms to ensure equitable and sustainable natural resource use. In contrast, the Liberian and Ugandan study communities adopted a range of community by-laws designed to conserve forests, water sources, and areas where community members go to gather fuel, natural medicines, and building materials for their homes, among other resources.

Notably, as part of the rule-drafting discussions in Liberia and Uganda, communities took the opportunity to discuss together how they would or would not share their natural resources with potential outside investors. These **communities' land and natural resource management plans demonstrate communities' receptiveness to outside investment**, but within a regulatory and participatory framework that ensures that:

- ▶ The community is involved in discussing and negotiating all aspects of the investment;
- ▶ Restrictions are made to ensure community health, environmental, and cultural protections;
- ▶ Benefits/fair compensation accrue to the community; and
- ▶ A contract is drafted to ensure that all community benefits are paid.

Critically, Mozambique's delimitation process does not establish any forum that would give communities an opportunity to discuss how they would respond to requests for community land by outside investors, should the opportunity arise.

5. Community land delimitation is a land conflict resolution process.

In Mozambique, **the process of harmonizing boundaries with neighbors unearthed every latent, unresolved land conflict — long dormant or festering for years — and ignited new boundary disputes that flared up in response to the impending delimitation efforts.** Boundary harmonization was therefore the beginning of serious intra- and inter-community conflict, even in communities that previously reported no boundary disputes and generally peaceful relations with their neighbors. As a result, CTV's field team found it necessary to dedicate a significant amount of its time to land conflict resolution and mediation, oftentimes calling in local, district, and provincial leadership for support.

While the potential for conflict was significant, communities' desire to delimit their lands created a strong impetus for them to peacefully resolve long-running boundary disputes. To this end, communities adopted a wide range of conflict-resolution and compromise strategies, sometimes settling decades-old land conflicts. Post-service focus groups and survey respondents reported

that the resolution of long-standing land conflicts both within and between communities appears to be having an overall positive impact on land tenure security and intra- and inter-community conflict.

6. The provision of paralegal support helped communities to most successfully progress through the community land delimitation process.

Giving a community the direct responsibility to complete land delimitation work — with guidance from legal and technical professionals and under the leadership of trained community paralegals — appears to be the most empowering method of facilitating the community land delimitation process. Cross-national statistical analysis of the study communities' progress suggests that communities led by local, elected “paralegals” progressed farther through the community land delimitation process than all other communities, including those communities given full legal support by lawyers and technical experts.

In Mozambique, community-based paralegals proved to have a significant, positive impact on communities' capacity to complete land delimitation activities. They appeared to do this by:

- ▶ Helping communities to address intra-community obstacles that were not always evident to or solvable by outside technicians or lawyers;
- ▶ Increasing community participation by mobilizing their communities on a daily basis;
- ▶ Fostering empowerment and creating a sense of community ownership over the land delimitation process; and
- ▶ Strengthening not only their own communities' capacity, but also the capacity of neighboring communities who proactively sought out their help.

The cross-national data also indicate that communities provided with paralegal support proved more capable of addressing and resolving intra-community difficulties than communities provided with full legal services support. Indeed, the findings illustrate that when the greatest obstacles to community progress come from within a community, outside professionals not intimately familiar with the complex social and political nuances of village life may accidentally aggravate conflicts or act in a manner that does not best serve the interpersonal dynamics at play. In fact, the cross-national statistical analyses indicate that when a community faces one or more intra-community obstacles — such as elite interference, weak community cohesion, or intra-community

land conflicts — offering full legal services makes no statistical difference to that community’s ability to successfully complete the delimitation process than offering no services at all.

The data also indicate that leaving communities with the responsibility for completing most delimitation activities on their own motivated them to take the work more seriously, integrate and internalize the legal education and capacity-building training provided more thoroughly, and claim greater “ownership” over the community land delimitation process than when a legal and technical team completed this work for the community. Furthermore, the evidence that these education-only and control group communities actively sought advice from neighboring paralegals leads to the conclusion **that well-trained and rigorously supervised paralegals may not only help their own communities, but may also have spillover impacts throughout the region in which they are based.**

However, the findings indicate that while motivated communities can perform much of this work on their own, they need targeted legal and technical assistance to successfully complete community land delimitation efforts. In addition, it is critical that a legal team closely supervise each community paralegal’s efforts, not only to ensure that their work product is of high quality, but also to step in when necessary and to be able to demonstrate to all stakeholders (government officials, investors, local elites, and others) that the community’s efforts are being supported by a team of professionals who have the capacity to take legal action if necessary.

7. If a community starts the community land delimitation process and does not see it through to completion, the process may increase conflict and tenure insecurity in the region.

The field teams’ observations illustrate that communities that struggle with elite sabotage, intractable boundary disputes that cannot be resolved through intensive mediation, internal discord, and weak leadership or power struggles between leaders may not be able to successfully progress through community land delimitation processes, irrespective of how much support they are offered. **Should a dysfunctional community initiate land delimitation efforts and not be able to complete them, the process may invigorate tensions and create or exacerbate conflict, leaving the community in a worse situation than before the intervention began.** As such, supplemental conflict resolution training, community-building, and leadership-enhancement activities may be necessary before a community can undertake land delimitation efforts.

RECOMMENDATIONS FOR POLICY

1. Make community land delimitation and protection a prerequisite to investment.

In the context of the Mozambican government's continued granting of large-scale land concessions over large regions of the country, **community land delimitation should be made a prerequisite to investment.** A focus on documenting family and individual lands will not only be expensive and time-consuming, but will leave rural communities vulnerable as a group, as they do not protect the common and reserve areas upon which communities depend for their livelihood and survival. In contrast, community land delimitation efforts safeguard an entire community's land at once, including all forests, grazing areas, and waterways. Delimitation exercises also may help to prepare communities to manage their natural resources more sustainably and enter into more equitable contracts with investors: as described above, land delimitation exercises that create a forum for communities to plan for potential investment opportunities may support improved development outcomes and better community-investor relations.

To ensure improved outcomes, **before an investor comes to negotiate with a community, the community's lands should be delimited and a social and legal preparation process undertaken to ensure that the community is negotiating with the investor on more empowered, informed, and participatory grounds.**

2. Make improved local land governance a central component of community land delimitation efforts.

Community land delimitation procedures should be modified to include a community-wide, democratic, and fully participatory review of local rules for community land and natural resource administration and management. While a document for land rights provides protection against land usurpation by outsiders, a document alone can do little to either protect against intra-community threats to common lands or ensure that communities conserve natural resources. **To permit a community to apply for land delimitation without creating and implementing systems for transparent, just, and equitable administration of that land is an invitation for mismanagement, corruption, and local elite capture.** Handing a poorly-governed community a piece of paper documenting its land claims without ensuring intra-community mechanisms to hold leaders accountable to proper management of that document may in some instances further unfair and inequitable land dealings.

As such, the *Lei de Terras*' Regulations and Technical Annex should be elaborated to include procedures that ask communities to examine, analyze, and amend existing local rules for intra-community land and natural resource governance. To leverage the land delimitation process to support improved community land governance, policy makers and legislators should:

- ▶ Mandate procedures through which communities must examine and amend existing community rules, for land and natural resource management. As in Uganda's Land Act (1998), communities seeking to document their lands should be required to discuss community norms and practices and formally adopt a set of community by-laws. This process functions best when it requires at least two rounds of fully participatory discussions that create the opportunity for community members to add new rules, revive old rules, change existing rules, or otherwise alter community practices as necessary to ensure improved governance, greater equity and justice, and community growth and development.
- ▶ Before approving a community's land delimitation application, government officials should complete a mandatory check that the community's rules comply with national law. Where differences between customary norms and national legislation arise, facilitating civil society agencies should conduct additional awareness raising and legal training activities that promote community understanding of the discrepancies. Once a community's rules have been checked to ensure that they do not violate national law, a community may then vote to formally adopt its agreed rules.⁶⁴
- ▶ After formal adoption, community members (and the State) can then hold local leaders accountable to fair rule enforcement and participatory decision-making processes. Such efforts to improve intra-community land and natural resource administration and management will become increasingly necessary as land grows in value and becomes more scarce, and as intra-community competition for land exacerbates discrimination and disenfranchisement of vulnerable groups.

However, the community rule-drafting process requires significant time and facilitation support. As such, the process may leave community lands undocumented as communities take time to fully discuss their rules for land and natural resource management. To avoid this potential pitfall, Mozambican

⁶⁴ It is imperative that the law ensures that communities adopt rules by a process other than simple majority vote. Allowing an absolute majority to vote to adopt community rules has the potential to marginalize members of minority or more vulnerable groups. Although consensus is ideal, a super-majority vote system may be most feasible.

policymakers might make the rule-drafting process a parallel component of the land delimitation process, allowing the formal land delimitation application to go forward (thus protecting the lands in question) with established mechanisms to ensure that the applicant community's rules are completed by the time state land administrators are prepared to issue the final delimitation certificate.

3. Amend the delimitation process to conclude with the election of a governing body that includes all trusted customary and local leaders, as well as representatives of vulnerable groups.

Mozambique's land delimitation process does not culminate in the creation of an elected group responsible for the management of community land and natural resources. At the beginning of the delimitation process, a coordinating committee of men and women is established to actively lead the community through the land delimitation process. However, in this initial formation, this group is not explicitly formed as the first iteration of a permanent, elected governing body whose composition will change according to periodic elections. The coordinating committees are selected to coordinate the delimitation process; they are never given specific authority by their communities to manage community lands and resources according to their communities' best interests over the long term. Coordinating committee members may not perform their responsibilities adequately, yet there is no procedure to evaluate their performance at the end of the delimitation process and make adjustments as necessary. Furthermore, after a community has amended its rules for governance of community lands and natural resources, it may be necessary to hold elections for leadership positions to align existing leadership positions and practices with the governance changes and accountability mechanisms established in the rule-drafting process.

To address this, the Regulations and Technical Annex should be modified so that the delimitation process concludes with the creation of an elected group of men and women who co-determine land matters in concert with the wider community. To ensure downward accountability and a community check on the powers of local authorities, Mozambique's land delimitation process should:

- ▶ **Mandate that intra-community governance structures are elected at the conclusion of the community land delimitation process, and that elections occur every few years to ensure against elite capture and stagnation of leadership.** The cross-national findings indicate that governing councils may work best when they include both existing local leaders (and/or members of pre-existing land governance bodies), as

well as representatives of vulnerable groups. This composition appears to ensure that the governing bodies are both respected and adequately representative of the diversity of all stakeholder interests. However, precautions and oversight may be necessary to ensure that newly-elected women, youth and other members of vulnerable groups are given not marginalized from decision-making processes or otherwise sidelined by entrenched leaders.

- ▶ **Protect against intra-community discrimination and elite capture by ensuring that communities provide for universal suffrage and regular all-community meetings in their rules.** The delimitation process is an ideal time for communities to establish systems to ensure that their leaders and governing body act in good faith, that community dialogue is inclusive, and that decisions are democratic. Such systems might include mandating that community leaders and community's land governing body make periodic reports of their decisions and actions to the wider community, or obligating the governing body to bring certain critical decisions to the whole community to determine together by consensus or super-majority vote. This process may curtail leaders' ability to act unilaterally when making decisions about whether to grant community lands and resources to outside investors.

4. Establish systems to protect the land rights of women and other vulnerable groups.

By failing to establish safeguards to ensure that a community's customary norms and practices do not violate the Constitution, the *Lei de Terras* misses a critical opportunity to preemptively protect women, widows, and members of other vulnerable groups from intra-family and intra-community land grabbing. It is critical that the *Lei de Terras'* delimitation procedure is amended to include processes that allow communities to address gender discrimination head-on and create systems to protect the land rights of women, widows, and other vulnerable groups. Such amendments could require:

- ▶ Community-wide discussions analyzing local rules for women's land rights that:
 - Analyze local rules for women's land inheritance rights and natural resource use;
 - Create the space for women and other vulnerable groups to argue for rules that enshrine and protect their land rights; and

- Make all revisions necessary to align community rules, norms and practices with the Mozambican Constitution and other relevant laws.
- ▶ A mandatory state check (before a community’s land delimitation certificate is issued) to ensure that community rules do not violate Mozambique’s legal protections for women and other vulnerable groups’ rights.
- ▶ Training for local leaders to support them to play a more active role in protecting the land claims of women and other vulnerable groups.
- ▶ The creation of local, accessible, and culturally acceptable mediation mechanisms (composed of both customary and state leaders and elected women representatives) to resolve cases concerning the violation of women and other vulnerable groups’ land rights.

If the *Lei de Terras* and accompanying regulations and Technical Annex cannot be amended, state and civil society organizations should at the very least incorporate the above practices when facilitating community land delimitation efforts.

5. Mandate enforceable community-investor contracts that effectively hold investors accountable to fulfilling promised “mutual benefits.”

Communities already sharing their lands with investors report that in their experience, investors rarely deliver negotiated or promised “mutual benefits.” (See Appendix C) Yet the *Lei de Terras*’ accompanying Regulations and Technical Annex do not establish appropriate enforcement mechanisms or oversight structures that can protect against unjust and inequitable interactions between communities and investors. Appropriate protection and enforcement mechanisms to ensure investor accountability should be put into place. Such mechanisms might include:

- ▶ Mandatory provision of free legal representation for communities during negotiations concerning land-sharing agreements with investors, including full and transparent information about the planned investment, such as anticipated annual profits;
- ▶ The creation of regulatory mechanisms to hold investors accountable for delivering agreed-upon compensation to communities;
- ▶ The enforcement of all community-investor agreements as legal contracts, subject to the mandates of national contract law;

- ▶ The creation of expedited complaint procedures and appeals processes, should investors fail to deliver the agreed benefits or rental payments; and
- ▶ The establishment of penalties for investors who fail to fulfill their terms of the contract with the community, among other supports.

An impartial or independent ombudsman may best undertake these efforts.

6. Establish support, facilitation, and oversight roles for government officials both during and after the community land delimitation process.

Local and regional government officials have an important role to play as supporters of community land delimitation efforts. Because Mozambique's *Lei de Terras* devolves control over land and natural resource management to rural communities, the central government should empower district and regional officials previously in charge of local land administration to assume important and necessary capacity building and oversight functions. For example, local and regional land officials could be tasked with:

- ▶ **Providing support to communities during community land delimitation efforts.** With proper training and funding, local and regional officials can:
 - Provide legal education to improve communities' awareness of their land rights and develop community capacity to complete relevant administrative and judicial procedures.
 - Provide conflict resolution support during boundary harmonization efforts.
 - Witness ceremonies documenting harmonized boundaries.
 - Supervise all GPS, surveying, and boundary demarcation activities.
 - Provide support during community rule-drafting processes, including expertise on relevant national laws and constitutional principles.
 - Provide support during the rule-drafting process, including sharing expertise on sustainable natural resource management practices and Mozambique's laws on conservation.
 - Verify that community rules align with national law and uphold constitutional guarantees.
 - Be available to answer community land delimitation-related questions and provide technical support on an as-needed basis, among other activities.

This assistance should be request-based, rather than mandatory, as requiring state oversight may stall or impede community progress.

► **Providing long-term support for community land and natural resource management after the delimitation process is complete.** Such assistance might include:

- Providing technical support for community land and natural resource management.
- Providing land dispute resolution assistance for particularly intractable land conflicts.
- Protecting community lands from encroachment by elites and local power holders.⁶⁵
- Acting as a check against abuse of power by community leaders and elected governing bodies. Upon a community's request, state officials should monitor and supervise community land management bodies to ensure that the elected officers are fulfilling their fiduciary duties and acting in accordance with national law.
- Enforcing women's and other vulnerable groups' land rights. Such support may include training customary leaders in relevant national law, working alongside customary leaders to jointly address rights violations, and making justice systems and formal rights protections more accessible to rural women and other vulnerable groups.
- Conducting capacity-building trainings for elected governing councils and community leaders, among other help.

Such government assistance should be made readily available and accessible via mobile clinics and other means of bringing state support directly to rural communities. These efforts should include both the executive branch of government (ministry officials, technicians, and the police), as well as the judicial branch; judges and magistrates should create legal precedent that enforces the strength and sanctity of community land rights.

To carry out these roles, state administrators may require training on relevant land legislation and related procedures.⁶⁶ They should also be sensitized to

65 Necessary enforcement support will likely involve both addressing bad faith efforts to appropriate community lands and penalizing illegal resource extraction. In such situations, communities should be able to seek recourse from the police and through the state court system, as theft and corruption are criminal acts under national law. In the event that the "land grabber" is a local official or has ties to powerful local government figures, the central state should enforce a community's property rights.

66 The field teams found that most local land officials were severely lacking in knowledge concerning both the content of their nation's land laws and how to implement community land delimitation processes. To remedy this, facilitating civil society agencies should institute annual training sessions for provincial and district land officials; these officials can then provide on-going training for local land officials within their jurisdiction.

the needs of rural communities and encouraged to see their role as “solution-providers” and defenders of community rights. To create the political will and capacity to fully support communities to document, protect, and develop their lands, state actors may need to be incentivized to support delimitation efforts. These measures should be undertaken in combination with the allocation of increased state resources allocated specifically for community land delimitation efforts.

RECOMMENDATIONS FOR IMPLEMENTATION

- 1. To maximize resources and ensure community commitment to the land delimitation process, community land delimitation work should be demand-driven, with support predicated on communities’ proactive request for legal and technical help delimiting their lands.**

Facilitating agencies should give priority — and immediate support — to any community facing an imminent external threat to its land claims.

- 2. Carefully assess whether the community is an appropriate candidate for land delimitation.**

Should a dysfunctional community initiate but be unable to complete the land delimitation process, the effort may invigorate tensions and exacerbate conflict, leaving the community in a worse situation than before the intervention began. Once a community has requested support documenting its lands, an assessment should be carried out to determine: existing conflicts and threats, community leaders’ strength and capacity, the degree of community cohesion and ability to work together, and whether the community is likely to be easily demobilized or reject the project. Civil society and government advocates preparing to support a community’s land delimitation efforts should first assess the community’s internal dynamics and existing conflicts and work to resolve serious underlying conflicts before facilitating the land delimitation process.

3. Let the community drive the content, pace, and progress of the delimitation process according to local knowledge, skills, and pacing.

Giving a community the direct responsibility to complete land delimitation work — with guidance from legal and technical professionals and the leadership of trained community paralegals — appears to be the most empowering method of facilitating community land delimitation processes.

In Mozambique, CTV observed that when given clear direction and skills training, communities are able to undertake the following activities on their own:

- ▶ Electing and forming a coordinating committee;
- ▶ Harmonizing their boundaries with their neighbors;
- ▶ Resolving most land conflicts;
- ▶ Discussing and writing up an account of their community's history;
- ▶ Making participatory maps;
- ▶ Completing simplified zoning plans; and
- ▶ Brainstorming a list of existing community rules for natural resource management.

Communities may therefore be instructed how to undertake these activities, and then supported to drive their own community land delimitation processes forward. To most effectively facilitate community-driven processes, government and NGO actors should:

- ▶ **Let go of expectations of a fixed time period by which a community should complete the community land delimitation activities** and allow the community to drive the forward momentum of all components of the process.
- ▶ **Train selected community members as “paralegals” or “community mobilizers”** to guide their communities throughout community land delimitation processes and liaise between their community and the legal and technical support team. Paralegals may be trained on the content of relevant national laws; meeting facilitation skills; strategies for ensuring that women and members of other vulnerable groups participate fully in the community land delimitation process; strategies for aligning customary rights with national laws and human rights principles; core principles of good governance and downward accountability; strategies

for working collaboratively with customary and community/state leaders; mediation and conflict-resolution methodologies; and basic conservation and sustainable natural resource management practices, among other relevant topics.

- ▶ **Let communities define themselves.** Defining a “community” is a complex political process with associated socio-cultural and geo-spatial implications at the local level.⁶⁷ As such, communities should be left to define themselves after extensive, highly participatory discussions. It is counterproductive and ill-advised for legislation and/or government agents to define what a community is or should be and impose this structure on existing groups. Community land delimitation processes should include a phase that ensures that the participants carefully negotiate and determine the spatial/social unit of the “community.” In Mozambique, this may mean that communities choose to undertake delimitation processes at the level of the *Regulado*, *Povoado*, *Zona*, or other administrative classifications of spatial identity and territory. In the event of a disagreement over community definition, state and customary leaders may jointly arbitrate the issue.
- ▶ **Include and involve all local leaders.** The field teams found that communities’ capacity to successfully compete land delimitation processes was directly related to leaders’ integrity, management skills, commitment to the project, and ability to mobilize their communities through the various steps of the land delimitation process. Relatedly, CTV found that cooperation between local government leaders and customary leaders is critical to the success of community land delimitation processes, as struggles of power and authority may at times undermine community land delimitation efforts. As such, before land delimitation activities begin, efforts should be made to identify and address power struggles between community leaders and ensure that there is cooperation and coordination between and within all local power structures, both customary and state.
- ▶ **Help communities create balanced, inclusive coordinating committees.** An elected or selected coordinating committee should be diverse and include strong, competent representatives of all interest groups, including youth, women, members of groups that practice a range of

⁶⁷ In the study regions, difficulties related to community definition were rooted in overlapping definitions of authority, territory, and identity. Specifically, the study communities’ process of defining for themselves the composition of their ‘community’ was often complicated by: 1) the nested quality of rural social organization in the study regions; 2) historical fractioning and division of groups/social units; 3) common areas fully shared between villages/towns that identified as separate entities; 4) differences between customary and administrative/state-drawn boundaries; 5) historical migration patterns, ecological changes, and infrastructure development; and 6) competition over valuable natural resources, and other factors.

livelihoods, and all clan/tribal minority groups. These individuals may then be given the responsibility for:

- Mobilizing members of their interest group to attend community land delimitation meetings and take part in all related activities;
- Seeking out the viewpoints of members of these groups and representing these interests during community land delimitation activities; and
- Reporting back to members of these groups on the content of community discussions as well as the community's land delimitation progress.

CTV found that coordinating committees work best when they include both respected leaders as well as a diverse group of community members. However, it was necessary to proactively ensure that community leaders did not dominate or control the community land delimitation activities and all decision-making processes.

► **Encourage full community participation in all community land delimitation activities, taking care to include all stakeholders.** To this end, facilitators should:

- **Enter communities with complete transparency, calling for full community participation.** At the inception of all community land delimitation work, the entire community must be convened to identify community leaders to work with, elect a diverse interim/coordinating committee, draw maps, take an inventory of ongoing land conflicts (internal and external), and gather all other necessary and pertinent information. Information should be solicited publicly and cross-checked by all stakeholders, including neighboring communities. Discrepancies should be publicly debated and transparently resolved.
- **Create space for all stakeholders and vulnerable groups to speak up during delimitation activities.** Attendance at meetings does not always lead to verbal participation, particularly when intra-community power and authority imbalances privilege the opinions and concerns of some groups over others. Facilitators should proactively take measures to ensure that women and other marginalized groups feel comfortable speaking during land delimitation activities. Facilitators can convene women, youth, and elders in separate groups in advance of these meetings to help them to articulate their interests. Other measures may include breaking community meetings into smaller identity-based groups or giving vocal or domineering community

leaders the role of moderator to ensure that they speak less while still feeling integrally involved in the process.

- ▶ **Leave communities to do much of the community land delimitation work on their own, according to local knowledge and skills.** While communities need legal and technical assistance to successfully complete land delimitation efforts, they should be left to complete community land delimitation activities on their own as much as possible. To support communities' individual processes, facilitating agencies should:
 - **Introduce each community land delimitation activity, build the capacity of the community to complete it, and then leave the community to do the work as “homework,” guided by community mobilizers/paralegals** who can call on the facilitating legal/technical team for support and assistance on an as-needed basis. NGOs and government actors supporting this work should make communities and their leaders responsible for requesting support when they need it. Placing responsibility on the communities to actively seek support will help to avoid failed meetings and wasted resources.
 - **Create workbooks detailing all the community land delimitation steps.** Facilitating agencies may create workbooks with space for communities to take meeting minutes, draw maps, write down accounts of their community's history, record drafts of community rules/norms, record debates, and otherwise keep all of their work in one place. Such workbooks could provide templates and examples of what the various products might look like, suggest advice for overcoming obstacles, and provide a guide for peaceful mediation. After filling out these books, communities can invite civil society and government technicians to review these workbooks and offer support to improve all work products until they reach the standards necessary for approval of a land delimitation application.
- ▶ **Recognize that while motivated communities can perform much of this work independently, they need targeted legal and technical assistance to successfully complete community land delimitation efforts.** CTV observed that for a community land delimitation process to progress smoothly, lawyers and technicians must:
 - Introduce the land delimitation process, support the election of the coordinating committee, train the coordinating committee, and provide general community-wide legal education and capacity-

building training concerning the community's legal rights to their land, the legal process to formally document these rights, and how to successfully complete the necessary procedures;

- Provide mediation and conflict-resolution support during significant, particularly contentious land conflicts that communities are unable to resolve on their own;
- Provide legal support and technical assistance during the completion of the community's second and third drafts of their community rules;
- Implement a women's empowerment/inclusion strategy to ensure women's full participation in all land delimitation activities; and
- Support communities during all administrative procedures, including: contracting and liaising with government agencies, working with government GPS technicians, and completing and filing all application forms and related documents.

4. Recognize that boundary harmonization and demarcation processes are conflict-resolution exercises and conduct them accordingly.

Facilitating agencies and government actors should proactively prepare for land conflict resolution to be a central component of community land delimitation efforts, and should craft trainings designed to support open, non-violent boundary negotiation. To promote peaceful boundary harmonization efforts, state and civil society agencies should support communities to:

- ▶ **Map publicly and comprehensively.** Map-making is not a neutral activity. It exposes all previous encroachments into or bad faith appropriation of community lands and identifies all of the community's natural resources and their locations. It therefore should be introduced and undertaken very carefully. The entire community should be convened for all mapping-related activities until all boundaries are harmonized, all land conflicts are resolved, and all boundary trees planted or markers placed. When mapping, women and men should draw maps in gender-based groups to ensure that all voices are heard, and communities should publicly discuss the maps to ensure that they are fair and accurate.
- ▶ **Ensure that all relevant groups' ownership, use and access rights to the land being documented are protected.** Before beginning work with a community, it is necessary to carefully assess exactly which groups have ownership rights to a given piece of land and which groups have use

and access rights, and to confirm this at a regional public meeting at which representatives and leaders of all neighboring communities are present, as well as district officials. Communities should acknowledge and preserve any existing reciprocal land use sharing agreements with neighbors; formal procedures should be instituted to protect these shared and overlapping use and access rights. Government officials processing community land delimitation applications should also verify that all neighboring communities' rights of use and access have been properly protected. Provincial officials may perform this check through discussions with local officials who have intimate knowledge of local communities' overlapping ownership, use and access rights, or by calling all neighboring villages to an open hearing.

- ▶ **Address boundary conflicts creatively and stand ready to provide mediation support.** Facilitating agencies should provide extensive conflict resolution and mediation training to community members, paralegals, and relevant leaders before a community begins boundary harmonization discussions with its neighbors. These trainings might include teaching communities to employ a range of compromise strategies and mediation/dispute resolution tactics, such as: agreeing to share the land as a common area and documenting it as such; dividing the disputed land down the middle evenly; and allowing disputed zones and/or households to choose where they feel they most belong, among others. Facilitators should stand ready to support the resolution of particularly entrenched land conflicts and to call in relevant government officials as necessary.
- ▶ **Allow communities as much time as they need to arrive at authentic boundary agreements.** CTV observed that some communities hastily agreed to their borders in order to successfully complete the project within the given time period. In some of these cases, communities did not truly resolve underlying boundary conflicts: in one community, a year after lengthy negotiations resulted in a compromise, the agreed boundary marker tree was burned down. It is therefore necessary to ensure that the boundaries are authentic agreements.

5. Leverage the community land delimitation process to support communities to improve intra-community governance.

The data and findings from Liberia and Uganda indicate that a highly participatory land delimitation process has the potential to galvanize communities to improve intra-community governance, foster participatory rule-

making, and establish accountability mechanisms for local leaders. To achieve such outcomes, civil society and government facilitators in Mozambique should lead communities to catalogue, discuss, and modify local rules for land administration and management. To ensure the most productive rule-drafting process, facilitators should:

- ▶ **Ensure full community participation in the rule-drafting process.** Civil society and government facilitators should actively create the opportunity for women and other vulnerable groups to challenge rules that they feel to be discriminatory, or to argue for the inclusion of rules that protect and promote their interests.
- ▶ **Begin the process of drafting community rules at the lowest level of intra-community governance** (for example within each zona, where applicable), then merge these rules into a set of community rules through rigorous and inclusive discussion. Such a two-tiered process may help to ensure a transparent and participatory process and create multiple opportunities for community members to reflect publicly on existing or proposed rules.
- ▶ **Handle the transition from oral to written rules delicately.** The process of writing down previously unwritten rules and practices may change them. Any land or natural resource uses, claims, or practices that are not included in the community rules may be, by omission, lost or inadvertently prohibited. As such, the discussion of existing rules must be deftly handled to ensure that the transition from oral to written does not undermine more inclusionary practices. To this end, facilitators should prompt communities to capture all norms and practices in their first drafts of existing rules, even those that are so taken for granted that they do not seem like “rules.” Drawing a “resource map” of all community natural resources and a diagram of the community leadership structure may facilitate brainstorming and help create an outline of what the community rules should address.
- ▶ **Allow communities to base the form and content of their rules on existing custom, norms, and practices.** Facilitating civil society and state agencies should not edit or revise a community’s rules to reflect their own prejudices and legal sensibilities. Each community should be allowed to include whatever content it feels is necessary for its equitable and efficient functioning. Facilitators should only encourage communities to modify customs and practices when necessary to ensure that the rules:

- Do not contravene the Mozambican Constitution and relevant laws;
 - Establish clear substantive and procedural rights for all community members, including women and members of vulnerable groups;
 - Protect neighboring communities' existing use rights and rights of way;
 - Include provisions establishing the creation of an elected governing body to be responsible for community land and natural resource administration and management;
 - Include provisions that particularly important and weighty decisions, such as whether to cede land to an investor, should be made by supermajority vote (at least 66%), rather than by local leaders acting alone;
 - Include provisions for annual review and amendment to avoid the potential calcification of customary rules that writing them down might imply; and
 - Are approved by all households in the community by consensus or super-majority vote.
- ▶ **Support communities to create an elected group of men and women who co-determine land matters in concert with the wider community.** As described above, at the completion of the rule-drafting process, facilitating agencies should support communities to revisit the composition of the initial coordinating committee in light of their new rules for land and natural resource management. A community's rules for electing and impeaching members of this group should ensure that:
- The composition of the governing body is truly representative and changes over time according to periodic elections;
 - The group has the authentic authority to take decisions concerning the use and allocation of community land and natural resource rules;
 - The group has the authentic authority to implement, monitor, and enforce all intra-community rules concerning land and natural resource use; and
 - The group must take certain critical decisions — such as whether to share community lands and resources with an investor — to the wider community for participatory decision-making.

Facilitating NGOs or government agencies may need to carefully monitor the election of these bodies to ensure that the elections are participatory, transparent, fair, and representative of full community participation, and that all positions are not captured by elites. Communities might also choose to create parallel “watchdog” groups to monitor the elected group’s decisions and actions, a course of action that is proving to be particularly successful among the Liberian study communities.

6. Leverage the community land delimitation process to support sustainable natural resource management and conservation.

To support communities to establish and implement rules for sustainable natural resource use, facilitating civil society and state agencies might:

- ▶ Train communities on a wide range of sustainable natural resource management techniques;
- ▶ Foster local “remembering” and reinstatement of customary natural resource management rules, norms and practices that promote conservation;
- ▶ Support communities to monitor and control use of their natural resources by community members, neighbors, and local investors alike; and
- ▶ Support communities to enforce their rules against poaching, illegal logging, and other unsanctioned extraction efforts and to request police support for enforcement when deemed necessary. Communities may also be supported to extract fines for infractions that could be put towards community improvement projects such as road maintenance or the construction of community meetings houses, etc.

7. Leverage the community land delimitation process to strengthen women’s land rights and establish mechanisms for their enforcement.

Mozambique’s community land delimitation process is an excellent opportunity to support communities to review local customary norms and practices and amend them to protect women’s land and natural resource rights.

To effectuate this, facilitating agencies should train community members on international and national laws that protect women’s rights and then support them to critically evaluate local norms in light of these laws. Where there are

differences between customary norms and relevant Mozambican laws, community members may be guided to analyze and debate their local rules and then amend them so that they are longer in violation. To ensure broad-based local support for women’s land rights, civil society and government facilitators may also need to:

- ▶ Carry out a gender analysis and work with communities to craft strategies to proactively address gender inequities that have the potential to negatively impact community land delimitation activities;
- ▶ Convene special women-only meetings to help women identify and advocate for their interests in the broader community meetings;
- ▶ Plan community land delimitation meetings to take place at convenient times and locations, after women have completed their house and farm work;
- ▶ Support communities to elect female representatives to local governing bodies;
- ▶ Establish paralegal support, ensuring that one of the paralegals is a woman who can organize community women to take part in all delimitation efforts; and
- ▶ Train and support local men and leaders to be protectors and enforcers of women’s land rights.

8. Leverage the community land delimitation process to support communities to proactively prepare to negotiate with potential investors.

Community reports of interactions with investors in the study region of Inhambane and across Mozambique indicate that consultations are not carried out equitably or fairly, communities do not feel they have an authentic choice to accept or reject an investor, investors are not providing the “mutual benefits” promised, and the long-term presence of investors is proving to have a primarily negative impact on their host communities.⁶⁸

To improve the quality and equity of future consultations with investors and ensure that the promise of equitable “integrated development” envisaged by Mozambican policymakers is actualized,⁶⁹ facilitating agencies should ensure

68 See Appendix C; see also Calengo *et al.*, *supra* note 23 at 13-14.

69 *Lei de Terras*, Act No. 19/97 of 1 October, 1997, The Republic of Mozambique, Article 24, 25, *inferred*.

that the community land delimitation process includes community-wide discussions concerning, among other topics:

- ▶ How the community will use, govern, and administer community lands and natural resources in the future;
- ▶ What land the community might choose to share with an investor, should one arrive;
- ▶ Plans for how the community will negotiate with any potential investors seeking land, including: on what terms and conditions the community would share its land and natural resources and what “mutual benefits” it will request in exchange for the use of community land;
- ▶ How the community will document any resulting agreements with investors or government; and
- ▶ How the community will hold investors or government actors accountable to fulfilling their agreements.

These discussions should be held proactively, in advance of any investment requests. Civil society agencies should also prepare to support all community-investor interactions and negotiations. Should an investment be realized, communities may thereafter need help holding investors accountable to promised mutual benefits as well as managing any benefits accrued in a responsible, transparent, and equitable manner.

9. Recognize that communities may require pre-intervention support before land delimitation efforts can begin.

While every study community in Mozambique faced a variety of obstacles, some communities were able to overcome obstacles more effectively than others. The cross-national findings suggest that an unhealthy or dysfunctional community may not be able to successfully complete the complex process of documenting community land claims. **Should a dysfunctional community initiate but be unable to complete the land delimitation process, the effort may invigorate tensions and exacerbate conflict, leaving the community in a worse situation than before the intervention began.** To ensure that community land delimitation efforts are successful, civil society and government advocates preparing to support a community’s land delimitation efforts should:

- ▶ **Assess the community’s internal dynamics and existing conflicts and work to resolve serious underlying conflicts before facilitating the land delimitation process.**

- ▶ **Provide supplemental conflict resolution training and community-building and leadership-enhancement activities** to community members and leaders alike.
- ▶ **Prioritize working with communities facing external threats to their land.** Cross-nationally, field teams' experiences illustrate that communities facing an imminent external threat to their land claims will work with focus and determination to complete community land delimitation activities, even when provided minimal legal support.
- ▶ **Provide supplemental support to communities facing intra-community threats.** In instances where weaker community members initiate land delimitation efforts in order to protect their land from being grabbed by local elites, intra-community conflict and disparities in power and influence may impact a community's capacity to complete community land delimitation activities. In such instances, despite internal conflict, these communities should not be rejected as appropriate candidates for community land delimitation support. Rather, civil society and government advocates should first address and resolve the underlying intra-community conflict at issue and then begin the community land delimitation process.

* * *

Research has shown that communities who have used the *Lei de Terras* to protect their land claims have been empowered by the experience.⁷⁰ According to Norfolk and Tanner's analysis of various case studies:

*"[Community delimitation] is not necessarily just about demarcating and registering [rights of use and benefit] and the limits to which they extend... [but about] how an informed population can participate both in the formalization of its land rights and in subsequent development activities. The overall result is a change in attitudes, increased confidence and a general ability to engage more effectively with the outside world."*⁷¹

While there are many remaining challenges to overcome, efforts to implement Mozambique's *Lei De Terras*' bring us closer to understanding both how to best support communities to document and protect their lands, as well as how governments may most effectively adopt and implement sound legal and regulatory community land protection frameworks. Once a community has

⁷⁰ Norfolk and Tanner, *Improving Tenure Security*, *supra* note 28, at 20-21; Rachael Knight, *Camponeses' Realities: Their Experiences and Perceptions of the 1997 Land Law* (Oxfam UK, 2002), available at <http://www.oxfam.org.uk/resources/learning/landrights/downloads/mozlawcr.rtf>.

⁷¹ Norfolk and Tanner, *Improving Tenure Security*, *supra* note 28 at ix.

successfully documented its land claims, it may then work hand-in-hand with government agencies and local organizations to fully leverage its lands for locally driven development, prosperity, and human flourishing.

AFTERWORD: Namati's Community Land Protection Program

Going forward, Centro Terra Viva is partnering with Namati, a new international organization dedicated to expanding the field of legal empowerment, to launch the global Community Land Protection Program.

The Community Land Protection Program's goal is to proactively strengthen communities' ability to protect, enforce, and defend their customary land rights. The program endeavours to promote genuine legal protections for customary land tenure and the recognition of customary land rights as legally enforceable ownership claims. Namati and its partners are working to:

1. Expand and scale-up the model

- ▶ Scale-up community land protection activities throughout Liberia, Uganda, and Mozambique, both through continued support to the Phase I study communities as well as through expansion into other rural communities throughout these nations.
- ▶ Expand and strengthen the network of civil society actors protecting community land rights globally, working to transfer "lessons learned" during Phase I to other NGOs and communities across the world, with the goal of documenting and protecting as many community lands as possible.

2. Impact policy

- ▶ Impact national land policy and practice in Liberia, Uganda, and Mozambique, with the goal of promoting improvements that facilitate communities' successful completion of community land documentation processes.
- ▶ Advocate for other nations to establish community land documentation processes, and in those nations whose legislative frameworks already provide for such processes, advocate for widespread implementation of such legislation.
- ▶ Promote a model of community land protection that emphasizes intra-community governance, accountability, conflict resolution, conservation,

gender equity, and justice as important goals of community land protection processes, on par with securing land rights documentation.

3. Ensure equity and justice in community-investor relations

- ▶ Support just, equitable, and empowered community-investor partnerships, ensuring that communities are properly prepared and have legal representation during all negotiations with investors and state actors concerning the use of community lands and natural resources.

4. Investigate impacts

- ▶ Investigate the long-term impacts of community land documentation efforts and monitor what long-term support communities require to successfully implement and enforce their by-laws and leverage their land for endogenously driven local development.

5. Influence global dialogue

- ▶ Impact the global dialogue on community land and natural resource rights, promoting community land protection as a critical issue while expanding the audience of actors invested in protecting communities' customary land claims.

Through such combined efforts, we aim to support genuine and lasting community empowerment; community sovereignty over land and natural resources; intra-community governance that fosters equity, justice, and accountability for leaders and community members alike; investor-community partnerships that result in locally-defined prosperity; and community stewardship of the earth.

Bibliography

Bowen, M., *The State against the peasantry: rural struggles in colonial and postcolonial Mozambique* (University Press of Virginia 2000).

Bruce, J., *Legal empowerment of the poor: from concepts to assessment* (USAID 2007).

Calengo, A.J., J.O. Monteiro, & C. Tanner. *Mozambique Land and Natural Resources Policy Assessment, Final Report* (Maputo: Centre for Juridical and Judicial Training, Ministry of Justice 2007).

Chimhowu, A., & P. Woodhouse, *Customary vs Private Property Rights? Dynamics and Trajectories of Vernacular Land Markets in Sub-Saharan Africa*, 6 *Journal of Agrarian Change* 346 (2006).

Cotula, L., *Legal empowerment for local resource control: securing local resource rights within foreign investment projects in Africa*. London (IIED 2007).

Cotula, L., S. Vermeulen, R. Leonard, & J. Keeley. *Land Grab or Development Opportunity? Agricultural Investment and International Land Deals In Africa* (London: IIED/FAO/IFAD 2009).

Cousins, B., *More than socially embedded: the distinctive character of 'communal tenure'*, 7 *Journal of Agrarian Change*, 281 (2007).

Direcção Nacional de Terras e Florestas, *Relatorio Nacional sobre Delimitacao de Terras Comunitarias* (Government of Mozambique 2010).

Durang, T. & C. Tanner, *Access to land and other natural resources for local communities in Mozambique: current examples from Manica province* (Presented to the Green Agri-Net Conference *Land Registration in Practice*, Denmark, 1-2 April 2004).

Giovarelli, R., *Customary Law, Household Distribution of Wealth, and Women's Rights to Land and Property*, 4 *Seattle Journal for Social Justice* 801 (2006).

Hall, M. & T. Young, *Confronting Leviathan: Mozambique since independence*. (Ohio U. Press 1997).

Hanlon, J., *The land debate in Mozambique: Will foreign investors, the urban elite, advanced peasants or family farmers drive rural development?* (Oxfam Great Britain 2002).

Knight, R., *Camponeses' Realities: Their Experiences and Perceptions of the 1997 Land Law* (Oxfam UK 2002).

Land Campaign, *Manual para melhor compreender a nova lei de terras* (Forum Terra & Kulima 1999).

Negrao, J., *Land In Africa — An Indispensable Element Towards Increasing the Wealth of the Poor* (Oficina dos Centro de Estudos Sociais 179 Universidade de Coimbra 2002).

Norfolk, S., *Examining access to natural resources and linkages to sustainable livelihoods. A case study of Mozambique*, LSP Working Paper #17 (Livelihood Support Programme, FAO 2004).

Norfolk, S. & C. Tanner. *Improving Tenure Security for the Rural Poor: Mozambique Country Case Study*. Legal Empowerment of the Poor Working Paper 5 (FAO 2007).

Serra Jr., C. & C. Tanner, *Legal empowerment to secure and use land and resource rights in Mozambique*. In L. Cotula and P. Mathieu, eds. *Legal Empowerment in Practice: Using Legal Tools to Secure Land Rights in Africa* pp 61-70 (London IIED 2008).

Tanner, C., *Law making in an African context: the 1997 Mozambican Land Law*. FAO Legal Papers Online No. 26. Rome (FAO 2002).

Tanner, C. & S. Baleira, *Mozambique's Legal Framework for Access to Natural Resources: The Impact of New Legal Rights and Community Consultations on Local Livelihoods*. Livelihood Support Program Working Paper 28. (FAO & Centro de Formação Jurídica e Judiciária 2006).

Tanner, C., *Land rights and enclosures: implementing the Mozambican Land Law in practice. Proceedings of the International Conference: The Changing Politics of Land in Africa: Domestic policies, crisis management, and regional norms*, University of Pretoria, 28-29 November 2005 (QUAE Press 2007).

Tanner, C., *Implementing the land law of Mozambique: progress on some fronts* (Centro de Formação Jurídica e Judiciária & Ministry of Justice 2008).

Tanner, C., *Land reform monitoring and evaluation in Mozambique*. Maputo, Centro de Formação Jurídica e Judiciária (Ministry of Justice 2008).

Tanner, C., P. De Wit & S. Norfolk, *Participatory land delimitation: An innovative development model based upon securing rights acquired through customary and other forms of occupation*, Land Tenure Working Paper 13 (FAO 2009).

The Oakland Institute, *Understanding Land investment Deals in Africa: Country Report Mozambique* (The Oakland Institute 2011).

Peters, P. E., *Inequality and Social Conflict Over Land in Africa*, 4 Journal of Agrarian Change 269 (2004).

Schunn, C.D., *Statistical significance bars (SSB): A way to make graphs more interpretable* (Unpublished manuscript 1999).

Serra Jr., C. & C. Tanner, *Legal Empowerment to Secure and Use Land and Resource Rights in Mozambique* In *Legal Empowerment in Practice: Using Legal Tools to Secure Land Rights in Africa*, edited by Lorenzo Cotula and Paul Mathieu, 61-70 (IIED 2008).

Seuane, S., *Aspectos de género e o impacto do HIV/SIDA sobre os direitos das mulheres e das crianças no acesso à terra e recursos naturais* (Centro de Formação Jurídica e Judiciária & FAO Livelihoods Support Programme Report for UNAIDS 2005).

Whitehead, A. & D. Tsikata, *Policy Discourses on Women's Land Rights in Sub-Saharan Africa: The Implications of the Re-turn to the Customary*, 3 *Journal of Agrarian Change* 67 (2003).

Woodhouse, P., *African Enclosures: A Default Mode of Development*, 31 *World Development* 1705 (2003).

World Bank Group, *Rising Global Interest in Farmland: Can it Yield Sustainable and Equitable Benefits?* (World Bank 2011).

Yngstrom, I., *Women, Wives, and Land Rights in Africa: Situating Gender Beyond the Household in the Debate Over Land Policy and Changing Tenure Systems*, 30 *Oxford Development Studies* 21 (2002).

Legislation

Constitution of the Republic of Mozambique, 16 November 2004.

The Land Law (*Lei de Terras*) (Act No. 19/97 of 1 October) The Republic of Mozambique.

Regulations of Land Law (*Lei de Terras*) 19/97 (No 66 of 1998) (Decree No. 16/87), The Republic of Mozambique. The Technical Annex of Land Law (*Lei de Terras*) 19/97 (Ministerial Decision No. 29-A/2000), the Republic of Mozambique.

APPENDIX A

Cross-National Statistical Analysis of Impact of Service Provision⁷²

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1. What type and level of support do communities require to successfully complete community land titling processes?

- a) Is there a correlation between the level of assistance provided and the relative success achieved?
- b) Is there a correlation between the level of assistance provided and communities' effectiveness in overcoming obstacles faced in process of following their nation's land documentation procedures?

1a. Analysis of Treatment Effect on Stage Attained in the Titling Process

Statistical analysis of all study communities across Mozambique, Liberia, and Uganda suggests that, when measured against the control groups' progress, the level of service had a significant impact on the stage attained in the land documentation process.

Because our study is set up to consider the average "African community," that is, as represented by Uganda, Mozambique, and Liberia, we consider relationships between explanatory variables and stage attained in the land titling process over all communities in each of the three countries. The reason for this is both so we may make general statements regarding the larger aggregate that Uganda, Mozambique, and Liberia represent and also because we only have about 15 control communities and 15 communities from each treatment level blocked across countries. In this regard, we consider four major stages in the land completion process, which all communities in all countries must complete before they are to get their titles, namely:

⁷² One component of the variation in the data that should be pointed out is that survey respondent selection was carried out under different regimes in each country, and so our presumption that they are the same is not represented in the data. That said, systematic correlation across a variety of similar tests may suggest some robustness in terms of our simplifying assumptions' ability to represent genuine correlations from the signal.

1. Creation and election of a coordinating or interim committee,
2. Boundary harmonization,
3. Establishing formal rules for community land administration, and
4. Establishing a land and natural resource management plan.

We construct a composite index from these four stages by assigning a value of 1/4 to the completion of each stage. There is no order in completion of stages, and all stages must be completed to obtain a title, so this is a plausible measure.

Of the four treatment groups, the 16 communities in the control group who finished the program had an average of 18.75% of stages completed in March, 2011 when measured in this manner. The education only group of 14 communities had an average of half of the stages completed by the same time, and the paralegal group of 15 communities had an average of 58.33%. Very interestingly, the group with the most extensive treatment, the full legal aid group of 17 communities that was assigned lawyers to work with them over the period, only completed an average of 33.82% of the steps. This may be due to the fact that community members believed the lawyer would undertake the steps for them and so were not motivated to undertake the intensive community centered work themselves, though we add none of the communities ultimately obtained a community land title — perhaps as our window of analysis is too short for its observation — and it may be that complete legal assistance is required to ultimately formalize the process.

We performed standard bivariate hypothesis tests testing the statistical significance that treatment groups differed in outcome from the control group, and found all such tests had very high significance, with, as expected, positive coefficients. Additionally, the test between the control group and the education only group produced an adjusted R-squared of .62, the test between the control group and the paralegal group produced an adjusted R-squared of .68, and the test between the control group and the full service group produced an adjusted R-squared of .38.

Additionally, we found such tests indicated very high statistical significance in differences between treatment groups, and the test of the education only group relative to the full service group produced an adjusted R-square of .43, the test of the paralegal group relative to the full service group produced an R-squared of .56, and the of the test education only group relative to the paralegal group produced an adjusted R-squared of about .77.

1b. Analysis of Service Provision and Important Conditioning Variables'/ Obstacles' Joint Effect on Stage Attained in Land Titling Process

We then turned to address the question of whether there is a correlation between the level of assistance provided and communities' effectiveness in overcoming obstacles faced in the process of following the mandated legal procedures. Observation and analysis of the obstacles confronted by communities' in their efforts to follow their nation's community land documentation procedures led to the conclusion that a variety of factors weighed more heavily on communities' capacity to complete the project activities than the level of legal services provided. Specifically, the most prevalent obstacles or difficulties encountered were:

- (a) The strength/unity or weakness/disunity of community leaders;**
- (b) The presence or absence of elite interference or influence;**
- (c) The degree and kind of threat to its lands a community is facing;**
- (d) The degree of internal community cohesion and cooperation; and**
- (e) The presence or absence of an intractable boundary dispute.**

The joint effect of each of these factors and the level of legal service support provided are analyzed in turn below.

(a) The strength and unity/weakness and disunity of community leaders

It was observed that the strength and cohesion of community leadership before the inception of the project impacted the community's capacity to successfully work through the project activities. To consider this hypothesis statistically, we create a composite index of leader aptitude of nation-state and customary leaders as follows. For elected governmental officials, if respondents responded positively to each of the following questions:

- (1) How well are local government officials protecting community land rights?
- (2) How well are local government officials helping individual families protect their land rights?
- (3) How well are local government officials protecting the rights of widows and children?

- (4) How well are local government officials making sure the people benefit from resources extracted from the area?
- (5) How well are local government officials making sure that the people are consulted when the government sends investors to the area?
- (6) How well are local government officials hearing land cases and resolving them?
- (7) How well are local government officials making sure that local people prosper and develop, bring development opportunities to the area?

they would receive a point, and the results were summed and divided by the number of questions to provide an index from 0 to 1. Community members were asked the first six questions from above regarding customary leaders, and the results were dealt with analogously.

We then tested the hypothesis that these indices of strength of community leadership lead to positive progress in the community land titling process, as measured in our progress index above, while including treatment level relative to the control group effects over the three countries in our sample. In particular, as above, we measured a particular treatment effect relative to the control group with a '1', where the control group was assigned a '0'. The coefficients we report below can therefore be interpreted as the average difference relative to the intercept and other conditioning variable effect of the treatment on the population (that is, relative to the control). As we have a small sample of communities, our study does not support extensive consideration of inclusion of many controls in addition to the treatment due to a small number of degrees of freedom. That said, considering the joint effect of two variables is an interesting exercise given this framework, and may not use up too many degrees of freedom relative to the sample size.

Effects from the education only group controlling for our index relative to state officials resulted in a hypothesis test significant at the 6% level, with a statistically significant positive coefficient of .23 associated with the treatment and a positive insignificant coefficient associated with the governmental leader competency index, whose positive effect was washed out by the standard error.

With regards to the paralegal group, we found significant results with a highly significant coefficient of .29 associated with the treatment effect, and highly non-significant local state leader competency effect, with modest negative effect with less than half of the magnitude of the standard error.

Considering both effects in the context of the full service group negated the significance of the treatment only regression.

Customary leader regressions produced a regression significant at the 10% level with a significant positive coefficient of .23 associated with the education only treatment and no significant effect associated with the customary leadership index, while the paralegal regression in this context produced a significant regression with a highly significant treatment effect associated with a .30 coefficient and an insignificant customary leadership index. Finally, the full service regression produced a significant regression, but with the treatment effect only significant at the 12% level, and an insignificant customary leadership index.

A further factor to note is that community leaders must not only be strong and well respected, but there must be relatively good cooperation *between* the various leaders in the community. This is necessary because, in the event that one or two more influential community leaders express a lack of support for land documentation efforts, at least part of the community will disengage, even if other influential leaders are supporting and encouraging their community to do the work.

In order to consider this we considered the interaction effect between the local state leadership and customary leadership indices. In the context of the education only treatment, the regression was significant at the 7% level with a significant effect associated with the treatment group with an estimated coefficient of .23, and an insignificant effect associated with the interaction term. In the context of paralegal treatment this produced a significant regression with a highly significant treatment effect and .30 estimated treatment coefficient and insignificant interaction effect, and in the context of full treatment this produced an insignificant regression.

With regard to existence of power struggles between leaders, our education only regression set produce highly significant results with similarly significant results relative to the treatment specific effect, accompanied with an estimated coefficient of .38, and no significance suggested relative to the count of elite attempts at power influencing. With regards to the paralegal regression, we attained high significance for the joint effect of treatment and count of elite attempt at influence, accompanied by a highly significant effect from the treatment — associated with an estimated coefficient of .48 — and counter-intuitively positive effect of .22, significant at the 10% level.

(b) The presence or absence of elite interference or influence

Count of elites trying to influence decisions produced significant results with regards to the education only group relative to the control group, with significant results associated with the treatment effect, with an estimated

coefficient of .37, and no significance associated with the count of elites trying to influence decisions. The paralegal regression produced highly significant results with a highly significant treatment coefficient associated with a .42 estimated coefficient and insignificant effect relative to the count of elites attempting to influence decision making. Finally, the full service group did not produce a statistically significant effect, while controlling for count of elite interference.

(c) The degree and kind of threat to its lands a community is facing

External Threats. Observations in the field also suggest when a community has in the past faced or is currently facing an *external* threat to its land claims, the community fully embraces the project and works diligently to complete all processes necessary to procure documentation of its land claims. These external threats are perceived as so great that it is “worth it” to risk trusting an outside NGO for support protecting their communal lands. The existence of external threat regression produced highly significant results for the education only case with a highly significant coefficient of .32 associated with the treatment and an insignificant effect associated with number of external threats recorded, similarly significant results for the paralegal treatment, with a highly significant coefficient of .40 associated with the treatment, and an insignificant effect associated with the count of external threats recorded, and no significance associated with the full service regression.

Internal threats. It was observed on the ground that because communities are so afraid of losing land to outside investors and government agencies, when the threats faced by a community are only internal (coming from community members) the community will reject the project, preferring to remain with the internal threats rather than risk trusting outsiders, even an NGO providing legal support to help protect community land. Likewise, communities that had a high degree of internal friction and division were not able to complete the project activities.

The internal threat regression resulted in a highly significant result for the education only treatment along with a highly significant .26 coefficient associated with the treatment effect, and a quite modest negative coefficient associated with the internal threat, significant at the 10% level, a highly significant result for the paralegal group, associated with a highly significant .38 coefficient associated with the treatment and an insignificant internal threat coefficient, and the full service regression resulted in a significant effect, associated with an insignificant treatment effect, and a significant and quite modest negative internal threat effect.

Relatedly, it was observed the presence of a feared or influential elite who opposes the project often has the power to either ensure community rejection of the project, stall or halt project activities for months at a time, or to completely sabotage the project's success from within.

(d) The degree of internal community cohesion and cooperation

It was similarly observed that the failure of communities to unite around the work was a key factor in whether they stayed in the project or rejected it/withdrew from it. It is important to note that this lack of unity was not caused by the project, but was inherent in pre-existing community dynamics. It was observed in the field that communities that had a high degree of internal friction and division were not able to complete the project activities.

In assessing the validity of this hypothesis we consider positive responses to the statement, "Working together as a community is empowering; we get things done better and faster as a group."

Using share of positive response (agreement versus disagreement) to the above question as a measure of community cohesion we attained statistically significant results at the 10% level for the education only treatment accompanied by significant results associated with a .24 estimated coefficient for the treatment group and insignificance of community cohesion, highly significant results associated with the paralegal regression, accompanied by highly significant results pertaining to treatment effect with a .30 estimated coefficient, and insignificant effects from this measure of community cohesion, and finally insignificant effects associated with the full service regression.

Additionally, we consider community member participation as measured by positive response to one or more of the following classifications:

- (1) Has attended a community meeting in the past year,**
- (2) Has combined with others to raise an issue to a community leader in the past year,**
- (3) Has contributed to community development projects in the past year,**
- (4) Has contributed to environmental protection and prevention of forest fires,**
- (5) Has contributed to surveillance and monitoring of hunting and forest exploitation within the community.**

We then took the share of respondents who responded positively to at least one of these criteria to be the community's average response, and consider how it predicted level of attainment in the titling process. Using this measure of community cohesion we find concordant results, namely with results significant at the 10% level, significant treatment effects of education only, with an associated .23 slope coefficient, and insignificant effect of community participation. Likewise, the paralegal assistance regression produced significant results with significant treatment effects associated with a .27 estimated coefficient, and insignificant community cohesion effects. Full legal service was not statistically significant.

(e) The presence or absence of an intractable boundary dispute

Finally, with regards to presence of an unresolved boundary dispute, the education only regression produced highly significant results with highly significant results associated with the positive .27 coefficient pertaining to the treatment effect slope term, and meaningful -.16 coefficient associated with the boundary dispute term, significant at the 6% level. The paralegal regression produced highly significant results with highly significant results associated with the .38 coefficient representing the slope parameter associated with the treatment effect, and an insignificant boundary dispute effect, with the full service regression also being highly significant, this time with a highly significant negative coefficient of -.30 associated with the boundary dispute effect and a .16 coefficient associated with the treatment effect, at the 10% level.

* * *

In sum, our treatments remain highly significant while controlling for a wide array of controls thought to be pertinent during the field review in the context of two independent variable regressions with regards to education only and paralegal treatments, though less so with regards to the full service treatments, even with our relatively small dataset. Secondary effects thought to be important during the experiment did not tend to hold up to these tests. In particular, the only secondary effects that retained significance were (1) existence of internal threats, which were significant in the education only (at the 10% level) and full service regressions, though in both instances with very small coefficients, (2) count of elite attempt at influence in the context of paralegal treatments, with a strong counterintuitive positive coefficient of .22, significant at the 10% level (perhaps indicating a positive motivating effect of count of elite attempt at influence in the context of paralegal treatment), and

(3) presence of an unresolved boundary, which had a negative coefficient of -.16 associated with it in the education only regression, significant at the 6% level, and a highly significant coefficient of -.30 associated with the full service regression.

2. How to best facilitate the protection of the land rights of women and vulnerable groups in the context of decentralized land management and administration?

Is there a correlation between the level of assistance provided and meaningful participation by vulnerable groups in terms of: community meetings; the drafting, finalization, and adoption of community by-laws; and the drafting, finalization, and adoption of land and natural resource management plans?

Is there a correlation between the level of assistance provided and whether communities adopted safeguards aimed at protecting the land rights of woman and vulnerable groups?

To explore these questions, we first looked at the extent of community participation overall. We then looked specifically at women's participation in the community land titling activities. Finally we investigated the impacts of the project work on women's land rights in the study communities. For this set of data, we looked at individual respondent's answers in the pre- and post-service survey, as a whole and also per community. Statistical analysis found that the project had a statistically significant impact on both community-wide meeting attendance and verbal participation rates across treatment groups. Looking at the women's data only we found that paralegal treatment was the only treatment to significantly increase women's participation rates as compared to their participation the year before the project, but that for the year of the project only, all women's participation rates in all three treatment groups' was significantly higher than women's participation in the control group. Furthermore, the data show that the intervention improved women's and men's awareness of widows land rights. Finally, we found that the project had a statistically significant impact on changes in the treatment groups' community rules concerning women's and other vulnerable groups' rights to their land. These findings are detailed below.

2a. Women's Meeting Attendance and Voicing of Opinion in Community Meetings

The data also suggests the level of support impacts community participation in the project activities. Post-service survey respondents throughout the study

communities responded that treatment level was positively associated with higher rate of individual meeting attendance in the preceding 12 months. In this context, we exploit the individual survey level nature of the data and conduct an individual survey respondent bivariate hypothesis test considering significance of difference between treatment class and control (1) relative to the continental sample of all three countries and (2) relative to individual countries.

Relative to the Africa case, the education only treatment was different from the control group with very high significance and a positive coefficient, the paralegal treatment was different from the control group with similarly highly significant results and positive coefficient, and finally the full service treatment was also statistically different from the control group with a positive estimated coefficient, also highly significant.

Bivariate hypotheses tests in the case of Uganda suggested the education only group was highly statistically significantly different from the control group, the paralegal group was highly statistically significantly different from the control group, and the full legal services group was highly statistically significantly different from the control group, all with the expected positive sign.

Relative to Liberia, concordant hypothesis tests suggest a positive effect of education only treatment on share of survey respondents having attended a meeting in the past year, paralegal treatments were positively correlated with having attended a meeting in the past year relative to the control treatment, and finally full service treatments were likewise positively and significantly correlated to meeting attendance in the past year, all with high significance.

Finally, relative to Mozambique, we find essentially the same thing, with education only differing positively from control, paralegal differing positively from control, and full service differing positively from control, all again with high significance.

The data also show interesting patterns in percentage of people who spoke up during meetings. In this context, all results were positive with high statistical significance.

We are also interested in the effect of treatment on women's attendance of community meetings. When specifying bivariate hypotheses tests relative to control groups, we only found the paralegal treatment to have increased the average share of female respondents who answered, "Yes, often," or "Yes, several times," as opposed to "Yes, once or twice," or "No," significantly, relative to the question, "Have you attended a community meeting in the past year?" by community, and relative to the control group the paralegal group had on average a 16% increase in share of community that responded as above.

Arguably, this could have been due to an increase in specifically project related meetings, and to such an extent we also consider how treatment relative to control predicts total share of people having attended a community in the past year using the post-service survey, independent of the previous year, and we find very high significance for all three treatment groups, with significant coefficients predicting share attending meetings in the previous year, with education only retaining a .63 estimated coefficient, paralegals a .65 percent coefficient, and full service a .71 estimated coefficient.

If we instead consider effects of treatments on average share of women who have voiced their opinions in community meetings, we find insignificance for all of our bivariate hypotheses tests for effect from treatments relative to this dependent variable.

2b. Impact on women's land tenure security

Next, we considered women's responses to questions regarding their confidence in their ability to maintain current rights to shared common areas, and measured the change in their perceptions from the year before the start of the project to the year during which the project was undertaken.

If we consider the effect of the treatments on changes in female responses relative to confidence regarding their ability to maintain current rights to shared common areas from the year prior to the initiation of the project relative to the year during which the project was undertaken, as averaged across the community, we find that only the full service regression is significant at the 10% level, with treatment inducing a counterintuitive negative $-.08$ effect on the average variable response, 'Very confident' or 'Somewhat confident,' relative to 'Very unsure' or 'Somewhat unsure.'

If we look at change of share of women who gained land by community, we find the only treatment that had a significant effect was the education only group, which had a positive effect of $.08$, significant at the 10% level.

Likewise, the education only treatment was the only group to show statistically significant effects on change in share of women who lost land, producing a $-.06$ coefficient. If we then ask women how many different types of people protect women's land claims, relative to the possible responses

- (1) Her children if they are grown,
- (2) Her husband's brothers or father,
- (3) The state/state officials,

- (4) The traditional leaders,
- (5) The widow herself,
- (6) The customary leaders,
- (7) Other,

and measure if respondents could name 0, 1, or 2 different types, we found treatment class could not predict change in this variable relative to the year prior to the treatment and the year during the treatment in bivariate hypothesis tests.

If we consider change in share of correct female responses to a set of 5 questions pertaining to local (national) land rights over the year prior to the experiment and the year of the experiment itself, we find that education only and full service treatments have counter-intuitively negative significant coefficients of $-.08$ and $-.07$ respectively.

If we see how treatment effects predict positive change in responses to the question, “A woman has a right to retain control over the land she lives on after her husband dies?” relative to the year prior to the onset of the experiment and the year in which the experiment was being conducted, with possible responses being “Yes” or “No”, we obtain significance for the education only group with a positive coefficient of $.09$ and significance at the 10% level for the paralegal group with an estimated coefficient of $.07$.

If we instead focus on male response to the question in the above manner, we only get significance for the education only group at the 10% level with an estimated coefficient of $.09$.

If we see how treatment effects predict positive change in responses to the question, “A woman has a right to make decisions about the use of her household’s land after her husband dies?” relative to the year prior to the onset of the experiment and the year in which the experiment was being conducted, with possible responses being “Yes” or “No”, we only obtain significance for the education only group with a positive coefficient of $.16$.

If we instead focus on male response to the question in the above manner, we only get significance for the education only group with an estimated coefficient of $.14$.

Finally, we turn to considering the effect of treatment group on the number of provisions in communities’ by-laws/constitutions and land and natural resource management plans that could be interpreted as strengthening vulnerable groups’ land rights in the community. In this analysis, we find that all treatment

classes had a statistically significant, positive effect. To conduct this analysis, we took all the provisions counted as strengthening women and other vulnerable groups' rights, and then divided this number by the number of communities that completed a second or third draft of these documents. The average number of provisions per by-laws/constitution was found to be 3.19. Compared across treatment groups, the education-only groups had, on average, 4 more provisions than the control groups, the paralegals had 5.5 more provisions than the control, and the full service had 2.83 provisions. Statistical analysis of these results concluded that they are statistically significant.

APPENDIX B

Brief Summaries of the Study Communities' Experiences

Progress of the full-service treatment communities

Nhabundo

Despite the presence of competent leaders, community participation in Nhabundo was low, particularly among women and youth. As a result, delimitation activities were not always completed in a participatory manner. The community's progress was also complicated by various uncontrolled fires, multiple deaths in the community during the project period, and complex boundary conflicts. CTV's field team dedicated a great deal of time and energy to mediating these conflicts. Furthermore, the community of Nhabundo did not demonstrate a strong interest in the project, likely due to the fact that there were no common areas within the community available for use by investors. Meanwhile, community members' reported a strong sense of tenure security, which they attributed to their use of coconut trees as markers of personal property.

Mathi

The leader in Mathi who had been working most directly with CTV died partway through the project period, suspending all activities for two months. When he was replaced, the new leader changed the venue of all project meetings from the town center to his own house, located in a remote section of the community. This change meant that nearby residents started to attend project meetings, while all of the original regular participants no longer participated. To address this change, CTV held many more meetings than expected and provided transportation to the new leader's home. Positively, as a result of CTV's efforts, the community meetings remained characterized by strong community participation, including the regular participation of women and youth. Mathi's high degree of enthusiasm for the project was likely due to its fertile soils and extended coastal/beachfront lands. As a result, foreign investors routinely seek to invest in Mathi. Meanwhile, relations between the community and existing investors are strained. During CTV's mediation of a conflict between Mathi and one investor, community members expressed that they were particularly worried about their fertile lands and coconut trees, explaining: "For this community land to be used by the Boer, our coconut trees have to be felled." With CTV's support, the community was able to complete all activities and make a first draft of its existing land and natural resource management rules.

Coge-Sande

Although Coge-Sande completed all project activities, including the descriptive report and a first draft of its current rules for land and natural resource management, a power struggle between the customary leadership (the *Regulo*) and the state-affiliated *Lider Comunitario* threatened the community's success. Frustrated with the *Lider Comunitario's* involvement, the *Regulo* complained to CTV, "The project meetings should not be done here in the center of the village because the *Lider Comunitario* does not understand anything about community land! In matters of land I should be in front, not the *Lider Comunitario*, and the meeting should be held at my home!" The *Regulo* often demanded that the meetings take place at his house, where he felt he had more power; this mandate led to low turnout and frequent postponement of meetings. The power struggles among Coge-Sande's leadership led to low community participation.

Ligogo

Ligogo withdrew from the project entirely. Despite CTV's countless efforts to mobilize the community, both leaders and community members repeatedly failed to attend scheduled meetings. The community's rejection of the project appeared to stem from community members' lack of trust in both district government officials and their own local customary leaders. Community members explained, "The administration acts against members of the community when we try to claim our rights." Similarly, a community leader in Ligogo said, "We are tired, many projects promise things and fail, and we're tired of fighting. The whites will no longer let us pass to the beaches; everything is for them, all our resources." Other community members explained to CTV that their community was not able to work together because people appear to only be concerned with their individual parcels of land. During the last successful meeting, community members fled from the meeting the moment that CTV's field team began to facilitate work on the participatory appraisal. Despite CTV's inquiries, no explanation for this action was given, and subsequent meetings were not attended.

Petane

The community of Petane successfully carried out the project activities, including completing its descriptive report. Petane was also the only community that managed to complete a second draft of its community rules for land and natural resource management, having discussed and debated the rules, and amended those found to be unconstitutional. Petane enjoyed this success due to the high degree of cohesion between its leaders, community members' trust

in these leaders, and strong community-wide concern with protection of their lands and natural resources.

Progress of the paralegal treatment communities

Furvela

In Furvela, CTV noted a general lack of enthusiasm for the project by both leaders and community members. As a result, the project tasks were conducted primarily by the community mobilizers/paralegals, with little participation by local leadership. To stimulate community involvement in the delimitation activities, the mobilizers frequently changed the location of the community meetings, from the local market to the home of the *Lider Comunitario*, among other locations. Interestingly, the community mobilizers in Furvela had very strong literacy and technical skills. Yet their efforts did not seem to have an impact on community members' participation rates, likely because key leaders were not involved. It appears that the leader's non-involvement was not of their own volition; on the day of the geo-referencing, when it was necessary to resolve all remaining land disputes, the *Regulo* explained to CTV's field team, "They did not consult or seek the help of the customary leaders in drawing these maps of the community, even though it is us who know the community!" Lack of community leaders' participation likely also negatively impacted participation in discussions of community rules for natural resource management.

Magumbo

This coastal community showed a great deal of interest in the delimitation exercises. Over the course of the project, CTV supported Magumbo to resolve a long-standing land dispute that had endured for more than 50 years. Magumbo's community leadership structure worked well with both CTV and the community mobilizers; meetings were rarely cancelled or postponed. The community progressed well through all community land delimitation activities, and CTV noted that community members were generally very pleased with the process, as illustrated by one post-service focus group's comment:

It's a good project because we get to know our limits and the boundaries of our neighbors, we got to know the natural resources in our community, [We learned] the importance of protecting ourselves against foreigners who want to use our beach, and [we learned about] the Land Law, which helped us to resolve the conflict with Nhatxota and Pateguana.

Inhamussua and Inharrumbo

Although the communities of Inhamussua and Inharrumbo were initially very distrustful of the field team and the project, the activities progressed successfully and uneventfully, largely due to the high level of commitment of both the mobilizers and community leaders. In both communities, all of the monthly meetings CTV scheduled were held, although there was often low turnout. In Inhamussua, due to the arid soil and the lack of investors' presence (and therefore a lack of external threat to community land) CTV observed a particularly low level of motivation. In Inharrumbo, the death of the previous traditional leader left the community with no one to recount their community's historical narrative, and community mobilizers reported that it was very challenging to find a group of elders who could respond to questions about the community's boundaries and limits. Of note is that in Inharrumbo, women participated more frequently and in greater numbers than men.

Mahangue

In Mahangue, the *Lider Comunitario* initially resisted cooperating with the community mobilizers because he felt that their work undermined his authority. This resistance resulted in a number of cancelled meetings and meetings characterized by extremely low community attendance. The *Lider Comunitario* only accepted the paralegals' role in the delimitation process after CTV's field team intervened and held a meeting to explain the project and its structure. After this conflict was resolved, the community was then able to successfully complete all of the project activities under the joint leadership of the mobilizers and the *Lider Comunitario*.

Progress of the education-only treatment communities

Paindane

The community of Paindane started activities later than the other study communities because the community leader did not at first understand the importance of the delimitation process. A number of scheduled meetings were cancelled or went unattended as a result of insufficient intra-community mobilization. However, when the community leader realized the potential benefits of the delimitation process to his community, he began to call meetings at the local commercial center, which resulted in high levels of community participation. Unfortunately, Paindane did not make much progress due to a boundary conflict with its neighbor that occupied a significant portion of community members' energy. As a result, Paindane was only able to complete the mapping and the cartogram activities.

Mahundza

Mahundza was the sole education-only community that successfully completed a historical profile and participatory appraisal (DRP). This may have been due to the community's strong leaders and the enthusiastic participation of women and youth, including representatives of the Mozambican Women's Organization (*Organização da Mulher Moçambicana*). However, CTV noted that while the work was completed, it was often not done in a participatory manner; the field team observed that the community leaders appeared to have completed most of the final delimitation documents on their own.

Macavane, Marrengo, and Guiconela-Guifugo

In these three communities, CTV observed community leaders' weak capacity to mobilize community members to participate in their communities' land delimitation process. All three communities' meetings were characterized by repeated delays, postponements, and poor attendance. While the three communities generally completed the necessary delimitation activities, the work did not appear to have been performed by the community as a group. However, in Marrengo, after geo-referencing was complete and the work turned to discussion of the community's rules, the situation shifted: community participation, including that of women, increased significantly. Yet, due to capacity and literacy issues, all three communities were unable to complete the participatory appraisal work of writing their community history, and analyzing and describing their community's social and economic organization (the DRP). Furthermore, only Guiconela-Guifugo was able to write up the descriptive report and the first draft of its community rules. Although Macavane and Marrengo made efforts to record their processes, community members' writing skills were not strong enough to produce the documents required by the Technical Annex.

Progress of the control group communities

Chinginguire and Maduela

Chinginguire and Maduela were able to complete most of the delimitation activities on their own. These two control communities were able to achieve progress for two reasons:

1. The *Povoado* of Chinginguire is a component part of a *Regulado* that had been delimited in the past, and as a result some members of the community had clear memories of taking part in delimitation exercises, which they applied to the current effort. Furthermore, Chinginguire is populated by literate demobilized soldiers and their

families, who were able to read the manuals and laws, and lead their communities through the delimitation activities.

2. The community of Madeula was influenced and supported by its neighbors, particularly the surrounding communities of Petane (full-service) and Inhamussua (paralegal). The mobilizers from Inhamussua reported that the leaders of Maduela frequently sought their assistance during participatory mapping and boundary harmonization activities. With the mobilizers help, Maduela was able to complete many of the delimitation activities.

Maduela and Chinjinguire were also able to complete the geo-referencing activities. While CTV was involved in helping to schedule geo-referencing (led by the SPGC technicians), CTV did not supervise this process, nor any of the other project activities. However, it appeared that community participation was weak and that most of the work was performed by community leaders.

Nhamangua

The community of Nhamangua abandoned the work almost immediately. This rejection was primarily due to the fact that the community did not benefit from interactions with neighboring communities: the community leader, who would have led the process and interacted with neighboring leaders, fell sick for four months. As a result, the community was left out of the general momentum of the project's process.

Marrucua

The community of Marrucua benefited from becoming part of a community land delimitation project promoted by the Morrumbene District Government. Although Marrucua had already made some advances on its own before the District stepped in to undertake delimitation exercises, the District's process mandated that the work begin again from the start. Positively, the community reported that the second time around, the process went smoothly as a result of community leaders' knowledge gained from reading the manuals and guides distributed by CTV. A community leader in Marrucua explained: "We had to start the process over, but as we had already led some activities, such as participatory mapping and initiated the boundary harmonization work [on our own], [beginning again with the district] was not complicated for us, because we had already used the material given to us by CTV."

Jogo

The community of Jogo did not make any progress, largely due to its *Regulo*, who insisted that rather than working at the level of the *povoado* he wanted all

three *povoados* within his domain to work together to seek delimitation at the *regulado* level. However, this *Regulo* did not call the leaders or the people from the three *povoados* to meet; as a result the process stalled and was eventually abandoned. The *Regulo's* insistence that any land delimitation efforts within his authority be combined rendered the process more unwieldy because it involved three communities, three sets of leaders, and a much larger area of land. As one of those leaders explained:

It was not easy to unite the people of all three communities, because we only meet once a month together as a group... and in this monthly meeting we always have many problems and issues to resolve, and there was no time left to complete the project activities. [We also faced] low participation from community members of the three communities, and sometimes we even lacked the participation of the leaders of the povoados.

Jogo also did not have the positive influence of any neighboring communities involved in the project and therefore failed to feel the momentum of other communities' experiences. Jogo's experience demonstrates that performing this work at the level of *regulado* may be more difficult than performing the work at the *povoado* level, where the population is smaller and the land to be delimited is well known to all.

APPENDIX C

Focus Group Descriptions of Community Experiences with Investors

During the baseline survey, CTV’s field team gathered some information concerning the study communities’ current experiences with outside investors (primarily tourism ventures) functioning within their bounds. The information below is not intended to be exhaustive or conclusive; it was gathered in the course of routine focus groups and is presented in raw form.

Various pre-service focus groups explained that some or all of their common areas had been transferred to a foreign investor. For example, focus groups described, “The size of the common areas in our community diminished — the forest that belonged to everyone — it was parceled off and ceded to an investor;” and “There were changes to the size of the forest we use for hunting. The cause of this change was the transfer of part of this land to foreign investors for the construction of lodges.”⁷³

In most of the communities that had ceded some of their land to investors, focus groups described how their community was not included in the decisions to surrender the lands. These focus groups described being summarily informed of the change in a community-wide meeting that did not allocate time for discussion or debate. For example, one focus group explained:

There was a change in the use of the common areas, principally in the forest close to the sea. This area was wanted by foreigners. They came to our community to procure land to build hotels, and the agents of the state told us to concede land to them because we are not properly taking advantage of these areas, because we do not have fields in them or coconut orchards and therefore it would be better to surrender the land to the investors. And we stood with no way out — they came to buy the land but do not build anything — they are taking a long time to build and we remain deprived of the ability to gather firewood, or to hunt and many other necessities!

Other focus groups explained:

The entire community was summoned to meeting with investors, but it was not a discussion — the meeting was more to inform us that they were coming onto our lands because the forest didn’t have even a coconut tree or a fruit tree, and so the amount paid for the land was very little; The

⁷³ Please note that this quotation and all subsequent quotations are direct quotes from focus group participants translated by the authors.

community was not included in the discussion of this change, because the government agents said this parcel was not being effectively used by community members; The whole community was included in the discussion [of the concession], but our opinion didn't change anything, because the investors came with the negotiation already 'closed' by government administrators—they came to inform us that an investor was coming to occupy a part of our lands.

Importantly, focus group participants voiced frustrations with the manner in which they were “consulted” when an investor came seeking land. One group said, “We would accept an investor if he came with the officials of the government administration. Usually, these people come ‘trafficking influence’ and the community feels intimidated and eventually accepts.” Members of another focus group dismissed the entire idea of having had a choice:

The community has nothing to decide on the granting of land to a foreign investor, because when the investor arrives, he is received by the district level, and these questions are treated as only something for the leaders, or chiefs, who only later inform the people about the assignment of our land to the investor.

Another group explained: “The greatest benefits derived from an investor stay with the administrators and the government, because the people are not consulted about the projects to be developed, we are only informed and required to be ‘presented’ to investors.”

Yet many community members appeared to embrace the idea of further investment, predicated upon certain conditions. When pre-service focus groups were questioned whether, if offered the chance for an investor to come into their community and begin an investment project, they would embrace the opportunity, 84% (38/45) of the focus groups answered affirmatively. Only 16% of the groups (7/45) agreed as a group that they would reject outside investment.

The focus group participants were quick to qualify their invitations, however; the majority of focus group respondents replied that they would accept an investor “if...” or “depending upon...” For example, focus group respondents were clear that, “If you receive an investor in the community, you accept the proposal depending on the conditions that are offered to the community. The advantages would be maybe getting jobs and compensating the community in other ways such as building schools, hospitals and more;” “The benefits of having an investor are without a doubt development that can bring jobs to the community, *if* investors work together with the community;” and “The benefits depend on the honesty of the specific investor: if he is not a serious person, we

would not accept that he come into our community — he has to be someone who is willing to fulfill his promises. If he is a good person, we will have a lot of community development, such as transportation, water, health centers, and schools.”

Similarly qualified answers include:

If we accept an investment brought by a foreigner, there would be many advantages if it is a good investor, so it is important to first analyze the type of investment that the investor intends to establish in the area. If the analysis is positive, the benefits would be jobs for us and our children, more classrooms, health centers, and other advantages.

It depends on the district government, but we would accept to share our land with an investor on the condition that the community had time to analyze and consider the benefits that the investment would bring to the community.

Yes, we would accept foreign investment, but we would not accept without first analyzing whether this investment would benefit us. Also we would not accept to surrender the land we use for our activities, but only those areas that we are not using for our activities. If the investment is not beneficial to our society, we would refuse to accept it.

If we were offered an opportunity for an investor to build or realize a new development in our community, we would accept it and believe that we would have some benefits. But we have some concerns in giving up our land, as sometimes investors make good promises to support the community and perform activities that benefit the community, but after they have been transferred the land [they need for their investment] they do not fulfill their promises.

When asked what might be the potential positive and negative aspects of sharing their land with a foreign investor, ten focus groups (22%) simply answered, “There are no disadvantages to an outside investor coming into the community.” One group said, “We lose nothing, we only gain.”

However, the remaining 78% of focus groups had a more nuanced analysis. Focus groups with experiences sharing their lands with investors responded with frustration, complaining: “There are no benefits to members of the community, only to the investor”; “Many foreign investors have come into our community and we never see any real benefits”; and “The advantages would be jobs and employment, hospitals and schools, but our experience is that investors never fulfill their promises.” Another focus groups explained that “It is difficult to talk about benefits, because always, when an investor comes

from outside, he promises to do something to develop the community but such promises are not fulfilled, and the community is abandoned to its luck ... without justification.”

Indeed, **focus group participants described the “lack of fulfilled promises” as the greatest drawback of having an investor in your community.** Focus groups’ responses starkly illustrate communities’ high hopes for the improvements that investors could bring, and their profound disillusionment by how events have transpired. Focus group participants explained, “The disadvantage is the dishonesty of the investors who exploit community resources and do nothing in return — they build tourism facilities and make lots of money, but the community gains nothing in return; the investors make promises they never fulfill.” The groups explained:

Foreign investors come and, instead of fulfilling their promises, in place of developing the community, they pillage it;” “The big disadvantage is that investors never fulfill their promises; they come to our community with their promises, they come to make money using our resources, but they never turn their promises into a reality.

In addition, community members were quick to list a wide variety of potential problems that accompany outside investment. The disadvantages they named included:

- **Loss of land and food security.** Many groups named “loss of our lands” and “having nowhere to grow our crops/make our farms” as the primary disadvantages of outside investment. They described: “The disadvantages are that we would stay without our lands and our culture;” “The disadvantages are many, for example investors can obtain land from someone who depends that land, and the person they will be left without space to cultivate and survive;” and “The major disadvantages of having an investor is that they require.... extensive land areas and we do not have large amounts of land to give to them. Ceding the small amount of land we have, we will be left landless and starving/dying of hunger, because we will have nowhere to grow our crops, and the money he gave us will finish, leaving us landless.”
- **Pollution and destruction of community natural resources:** Focus groups described the various environmental dangers of allowing investors into their communities: “The investors can come and pillage our resources and not do anything in service to the community;” The disadvantages would be in relation to the fact that they may build a factory or another investment which will pollute the river, which is

the only source of water in our community;” “It depends on the kind of investment; it could be an investment that brings health problems caused by pollution;” “A disadvantage might be the creation of products toxic to the community;” and “The disadvantages may be a factory that emits harmful toxic products.”

- **Social problems and crime.** Focus groups were wary of some of the social impacts that outside investment would create or bring into their community. They explained: “The disadvantages will be social, because the community dynamics can change - and our values as well - now there is no crime [in our community], but after these projects, everything can change;” “The disadvantages would be linked to the increased movement of strangers in our community and increased crime;” and “The disadvantages would be increased crime because when you open factories, for example, the population of people looking for jobs and land grows, but as there are not enough jobs for everyone, people who do not manage to work may begin to steal.”
- **Lack of respect for community norms and practices; imposition of investors’ rules.** Community members described investors’ lack of respect for the communities where they have located their investments, and communities’ ways of doing things. Focus groups detailed how investors sometimes dictate community behavior and enforce new rules upon community members. One community explained that: “Foreign investors are very confused; they close the roads without our authorization and this creates conflicts between the community and the investors. The investors who came here to use our beaches know that they have to negotiate with the community, but the main problem is that they leave their managers here, who do not comply with the pre-agreed rules, in violation of the promises made.” Another community echoed this sentiment:

The disadvantages of having an investor exist when the investor does not fulfill his promises and begins to dictate his own rules in the community that are harmful to members of the community, or when the investor begins to arbitrarily create boundaries, closing our roads and not giving us access to our resources located the areas occupied by the investors. Investors forget that these resources are the community’s and are not his private property.

When asked if they felt as though they could ask for benefits in exchange for granting an outside investor a piece of their land, **87% (39/45) of focus groups answered that they would indeed feel entitled to ask for community benefits in exchange for their land.** Focus group members detailed that they

would ask for: employment; schools (particularly secondary schools); hospitals/clinics (including maternity clinics) and more doctors and nurses to staff those hospitals/clinics; better roads; better electricity; improved and increased public transport to local urban centers; more boreholes; improved access to markets or for the investor to build a local market; improved access to necessary agricultural inputs; agricultural extension supports for “improvements to trees and farms;” “the inclusion of youth in income generating activities aimed at increasing the creation of cattle;” football fields; and improved drinking water.

Many groups asked for the investor to pay for the costs of rebuilding any improvements to the land that the investment venture would destroy, and to compensate any individual families who had lost their lands by paying for the cost of rebuilding their homes. One group asked for “services to improve the lives of single women and widows who are wronged,” another asked for “food aid to vulnerable community members,” and a few groups asked for services to improve care for the elderly. Interestingly, some focus groups also asked for training and education centers, and two groups asked for “an antenna for the mobile telephone network,” and “a mobile satellite network.”

Importantly, perhaps recognizing the potential for a landlord-tenant relationship with an investor, a number of groups also asked for a monthly rent, or a periodic payment resembling rent. Specifically, they stated: “We would ask for a monthly rent for the use of our land;” and “We would ask for something valuable to not starve, like money, receiving something every month.” In contrast, another community said that they would not ask for money, as “asking for money only ends in disgrace.”

Various focus groups debated the question of “what they would ask for” but, after watching the behavior of investors already operating in the region, explained that they were under no illusions that they would actually receive these things. For these focus groups, requesting “mutual benefits” was a charade. They explained that: “We would not ask for anything in return for our lands because it is not worth it to ask for anything — these investors never fulfill their promises”; “Investors do not fulfill their promises, so it would only complicate things to ask them for anything when we know that they will not comply — we would ask for schools, hospitals, piped water, employment — but we know they would not deliver;” and “Well, we could ask for something in return [for our land], but community members feel that it is no use asking for anything, because investors do not keep their promises to the community. They promise to build this or that but do not fulfill their promises.”

Of note is that two focus groups simply replied that they wouldn’t share their lands with an investor, and therefore the question of “what they would ask for” was moot. They simply said: “We are not going to concede our lands...if we

ceded our lands, we would have nowhere to cultivate” and “We would not share our land to foreign investors, because they have already demonstrated that they are not serious.”

Interestingly, **when asked who would benefit most and who would benefit least from an outside investor coming into their community, focus groups were unanimous that investors benefit far more than communities.** One focus group explained, “We have some investors in the area, and what we have seen is that the investors benefit the most from their investments and the communities do not gain anything.” Other focus groups explained: “The investors are always the biggest beneficiaries;” “The investor would have greater benefits because of the investment profits” and “The biggest beneficiaries are the investors themselves, the population would not gain anything, there just would be no land to cultivate.”

Several focus groups qualified that the government would also benefit far more than the local community. Explaining the situation, they linked the issue to their exclusion from, and lack of participation in, negotiations with investors. Focus groups described: “The main beneficiaries are the leaders and government personnel who negotiate directly with investors, the community are only informed, they do not participate in the negotiations;” and “The largest beneficiaries are the community leaders who deal directly with the investors and state agents.”

Above all, community members were clear that they would not benefit nearly as much as local leaders and elites. One group explained: “The investor and the government are the ones who would benefit the most, not us who are poor and have no money and no power to require the Government or the investor to fulfill their promises.”

Notably, some focus groups’ responses to this question clearly illustrate community members’ understanding that the land and natural resources are *theirs*, and that the investor is profiting directly from their resources. One focus group declared, “Certainly, the investor would profit the most from his investments, we would have some benefit, but no benefit fully covers the fact that he is using our resources.” Another focus group explained, “There is no doubt that the investor is the one who would benefit the most, and the first benefit will be the fact that he would already be using our land and our resources; the community could, yes, gain a few things but these things cannot be compared to the benefits that the investor will gain.”

MOZAMBIQUE currently has one of the highest rates of land concessions throughout Africa. In the coming years, if large-scale land concessions to investors are not carefully controlled, the amount of land still held and managed by rural Mozambicans will decrease significantly, with associated negative impacts on already impoverished rural communities. Mozambique's 1997 *Lei de Terras*' community land delimitation process has significant potential to safeguard customary land rights and promote equitable local development. However, seventeen years after the law was passed, the *Lei de Terras* has not been well or widely implemented, leaving most community lands undocumented.

To investigate how best to support communities to successfully delimit and protect their customary land claims, Centro Terra Viva and the International Development Law Organization carried out a randomized controlled trial, the *Community Land Titling Initiative*, in Inhambane Province from 2009 to 2011. This publication details the study communities' experiences undertaking land delimitation activities and describes various key findings. The study's central conclusion is that community land delimitation activities should combine the *technical* task of mapping and titling community lands with the *governance* work of supporting communities to strengthen intra-community land and natural resource management and promote gender equity. The report concludes with recommendations intended to inform policy dialogue and promote the widespread protection of communities' customary land claims throughout Mozambique.

