6 *Land rights and enclosures: Implementing the Mozambican Land Law in practice*

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Mozambique has achieved widespread recognition for having what some call the best land law in Africa (DfID 2008). This law emerged after a decisive response by the first democratically elected government to growing post-civil war tensions over land, and an awareness of the need for a modern land policy that would attract and facilitate new investment. An exemplary democratic process involving several public sectors, civil society and experts resulted in the 1997 Land Law, which fully took into account customary land occupation and administration, while including guarantees and mechanisms to promote investment (Tanner 2002). The question now is: has Mozambique been as successful with the challenge of its implementation?

Policy choices in 1995 were restricted by the 1990 Constitution, which maintained the principle of state ownership and did not allow land sales. Yet, like other African countries with similar post-independence histories, free market reforms and the 1992 Peace Accord were already turning land into a valuable asset (Bruce & Tanner 1993; Tanner 1991, 1994, 2002). Refugees and internally displaced people returning to farmland to which they had customary rights found their land occupied by strangers, often in the possession of new documents issued by the state land administration. Government and donors were worried that the existing law did not protect the poor and would not attract investors to a war-ravaged country desperate for new capital.

The need to recognise customary forms of land access and management in the new policy was indicated by the lack of local conflict during the resettlement of millions of 'family sector' farms. It was clear that in spite of years of war and upheaval, these traditional land administrations were in effect *the* land management system of Mozambique, providing a vital zero-cost service to the state (Myers, Eliseu et al. 1993; Myers, West et al. 1993; Tanner 1993).

Farm systems research also showed how local livelihood strategies adapt to local conditions, minimising risk through the use of different resources throughout the year (De Wit et al. 1995, 1996). This suggested a very different view of land rights compared to the official view of the 'family sector' farm on a discrete plot of land that guided post-independence socialist ideas, also evident in other African countries with similar histories (De Wit 1996; Tanner 1991).

Meanwhile, post-independence governments did little to change the colonial land structure recorded in the cadastre. Most colonial plantations simply became state farms and cooperatives. These were later allocated as complete units directly to new

private investors, creating tensions with the original local occupants who still claimed rights over them (Tanner 1993). Smaller colonial units remained as 'properties' on official records, and in recent years have been progressively transferred to private interests. Thus, the colonial map is still largely intact, but with different 'owners'. Meanwhile, local people and farm workers with pre-colonial and other informal rights have occupied many of these areas, resulting in serious conflict when they are given to new private interests (Myers, Eliseu et al. 1993; Myers, West et al. 1993; Tanner 1993).

This mix of surging demand, reasserted local rights and a complex inherited land structure was creating serious problems in 1995. Yet national experts argued that while 'most local farmers resorted to traditional authorities to acquire land' (Carilho 1994: 69), there was a general feeling that existing legislation was adequate and needed only a few adjustments (FAO 1994a, 1994b). A process of 'indigenous modernisation' – 'modernisation from within, based on the Mozambican reality' (FAO 1994a: 15) – was, nevertheless, a major long-term goal. Some also argued that the coexistence of marginalised customary systems and a weak public land administration had created 'a situation of great institutional weakness in relation to natural resources management' (Rodrigues 1994: 158). Therefore, the law was not the problem – effective implementation was needed, and this required stronger public land administration.

These opinions had a familiar ring in 2009, with recent documents saying that the legal framework was sound but needed to be better implemented (Calengo et al. 2007; World Bank 2009). In the mid-1990s, however, when the Inter-ministerial Commission for the Reform of Land Legislation (hereafter the Land Commission) was created, demand for land was already rising exponentially, boosted by the Peace Accord, successful multiparty elections and continuing economic reforms. Economic and political changes were creating a very different policy and legal challenge; therefore the Land Commission initiated a full review of policy and legislation along the 'indigenous modernisation' line.

This chapter argues that the resulting 1997 Land Law has had some success managing the new land challenge in Mozambique. This has been confirmed by many commentators and in a National Commemorative Conference marking 10 years of the Land Law in October 2007 (Calengo et al. 2007; Commemorative Conference 2007). Meanwhile, although the new 2004 Constitution confirms state ownership, political stability created by successful multiparty elections boosts demand for land still further, and local land rights are under immense pressure from both international and national investors. The pressures created by this demand, and a continuing lack of effective implementation by a still unreformed land administration, are resulting in a *de facto* enclosure process that seriously threatens local rights and the equity-enhancing potential of the 1997 legislation.

A controlled enclosure movement

National experts, who recognised the existence and legitimacy of customary land systems in the mid-1990s, also accepted the need for a legal framework in tune with a modern market economy. They agreed that specific articles of the existing Land Law should be changed to allow the transfer of use rights through a market of some sort, and to enable the 50-year state leasehold to be automatically renewed (FAO 1994b).

Because the basic constitutional principle of state ownership could not be changed, the focus was rather on changing the ways in which the state-allocated land use and benefit right (DUAT – *Direito de Uso e Aproveitamento de Terra*) could be used. Old ideas about 'family sector occupation' also had to change, based on evidence from production systems and livelihoods analyses that indicated that customary rights covered far wider areas than previously thought, including common land and areas reserved for family expansion. Public land services also needed to be reformed and upgraded. A case was made, therefore, for a more radical policy review and a new land law which would protect local rights by recognising the legitimacy of customary systems, *and* provide investors with secure long-term rights and some form of marketability in land rights.

The 1995 National Land Policy addresses both issues in its central declaration to:

> [s]afeguard the diverse rights of the Mozambican people over the land and other natural resources, while promoting new investment and the sustainable and equitable use of these resources. (in Serra 2007: 27)

Protection of existing rights and conditions for secure investment were built into the new law, with important implications for the land map of Mozambique. Firstly, customary and formal land administrations were integrated within a single policy and legal framework. Thus, Mozambique is *not* divided into distinct community and commercial areas; rather, different types of occupation and land use coexist, often side by side. Secondly, the policy recognises the legitimacy of extensive customarily acquired land rights, and gives them full legal equivalence to a state-allocated DUAT.[1] These rights can be recorded using a methodology specified in the Land Law Regulations. In terms of legal rights, there is in fact very little 'free' land in Mozambique.

The 1997 Land Law also facilitates equitable and sustainable rural development by allowing negotiated private sector access to customarily acquired land, resulting in agreements benefiting local people. Moreover, individuals with customary rights can also take their land out of customary jurisdiction. The law recognises rights acquired by 'good faith' or squatter occupation, in order to safeguard internally displaced peoples who remained where they were after the war,[2] and to protect the millions who simply occupy land without formal documents (a particularly important provision in the peri-urban and urban contexts).

The law also empowers local people to participate in land and natural resources management, including the allocation of rights to investors, and in conflict resolution. Private investors seeking new DUATs must consult local communities first. Local people can choose to keep their rights, or agree to terms with investors ('partnerships' under the Land Law) for ceding their rights to them. Finally, the new Regulations drew a line under any further attempts to revalidate rights held by former colonial occupants, and required that all new requests for land that were not yet complete should comply with the new law, including the key community consultation provision.

The 1997 Land Law is, therefore, a blueprint for a controlled and equitable process of rural structural transformation. It also promotes a more rational use of land, permitting the transfer of some local rights to new land users, in the hope of providing a more productive future for all. In this sense, Mozambique presently shares the vision of those who proposed the enclosures of eighteenth-century England. To quote one eighteenth-century enclosure Act:

> And whereas the Lands and Grounds…lie inconveniently dispersed, and intermixed with each other, and are in general so disadvantageously circumstanced as to render the Cultivation and Management thereof very difficult and expensive; but if the same…were divided and allocated and enclosed, they would be rendered of much greater Value, and might be much improved…(*sic*) (quoted in Russel 2000: 56)

Similar sentiments are often heard among investors and policy-makers in Maputo who are frustrated by the apparent waste of land in the hands of peasant producers. Yet, while the new law *is* a document advocating change and the development and utilisation of resources, senior commentators also underline the need to protect local rights as the precondition for a process of equitable land rationalisation and rural transformation which brings 'advantages that guarantee the defence of the interests of local communities' (Do Rosario 2005: 177).[3] Achieving this vision of equitable and socially beneficial 'structural transformation' is the greatest challenge of the 1997 Land Law.

Land Law implementation

Proper implementation of the law should result in a *de facto* redrawing of pre- and post-independence land maps, as local people register customarily acquired DUATs and make deals with investors who want their land. Such 'controlled transformation' should begin by recording existing customarily acquired rights on official land maps. A second layer of existing and new 'non-customary' DUATs can be added over these, coexisting within the same overall area. As investors seek land and make agreements with communities, this two-layered base map should change, as areas under community jurisdiction pass to investors under the watchful (and authorising) eye of the state land administration.

Recording local rights

The production systems and livelihoods analysis of land rights translates into customarily acquired DUATs being legally recognised over resources that are not always 'occupied' in the direct sense of presently being worked. These areas can be very large and are included within what the law defines as 'local communities':

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

The local community itself is a titleholder of a single state DUAT, which is managed according to the principle of 'co-titularity', regulated by the Mozambican Civil Code: when decisions are made affecting the collectively held DUAT, all local community members have an equal say. The law also recognises that customary norms and practices determine individual and family land rights within the community. These lower-level rights are also equivalent to state DUATs, and do not have to be formally registered. Recording the overarching community DUAT on official maps does, however, give them adequate protection and makes the codification of the many customary systems unnecessary. Finally, the unequal treatment of women in some customary contexts is addressed by affirming the primacy of constitutional principles.

In 1998 local communities were officially recognised as being 'open border' systems (Tanner et al. 1998). While the community DUAT is private and exclusive – like any other DUAT – investors can come inside and occupy local land if it is 'free of occupation' or if the community agrees to cede its rights. Although the Cadastral Atlas should by now be amply covered by the contours of local community DUATs, this is not the case for two important reasons. Firstly, the law does not oblige local communities (or their members) to identify and register their rights. Secondly, the public land administration has paid little attention to this aspect of the Land Law.

Registering customarily acquired rights

The legislators recognised that communities do not have the resources or know-how to comply with a legal obligation to 'register or lose your rights'.[4] Therefore, DUATs acquired by customary or 'good faith'[5] occupation do not have to be registered. Furthermore, the absence of a title document (*titulo*) does not undermine legality of these DUATs, so long as they can be 'proven in terms of the present law'.[6]

However, not being required to register a right does not mean it should not be done. Proof by means specified in the law is an important condition – it is sometimes necessary to prove local rights and show where they exist. Article 15 of the law contains the important provision that proof of a DUAT can include 'evidence

presented by members, men and women, of local communities', a breakthrough in ways to help local people to prove and secure their rights. In addition to this, 'expert opinion and other means permitted by law' are allowed.[7] These 'means' are contained in the Technical Annex to the Regulations: a field-tested participatory methodology – delimitation – that proves the community-held DUAT, and establishes the area over which it extends. The process relies heavily on community-based evidence, and looks at evidence of historical occupation, production and social systems, as well as traditional boundaries (Land Commission 2000a). The resulting 'participatory map' has to be verified by neighbouring communities before being transferred to official maps, at which point a Certificate of Delimitation is issued in the name of the community.

Not having to register these rights also means there is no pressure on public services to record them. Therefore, although these customarily acquired DUATs exist all over Mozambique, very few have been formally mapped and registered. If they had been, the land use and occupation map would show that very large areas are already occupied and have secure community-held title, leaving little – if any – 'free' land. Indeed, in 2005, the then National Director for Land admitted in a national meeting that this is a significant weakness in the public database.[8] More recent data confirm that this is still the case, with up to 292 communities delimited, against a total of well over 20 000 'new' or non-community DUATs registered in official records (personal communication, Simon Norfolk).[9]

Knowing your rights

Unregistered community and 'good faith' DUATs may be legally recognised, but are invisible to anyone but local people. Faced by rising demand for land, local people are then exposed to *de facto* expropriation and are not really in a position to negotiate with investors: how can you negotiate over land if it is not clear to whom it belongs? Local communities therefore need to know their rights and why they are important.

To this end, public education has been provided in several ways since the law was approved. Firstly, copies of the Land Law Bill were made available to the public in the national press prior to the debate and passage of the Bill into law by the Assembly of the Republic. All laws must also be gazetted in the *Boletim Oficial* to formally come into effect, and copies are available from the Public Information Bureau and the Official Press (*Imprensa Oficial*). In practice, however, few local people will have been informed in this way.

Secondly, delimitation itself raises local awareness about rights, with significant 'knock-on' effects in terms of local organisation and confidence.[10] The Land Commission and the Food and Agriculture Organization (FAO) of the United Nations also trained over 120 NGO and public sector field staff to use the participatory delimitation methodology.[11] Many of those trained are now in senior posts in NGOs and projects, and continue to advocate for better implementation of

the community aspects of the Land Law. The Land Law, Regulations and Technical Annex have also been translated into six national languages, the only legislation (including the Constitution) to have been translated to this extent.

Thirdly, and most importantly, a National Land Campaign launched by national and international NGOs in 1998 took six basic Land Law messages to the local level:

- consultations (between local communities and would-be investors) are obligatory;
- communities may sign contracts (with investors, the state);
- women have equal rights;
- rights of way must be respected;
- register your rights;
- conflict resolution (Land Campaign 1999).

Following the Land Campaign, several NGO groups have worked hard to keep provincial Land Forums going, especially in Nampula, Manica and Sofala provinces.

Fourthly, specific development projects and programmes have spread awareness through practical applications of the Land Law. For example, the National Directorate for Forests and Wildlife (DNFFB)/FAO Community Based Natural Resources Management (CBNRM) programme of the Ministry of Agriculture has reached over 68 communities since 1996. Community delimitation is integrated with participatory land use planning ahead of community development activities (Durang & Tanner 2004; Enosse et al. 2005). FAO food security programmes, where natural resource access is a key issue, also employ Land Law and delimitation principles to promote equitable and negotiated development predicated on the recognition of local rights (FAO 2008; Norfolk & Tanner 2007).

The cadastral service has trained district administrators and other sector officers, and an English-language version of the Land Law is available on their website.[12] This training focuses more on handling new private sector land requests, however, and community delimitation has not been a high priority (CT Consulting [CTC] 2003). The FAO–Netherlands-supported Paralegal and District Seminar Programme run by the Centre for Juridical and Judicial Training (CFJJ) of the Ministry of Justice is more comprehensive (Serra & Tanner 2008). Between 2006 and 2008, some 252 paralegals (including 65 women) working in communities were trained, not just in the Land Law but in other natural resources and environmental laws; and 157 district officers – administrators, judges, district attorneys, police chiefs and land administrators – have a better understanding of these laws and how to use them to promote equitable, participatory development.

Progress to date

While the law does not oblige communities to register their rights, registration is becoming more important, both to secure local resources and as a first step in development initiatives. Yet, apart from 21 Land Commission pilot projects to develop the delimitation methodology, few delimitations have been supported by the public sector. Most of this work is done by NGOs with bilateral support, notably

the British Department for International Development (DfID), the Netherlands and Germany. The latter have supported community delimitation programmes by the national NGO ORAM[13] in Zambezia, Nampula and Sofala provinces respectively. Important work has also been done by smaller local NGOs, such as Kwaedza Simukai and Caritas in Manica, and the Swiss NGO Helvetas and Action Aid in Maputo Province and Gaza. All these NGOs have acquired solid operational and technical capacity over the years, and continue to promote the community aspects of the 1997 law.

The impact of focused donor support is evident in a comprehensive survey carried out for DfID in 2003, which showed that 180 communities had been delimited by June that year (Table 6.1). However, of the 180 delimited communities, just 74 had certificates issued by provincial cadastral services. Reasons for not issuing certificates vary from not having an officially prescribed form, to the presence of private investors and/or conflicts within communities. For example, one certificate that had already been issued was held back by the local administration, which argued that handing it to the community would cause conflict in an area of high investor demand.[14]

Table 6.1 *Community land delimitations under way and completed, Mozambique, June 2003*

Province	Number of delimitations	Number of certificates issued	Number of titles issued	Number of substantial post delimitation activities
Niassa	5	3	0	1
Cabo Delgado	11	0	0	0
Nampula	56	19	24	1
Zambezia	48	28	0	1
Tete	2	0	0	0
Manica	18	4	0	1
Sofala	17	5	0	1
Inhambane	5	0	0	0
Gaza	9	8	–	1
Maputo	9	7	–	–
Total	180	74	24	6

Source: CTC (2003: 19)

It is not clear how many 'local communities' there are, but the Ministry of State Administration has recorded over 10 000 villages. Usually, a 'local community' includes several villages, so there could be anything between 2 000 and 3 000, all with extensive legally recognised DUATs. Cadastral maps should be full of the outlines of these community DUATs. Where large communities are registered (for example in Niassa Province), they do stand out alongside the private sector DUATs, which – by law – have to be recorded; overall, however, the communities so far recorded do not make a big impact on official maps. In fact, the absence of local rights on these

maps seriously understates the extent of legal land use and occupation, and creates an impression of large 'empty areas' available for investment.

The public sector response

The cost of delimiting local rights is often given as a reason why more has not been done. A report for DfID in 2003 estimated that a delimitation costs from US$2 200 to US$8 800, depending upon the terrain and logistical factors – an average figure is around US$6 000. This may seem high, but it is cost-effective if it gives once-off documentary and visible (recorded on a map) security to the hundreds of households who make up a local community, and if compared with the cost of securing a DUAT for an individual investor. For example, it can cost US$400 to survey and provide a title document for a 2- to 10-hectare plot (CTC 2003: 35). For a community of 50 households, this would be US$20 000. Delimitation is a good deal in this context.

The absence of local rights on cadastral maps is then fundamentally the result of weak public sector commitment to community rights registration. Apart from the 21 Land Commission pilot projects, little public funding has been available, and even declined from 2001 to 2003 (Table 6.2). Using the then exchange rate of Meticais (Mts) 20 000/$US suggests that public resources could have funded 10 delimitations in 2001, and only three or four in 2003. This is an extremely low level of funding for a state committed to safeguarding the basic rights of its citizens. In fact, the CBNRM programme, run by the DNFFB and FAO, has probably done more than the state land administrators to provide some level of public support to community aspects of the Land Law, by supporting delimitations to secure the forest and other resources that will subsequently be managed by local people.

Table 6.2 *Allocation of public sector resources to community land delimitation through PAAO SPGC budgets, Mozambique, 2001–03*

Province	Resources for community land registration (Mts 1 000)			Resources for community consultations (Mts 1 000)		
	2001	2002	2003	2001	2002	2003
Niassa	142 520	28 080	116 400	0	88 000	0
Cabo Delgado	67 920	0	23 500	34 060	14 000	0
Nampula	301 040	57 600	0	71 832	41 800	42 600
Zambezia	335 080	73 800	83 260	62 000	130 500	42 720
Tete	36 432	90 000	37 260	0	25 380	0
Manica	27 504	22 680	83 425	79 200	37 900	81 700
Sofala	147 488	0	0	26 720	0	0
Inhambane	0	47 520	20 184	0	176 400	0
Gaza	80 000	11 520	5 800	0	0	0
Maputo	10 836	118 700	42 840	7 224	0	0
Total (1 000 Mts)	1 148 820	449 900	412 669	281 036	513 980	167 020

Source: CTC (2003: 44), using data from the sector programme PROAGRI
Notes: Annual Action Plan of Operations (PAAO) and Provincial Geography and Cadastre Service (SPGC)

The Technical Annex indicates when delimitations are necessary, with implications for who pays. Priority is given to conflict areas, where the Public Administration 'decides on how the costs are divided', presumably between stakeholders. Next are areas where new projects are proposed (state or private). Here the Annex is clear: 'costs are supported by the investor'.[15] The third situation is when the community requests delimitation. Although nothing is said about costs, it is likely that the community or a supporting NGO would pay.

As already indicated above, NGO programmes are the main source of funding for the majority of community rights work. To quote the CTC (2003: 43) report:

> In practice, it is very rare for delimitation and registration costs to be supported by a new investor or the State. There are no cases yet of the State proposing a delimitation as a first step in a local development process, as specified in the Land Law Regulations. Accordingly, there are no cases where costs have been assumed either by the public sector, or by the investor at the direction of the local administration. All community land delimitation exercises can then be said to be at the request of the community, and costs are transferred to the community or its support NGO. In practically all cases recorded to date, NGOs or similar organisations have covered the costs and carried out the work.

This situation has changed little since 2003, when the CTC report suggested an 'optimistic rate' of some 45 delimitations per year (based on Table 6.1, all delimitations). Assuming a baseline of 180 in 2003, this would give a 2008 total of 405 communities delimited. A recent review of official data suggests a current figure (early 2009) of 298,[16] which is significantly short. In fact, the number of communities delimited has now been accepted by government as a key indicator in the Performance Assessment Framework which informs the government–donor Joint Review process. The *accumulative* target of 242 communities 'delimited and registered' by end-2008 has been met (República de Moçambique 2009: 9), but this is well short of even the 299 that could be expected using the 2003 'with certificates' figure of 74 as baseline. Moreover, certification is still a problem, and other data show the rate of delimitation falling dramatically in the last two years.[17] This is attributed to a regulatory change that imposes conditions on communities that were previously only applicable to investors, and requires that delimitations are approved by the Council of Ministers.[18]

Current agricultural sector programmes[19] appear to allocate even fewer resources to recording the land rights of the majority rural population. Instead, regulatory changes, land use and occupation inventories, and a recent zoning exercise to find land 'available' for large-scale investors (over 10 000 hectares) are restricting community rights. A more narrowly defined interpretation of 'occupation' is emerging, focusing on areas of actual use – existing plots and housing – rather than the extensive Land Law definition of a local community.[20] Therefore, there is an

even greater likelihood that official maps will effectively reduce the legal rights of communities and small farmers, and re-impose the orthodox view of 'family sector' farms that existed before the 1997 law.

Private sector and other non-customary land rights

Compared with community-held rights, the treatment of private sector land rights under the 1997 Land Law has been different. Practically all public sector funding in the last two governments has gone to fast-tracking private sector requests for new land rights. In contrast to the 180 community delimitations registered by mid-2003, the CTC reported many thousands of private sector land claims processed by public land services since the Land Law came into effect. The full extent of the differential treatment of 'occupation' DUATs and those held by the private sector is revealed in the recent survey of official records already cited, with more than 20 000 privately held DUATs registered.

Apart from the weak public commitment to delimitation, the major reason for this dramatic imbalance is that, unlike community rights, the registration of new DUATs acquired from the state is legally mandatory. The result is an official land map of Mozambique that presents a seriously one-sided view of where legally attributed and protected rights actually exist, and which gives the impression of vast areas where no rights exist at all. Moreover, even the administration of these formally registered rights is not free of problems, with overlapping rights and poor survey work causing many land conflicts between investors as well as with local communities (Baleira & Tanner 2004).

Historical land units

There is another underlying layer of landholdings with roots in the colonial era: the colonial plantations that became state farms after independence, and the thousands of smaller colonial properties that still exist on the cadastral database with their original borders. The establishment of these colonial units always involved the relocation of local people from the best land to marginal areas nearby, where they formed a labour pool for the colonial enterprises (see Negrão 1995).

With the post-independence nationalisation of land, all colonial properties that were not converted into state farms should have disappeared off the map. Instead, they have remained silently in cadastral records, treated by the land administration as discrete (albeit moribund) 'properties', already alienated from community control. Since the mid-1990s they have been the focus of growing private sector interest, and many have been privatised as going concerns. In many cases, however, local communities have already settled on this land, often asserting prior rights that existed before Portuguese occupation. They argue that, under the 1997 Land Law, these areas have reverted to local community 'use and occupation', either by customary practices or 'good faith' occupation.

When an investor wants to take over one of these 'properties', an acute conflict inevitably starts with local residents. The state argues that local residents have no permanent right to be there, having been 'allowed to stay' until a new owner was found. Residents in turn argue that they have been there for years and have *de facto* acquired DUATs either as a community or as individuals. Recent research into natural resource conflicts has revealed many such cases (Afonso et al. 2004; Baleira & Tanner 2004) where local people are in conflict with the new 'owner' of an old colonial property that has been transferred to him or her by the state, without regard for the presence of local communities.[21]

Colonial national parks and official hunting reserves (*coutadas*) also remain 'public domain' areas where, in theory, no one can live, farm or hunt. Again, however, all of these areas have significant resident populations who claim historic rights, and who reoccupied 'their' land during the years of neglect and war. These people end up in conflict with both the state and private firms now securing management contracts for tourism or safari hunting businesses. This issue is even more complex in the new national parks created since independence, where local people claim pre-existing rights. The debate in Mozambique as to whether local rights cease to exist when a new park is declared, or whether they continue subject to park and conservation legislation through negotiated settlements along Makuleke[22] lines, has still to be resolved.

The old colonial land map of Mozambique is therefore still very real. The settlers may be gone, but many old company and other colonial landholdings are either the site of bitter conflict, or are being used without any clear legal basis. Conflict occurs in all these areas where local people have either reasserted old pre-colonial land rights or claim 'good faith' occupancy rights, and then the state suddenly gives the DUAT to a new investor.

Land concentration

The final piece in the new Mozambican land map is provided by an assessment of the impact on land distribution of the many thousands of private land applications since economic liberalisation began in the mid-1980s. Official data on land distribution are presented in very simple categories that do not allow in-depth analysis of the evolving land structure of the country. It is, however, possible to interpret some of the available data and draw tentative conclusions about how the rising tide of private land applications is affecting land concentration.

The first example is from Zambezia Province, where the DfID-funded Zambezia Agricultural Development Project team had full access to cadastral records (Norfolk & Soberano 2000). Up to March 2000, 3 259 applications had been made to the provincial cadastral services, covering a total of 3 613 847 hectares. Of these, 1 342 were for residential purposes. The analysis was restricted to 1 678 of the total applications as all applications less than one hectare[23] were excluded on the grounds that they are mostly for urban commercial or residential use and in 33 cases the land use purpose was 'not indicated'. This exercise was repeated for the number of

applications actually approved. The data are presented in three amalgamated bands (Table 6.3).

Table 6.3 *Land concentration indicated by new land applications up to March 2000, Zambezia Province, Mozambique*

Size of land	Applications (N = 1 678)[a]		Approved applications (N = 219)[a]	
	Number of applications	Total area applied for (%)	Number approved	Total area approved (%)
1–100 ha	44	0.4	59	2.8
100–1 000	33	5.3	30	23.5
Over 1 000 ha	23	94.3	11	73.7
Total[b]	100	100.0	100	100.0

Source: Norfolk & Soberano (2000: 21)
Notes: a. Excludes 251 cases <1 ha
b. Excludes 1 548 cases <1 ha, and 33 cases 'not indicated'

The evidence of a land concentration process in Zambezia is compelling. The most accurate indicator is the area actually approved, but even in this case, just 11 per cent of applicants were allocated nearly 74 per cent of the area approved, while 59 per cent of applicants received just below 3 per cent. The data also reflect the huge scale of some applications. In the Norfolk and Soberano dataset, there are 15 applications for areas of over 50 000 hectares, covering over 1 million hectares (29 per cent of total area applied for).

In Zambezia most of the area requested is for forestry projects (2.2 million hectares or 62 per cent of the total) (Norfolk & Soberano 2000). In fact, a forestry concession holder does not need a DUAT to carry out his or her activities. Forest resources are legally the property of the state and do not 'belong' to the land rights holder; the concession applicant needs to secure a licence to extract timber, and with that they can advance into a given area and start logging. Either way, the net result is usually that the timber company considers the area to be 'theirs', and local interests are largely ignored.

Many such projects conflict badly with the land use practices of local communities with legally recognised but unregistered DUATs over the area. In this context, communities have little power to demand a share of the high returns earned from extracting 'their' timber, in spite of the 1999 Forest and Wildlife Law that demands consultations between the local people and the concession holder before getting a logging licence. In Sofala, years of local-level capacity building by ORAM are changing this, with some communities now able to insist on some form of participation in commercial logging. Having a community-held DUAT recorded and registered also raises the pressure the community is able to apply to the concession holders (Tanner 2004).

Recent research by the CFJJ also provides some insight into land distribution. This research looked at the economic and social impact of community consultations,

discussed in the next section. Data on areas requested by land applicants were also collected, however; through these data it was possible to produce indicative tables of trends in land concentration in some provinces.

Table 6.4 shows the situation in Gaza Province, indicated by a random sample of 41 cases from the files of the Provincial Geography and Cadastre Service. Again, there is a clear trend towards land concentration as a result of new land rights being awarded to private sector applicants. Out of 41 cases, 17 (42 per cent) account for 95 per cent of the area requested. At the bottom of the scale, 13 cases (32 per cent) account for less than 1 per cent of the area applied for. While the data are by no means complete or statistically valid (all land applications would have to be classified, as in the Zambezia study), they do support the general trend observed elsewhere.

Table 6.4 *Land concentration trends in Gaza Province, Mozambique, 2004–05*

Area (ha)	Number and (%) of cases	Total area requested	% Total area requested
0–10	8	52	–
10–50	4	127	0.5
50–100	1	100	–
100–500	7	1 940	1.5
500–1 000	4	3 504	3.0
1 000–10 000	15	84 136	65.0
> 10 000	2	39 000	30.0
Total [1]	41	128 859	100.0

Source: Tanner & Baleira (2005) using data from a field survey by João Paulo Azevedo

This view is confirmed in work by Dr José Negrão from Eduardo Mondlane University in Maputo, whose fieldwork in Manica Province revealed clear signs of land concentration through the allocation of large areas to a relatively small number of applicants (Cruzeiro do Sul 2004).[24] Negrão foresaw a serious increase in land conflicts within the next 10 years as a direct result of this process, and estimated that across the country, land concentration resulting from new DUATs was probably benefiting some 60 to 70 families.[25]

These concerns appear to be justified: 2008 saw the high point of new requests for large areas of land by the new biofuel lobby, with figures of up to 12 million hectares requested appearing in the national press and a variety of documents. However, the huge areas legally covered by community-held DUATs could restore some balance to a highly skewed situation. Communities are not single users, however, and assuming an average of 1 000 households in a community of 30 000 hectares delimited would give an area of 30 hectares per 'household-farm'. Based on recent calculations of the area needed by low-technology extensive agriculture, this is not enough land for sustainability, where households might need up to 30 hectares just for their subsistence plots, without taking into account access to forests and other common use areas (Åkesson et al. 2008: 21).

Better and more disaggregated classification of land occupation data will allow a clearer view to emerge, and might even permit a Gini coefficient for land distribution at some point. Given the very large areas legally under community control, it is likely that a Gini coefficient may not show a marked degree of concentration among a small number of land users. However, available data do indicate that with respect to areas being requested – which tend to cover the best or most economically viable land – a process of land concentration involving the wholesale loss of local rights is under way.

Benefits to local people: Community consultations

The Land Law was described above as an instrument for promoting rural development through a controlled structural transformation. Customary rights are not frozen when they are legally recognised or even when they are delimited. Instead, by negotiating with investors, local people can trade land for new resources to advance their own development priorities. Using their legally recognised customary rights and community consultations, they can realise at least some of the capital value locked up in their land.

Land concentration is, therefore, not necessarily a bad thing (although the trends advise against complacency). Assuming the process is beneficial, and that consultations bring benefits to local people in exchange for giving up their rights over very large areas, it makes sense to look at the impact of these consultations.

Article 27 of the Land Law Regulations requires the district administrator to issue a statement (*parecer*) about the consultation between a community and the investor. This statement should:

> …refer to the existence or not, in the area requested, of the Land Use and Benefit Right [DUAT] acquired through occupation [customary or 'good faith']. Where other rights do exist over the requested area, the statement will include the terms through which the partnership will be regulated between the titleholders of the DUAT acquired through occupation and the applicant.[26]

The Technical Annex to the Regulations also stipulates that delimitation should be carried out where new projects are proposed, and that the person or entity proposing the new project (state or investor) should pay for it. This makes sense if a core objective of the consultation is to see if local DUATs already exist in the project area and, given the recognition of customary rights, local DUATs are very likely to be present.

The National Land Directorate and the government legal advisor on land argue that Article 27 alone is adequate for protecting local land interests, and is much less costly in terms of both time and money than a full-scale delimitation before the consultation.[27] This is understandable from a public sector with a limited budget, and applying Article 27 does comply with the most essential legal requirements; and to the credit of the land administration, a *consulta* is carried out for practically every

new land application. This has had many positive effects, not least that local people feel their interests are being taken into consideration. Whatever the outcome of the process, this is an important step forward. If local rights – delimited or not – are then ceded to the investor, the important question is whether or not the *consulta* brings benefits to local people that (a) are sufficient to compensate them for the real value of the assets lost, and (b) allow them to move out of the poverty trap they are in.

Recent research by the CFJJ and the FAO Livelihoods Programme looked specifically at these questions and clearly indicates that the answer is a resounding 'no' in both cases (Tanner & Baleira 2005).[28] There are a number of reasons for this:

- Local people are unaware of how to exercise their legal rights: they may be aware of their rights, but when faced with an outsider in the presence of representatives of 'the state' (district administrator), surveyors or even the police, they feel pressured into agreeing. They also have no experience in negotiating.
- Local awareness of the real value of their assets is low: without some kind of land use inventory and support to understand the real value of their assets (often for new uses about which they have no knowledge, such as ecotourism), local people accept absurdly low 'offers' in exchange for agreeing to an application.
- Consultations are poorly carried out, with little real local representation: local leaders do not consult other community members, or documents are signed by whoever is available at the time.
- Most consultations are too short, often lasting no longer than an afternoon visit: the Land Law principle of co-titleholding requires that all community members are consulted, implying time for an internal discussion.
- Not enough meetings are held with local communities: investor projects are new and complex and the community needs at least two meetings to be informed, and to discuss an agreement.
- The best 'development outcome' may not be a community priority: the overriding objective of the investor and public officers is that the community should have 'no objection', as the land applications cannot proceed without their consent. Public officers are also often aware that investors are supported by higher-level political figures.

It is very difficult to give a monetary value to the community–investor agreements that are made during a consultation. In some cases, especially in coastal areas where investors are queuing up to build beach lodges, a form of purchase is occurring that can provide some indication as to how much some communities are getting for these very valuable resources. Land cannot be bought and sold, but fixed assets *on* a piece of land are treated as private property and can be sold to a third party. Having acquired the assets, the third party can then request the transfer of the underlying DUAT into his or her name.

Several cases in prime beach locations in Inhambane Province use standing coconut trees as the basis of the transaction. One 'good practice' consultation based on a price per tree agreed between the investor and the local community resulted in the DUAT titleholders – 69 households – handing over 20 hectares of beachfront land

for US$16 000. The investor also agreed to employ local people and upgrade local infrastructure, which seems to be happening. This is, however, a very small sum to pay for a world-class beach location. In fact, the average price per hectare paid to local people in this beach zone is even less: around US$390, with wide variations depending on the awareness and negotiating skills of local people. Prices charged by developers, who later subdivide such areas for holiday homes, range up to US$200 000 for a 10-hectare plot.[29]

The official position that consultations adequately protect local rights *could* apply if local people are fully aware of their rights and how these relate to the area the investor is requesting, and if they know the real value of the land. However, without a full delimitation or other technical support, they are rarely aware of these aspects, in spite of the hard work of the Land Campaign and others (Baleira & Tanner 2004).

The CFJJ/FAO data also indicate that the majority of consultation agreements between investors and local people are poorly recorded, and do not give enough detail to later verify if investor promises are adhered to. Field visits to these communities confirm that, in reality, very few of these promises are kept, even those that involve little real economic commitment by the investor.

Judges and prosecutors in CFJJ/FAO courses and seminars confirm this lack of compliance with consultation agreements. Yet, to date, no community has taken legal action based on non-compliance, as they view the courts as being part of the same state mechanism that is obliging them to accept the investor and his promises. Moreover, they have no idea how to prepare a case and take it to the public prosecutor or the courts (Afonso et al. 2004; Baleira & Tanner 2004).

The positive side of the picture

It is almost 12 years since the Land Law came into effect and was quickly followed by the regulatory instruments needed for full implementation. Although the picture painted above illustrates many negative aspects, this does not mean that the Law has failed. The development of the Land Law itself was a major achievement, not only because it provided an innovative and workable solution to very complex problems, but also because it was developed through a participatory exercise that included civil society, academics, and all line ministries and sectors with an interest or role in land and resource management. It had, and still has, widespread support across the country, especially among those who promote local, community-based development and who expect the state to respect and protect the basic rights of its citizens (Calengo et al. 2007).

Implementation *has* been patchy, particularly in relation to the treatment of community rights by public administrative agencies. Nevertheless, notable progress has been made:

- there is basic awareness of the legislation among all land users in many areas, and of the rights provided for and protected by the new law;

- a small but important number of communities have had their customarily acquired collective DUAT identified in spatial terms and registered in the Cadastral Atlas;
- in practically all new land requests, private investors *are* consulting communities before occupying land, and are paying some attention to local rights; and
- community consultations in a limited number of important cases *are* beginning to bring benefits to local people, and impact upon poverty and local development.

A type of controlled enclosure process, which has been conducted not just to meet the demands of a small powerful elite, but also to achieve an equitable and sustainable outcome, is being pursued in a small number of cases with some success. There are important pockets around the country where local people are aware of their rights and are increasingly able to use them to generate new resources for local development, through a negotiated process that either cedes or shares their unused land with investors.

NGOs are making a valuable contribution to this process: the Swiss NGO Helvetas has supported delimitations as a starting point for community-based projects since the law was passed in 1997. In two key tourism areas, community-owned lodges are now generating useful revenues, and in one case the community has signed a revenue-sharing contract with a private firm that will upgrade the lodge and manage it together with local people.[30] In Sofala and Nampula provinces, ORAM continues to delimit community rights and build capacity to deal with outsiders. Finally, in Manica, ORAM and Kwaedza Simukai have created community organisations that are increasingly able to negotiate with outsiders and defend their interests (Chidiamassamba 2004; Knight 2002).[31]

There are cases of investors agreeing to land use contracts with local residents, even inside the contentious hunting reserves (Durang & Tanner 2004; FAO 2008; Norfolk & Tanner 2007).[32] Large multinational investors are also concerned about local rights and want to work with local people, although this is not always easy and can sometimes result in tensions. As a report on one large-scale project says, however, 'it is not a question of not doing it [referring to the participatory rights-based approach], it is a question of how to do it' (Åkesson et al. 2008: cover). In other words, difficulties and challenges associated with implementing this approach do *not* justify discarding it.

There are, therefore, many projects that respect the underlying principles of equity promoted by the new laws and that bring benefits to local people. Other programmes with a strong private sector focus also promote equitable development, based on recognition of local rights and the role of local communities, not just as beneficiaries but also as stakeholders in new projects.[33]

Local people who are more aware of how to use their rights are beginning to use the Land Law to access capital locked up in their land. They are increasingly able to use their rights to secure resources for their own agricultural and other initiatives,

and are learning how to negotiate constructive agreements over land access with investors (and the state) that benefit all sides. Both processes can drive a genuine process of local development and poverty reduction, and can influence longer-term policy development in the context of decentralisation and local planning that is being extended across the country.

Moreover, a number of organisations continue to promote the correct application of the new laws. After the Land Campaign of the late 1990s, provincial Land Forums are still active. NGO development projects that need secure land rights to move forward use key mechanisms like delimitation as a starting point, using Land Commission training manuals and acquiring valuable experience that can now feed into discussions of policy and improvements to the legislation.

In the public sector, the national land administration continues to disseminate the Land Law, albeit still with a focus on acquiring new land rights rather than formalising existing ones.[34] The Community Management Programme of the National Directorate of Forestry and Wildlife, and sectors like Environmental Coordination and Rural Development, are also working at the local level to inform people of their rights and to promote activities based on varying degrees of local control over resources (DNPDR 2007). Recent success with having delimited communities included as a Performance Assessment Framework indicator, and growing acceptance of the unequal treatment of customarily acquired rights in the Cadastral Atlas, suggest that more attention may soon be paid to identifying and recording these rights. NGOs and others must ensure that the approaches used result in certificates that are reflective of the true dimensions of these rights, so that communities can negotiate from a position of strength with investors and the state.

The CFJJ/FAO Paralegal and District Seminar Programme has achieved important results in raising awareness among local people of their rights, and promoting a participatory and equitable approach to agrarian transformation. The Programme is now poised to link this process of legal empowerment and negotiated stakeholder participation in local development directly into the national Rural Development Strategy (approved late 2007). The focus will be on how to use rights constructively, and – when necessary – how to access the justice system to defend them. The critical issues of women's rights and HIV/AIDS are also being addressed and included in this training (Seuane 2005).[35]

Conclusion

The discussion has underlined the progressive nature of the 1997 Land Law and its potential for bringing about a controlled structural transformation of the rural economy, without creating social injustice and hardship. Indeed, if used as intended by its architects, the Land Law can facilitate a process of local development in which a kind of equitable enclosure process, linked to agreements between local people and investors, facilitates the release of locked-up capital value of local land rights to local people.

This requires effective implementation of the legislation. A key indicator of this is progress towards identifying and recording customarily acquired rights, and helping local people appreciate the potential of their land and other resources. However, the limited progress that has been made is mainly a result of donor-supported NGOs, and not a reflection of a public commitment to securing local rights as the first step towards a participatory development process. The number of registered 'delimitations' remains very low. Public sector involvement is still minimal, resulting in official records that practically ignore local land rights, in a country where the vast majority of DUATs are acquired through customary systems.

Much of the colonial land map remains in place, including old private properties, plantations-turned-state-farms, national parks and hunting reserves. The failure to remove the old farm properties in particular from cadastral records contradicts the basic philosophical principles of the Land Law, and undermines the rights of local people who have occupied these areas and claim historic or squatters' rights. Conflicts erupt when the state then allocates this land to investors.

Thus, while local DUATs probably exist over most of the country, their lack of visibility means that local land is vulnerable to acquisition by investors and elite groups. In this context, the evidence of land concentration is disconcerting. Legally recognised customarily acquired land use rights cover large parts of the country and a Gini coefficient for land occupation might then suggest that land distribution is still quite evenly balanced or even favours the poor rural majority. Applying the same test to the best land (fertile; close to water, roads and markets; in valuable coastal areas) would, however, suggest that there is a serious trend towards concentration in land use at the expense of local rights.

Community consultation is said in official quarters to be adequate for protecting local rights, and the fact that all new land requests do involve prior consultation with local people is a considerable achievement. Yet, in the face of rising demand for land, communities 'participate' in *consultas* from an essentially defensive position, and most agreements to date scarcely enable them to maintain current living standards, never mind achieve a lift out of poverty. The final outcome – loss of local rights for little or no return – is weighted in favour of the land applicant.

If these trends continue, especially with regard to the best and most viable resources, the end result will be an enclosure movement that only benefits national and international interests, resembling the classic English historical model alluded to by Russel (2000, quoted above). Moreover, the community consultation process in this context merely serves to give these new enclosures a veneer of respectability by demonstrating compliance with the law, and apparently safeguarding local needs and interests.

Nevertheless, there is also much of which Mozambique can be proud. Producing an innovative new Land Law that includes local practices and customs is the first achievement. The mid-1990s consensus on land policy still exists, albeit challenged by a strong private sector that wants to privatise land. Real benefits from a more

controlled enclosure process are possible if people know how to use and defend their rights, and if consultations are properly carried out. Important benchmark cases are proving this in practice, and must be used to inform investors and policy-makers of the real benefits that a more equitable application of the Land Law can bring.

Meanwhile, pressures to change direction are increasing. There have been indications that government is considering a kind of market in land use rights. Indeed, a *de facto* market in land rights already exists and does need to be regulated. How this is done and what the implications are for local people must be fully explored and discussed. Yet, even without full privatisation, there are strong signs that a more conventional form of enclosure movement is under way, in which the progressive aspects of the Land Law, such as negotiating with existing rights holders, are used to provide a veneer of respectability.

The evidence also suggests that a historical Mozambican process is repeating itself: outsiders are occupying the highest-potential local land, leaving local people to survive with fewer and less-robust resources or to work for the new occupants of their land. On what land is left, they resort to deforestation and shorter rotation cycles – all of which bring the environmental impact of this less equitable enclosure process to the fore.

This is not a cry of 'foul play' against investors, whose funds and skills are essential for generating new growth and employment, and reducing poverty. Nor is it a call for investors *not* to occupy local land, and for communities to hold on to their rights at any price. Indeed, most rural communities *want* investors – they know they need the new jobs, the new market opportunities and the economic shift that will result. The real issue advocated in this chapter is the underlying principles of equity, sustainability and partnership that are eloquently put in the original Land Policy declaration. What local people do *not* want is for their land to be 'captured' by a class intent on rapid capital accumulation through an enclosure movement that brings no benefits to local stakeholders who have legally recognised rights, and which cynically uses elements of the new and progressive legislation to provide a veneer of respectability to the outcome.

Land grabbing and concentration are not yet irreversible and large areas are still occupied by local communities who can learn from the growing number of 'best practice' cases. This chapter does, however, present a call for caution. The 1997 Land Law offers huge potential for a genuinely equitable process of rural transformation and local economic diversification – enclosures with a human face – based on rationalisation of land use and the availability of new capital and skills through a collaborative relationship between state, citizens and entrepreneurs. There are clear signs that this potential for good is being wasted and the Mozambican enclosures could produce the same result as their predecessors in Europe – a dispossessed rural majority, and migration to towns. Yet, unlike Europe, this will be in a country that is not about to embark upon a labour-intensive industrial revolution generating thousands of new jobs for dispossessed peasant farmers and their families.

Notes

1 Law 19/97, Article 12.

2 Applies to national individuals occupying unclaimed land for 10 years uncontested.

3 Carlos Agostinho do Rosario was Minister of Agriculture in charge of the Land Commission to January 2000, and oversaw the development of the Land Law, Regulations and Technical Annex.

4 Personal notes, FAO and Land Commission files.

5 'Good faith' occupation: uncontested occupancy and use of a piece of land for 10 years or more.

6 Article 13, Line 2 and Article 14, Line 2.

7 Law 19/97, Article 15.

8 Speaking at the National Seminar on Integrating Territorial Planning and Natural Resources Management in the Context of Decentralised Planning, Beira, 31 August–2 September 2005.

9 Based on a recent analysis of official records.

10 This is clear in provinces like Nampula, where NGOs like ORAM say that early delimitation programmes have created demand for registration in neighbouring communities concerned about threats to their land; and in Manica Province, where communities bordering a new biofuel project feel at risk.

11 See the Commission delimitation training manuals and video (Land Commission 2000a, 2000b, 2000c). A second edition of the Manual has been produced by the Centre for Judicial and Judicial Training of the Ministry of Justice for use in paralegal training, and in the multi-donor Community Land Initiative project.

12 See www.dinageca.gov.mz.

13 The Rural Organisation for Mutual Support, ORAM is today the major 'land' NGO in Mozambique.

14 Anecdotal evidence is from a reliable NGO source.

15 Technical Annex, Article 7, Number 4, lines a) and b) respectively.

16 See note 9.

17 Noted by donors in a non-published communication, early 2009, based on independent NGO data. Government has apparently agreed to an annual target of 50 communities delimited as from 2009.

18 Article 35 of the Land Law Regulations was altered in October 2007. See Calengo et al. (2007) for a full account of the legal basis of this change and its possible impact.

19 These are the PROAGRI 2 sector-wide programme and the newer Programme for Food Production.

20 Recent reports from the National Directorate for Land and Forests, and personal communications with National Directorate staff.

21 Part of the FAO programme at the CFJJ.

22 The Makuleke community bordering the northern Kruger Park won back their rights over land inside the park under the RSA land restitution process, and subsequently negotiated with the National Parks Board SANPARKS to still include this land as part of the park in return for economic benefits flowing from eco-tourism within this area.

23 The average residential area applied for was six hectares. This suggests that some are very large and intended for agricultural or other use. Only small residential plots were therefore removed.

24 Also see www.iid.org.mz.

25 Personal communications with Dr Negrão discussing his field research before his untimely death in 2005. José Negrão made a huge contribution to the land and poverty debate in Mozambique, and established a successful master's programme in rural development.

26 Law 19/97, Regulations, Article 27.

27 Personal notes, FAO files; donor meeting, Swedish Embassy, Maputo, 2007.

28 Now also published in Portuguese, Working Paper No. 1 in the series *Sociedade e Justiça* of the CFJJ.

29 Based on conversations with developers, CFJJ/FAO field research, and anecdotal evidence.

30 This is the Covane Community Lodge, Canhane Community in Massingir District. A delimitation and land use plan supported by USAID and FAO preceded the development of this important case study.

31 About Manica, Knight asserts that 'communities reported that after learning about the land law they felt as though their ignorance and isolation has been alleviated and that a door had been opened for them into the greater national legal system. A sub-chief in Pindanyanga [said] that, "This new land law…is good, because it is helping people to know their rights to the land. We knew our rights within our culture, but not under the government's laws" ' (2002: 12).

32 In Coutada 9, safari operators proposed a revenue-sharing agreement with communities in the Coutada, with an internal zoning of the reserve where the investor has an exclusive Ministry of Tourism concession. In 2005, community leaders received US$18 000 from the first year of operation.

33 The African Safari Lodge programme promotes ecotourism operators who make genuine and beneficial agreements with local people, and who implicitly recognise the underlying rights of local people as the original asset holders. With more attention paid to consultation as a negotiation over benefits, future projects can then secure greater benefits for both sides.

34 For example, brochures and posters on the so-called Simplified Procedures for getting a new DUAT.

35 Initial case study research by Sonia Seuane and Megan Rivers-Moore indicates very low awareness among women of their basic constitutional rights, and a failure to use these to defend their land rights when husbands or male household heads die young – see Seuane (2005).

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