

NAMATI PARTNER: CENTRO TERRA VIVA



Customary Rules and Practices Strengthen Women’s Land Tenure in Rural Mozambique

By Nelson Alfredo (Translated by Marena Brinkhurst)

Under Mozambique’s Constitution and Land Law (1997), communities may legally govern their lands and natural resources according to customary norms and practices, so long as local customs do not contradict national law. However, rising land scarcity and associated increases in land value are leading some families to “reinterpret” custom as sanctioning the dispossession of widows from their marital lands. This *Lesson from the Field* describes how Centro Terra Viva (CTV) and Namati support communities to strengthen women’s land rights within customary systems and harmonize local practices with national and human rights law. The publication also describes CTV’s efforts to involve Customary Tribunals and local dispute-resolution authorities in efforts to ensure the implementation and enforcement of community rules designed to protect women’s land rights.



Women attend a community land meeting in Inhambane.

Mozambican law also clearly establishes that men and women have equal rights to land. The Constitution sets out the principles of universality and equality of all people (Article 35) and gender equality (Article 36). Similarly, the Land Law of 1997 provides 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). Mozambique’s Land Law also explicitly grant men and women equal inheritance rights, stating that “The right

Mozambican law explicitly recognizes customary systems for land management and conflict resolution, but only so long as these systems do not contradict constitutional values and principles (Mozambican Constitution, Article 4, and Land Law, 1997, Article 12).¹

¹ Article 4 of the Constitution recognizes all the “different legal systems and customary norms that coexist in Mozambican society as long as they do not contradict the fundamental principles and values of the Constitution.” Within the Land Law 1997 itself, Article 12 stresses that customary practices are only accepted if they do not contradict the Constitution.

of land use and benefit may be transferred by inheritance, without distinction by gender” (Article 16§1). The Law is explicit that women must be included in every aspect of the community land delimitation process and community land management (Technical Annex Article 5§2, 2§8 and 6§3). In addition, because women are “co-owners” of a joint community land right, women have equal rights to community property and must be involved in land and natural resource management decisions (Article 10§3 of the Land Law; Article 12 of the Land Law Regulations; Article 1403 of the Civil Code). Additional protections for women’s land rights are enshrined throughout the Land Law and in its Regulations, as well as Mozambique’s family law. Taken together, these provisions offer strong state-level protections over women’s land and property rights, both during marriage and in the event of widowhood.

However, although both the Constitution and the Land Law establish strong land rights for both men and women, the spirit and letter of the law may not be followed in practice: across Mozambique, untold numbers of widows are dispossessed from their marital lands in direct contradiction of national law.

Commodification of land, large- and mid-scale land concessions to investors, climate change, environmental degradation, population growth, and various other factors are putting pressure on

increasingly scarce land. In response, powerful individuals and families in rural communities appear to be manipulating local customary rules and land tenure systems in order to gain land. In land disputes with relatives or neighbors, customary courts and dispute resolution mechanisms favor men and powerful families. Male heads of households are increasingly claiming absolute ownership rights over family land and transactions, depriving the weaker family members of their rights. CTV has observed situations where customary leaders, powerful residents and family members have undermined or eschewed traditional protections for women’s land rights by strictly interpreting customary rules, suppressing customary rules favorable to women, or by ‘rediscovering’ rules that undermine women’s land and inheritance rights.

Using Custom to Strengthen Women’s Rights

To address the divide between women’s statutory land rights and community practice, CTV and Namati have developed techniques to help communities align local practice with national law. As part of the community land delimitation process, CTV supports men, women, youth, state leaders, customary tribunals, religious leaders, and traditional leaders to catalogue and assess their community’s customary rules for land and natural resource use and management. As part of the process, CTV helps communities to think critically about impacts of their current customary rules on women’s land rights and how to align local rules with protections established by Mozambique’s Constitution, Land Law, and Family Law.

CTV uses participatory discussions and community members’ own experiences, interests and ideas to address intra-community discrimination. CTV’s approach helps deepen community members’ awareness and appreciation of the positive benefits of women’s land tenure security. In response,



Female members of the Community Land Committee in Coguno.

communities frequently revitalize customary rules that protect women's rights. In this way, communities improve the protections for women's rights without undermining or replacing their culture and customary land governance systems.

Steps to Revitalize Customary Rules and Practices that Protect Women²

1. Inform the community

CTV works with leaders and community members to inform the whole community about the community land protection process and how it will involve the revitalization of customary rules and practices. In open meetings, CTV staff explain the objectives, importance, advantages, disadvantages and potential impacts of the process on community members' lives. CTV schedules these informational meetings publicly and invites all community members to attend, including youth, women and elders.

2. Catalogue existing customary rules

CTV field staff collect initial information concerning the community's existing customary rules and practices for the use and management of land and natural resources. In large community meetings and smaller meetings with elders and leaders, CTV's field team enquires about the content and function of all current and past customary rules, including their practical application and enforcement. The aim of this inquiry is to understand how the community's customary rules functioned in the past versus how they function now, which rules are still in force versus which ones have fallen out of use, and how a community's customary rules have changed over time.

To ensure that all people in the community feel comfortable expressing their opinions, CTV holds separate sessions with groups of women, men and leaders. CTV's field staff facilitate each group to ensure that discussion covers the full range of community rules, norms and practices,



Women of all ages participate in a women's meeting on by-laws in Ngulela, Inharrime District.

including rules concerning community use and management of land, marine resources, freshwater bodies, forests, hunting grounds, grazing areas, and other natural resources. After each small group creates its list of the community's current and past rules, they present their list to the entire community.

3. Organize and compile community rules into a comprehensive first draft

CTV then compiles all the rules into one document and structures them by resource type (land, forests, hunting, fishing, etc.) in order to make them easier for the community to discuss in future meetings. During this phase, CTV does not edit or censor any of the community's rules. It simply records all of the community rules exactly as explained by the community, using the words of the community. At this stage, CTV staff watch for rules that appear to undermine women's rights or are potentially problematic in order to ensure these are addressed later in the process.

4. Provide legal education

After the community has recorded all of their current rules for land and natural resources use and management, CTV teaches the community

² Centro Terra Viva. 2013. Manual de Delimitação de Terras Comunitárias com Uso de Mobilizadores Comunitários.

about the Mozambican Constitution, basic human rights principles, and women’s land rights. CTV staff divide the community into groups of men and women during the legal education sessions, and use the time to support the women’s groups to generate ideas for new rules – or changes to existing rules – that will strengthen their rights.

5. Facilitate a second draft

After the community has learned about relevant national international laws protecting their land rights, CTV facilitates community discussions about the effectiveness of each of the current rules (as compiled in previous meetings). Staff encourage the community to discuss whether or not the customary rules and practices of the past and present are good, effective and fair. Facilitators ask whether the community wants to keep, revise or replace each rule in order to match the community’s current reality. In particular, staff point out any situations where the customary rules contradict the Constitution (and therefore are legally invalid). CTV also answers questions and addresses community members’ concerns.

During this phase of the rule-writing process, CTV works with community leaders to ensure that all community members – including

women, men, youth and elders – attend meetings and take an active part in debates and discussions. Diverse participation is necessary to ensure that the community’s future rules for land and natural resource management represent everyone’s involvement. If women are not fully participating in meetings, CTV staff continue to divide the community into smaller discussion groups by gender to ensure that women feel comfortable speaking.

6. Validate the draft rules

After the community has come to agreement on a second draft of their rules, CTV verifies that the community’s draft rules do not contradict Mozambique’s Constitution and Land Law. CTV also determines whether the draft rules adequately protect women’s rights. If there are problematic rules, CTV asks the community to further discuss and revise their rules until they are compatible with the laws of Mozambique.

7. Seek community approval

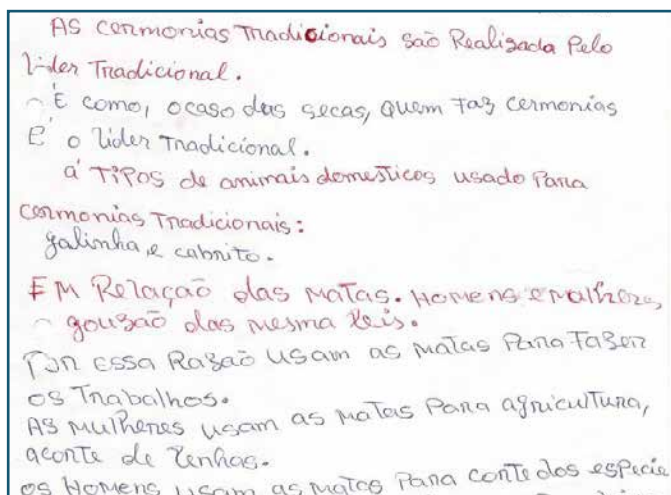
After completing the compilation and validation of the community’s rules, CTV returns to the community with the final draft of rules. The community and its leaders review this final draft and then formally adopt it.

8. Present community rules to local officials

Once the community adopts their rules, the community shares its rules with the District Government.

9. Ensure ongoing implementation and enforcement

At this point, the community considers the rules – new, old and revised – to be “in force.” The list of community rules is made publicly available to community members so that everyone can read and reference them at will. Local leaders and officials ensure the ongoing implementation and enforcement of the rules, particularly in dispute resolution processes.



Sample from the first draft of community rules, Inhamussa community.



A community meeting in Mata about drafting community by-laws.

Community Rule-Drafting in Action: Mata

In the community of Mata, CTV quickly identified that the community's existing rules were discriminatory against women, particularly in relation to land inheritance after the death of a woman's husband (according to local custom, a family's land passes automatically to the deceased husband's brothers). Mata's rules also prevented women from making decisions related to family farm production, sale of farm produce, allocation of any surplus produce, or the use of funds earned from the sale of produce.

CTV observed that as a result of such rules, women in Mata rarely participated in community decision-making processes. Staff found most women to be quiet and passive, always deferring to the decisions or statements of local men. CTV realized that they could not simply tell women that they were equal to men and had the same legal rights because the women had internalized the messaging told to them all their life that men are the ones who decide on all "matters of importance."

Rather than simply teaching women about their legal rights, CTV began with open questions to the whole community about the rights of men and women and drawing out practical examples of how men and women contribute both to their households and to the community. CTV also

facilitated community discussions concerning the negative consequences of discrimination based on gender. The goal was to bring both male and female community members gently to a place where they realized for themselves that weak women's rights were hurting the community as a whole – economically, culturally, and spiritually – and that change would be beneficial.

During the process of listing all of the community's past and present rules, the elders of Mata talked about how in the past women – especially widows and orphans – were treated in accordance with customary ideas that women should be protected because they have important roles in the community and family. Many community members were unfamiliar with these old rules because the community had not practiced them for many years.

There was much debate during Mata's long process of amending, abandoning and replacing rules that discriminated against women and vulnerable community members. At first, the community land delimitation's rule-revision process appeared to generate distrust among the men and women of Mata: the community had never before in living memory openly discussed and debated their rules for land and natural resources management.

As the process continued, CTV reminded the community that their rules could not contradict the Constitution, including the principle of equality between men and women. This legal education included clear and practical explanations of how the principle of equality affects things like the inheritance of land.

Ultimately, Mata created a set of community rules that revived past rules that respected women's rights and modified existing rules to remove discriminatory practices (see examples in box, next page). In the final review and adoption meetings, members and leaders repeatedly called upon everyone to respect the new rules and protect rights of women and children.

The Evolution of Community Rules in Mata

The examples below are taken from the section of Mata's community rules concerning the inheritance of land.

First Example: Death of Women's Father

In the first draft of Mata's rules, the community said that women had no right to inherit land from their fathers because, in their view, the land should stay with the home because daughters are likely to leave when they marry and then no longer care for land they inherit.

In the second draft, Mata decided that women could inherit land while living with her parents, that is, not in the home of another man. According community members, this restriction was needed because otherwise the woman would not be there to care for the land and so it must stay with her brothers or uncles (the brothers of the deceased).

With awareness of the equality between men and women in the national land law, and explanation of how their inheritance rule contradicted with the Constitution, on the third draft, the community agreed on a rule that women have the same inheritance rights as men, regardless of whether they are single, married or live with a man.

Currently, community members appeal to those who are depriving women of their inheritance rights to voluntarily abandon the practice.

Second Example: Death of Husband

In the first draft of rules, Mata community members said that a widowed woman should continue to live on and use the same land, provided that she had living children by her late husband and to accept to remarry into the family of her late husband.

In the second draft, the community removed the remarriage requirement and decided that a widow would inherit land if she had living children by her deceased husband, but continued to insist that if she remarried outside the family of her late husband she would not have the right to transfer that land to another man.

In the third draft, after legal education and explanation of the equality of men and women in this case, the community agreed to remove all conditions. The final rule states that women, whether they had children with their late husband or not, will inherit half of what the couple had when the husband was alive. The remaining half would either go back to the family of the deceased man or go to any children that he may have had outside of his marriage.

The community members of Mata also decided to make this rule apply to widowed men.

Implementation Challenges

Despite its success facilitating lively and highly participatory community rule-drafting meetings, CTV is concerned about communities' implementation and ongoing enforcement of their newly revised rules. While community leaders repeatedly remind community members that they are required to respect the rules, actual enforcement remains weak, as some families and individuals continue to violate the land rights of women and children.

While investigating the reasons for the weak enforcement of women's land rights, CTV identified a critical gap in the rule-drafting process: the Customary Tribunals (*Tribunais Costumarios*) were not adequately involved in the rule-drafting process. The Tribunals are the customary dispute resolution forum. Because CTV had inadequately involved the Tribunals in the discussion and adoption of the community's rules, the Customary Tribunals were continuing to use the 'old' rules, rather than the new norms agreed by the community after months of participatory discussion and revision. Because they did not incorporate the new rules into their decisions or punish people who violated them, the Customary Tribunal's decisions were seriously undermining the effectiveness and perceived legitimacy of the new rules.



Women actively participated in community by-law meetings in Mata.

To address this challenge, CTV is now involving the Customary Tribunals earlier in the community land delimitation process. CTV now meets with all the members of the Tribunals to explain the steps and objectives of the community-rule-drafting process, emphasize the role of the Tribunals and all community institutions, and stress the importance of having each institution work together to implement the community's adopted rules.

In addition, CTV now organizes specific trainings for members of the Customary Tribunals and other traditional leaders to discuss in detail their roles as supervisory bodies and enforcers of compliance to community rules. CTV designs the trainings to ensure that customary authorities understand the importance of equal rights for men and women, how the community's new rules protect women's rights, and how to apply the new rules in dispute resolution decisions.

In addition to these trainings, CTV staff plan to ensure that members of the Customary Tribunals participate in the official presentation of the community's rules to the District Government. CTV hopes that by sharing the rules with the District Government, District officials will reference a community's rules when communities ask them to intervene in a dispute – as occurs when Customary Tribunals are unable to reach consensus on a particular case.³ By engaging the District officials, CTV hopes to prepare them to work with communities to find solutions to conflicts without requiring involvement from the formal court system. In addition, because community members sometimes bring land-related issues directly to the police (rather than to the Customary Tribunals), CTV also now shares a community's new rules with the local police. CTV has learned that all local governance institutions must work together to support the implementation and enforcement of a community's protections for women's rights.

³ Customary Tribunals are below the District government in Mozambique's judicial organization.

Reflections and Conclusion

It takes time to change customary norms and practices. However, by actively engaging all segments of the community - young, men, women, community leaders, traditional leaders, religious leaders, traditional healers, community elders, and customary Community Tribunals – CTV has had positive results supporting communities to change their rules concerning women’s access and control over family lands. By supporting communities to revitalize ‘old’ customary norms and practices that protected women’s and children’s land rights and revise discriminatory rules, CTV empowers communities to transform local practice to align with Mozambique’s constitutional principles of equality and justice. In this way, communities are not forced to abandon their customary rules, but instead work together to strengthen and improve them.

CTV has learned that it is critical to consider local enforcement of community rules from the beginning of the rules-drafting process. Even when the process of drafting community rules is highly participatory and inclusive, it is the Customary Tribunals and other adjudicating bodies that hold the power to make or break the community’s newly adopted rules in practice. Forcing change upon these institutions at the end of the process is likely

to fail, so it is crucial to involve them throughout the rules drafting process. CTV anticipates that the increased involvement of customary institutions will strengthen the practical implementation of community rules – particularly those rules that protect women’s land rights.



Feliciano Chamo of CTV facilitates a community meeting in Coguno.

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Namati is an international organization dedicated to advancing the field of legal empowerment and to strengthening people’s capacity to exercise and defend their rights. Namati’s Community Land Protection Program supports communities to follow national land documentation laws to protect their customary and indigenous land claims.

www.namati.org

Centro Terra Viva (CTV) advocates for natural resource management policies and practices that are environmentally sound, scientifically-based, economically viable and institutionally responsible in Mozambique. CTV and Namati have partnered on the ‘ProTerras’ community land protection project in Mozambique since 2010.

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