

Protecting Community Lands and Resources

Evidence from Mozambique



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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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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.

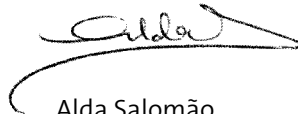
As part of this same study, data from Uganda and Liberia illustrate how integrated, comprehensive community land delimitation efforts have the potential to foster profound changes that go far beyond documentation. Since adding a governance component to our work in Mozambique, we have observed the same 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.



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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

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.

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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.

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.

