

PARTICIPATORY LAND DELIMITATION

AN INNOVATIVE DEVELOPMENT MODEL BASED UPON
SECURING RIGHTS ACQUIRED THROUGH CUSTOMARY
AND OTHER FORMS OF OCCUPATION



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With the supervision of
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Land Tenure and Management Unit (NRLA)

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Photography: Carolina Cenerini

List of abbreviations

CBO	Community-based Organisation
CEDAW	Convention on the Elimination of all Forms of Discrimination against Women
CFJJ	Centre for Juridical and Judicial Training
DfID	UK Department for International Development
DUAT	Land Use and Benefit Right
FAO	Food and Agriculture Organization of the United Nations
GPS	Global Positioning System
LEP	Legal Empowerment of the Poor
NGO	Non Governmental Organization
PRA	Participatory Rural Appraisal
SPGC	Provincial Services for Geography and Cadastre

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1. Setting the scene: securing land rights for the rural poor

1.1 Livelihoods and risk reduction strategies

Access to land and other natural resources is essential for the survival of the vast majority of rural – and even many urban – households in developing countries. Most poor families have diversified income generation strategies that are also designed to minimize risk, but in rural areas especially their land is *the* principal source of subsistence. And even where land and natural resources are part of a wider livelihood strategy that might involve off-farm labour, access to land is often the bedrock of that strategy, providing a minimum level of food security when jobs disappear or when wages pay for rent or medical bills.

Agriculture is also often part of a wider web of income generating activities that links poor households with other economic actors and sectors of the economy. Commercial farmers lower their wage bills by passing on part of their labour costs to the small farms where their workers live and produce food. Land access for the poor is then not just part of their livelihood strategies, but is also tied into the production strategies of much larger enterprises.

Household farm strategies also have another dimension. A systems analysis of most rural households will show that they depend upon access to a wide range of resources throughout the year to meet food security needs as agro-ecological and seasonal conditions change. Thus even quite poor families may depend upon access to large areas of land to support crop rotation, seasonal use, and risk aversion strategies.

Different household members have different but important roles too. Women are often the major force in both the agricultural and domestic sides of the household economy. Their rights to land may depend on the men in their communities however – through marriage principally – but their production is the basis of survival and food security for millions of children across the world.

Patterns of household reproduction also affect resource use. Children enter the household workforce at a very young age, and their tasks change as they get older. With older children – more labour - a household can look for more land, and production might increase. Other households grow old and shrink. These cycles imply different strategies over time, letting go and taking in land, using more or fewer resources as the key constraint of available household labour also changes.

Diagram 1 illustrates how rural households in these kinds of situation need far more land than the immediately visible family plot of one or two hectares. If they change plots every three years, over a period of 15-20 years, they will need at least 5-10 hectares per household. Some families will also have different fields near rivers and in upland areas, which produce in rainy and non-rainy seasons. In the dry season, still moist river beds might offer an important source of income producing specific crops (in Tete Province in Mozambique for example garlic is produced for the market when the rivers are dry). And access to common resources such as pastureland and forests also play an important part in

the overall strategy, for medicinal plants, hunting, building materials. Land is also reserved for future use, as entire villages move across the landscape to use new resources, or when children need to start their own families.

Where long range seasonal pastoralism is the basis of local livelihoods (Diagram 2), large areas of apparently 'empty' land are a critical part of the community strategy. Even here however, relatively small areas are strategically important at certain times of the year, such as hillocks and raised areas where cattle and people congregate during the rains. Northern Namibia and southern Angola offer good examples.

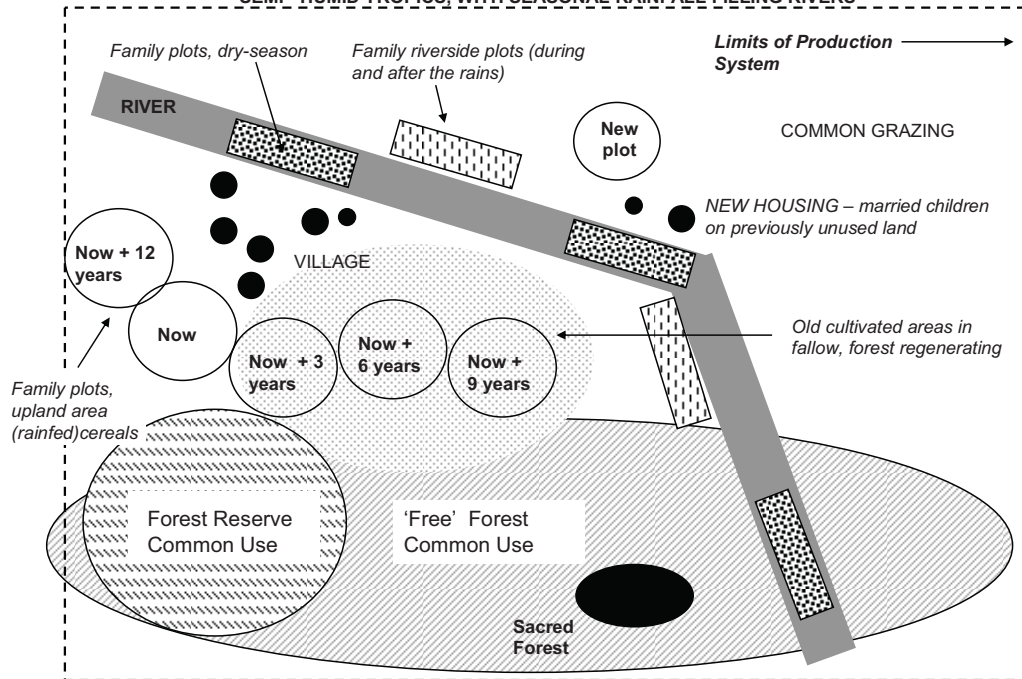
Livelihood strategies may also be affected by how plentiful or resource-rich land is in the vicinity. Where land access is severely restricted by overcrowding and the degradation of resources, many household livelihood strategies are about coping in situations where there are no opportunities to grow or work your way out of poverty. Securing even the smallest land right is then a critical factor just for survival. How you get that right, and the measures that are needed to secure it – registration, documentation etc – are major challenges for millions of urban and peri-urban dwellers. With growing populations and rising commercial demand for land, securing their land rights is increasingly important for rural households as well.

Finally, while agriculture and land use may be intensive or extensive, grouped around key resources like the Limpopo River basin in Mozambique, or spread across vast open spaces like the Namibian Ovamboland, traditional systems tend to be in 'balance' with their environment, with techniques and land use patterns that do not degrade the resources around them. Cyclical droughts or floods are coped with by following tested strategies that are adapted to these challenges. Secure access to all these resources is therefore not only important for incomes, but also for reducing risks and averting disaster when natural disasters strike. It is also a key factor for ensuring environmental sustainability, through systems that are well adapted to local conditions and resource availability.

Participatory land delimitation

DIAGRAM 1

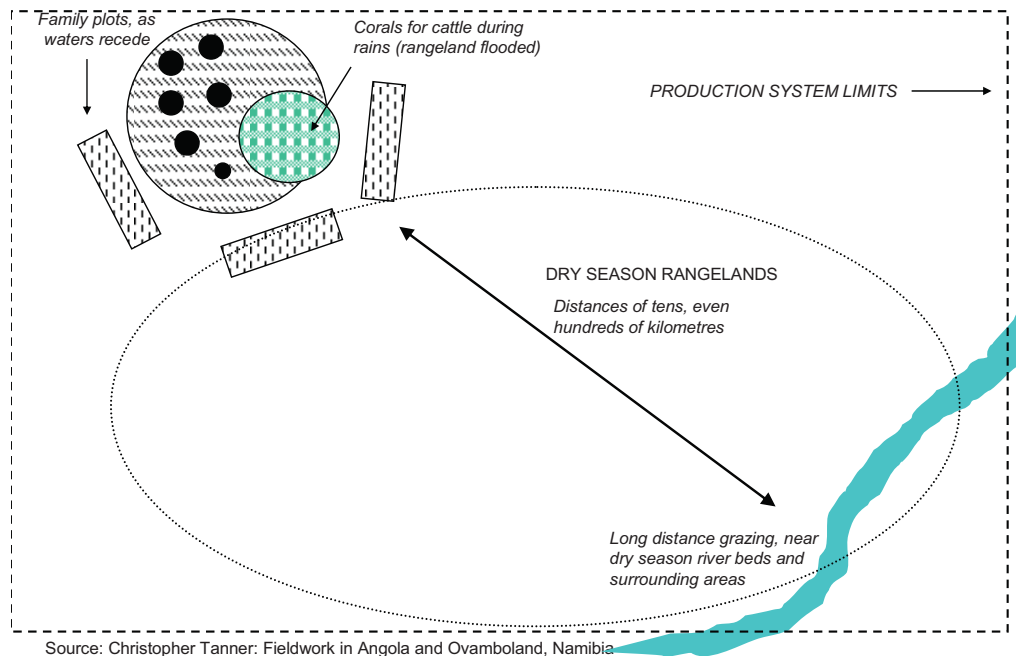
COMMUNITY REVEALED BY FARM SYSTEM ANALYSIS: RAINFED MIXED AGRICULTURE AND LIVESTOCK, SEMI - HUMID TROPICS, WITH SEASONAL RAINFALL FILLING RIVERS



Source: Christopher Tanner: Fieldwork in Mozambique, Angola, Guinea Bissau

DIAGRAM 2

COMMUNITY REVEALED BY FARM SYSTEM ANALYSIS: LONG RANGE PASTORAL SYSTEM, MIXED AGRICULTURE AND LIVESTOCK USING FLOOD PLAIN, SEASONAL RIVER, AND SMALL RAISED AREAS



Source: Christopher Tanner: Fieldwork in Angola and Ovamboland, Namibia

1.2 Economic and political aspects of “land availability”

Land availability is also a relative concept. Countries like Angola and Mozambique have large areas that are apparently unoccupied and underused, and it is not uncommon to hear senior officials talk of ‘lots of land for everyone’. Indeed the greater concern now is that this land is not being used properly. A Government concerned about national development might then want to give these ‘empty’ areas to those who are seen as having more ‘capacity’ (money and know-how) than local farmers. This is assumed to be good for local people - a common argument in the land reform debate is that private investment in rural areas will bring jobs and new opportunities for all.

In fact areas of good land – with good soils and natural resources, and access to water - are far less abundant. Local people have known for generations where these areas are, which is why populations are often concentrated instead of spread across ‘empty’ landscapes. These areas are naturally also the ones that investors want, and competition – and conflict – then involves relatively small areas, not the vast areas of more marginal, unused land¹. Adding other factors into the equation – closeness to markets and roads, availability of energy – shrinks the ‘best land’ still further, and a relatively elastic supply of useful land for rural households is far less certain.

Land availability is also affected by social and economic processes that foster land grabbing and resource concentration. This is evident for example in southern Angola where the extensive pastoral systems in the model above are in crisis as large areas of rangeland are fenced off by outsiders who secure land rights from the government. Rotation-based production systems that are well adapted to local soils and climate can also be pushed into crisis when a commercial farmer occupies an area set aside by a community for future cropping or grazing, or cuts off traditional rights of way linking grazing land to a river. In these situations, livelihoods break down as access to land is increasingly restricted or even denied altogether.

Population growth and climate change also raise the pressure on existing resources. Households are larger and if they cannot change their production strategies, they will degrade resources that were sufficient for a smaller number of people. In many areas the looming threat of climate change is already threatening existing production strategies. And of course, war and natural disasters have more immediate and catastrophic impacts, by creating swathes of apparently ‘available’ land that are then taken over by outsiders when peace comes or when floodwaters recede.

¹ Conflict is not always related to scarcity, but is more likely in areas rich in resources and with the most potential; these are the areas that attract investors and where conflicts with local people are likely. See Peluso and Watts (eds) (2001), *Violent Environments*. New York, Cornell University Press.

1.3 Land and rural development

Secure access to land is not just about guaranteeing existing livelihoods however. If our concern is also to help households use their own resources to *alleviate their poverty*, then the land that people have rights over must be used to generate new resources and income. Yet many poor households and communities may not have enough labour, or access to credit, to use the land they occupy. It then becomes vulnerable to capture by outside interests who are deemed by government to have a greater capacity to use it.

Sometimes governments argue that this is good for poverty alleviation; at other times it leads to land grabbing². Yet even in the more positive scenario of ‘socially aware’ investment producing jobs, the ability of local people to negotiate and discuss development options with the outside world is fundamentally weakened. Losing their land rights will mean that they can only participate as labour for new enterprises appearing in their midst. They not only lose rights, but also any chance of using their own land to grow new crops or generate resources that can end their poverty, when government finally puts in place adequate credit schemes or good roads to distant markets.

Secure land rights therefore are crucial if local populations are to engage actively as stakeholders in rural development. A good land policy should then strive to secure rights so that livelihoods are maintained and poor people do not become even poorer; and to secure rights so that poor people can use their land as an asset – whether or not it is currently cultivated - to alleviate their own poverty. The wider policy context of rural development, financial sector support, and good governance, are key elements in both processes.

Achieving these objectives is not always easy in countries with limited public sector resources. It is important therefore to know where to focus available resources, with these twin objectives of food security and participatory rural development in mind. Private investment is currently the focus of economic policies in many African countries, and the private investor in rural areas is naturally going to want the best resources for his or her project - good agricultural land, areas close to national parks, or a beautiful coastline attracting a growing number of tourists, for example. This quickly translates into a rush for land in certain areas, and local rights becoming more vulnerable. Such a process – often occurring in areas that are apparently unused or unoccupied – underlines just how ‘relative’ land availability can be. But by identifying where ‘hot spot’ areas are likely to be, as the result of new road projects or a growing tourist industry, it is possible to focus land administration efforts and promote the kind of development process that respects local rights while generating new growth and opportunities to end poverty.

Diagram 3 shows real situations found across Africa. In Zone 1, an old colonial irrigation scheme is being rehabilitated in a large flood plain with excellent alluvial soils; a new national park in Zone 2 is attracting investors in buffer zones that offer good locations for

² Informal Land Group (2003): *Seeking Ways Out of the Impasse on Land Reform in Southern Africa*, Notes from a meeting in Pretoria sponsored by SARP and FAO, 1-3 March.

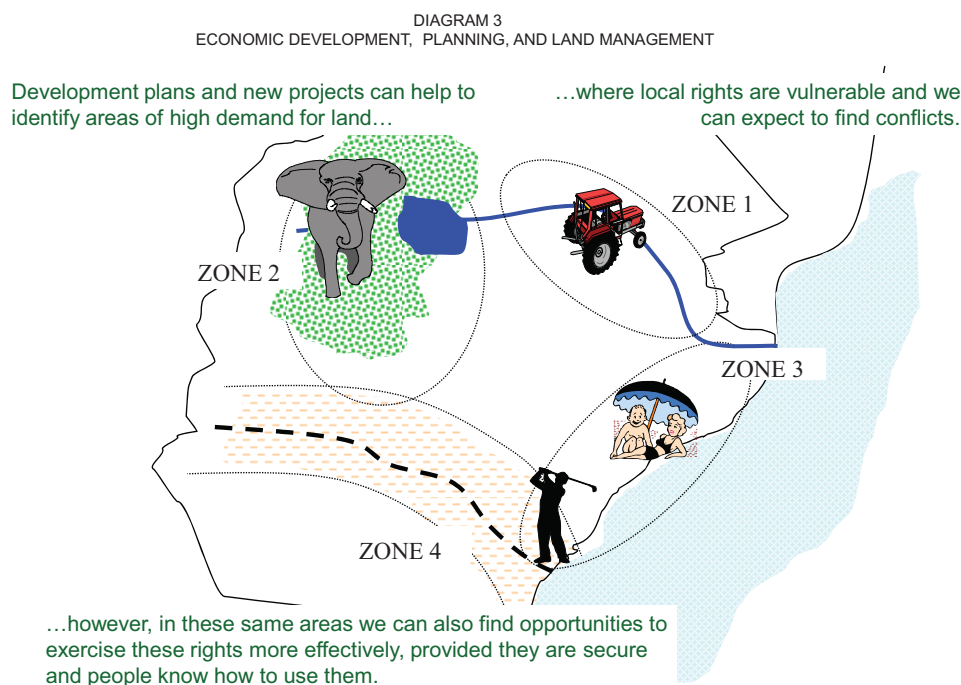
Participatory land delimitation

hotels and service industries; Zone 3 is prime tourist country, with burgeoning demand from investors putting local rights under extreme pressure; and finally a proposed development corridor (Zone 4) will turn low value land into a valuable resource with access to local and regional markets.

In all of these areas long term residents complain that rights are not being respected, as the government concedes large areas to commercial interests. Pre-colonial rights are still claimed by people living in and around the irrigation scheme; local people inside the new National Park are asked to leave; fishing and other communities along the coast feel insecure.

Development planners and land administrators working together can see that in these four areas, once abundant resources are likely to be enclosed by new privately held rights, leaving less land for local households. Local production systems will be increasingly unable to respond to household needs and guarantee food security. Crop rotation cycles will shorten or break down, adult children will have no land to move to, and households will become dependent upon the new 'landowners' holding State use rights over what was once local land.

On the other hand local development requires capital and new investment, which is not available at local level, and local people may not be aware of the opportunities and new markets which their land resources can be used for. Encouraging investment is therefore also a priority. The challenge then is to secure local land rights so that local people do not see their basic food security and livelihoods undermined; and to promote investment that also brings with it new economic opportunities which compensate for or even outweigh the negative impact on local livelihoods when communities give up their land.



Source: Tanner 2006, 'Exercendo os Direitos Atribuidos por Lei', training module for paralegals, CFJJ, Maputo

This challenge implies a process that involves a series of clear steps:

- Identify areas where land issues are likely to require focused public sector and NGO support
- Recognize and secure existing local rights
- Help local people and local administrations to work together, defining development options and identifying resources that can be used by investors
- Provide mechanisms that allow constructive negotiation over land access between local people and incoming investors (including the State, in the case of National Parks for example)
- Facilitate and support agreements once they are implemented

Usually this process also needs an enabling policy and legislative package that in turn will reflect the development model and underlying principles that have been worked out between the different socio-economic and political interests in any given country. Once this is achieved, attention then turns to implementation, often with scarce resources that may also be ill-equipped or poorly prepared to change their methods and adapt to a new participatory development paradigm.

Assuming that the policy and development discussions produce a consensus over the recognition of existing rights (this might even be enshrined in constitutional provisions), the process outlined above can begin. Securing local rights quickly and cost effectively is a key element in this process. Ideally this should be done *before* the investment wave hits the areas that are likely to experience new demands on their land and resource base.

One approach – community *delimitation* - is the subject of this volume. This is only part of the picture however. The main objective is to *promote sustainable and equitable development*. Local people with existing rights are in a strong position to respond to new opportunities themselves. Community or village land delimitation also creates stronger communities who know what their rights are *before the investor arrives*, and can then negotiate more effectively over access to their land and natural resources. What should result from this participatory process are packages of direct benefits from the investment process, for the community. This process is discussed in more detail in the concluding chapters.

Private investment also has its place of course, and needs secure rights and good local relations to flourish. Delimitation as promoted by FAO does not ignore this essential element of the development equation, but rather seeks to maximize its social and poverty alleviation impact as investors bring new ideas, capital, and employment to moribund rural economies. The goal is to use community delimitation not just as a basic land administration tool, but also as a rural development tool, helping to manage the investment process, and setting development within a set of wider social and human rights objectives.

1.4 Good governance, participation and decentralization

Finally we turn to governance as a key element in security for the rural poor. Most local populations have long standing rights acquired through historical occupation and by practicing different production systems over the areas they lay claim too. On this basis, land access by outsiders should then be negotiated with them. Yet field evidence in many countries reveals many instances of exclusion, extra-legality and highly discretionary decision making by governments and elites who allocate local land to outsiders with little or no local agreement. Conflicts, social instability and unrest are the result.

This kind of land administration and the conflicts it causes are bad for investment. Fast-tracking their land claims might seem attractive to investors, but if local people do not accept the legitimacy of the process, conflicts can delay or even stop investment. Production costs may soar, returns may fall, and the credit worthiness of investors under such high risk conditions is also likely to drop. In the end incentives to invest may be greatly reduced, and everyone - local people, investors, and government - loses out. In this context local participation and the democratization of land management procedures are not just about securing benefits for local people – they are key elements of an enabling environment that can attract *and support* investment.

Decentralization of government and the devolution of responsibilities and powers to provinces, municipalities and civil society open the way for greater popular participation. Social pressure can enhance transparent, fair and accountable decision-making, and oblige government and investors take account of local interests. Communities can then play an active role in decisions that affect their lives, and make governments more accountable: “as participation increases, vital information not in the public domain becomes available and the voices of interested parties can help make governments more accountable; both in turn enhance performance”³.

In fact rural communities and their leaders have always played an important role in land and resources management, even when they are politically and economically marginalized. In many countries central government has tolerated local land management institutions and used the traditional land and forest management roles of local leaders to control activities such as illegal burning, logging, and hunting at little or marginal cost to the state. But this top-down approach does not treat local people as legitimate stakeholders with rights over the resources they are supposedly policing on behalf of other interests.

The alternative is to empower the rural poor and promote their participation in local decisions so that they are better able to manage their resources, both for their own use and in partnership with other interests. This will help to curtail unsustainable or illegal practices. Measures to promote dialogue between local people and outside interests need to be developed, and supported by the State. A key condition in this scenario is the recognition of local rights over land and natural resources, and making sure that these rights are secure.

³ World Bank (1994): *Land Policies for Growth and Poverty Reduction*.

Policy makers may also want to ensure that local communities and land managers gain direct and substantial benefits, both monetary and in kind, from sound local management and resource use. Decentralization is an illusion if there are no financial resources available at local level, or if there is a corrupt or unfair flow of locally generated income to central levels. In countries where land is still a major part of the wealth of a rural household, local land taxes can be used by local governments to support decentralization. Where investors are using local land, some or all of *their* taxes can also be passed back to local level, to contribute directly to local development. Land taxes, if raised and used locally, enhance the accountability of local officials and promote fiscal discipline by local governments, resulting in a strengthening of the voice of the local population. Putting the use of locally generated income at the discretion of responsible local managers is likely to generate a higher investment return that responds to locally identified needs and demands, *and* creates better conditions for external investment as well.

1.5 Mozambique: A legitimate and relevant land law

In the discussion of rural development, we say that the kind of participatory land management process described requires a good enabling policy and legal framework. Developing such a framework also requires the participation of all stakeholders if it is to have legitimacy and the full support of the disparate and often opposing interests that make up any society.

The community delimitation model which is the subject of this volume has grown out of the experience of Mozambique and its widely acclaimed 1997 Land Law. The policy and legal development process has been supported by FAO from its inception in the pre-policy research stage, through to policy and legal development, and now implementation. It offers an excellent example of how to create the policy and legal environment within which effective rights delimitation can take place.⁴

Nearly twenty years after the end of the Civil War in October 1992, Mozambique is still dealing with the impact of a long and bitter conflict that extended over three decades and imposed extraordinary upheavals on the daily lives of its people. Over the same period Government policy also changed dramatically, from a broadly socialist model to the present market economy and political pluralism. Mozambicans and their institutions have therefore experienced major changes over a relatively short period.

The sudden eclipse of colonial administration by a post-Independence socialist regime, followed by a civil war and severe droughts, contributed to deepening levels of poverty. Already-poor rural households abandoned their land, lost their cattle and other assets, and survived in exile by becoming dependent upon aid. When they returned after the war ended in 1992, they faced another political and social transition, this time to multiparty democracy and a market driven economy.

⁴ See Christopher Tanner (2002). *Law Making in an African Context: The 1997 Mozambican Land Law*. Rome, FAO, FAO Legal Papers Online Number 26. FAO is currently supporting legal empowerment of communities through paralegal training, to promote the use of the legislation as a practical tool for bringing local and private sector interests together within a participatory rural development and territorial planning approach. See last chapter.

The relatively conflict-free return of millions of people to their land underlined the resilience and relevance of customary land management systems. Peace and the market economy also however fuelled a dramatic increase in investor demand for land, creating problems when returnees found their abandoned (and therefore 'free') land allocated to outsiders by land administrators. Government concerns revolved around the issue of 'capacity', favouring private national and foreign enterprises that could bring land quickly into production and get the economy moving. Local claims based in pre-independence rights were often overlooked or ignored by an extremely weak and disorganized public land administration, a serious lack of transparency and inconsistent application of the existing law⁵. Resulting tensions threatened to undermine the fragile peace process itself, underlining the role of effective land policy in post-conflict situations.

While some Government officials argued that there was plenty of land for everyone, the need for a new land policy and law became more and more apparent. As we argue above, good land close to markets and infrastructure is in fact quite limited, even in a huge 'open' landscape. Early post-war research showed that just one year after the Peace Accord, new land concessions covered 28% of arable land⁶ (then estimated at around 18 million hectares, compared with 35 million hectares today).

Other research was also showing that local production systems need lots of land, with long fallow periods and the use of different resources at different times of the year (as in Diagram 1 above). However, extensive patterns of land use create the illusion of "free" land when it is either not currently used, or being used in ways that are not immediately obvious to the outsider. Maintaining their access to these resources was essential for the survival strategies of poor households, especially at a time when they had few tools and animals left after the war,

Social tension and concerns for the livelihoods security of the poor prompted Government to respond with a new Interministerial Commission to review land policy and develop a new Land Law. The Commission had a challenging brief: to secure existing rights and to promote new private investment using land. Using research which showed how customary land management systems were still the basis of land access and use for most rural people⁷, the resulting 1995 National Land Policy recognised the legitimacy of these systems and the rights which they gave local people. It made clear provisions for investors as well, and underlined the principles of equity and sustainability when allocating and using land rights.

⁵ Law 6/79 of 3 July.

⁶ Myers, Eliseu and Nhachungue (1993): *Security and Conflict in Mozambique: Case Studies of Land Access in the Post-war Period*. Ministry of Agriculture and Fisheries and Wisconsin, Land Tenure Centre, Maputo

⁷ De Wit Paul, Nyamuno Costain, Shumba Monash, Mufandaedza Lameck (1995): *Propostas de Planeamento de Uso de Terra parte 1: Questões e necessidades de uso de terra ao diferentes níveis operacionais*. National Family Sector Agricultural Programme – Pre-Programme, FAO-UNDP Project MOZ/92/012, National Institute for Agronomic Research. FAO, Maputo.

This policy is still in force today. Its central mission statement charts a road between securing rights and promoting investment, laying down a blueprint for rural development in which effective land management plays a key role:

“To secure the rights of the Mozambican people over land and other natural resources, as well as promoting investment and the sustainable and equitable use of these resources.”

The *inclusive* philosophy of this policy is critical for understanding the objectives and the rationale behind the delimitation process described in detail later on. After an exemplary legislative process in which a wide range of stakeholders participated directly in Commission discussions and were able to comment on legal drafts, the policy was given concrete form with the approval of the 1997 Land Law⁸. By the end of 2000, key implementing tools such as the Land Law Regulations and the Technical Annex⁹ to the Regulations were also in place. In a relatively short space of time, Mozambique had achieved a radical review of its land policy, and had put in place a complete legislative package to implement it.

This process is an excellent example of how ‘good governance’ and ‘participation’ are central elements of effective land policy. Firstly, in addition to the land administration, the Commission included other sectors that deal with land and natural resources, as well as national experts, researchers and civil society organizations. Secondly, the policy reflects what Mozambicans do to manage their land, not some imported notion of how land management should be done, by underlining the relevance of customary systems and local level, informal forms of land administration. The subsequent law was also produced through a genuinely participatory and multi-stakeholder process. These factors were not only important for producing a law that would help consolidate the peace; they also gave the new law a high level of social as well as political legitimacy, which it enjoys up to the present moment¹⁰.

1.6 Basic elements of the Mozambican land law

The 1997 Land Law was built upon basic Constitutional principles as well as the empirical evidence and stakeholder participation referred to above. Thus land in Mozambique still belongs to the State and cannot be bought or sold. This has little to do with custom, and everything to do with a political philosophy with roots in post-Independence ideologies and nation building. The national Constitution does however recognize the right of every Mozambican to access and use land, through the Land Use and Benefit Right, or DUAT to use its Portuguese acronym.

⁸ Law 19/97, 1 October. For a full account see Christopher Tanner (200): *Law-making in an African Context: The 1997 Mozambican Land Law*. FAO Legal papers Online Number 26 FAO (www.fao.org/legal)

⁹ Land Law Regulations, Council of Ministers Decree 66/98; Technical Annex to the Regulations, Ministerial Diploma 29 - A/2000

¹⁰ National Commemorative Conference for the 10th Anniversary of the Land Law, organized by the Centre for Legal and Judicial Training (CFJJ) of the Ministry of Justice, with FAO, Netherlands and DfID support.

The DUAT is in fact a strong private right resembling a kind of state leasehold and in principle is not easily taken away.¹¹ It is acquired through occupation according to customary norms and practices, and by ‘good faith’ occupation (squatting unopposed for ten years); it can also be acquired through a formal request to the State for a new DUAT. These provisions reflect the Land Policy recognition of legitimacy of customary land management and rights, and the reality of internal displacement and ‘ad hoc’ land occupation caused by war and successive natural disasters.

The third channel for getting a DUAT gives private sector interests (including foreigners) access to land, and the resulting DUAT has the same legal status as a DUAT acquired through occupation. The new DUAT holder then has up to five years to implement his or her project. Once this is underway and officially confirmed, they have a secure 100 year lease that is inheritable and transferable. The *investment* itself is private property and can be bought and sold; the DUAT is then administratively transferred to the new owner of the infrastructure or enterprise. This is an adequate solution to the private investor problem, but introduces some uncertainty with significant areas of State discretion which complicate the use of the DUAT as a guarantee for bank credit.

The major achievement of the 1997 law however is that it effectively formalizes – at least legally – all local rights acquired by customary occupation and squatting. Unlike new DUATs however, these rights do not have to formally identified and recorded¹², although local people must be able to prove them if and when necessary.

Using the kind of systems analysis described above, a ‘local community’ can also be identified as a collective DUAT holder, within which bundles of local rights are allocated and managed according to ‘customary norms and practices’. A community therefore has the power to allocate and manage DUATs on behalf of the State. This important role is subject to certain limitations however. Firstly, local managers of *community* DUATs must respect the principle of ‘co-titling’¹³, which requires that all community members take part in decisions about the collectively held right (including defining where its limits are). Secondly, customary norms and practices cannot contradict the Constitution (for example, by undermining the acquired rights of women).

Being largely unregistered however, all these rights – whether individual or community-held - are in effect invisible, known only to local residents. Investors consulting cadastral records will not see them; and government officers eager to attract investment will not point them out. In spite of being protected by a good law, these local rights are therefore still under threat.

The 1997 Land Law does contain an innovative and now almost universally applied instrument for ensuring that local rights are not overlooked in new DUAT processes. The

¹¹ See Calengo, Andre, Oscar Monteiro and Christopher Tanner (2008): Mozambique Land and Natural Resources Assessment . Maputo, Embassy of the Kingdom of the Netherlands

¹² Norfolk, Simon and Christopher Tanner (2007): ‘*Improving Tenure Security for the Poor: Mozambique Country Case Study*’. FAO Rome, Legal Empowerment for the Poor (LEP), Working Paper No 5.

¹³ Detailed in the appropriate section of the Mozambican Civil Code.

‘community consultation’ required by law obliges an investor to determine if the land being requested is ‘free from occupation’. The consultation is attended and directed by local government officers, who must then issue a statement as to whether the request can proceed or not. If the land is occupied – and in reality most land *is* occupied if we consider the implications of the systems-based model presented above - the consultation must then determine the conditions through which local people will cede their rights (if they want to), or share them in some way.

While local rights do not need to be registered, in situations where demand for land and resources is rising, it is a good idea to give them stronger protection through some form of mapping and cadastral processes. This helps to show where rights exist *before* the investors arrive, and can promote the kind of participatory process alluded to in Diagram Three above. A Technical Annex to the Land Law Regulations was developed by the Interministerial Commission on the basis of 21 pilot exercises in *community delimitation*. This is a form of participatory rural appraisal which produces a series of participatory maps and finally, an officially recognized map that is recorded in the official cadastral database. Once recorded the ‘local community’ is then free still to consult with outsiders over access to local land, and make agreements with them over the resources that they want to use.

This legal framework provides *implementing* instruments to promote respect for the basic rights of citizens and the norms and practices of daily life, and ensures an active role for local people and communities in managing local resources. It underlines how a good land law can focus on issues of access and use, *and* also make a powerful contribution to local democracy. In short it gives local people the tools they need to influence and shape the development that is going on around them¹⁴.

¹⁴ See the the accompanying volume on land policy development, *Land Policy Development in an African Context: Lessons Learned from selected experiences*, Paul De Wit, Christopher Tanner and Simon Norfolk, FAO, NRLA.

2. Land delimitation and registration

2.1 Delimitation and recognizing customary systems

Before looking at the delimitation model in detail, it is useful to consider how it fits amongst the four models for legally formalizing customary rights that have been identified by the Australian land specialist Daniel Fitzpatrick. The first of these is a minimalist approach that is based upon the simple assertion that ‘customary rights are recognized’, and that ‘the only involvement of the State would be in establishing and enforcing the external boundaries of customary land’. This creates the so-called ‘tenorial shell’ within which customary structures manage local rights.¹⁵

The second is the *agency method*, which involves the state identifying key figures to represent their customary groups, and who ‘hold legal title on behalf of their customary group’. This approach also offers a simple solution to dealing with local communities, where outsiders can deal with group representatives with formal legal confidence that any agreement with the representative is binding on the group.

The third option is *group incorporation*, in which the law grants a formal legal identity to a traditional group. Like the tenorial shell model, the group then governs all internal issues relating to land. How it does this should be left to local structures, and indeed one experienced observer has argued that incorporation should make as little change as possible to internal customary processes¹⁶. These groups are then allowed to enter into legally secure transactions with outside investors.

The final option is to create *land boards*, state bodies that administer and manage community lands, with some local representation of customary authority included in the board. This model is best seen in Botswana where the Land Boards allocate and manage rights – including to outsiders - ‘on trust for the benefit and advantage of the tribesmen of that area and for the purpose of promoting economic and social development of all the peoples of Botswana’¹⁷. The Botswana boards have evolved over time and now consist entirely of five elected members. Martin Adams, who has been closely involved in recent reforms to the Botswana legislation, has suggested that this system allows a managed transformation of customary into more formal statutory leaseholds,¹⁸

According to Fitzpatrick, Mozambique fits into the first of these models, because of its ‘broad demarcation of customary areas’ which leaves ‘land issues within those areas subject to unregulated customary processes’.¹⁹ He argues that this model is appropriate in situations where tenure insecurity is caused by encroachment by outsiders or

¹⁵ Daniel Fitzpatrick (2005): ‘Best Practice’ Options for the Legal Recognition of Customary Tenure. *Development and Change*, 36(3): 449–475. pp457-458

¹⁶ J. Fingleton (1998), ‘Legal Recognition of Indigenous Groups’. FAO Legal Papers Online, www.fao.org, quoted in Fitzpatrick (2005:462). Pp 34-35

¹⁷ Fitzpatrick (2005:463)

¹⁸ M. Adams, S. Sibanda and S. Turner (2000) ‘Land Tenure Reform and Rural Livelihoods in Southern Africa’, in C. Toulmin and J. Quan (eds) *Evolving Land Rights, Policy and Tenure in Africa*, pp. 135–49. London: DFID/IIED/NRI. et al., Pp 137, 147–8.

¹⁹ Fitzpatrick (2005:458)

interaction with state officials. In fact the Mozambican model has elements of all four approaches, and perhaps for this reason offers a range of practical options that include the simplicity and ‘low disruption’ effect of the tenurial shell and the incorporation models, while also allowing contracts with outsiders and – through provisions that allow group members to ‘de-annex’ from local jurisdiction - the kind of managed transformation foreseen by Adams in the Botswana case.

These processes are evident in a recent FAO Legal Empowerment of the Poor (LEP) publication which shows how the policy and legal framework in Mozambique is providing the backdrop against which both communities are using other ways to formalize or give solidity and visibility to their rights. This is especially important when public land administrations are weak and local people do not manage to formally delimit and register their rights, as is the case still in Mozambique. For example, entering into contracts with investors who want to use local land can give communities a strong form of recognition and *de facto* protection to communities that have their acquired rights formalized by law but not yet formalized through any cadastral or other administrative process; and effective community use of unregistered land also establishes rights by occupation that are hard to deny. Underpinning these rights-enhancing activities is a progressive land law built on local customs and with a high degree of legitimacy, which creates a space within which this other *de facto* formalization occurs.²⁰

2.2 Identifying and protecting local rights in Africa

The task of identifying and protecting local rights in most African countries faces several major challenges:

- incorporating many different local land management systems within a single land management framework that is not then top heavy and too cumbersome to use;
- devising a system that can adequately record dynamic and shifting patterns of land use that incorporate a range of *de facto* private, individualised customary rights and areas of common use such as forests and grazing land;
- coming up with a technical approach that is cost effective yet still accurate enough to establish borders and other features on official maps.

In this context conventional western concepts of discrete, fixed land holding units – ‘the farm’ - are entirely inappropriate. They work for the relatively small number of private investor land holdings, but are of little use for registering customary rights rooted in shifting agriculture systems and the use of a wide range of resources through the year.

One response to this problem is to look at small family farms as being part of much larger land occupation and use systems. If it were then possible to identify the limits of these systems and place a line around them, the rights of all those inside them can be managed (and protected) by those responsible for running each system. This would then make it unnecessary for the state land administration to register existing customary rights, let

²⁰ Norfolk and Tanner (2007).

alone attempt (futilely in all probability) to record changes in these rights as they are exchanged or extinguished in the to and fro of local life.

2.3 Rights delimitation in Mozambique

This approach was advocated by FAO during its support to the development of the present Mozambican Land Law in the mid 1990s. The result was the concept of the 'local community', defined in Article One of the 1997 law as: "*a grouping of families and individuals, living in a circumscribed area no larger than a Locality²¹, who seek to safeguard their common interests through the protection of residential areas, cultivated areas, whether cultivated or in fallow, forests, culturally important sites, pasture land, water sources, and areas for expansion*".

By law, each local community holds a collectively managed DUAT acquired by occupation according to customary norms and practices. The question then is, how do we define occupation?

It should be apparent that the legal definition incorporates all the elements included in the two system diagrams above, with an additional focus on principles such as 'common interest'. Therefore the occupied area includes all the land and resources that are used by this system, overlaid with an analysis of its social and land management structures. All individual, household, lineage, and common land 'use and occupation' inside the community is then managed by local community structures.

This analysis does two important things: it *proves* the existence of the community held DUAT; and it establishes the limits of this right. It then follows that placing a line around the local community and transferring it to an official map also proves the many hundreds or even thousands of local rights that exist within its borders. This is a relatively quick and cost-effective technique – the State only has to survey and register the over-arching unit.

These ideas were incorporated into the implementing instruments of the Mozambican Land Law as a technique called *delimitation*. Delimitation differs from other more precise forms of surveying and rights registration, in several ways:

- it does not establish the right (which *already exists*)
- it does not demand excessively high levels of survey precision
- it does not result in a Title Document, but in a 'Certificate of Delimitation' that confirms that a delimitation has been carried out and that the limits of a given community DUAT are as described in the accompanying maps and forms
- it confirms a given community as the land and resource management entity responsible for the resources within its borders, including conflict resolution

²¹ The Locality is the smallest unit of public administration in rural Mozambique, after the Administrative Post, District, and Province. In the autonomous Municipalities (cities and some large towns) the equivalent is probably the *quarteirão*, or city block, which is part of a *bairro* and Urban District. Note that the 'local community' is *not* a unit of public administration, which is what this phrase in the definition is mainly concerned with. For a full discussion of the public and private faces of the 'community' see CTConsulting (2003): *Appraisal of the Potential for a Community Land Registration, Negotiation, and Planning Support Programme in Mozambique*. A report for DfID Maputo.

- it establishes which is the community (or communities) that are involved in the consultation process when external interests seek to use local land

2.4 Identifying and proving local community rights

Delimitation does two things:

- it *proves* the right acquired by occupation, not just by looking at actual physical use, but by also considering several sociological and cultural variables
- it establishes the *limits* of the right by reference to specific *systems* that integrate and manage the shifting patterns of local land use (used *and unused* rights are included)

It does this by assessing various aspects of a ‘local community’, which together allow a picture to emerge of its occupation over a given area. These aspects include:

- land use patterns and production systems
- land management systems
- historical occupation
- social organization
- common use of cultural sites
- relationships with neighbors and confirmation of boundaries

Land Use and Production Systems

Apart from the village itself, its use of land and resources is the most visible evidence of occupation. Cultivated fields obviously indicate use by someone, and that use can only happen if those around about – the wider community – accord some form of use right to the person who is planting his or her crops there.

Closer examination of the production systems of the community will reveal a much wider pattern of use however, as indicated above, and specific techniques are employed to establish how these systems work and where they extend to (see next chapter). Adding together the total of all the individual household plots and the land each one needs to rotate production over several years will already give a large area of ‘community occupation’. Add to this common land for grazing, forests, water sources and land for future use and the total area occupied – and therefore to be delimited - can become very large indeed.

Land Management Systems

Every community will have its own ‘norms and practices’ for managing land and natural resources. These may be genuinely ‘customary’, or may be informal practices that are more recent but accepted as ‘norms’ by community members. Things to look out for and ways of determining where the management system begins and end are covered in the next chapter. At this point it is important to see this aspect of the analysis as the ‘vertical’ dimension of the overall system that might bind several villages together in a common land management structure. The limits of that structure – its area of jurisdiction – then become an important proxy for the boundaries of the community DUAT.

Historical Occupation

How long a community has been living in an area can show if they have a right acquired through occupation. In most African communities, knowledge about the past will not be written down, but will be passed on from one generation to another. Physical evidence is also important: certain large trees planted when the first family moved into the area, old burial sites, ruins from older villages abandoned as people shift their agriculture to a new area. In conversation, events and seasons, natural disasters, the 'times' of certain leaders, will all be referred to establish when a community arrived, and how long it has been there.

Social Organization

Horizontal ties between people and villages are also important for establishing a local community boundary. Marriage and kinship linkages are obvious things to consider – villages that are quite distant from each other may in fact be closely related, and come together at certain times to carry out specific tasks such as harvesting or clearing new ground. 'Eating from the same pot' is also one way of telling if apparently separate households or villages are part of one shared production and consumption unit. An assessment of shared working practices can also establish how closely separate villages depend on one another for their livelihoods strategies.

Social organization also develops as external institutions and processes penetrate down into the community. Churches and other organizations from outside the community might establish community-based groups or committee for specific purposes. NGOs often create local committees to look after a new pump, manage the health post, or in the case of land and natural resources, represent the community in discussions with outsiders about their land and resources.

Common Use of Cultural Sites

The first things to come to mind in this context are burial grounds and sacred sites for rituals and ceremonies. In many countries specific trees are endowed with great ritual significance, housing spirits or being the point around which the community meets for specific rituals. Sacred forests – or at least areas within forests - are often common to many villages that might otherwise appear to be separate.

In a more modern context, football grounds and other areas used by the community for recreation, markets and generally getting together all form part of the cultural fabric of the community, and help to establish its right of occupation over a given area. The concept of the 'community public domain' can be applied to specific areas that are for the use of the whole community. Mozambican law gives such public areas additional protection – they cannot be included in claims for new land rights, even when community members want to take out individual title.

Relationships with Neighbours

When there is a fence between two plots, it is clear where one person's land stops and his or her neighbour's begins. With much larger areas that include common land, unused land, shifting cultivation and very few fences, it is much less clear where the specific line should be drawn between two communities. Checking with the neighbours is an essential

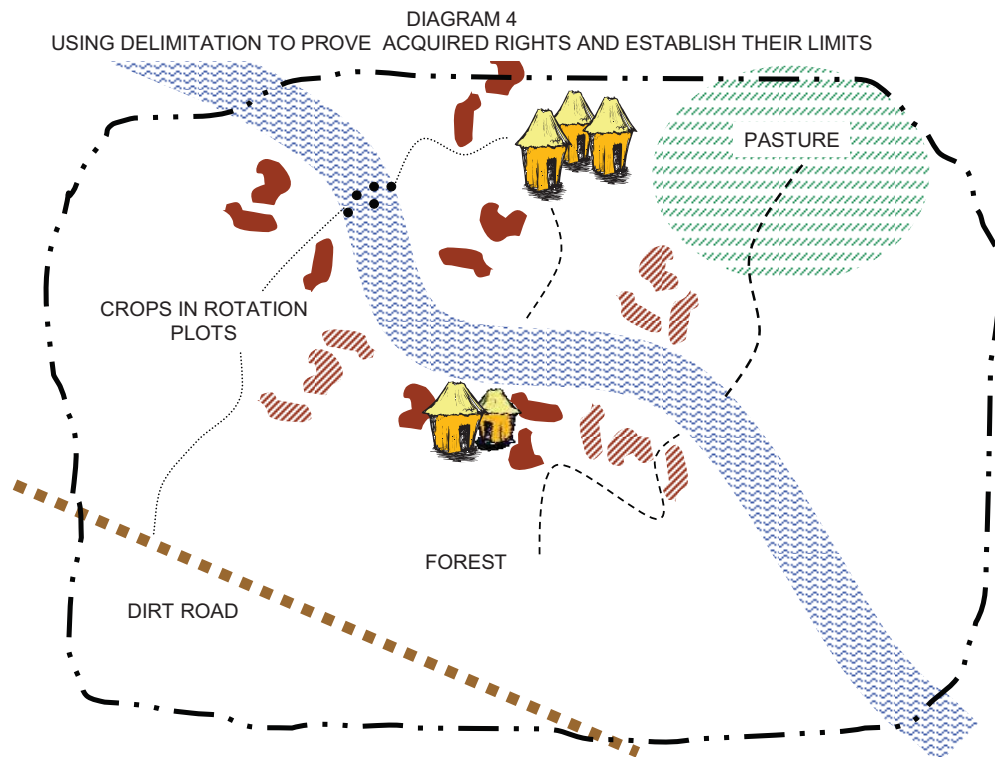
part of delimitation, and apart from confirming border line, reconfirms the legitimacy of the claim by the community being delimited.

2.4.1 A typical result

The outcome of delimitation is shown in the simplified diagram of a rural area below (Diagram 4). Aspects to note are the shifting pattern of cultivation, common resources for grazing and forest products, access to water, and the local rights of way that have been established by many years of local use (these are protected by law in Mozambique and cannot be closed off by investors).

Other social factors come into play as well. Even using the same local school can be significant. But most importantly, is the land of each village managed by the same land chief or higher customary authority?

If all these factors point to a strong link between the villages that also plays a part in their livelihoods strategies, then it is possible to think of them both as a single 'community', with a single border around their entire area, as shown in the diagram.



Source: Tanner 2007, Paper to 10th Anniversary Comemorative Conference for the Land Law, Maputo 18 October 2007

2.5 Delimitation in other contexts

2.5.1 Good faith occupation (squatting)

The same elements come into play for rights acquired by ‘good faith’ occupation or squatting. They may be evaluated differently, with verbal testimony from neighbours perhaps having more significance even than the word of a senior chief who may not be familiar with the case. As with communities, to prove and then map the acquired DUAT requires an overlapping web of complementary information. If this all adds up to a strong affirmation of the legitimacy of the right, and serves to identify where its limits are, then the right by occupation of the specific squatter or good faith occupant is proven and can be certified.

2.5.2 Urban and peri-urban areas

The delimitation approach is not just applicable to rural areas – it has huge potential in urban areas too. As De Soto has shown, few slum dwellers in developing country cities have any kind of documentary evidence of their acquired rights. They are then unable to unlock the capital value of their assets, and put off making investments to homes or businesses that can improve their lives²². ‘Good faith’ rights are particularly important in urban and peri-urban areas, and delimitation based upon various social and economic parameters can offer an alternative approach to expensive conventional titling. If the law allows testimony by neighbours as proof of occupation (as in Mozambique), local government structures should accept this as the basis of a claim to an acquired right. Appropriate documents can be developed including simple ‘participatory maps’ that can facilitate registration and give poor residents a greater degree of security.

This has been tried in the Mozambican city of Chimoio, in Manica Province. A simple form was developed that includes a space for a hand drawn map of the plot being registered. In each case local people were asked to confirm whether or not the occupant was legitimate, and how long they had been there. The neighbours of each plot then sign the small map along the borders that separate them from the occupant. This then allows the occupant to register his or her right with the city council.

²² Hernando De Soto (2000): *The Mystery of Capital*. London, Bantam Press

3. The field methodology of participatory land delimitation

3.1 What is delimitation?

The Mozambican Land Law recognizes “*land rights acquired by local communities through occupation according to customary norms and practices.*” It also gives communities a key role in managing land and natural resources, including “participating in the identification and definition of the limits of the land which they occupy”,²³.

Delimitation then is essentially a process of community ‘self-identification’, in spatial and socio-economic terms. Local people who live in a village or group of villages show a field team where their borders with neighbouring communities are located. Along the way they prove their DUAT acquired by occupation. All this information is then transferred to official records and maps, and a Certificate of Delimitation is issued.

The Mozambican Technical Annex to the Land Law Regulations describes each step of community land delimitation, culminating in recording the limits of the community DUAT on official maps (a process called *lançamento*). During the whole process, the community itself produces the information needed to develop the various maps that eventually result in the limits of its DUAT being recorded.

This is not just a good technical approach – as part of the Land Law Regulations it is *legally mandatory*. A delimitation that does not follow these steps and does not use participatory techniques involving the whole community *and its neighbours* is not only technically flawed, it is also legally invalid. This is why the Annex provides forms that are signed by community representatives and other key actors, to show that each step has been correctly undertaken.

3.2 Doing delimitation

Local people know the history of their occupation of the land, they know how they use it, what resources are used and when, and which villages or groups of people have stronger or weaker ties of kinship, political organization, etc. It is therefore logical that local people are the main actors in the process of identifying their own communities, proving their DUATs, and establishing the limits of these rights.

The role of the Technical Team is mainly to *facilitate* this process. Team members work *with* the community to help *them* produce the data required to prove their DUAT and to establish its limits. The Technical Team also plays a crucial role in the validation of the information with neighbouring communities. This is a mandatory part of the delimitation process, and the active participation of these other communities is also essential.

The overall process is shown in Diagram 5 below. The first panel covers the initial steps where the participatory method is most intensively used. Meetings are held with different

²³ Law 19/97, Article 24, 1(d)

groups in the community and different techniques are used by the field team to promote discussion and get the information required.

The second panel covers the process from the development of the first relatively accurate map, to the final recording of this map in the Cadastre (*lançamento*). Each step is now discussed in more detail, including extracts and illustrations from the official Land Commission Manual on community land delimitation²⁴

3.2.1 Awareness raising or “sensibilisation”

Sensibilisation or awareness rising is a critical and essential first step. If done well, the work should proceed smoothly and produced good results. If done badly or not at all, the whole approach detailed in the Technical Annex is put into question and the result of the delimitation could be placed in doubt.

The process requires several events and meetings to tell the community about the land law in general, and community land delimitation in particular. The whole community needs to know why it should delimit its land in the first place, and what it involves. It must then have enough time to discuss and think about the need for delimitation without outsiders present. Finally it has to formally agree to it – legally it is the community that requests and initiates the delimitation, not the facilitating NGO or supporting agency.

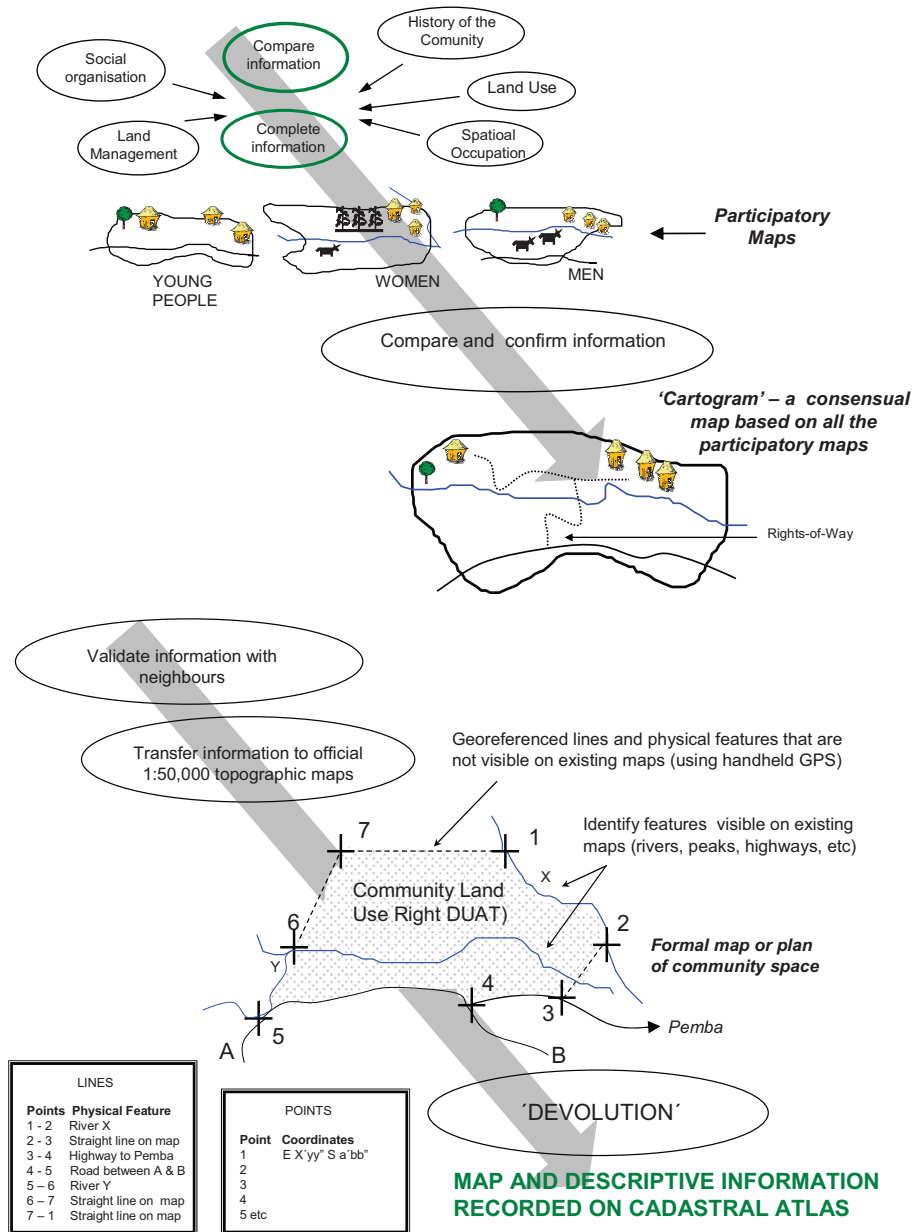
Sensibilisation can take months, but a good team can carry it out effectively in 3-4 weeks. Once the community agrees, it is asked to (s)elect between 3 and 9 members to represent it in land matters and sign all the delimitation documents. The way this process is conducted and followed up by CBOs and NGOs also largely determines if land delimitation will generate benefits beyond securing the land rights of the community. The delimitation might be set within the context of a wider rural development project sponsored by the NGO for example; or it could form part of a land use planning and project development process that involves multiple stakeholders and sectors²⁵

²⁴ Comissão Interministerial para a Revisão da Legislação de Terras (2000): *Manual de Delimitação de Terras das Comunidades*. This manual was prepared by the Technical Secretariat of the Inter-Ministerial Commission with FAO technical assistance. It is still used by NGOs particularly, who are the main proponents of delimitation in Mozambique (the public sector pays little attention to this process, see CTC 2003). A second edition has been printed by the CFJJ, underlining its continuing relevance in 2009, with a rapidly growing economy and pressures on local land.

²⁵ FAO has developed a stakeholder based participatory planning methodology in which delimitations play a useful role, to establish the right of local people to take part as stakeholders (i.e. as holders of the local land rights), and to facilitate a wider analysis of current and potential use of community occupied areas. See FAO 2008, *Communication, Dialogue and Conciliation: Participatory and Negotiated Territorial Development (PNTD). More than a Model, a Strategy for Integration and Interaction*. FAO, Natural Resources and Environment Division. With CD-ROM.

DIAGRAM FIVE²⁶
THE DIFFERENT STEPS IN COMMUNITY DELIMITATION

'SENSIBILIZATION'



²⁶ Diagram adapted from CTConsulting (2003): *Appraisal of the Potential for a Community Land Registration, Negotiation, and Planning Support Programme, Mozambique*. DfID, Maputo; and the *Manual de Delimitacao de Terras das Comunidades* (Maputo, Comissao Inter-ministerial para a Revisao da Legislacao de Terras), developed with support from FAO Project GCP/MOZ/089/NET). This version is used by the Centre for Juridical and Judicial Training (CFJJ) of the Ministry of Justice of Mozambique to train paralegals, judicial officers, local government officers..

3.2.2 Participatory rural appraisal

The technique of Participatory Rural Appraisal (PRA) fully involves the target group or community as participants who directly contribute to our understanding of the reality that shapes their daily lives. Using PRA methodology, the technical team helps the community to produce and analyze a wide range of information which is then used to *prove the DUAT* of the community, and *establish its limits*. The role of the team in this case is to *help the community go through a process of self-definition, both as a social and land-rights holding entity, and as a management entity with specific borders defining its area of jurisdiction*. In this way they prove their DUAT acquired by occupation, and in effect define their own communities, in both spatial and socio-economic terms.

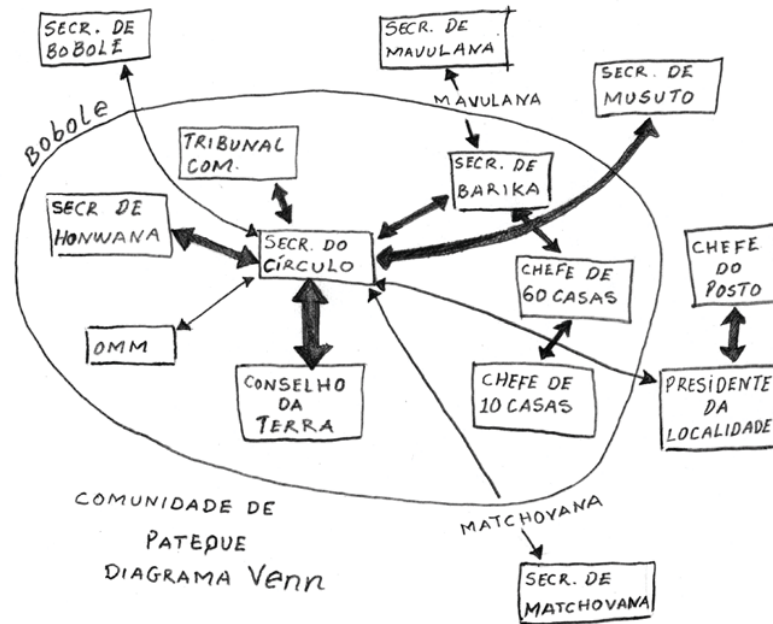
In the case of delimitation, the reality in question is how they occupy, use and manage land and other natural resources, how they organize themselves socially and politically to exercise rights over specific areas of land, and where the borders of these specific areas lie. Using a Time Line of important events in the local history, and other aspects such as cultural sites (e.g. cemeteries, sacred forests) and evidence of old abandoned villages all helps to prove the existence of the DUAT acquired by occupation.

A variety of techniques are used to establish the limits of the community, including Venn diagrams (Diagram Six) to establish which institutions and key actors are 'inside' or 'outside'. Land use is of course an essential element as well, bearing in mind the need to identify the whole *production system* and not just current plots and other signs of active land use around the village(s). Techniques include walked transects across the community, and a range of visual techniques to establish if production systems have changed, and if more or less of particular crops is being produced now compared with, say, ten years ago. Some idea of how the community sees its *future needs*, including ideas about how it might use unused land and resources, is also important.

PRA goes beyond the conventional approach where researchers simply extract information. The target group – in this case a group of villages and people who are assumed to form a local community – works closely and interactively with the technical team to produce and analyze information about their livelihoods, social organization, land use, and anything else that might be relevant.

Different social and interest groups in a community participate, separately and together in larger community meetings. The PRA also gives community members an opportunity to tell their leaders, local administrators, NGOs and other institutions about their problems and viewpoints, and to work with them to find solutions.

DIAGRAM 6
VENN DIAGRAM USED TO IDENTIFY KEY INSTITUTIONS

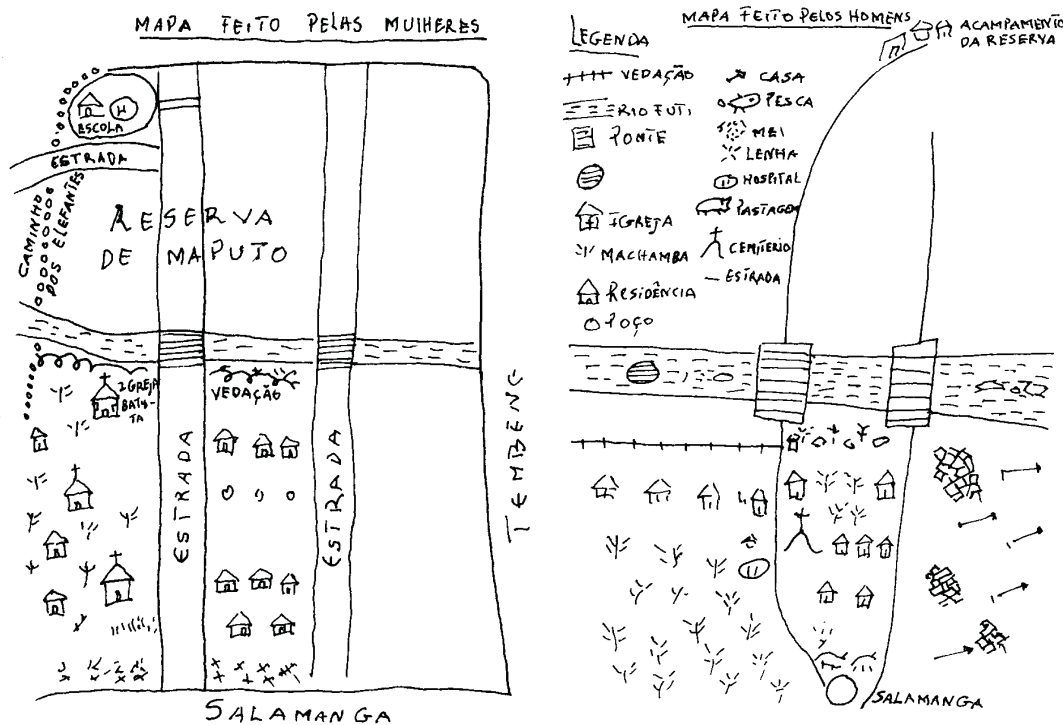


3.2.3 Creating rudimentary sketch maps

By using these PRA techniques, a number of participatory maps are produced by different interest groups, resulting in one overall consensual map that depicts the community territory as perceived by the community members. These maps often begin with meetings in which community members are asked to sketch out where they think their borders are with sticks in the sand. By prompting others to join in, a lively debate is generated in which all those present contribute to the emerging 'participatory map'.

It is essential to do this with different groups – at the very least it is done with men and women separately – because each group uses different resources and has its own particular view of how the community occupies and uses its space. Diagram Seven below shows this well. Each map provides a similar view of the geographical layout of a community near the Elephant Reserve in Maputo Province, showing its location near the river, areas of housing and crops. The maps produced by men and women differ in important respects – the women show the school and the route taken by elephants that cause a lot of damage to crops, while the men include a key *communal* resource not indicated by the women, a large woodland area used for hunting and gathering medicinal plants. They also show the Reserve camp site where the Reserve management is based and which is a focus of discussion about the elephant problem.

DIAGRAM 7
WOMEN'S AND MEN'S MAPS OF A LOCAL COMMUNITY IN MOZAMBIQUE



3.2.4 Final sketch map (Cartogram)

By comparing the rudimentary maps produced by the different groups, a consensus is reached over which resources are inside the community area, what are the main boundaries (a road or river here, a track and an old tree there, etc), and which villages and other infrastructure are part of the community. Feeding in other information about history and social organization, social and religious sites, and the production system, results in a final consensual map of the delimited local community, called the 'cartogram' in Mozambique.

It is important to see how this 'cartogram' evolves through the various stages of the PRA and participatory mapping. It is essentially a consensus map derived from the different participatory maps and presents an approximate image of the communal lands. This final sketch map incorporates a vast array of information, but in a relative way - it is a picture, without a scale, and is not surveyed.

During the early phases of the PRA it may well be that not all boundaries are clearly identified at that moment. Other information improves and fine-tunes the image of the communal lands during the process. For instance some boundary lines that were initially not clear might be conformed during transects walks. Other points are noted when a group visits the forest, when the focus is on forest use and management. It is only

towards the end of the PRA that all information will be available to produce a complete cartogram.

In this way, not only is the DUAT acquired by occupation proven and its boundaries established, but the community also vastly improves its awareness of the presence, spatial distribution and value of its land and natural resources. Delimitation carried out in this way has an immense empowering impact, making people aware perhaps for the first time of the resources they have under their control, and what their potential is.

3.2.5 Talking to the neighbors – Validation

The cartogram evolves from a simple spatial approximation of the local community into a much clearer image that has the agreement of all community members. This map then has to be confirmed with neighbouring communities – if they disagree with the borders then conflicts can be expected later on. These meetings follow the same path as before and have to be as participatory as possible. Dialogue and consensus are the keywords. Without a full and often animated discussion, prompted and guided by the technical team, it is difficult to achieve a successful result where all neighbouring communities also agree with the borders indicated on the cartogram.

This process is also often very useful for resolving longstanding inter-community conflicts over borders and the use of certain resources. The video which accompanies the Land Commission manual²⁷ shows how even though lines are drawn on the map indicating the border between one community DUAT and the next, neighbours who have traditionally come into the delimited community to use and share resources can still do so. Social and cultural practices linking neighbouring communities may in fact be so strong that the delimitation results in them both being considered as one Local Community for Land Law purposes. In other cases, neighbouring communities may simply have long standing agreements about sharing resources, with a consensus over which community controls the management and use of these resources.

3.2.6 Transferring the sketch map to an Official map

Once agreement is reached with all the neighbouring communities, work begins to transfer the mass of data collected onto an official map. The boundaries on the cartogram are always presented in a descriptive way, on maps without a scale. This very relative depiction of local borders and other identifying features and landscape has to be transferred to proper scaled map with surveyed boundaries.

Most communities use at least some natural features as their borders: rivers, hills, roads, lakes, etc. These can usually be found on standard 1/50,000 topographic maps, and boundary points and lines that coincide with these features can easily be transferred onto a final map. These features were of course accurately surveyed when the topographic map was being produced, and therefore do not need more field surveying work. This saves hugely on the costs of the delimitation.

²⁷ *Nossa Terra*. Produced for the Interministerial Commission by IRIS Imaginações Lda, Maputo.

Other boundary points such as big trees, creeks, smaller access roads or footpaths cannot be identified on existing topographic maps. Sometimes they can be found on larger scale maps if these are available, or on aerial photographs, and the information is then transferred onto the official 1/50,000 maps, again without the need for field surveying. If these features or marker points cannot be identified on existing maps or photos images, a field visit is needed to carry out formal surveying through geo-referencing using a GPS.

3.2.7 Georeferencing boundaries and points

Boundaries and points that are already visible on a topographic map or aerial photo can be easily geo-referenced. Their respective geo-coordinates are taken directly from the source map and recorded in the descriptive information (see below).

When boundary lines or points cannot be identified on a topographic map or photo, field geo-referencing or surveying is required (see box below). An effective and cheap way to do this is to use a Global Positioning System or GPS. This system identifies geographic coordinates of a point using a set of satellite signals. Most devices have the capacity to survey also boundary lines. The precision required depends upon several factors and can vary from a few millimeters to some tens of meters. For the purpose of a delimitation, which normally covers a large area and does not require the subsequent placing of precise markers or other physical indicators, a level of accuracy of some tens of meters is sufficient and can be obtained with a cheap handheld device.

3.2.8 Descriptive information

The descriptive memory is an integral part of the final sketch map and always includes the following:

- A description of each boundary point as it occurs in the field, and its respective coordinates
- A description of boundary lines
- A description of other rights that exist within the territory, such as:
 - Areas under common use and management with other communities
 - Private concessions
 - Rights of way

FIELD SURVEYING

Each boundary point that cannot be given coordinates directly from the base map must be surveyed and geo-referenced in the field using a simple GPS. The survey team will however need a rough idea of the location of these points before leaving for the field. Field surveying involves the following steps:

- Identification of points that need to be geo-referenced
- Geo-referencing
- Transfer of coordinates onto the topographic base map

Geo-referencing a point is simple. Although each GPS device will have its specific characteristics, there are number of general rules:

- Get to know the users manual and test the device before starting the field work
- If vertical obstacles interfere with the satellite signal, look for an adjacent spot not too far away
- Make at least two or more readings for each point to eliminate unwanted errors
- Annotate the coordinates of each point in a separate notebook

The transfer of GPS readings onto a topographic map involves following steps:

- Transfer of the longitude reading on the horizontal coordinate scale of the map
- Draw a vertical line through the transferred point
- Transfer the latitude reading onto the vertical coordinate scale of the map
- Draw a horizontal line through the transferred point
- The junction of the vertical and horizontal line presents the geo-referenced point on the map

It is important to transfer surveyed points onto the topographic base map before the surveyor leaves the area.

DESCRIPTIVE INFORMATION

Description of boundary points

Each relevant boundary point of the community territory is numbered and described as it occurs in the field. The coordinates are identified by GPS field surveying or taken directly from the topographic base map.

Description of boundary lines

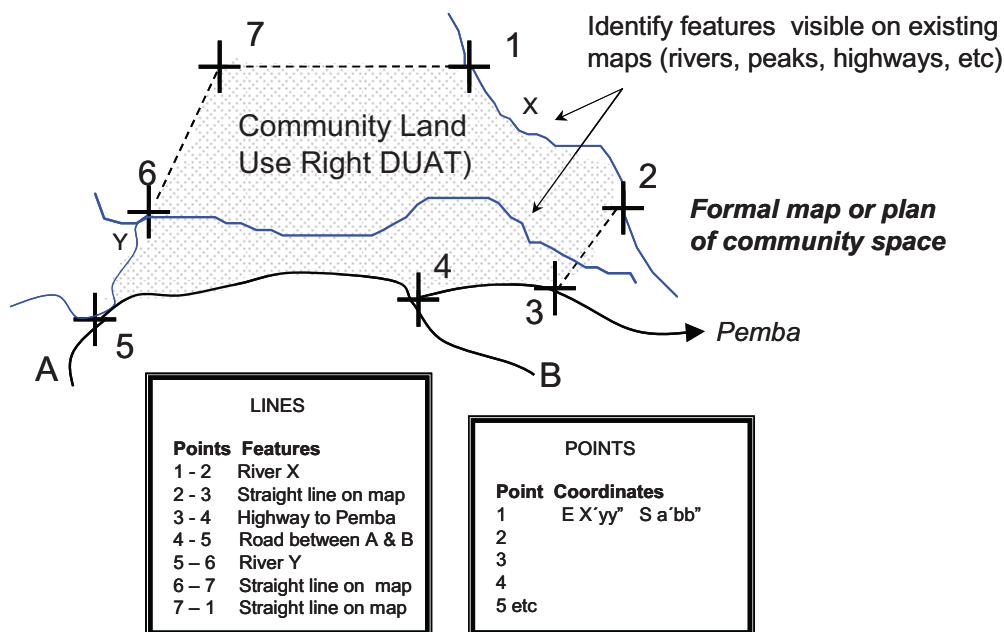
Boundary lines may coincide with natural or artificial features such as rivers or roads (line 1-2 below). Where these do not exist, a boundary line is an imagery line that connects two identified boundary points for example when a community shows two hilltops marking its limits. The corresponding boundary is the imagery line that connects these two points (line 7-1).

Description of rights of way and other relevant information

The relevant cadastral forms should also provide space for a description of the nature and approximate location of rights of way, the presence and location of private concessions, areas that are jointly used and/or managed with other communities, areas of public domain (such as Reserves), and so on.

Recording the Information

The Mozambican Technical Annex provides forms designed to systematically present all this information. It is essential in whatever system is used to have this descriptive information registered and archived along with the maps, in case questions or doubts are raised at some later point.



3.2.9 Getting the community or occupant to check the final map

All through the PRA process, efforts should always be made to “feed back” information to those who have helped to gather it. To do this, once the PRA is completed, a meeting is organized for the Technical Team to present the results and findings of the delimitation exercise to the community. This process is called ‘devolution’ - to use a direct translation of the Mozambican Portuguese - or restitution, ‘giving back’.

The restitution is also an opportunity for the community to confirm or adjust any of the data and maps produced by the PRA. It is therefore important that neighbouring communities are also present, so that the community being delimited and its neighbours can be informed about the final shape and content of the official map and accompanying descriptive information. Indeed the Technical Annex requires that representatives of all neighbouring communities are present for the validation of the final sketch map.

In fact as many as possible are invited, including all those who participated in the working sessions, community and local government officials, and even investors who may also be present in the area. All stakeholders can then confirm and double-check the final results, including the agreed limits and any other relevant information contained on the maps and records.

Where disagreements arise, the restitution meeting provides the Technical Team with an opportunity to work with the target community and its neighbours to verify the quality of the information generated, clarify any misunderstanding, and correct and complete errors and gaps²⁸. Ensuring that the representatives of neighbouring communities also participate may forge a stronger sense of confidence and trust between different communities.

The material presented at this meeting includes the various maps and any other relevant information and findings produced by the delimitation. It is likely that by this time the final official map of the community DUAT and its descriptive memory are also available. If so, a copy is handed over to the community.

The final restitution is also an opportunity to explain again to the community the additional steps that are still required to obtain a community land certificate. If final maps have not already been produced, the Technical Team undertakes to forward on to the community representatives copies of all maps and reports that have been produced during the PRA. Finally, at the end of the meeting a session is organized for the community to evaluate the PRA process.

3.2.10 Registration in cadastral records

The results of the delimitation – all the maps, the official forms duly filled in, the descriptive information etc – have to be now recorded in the official cadastral database. In Mozambique this is done by the Provincial Services for Geography and Cadastre

²⁸ It is interesting to note that in the Mozambican video *A Nossa Terra*, a disagreement erupts in this restitution meeting when a neighbouring community that was to be included within the newly delimited Local Community decided that it was not part of the target community after all. More fieldwork was needed to identify new limits between them.

(SPGC), which hold and maintain the public land database. The SPCG or its equivalent must formally record the limits of the community-held DUAT on its official maps, give the whole exercise an official record number (*processo* in Mozambique), and archive all the other accompanying information produced by the delimitation.

Recording the complete set of information produced by the delimitation can only be done by SPGC technicians. They can be given the information either directly by the community, or by its agents or the supporting technical team. Once the SPGC receives the documentation, it is checked to make sure it is complete and to confirm that the delimitation has been correctly carried out. Form 6 of the Technical Annex is designed for this purpose.

Once Form 6 is signed by the SPGC, the final sketch map is transferred to the cadastral Atlas. The descriptive memory is archived under the same reference number as the final sketch map. The archive includes copies of all the documentation generated during the delimitation process:

- the PRA report
- all completed forms
- copies of the final sketch map and descriptive memory
- any other documentation related to the delimitation process.

Once the process is complete the SPGC must issue a Certificate of Delimitation. Before it does this however, the process has to be formally noted and cleared by a representative of the underlying 'land owner', or in other words the State²⁹. With formal clearance given, the SPGC issues the Certificate, which containing all the information now contained in the official records:

- the Cadastral Atlas reference of the projection of the community
- identification of the land unit indicating its area and location
- name of the local community and its neighboring communities
- the date of issue of the Certificate

3.2.11 Who is the technical team and what do they do?

An interdisciplinary technical team is essential in any PRA, so that any situation be analyzed from different perspectives. Different specialists have different ideas about how to deal with specific problems; a medical doctor thinks poverty can be solved through a better health programme, while an agricultural extension worker focuses on production to enhance income and food security. The Technical Team should therefore come from different backgrounds, such as cadastral technicians, rural extension agents, and NGO workers.

Each team member contributes his or her views, which reflect their area of expertise and experience. Comparing different perspectives is also a form of triangulation that results in

²⁹ The Mozambican regulations have until recently given this role to the Provincial Governor, who must give his or her signature indicating that the State has been notified and recognizes the process as legitimate. This final act has been complicated by an amendment to the Regulations that aims to bring the administration of community-related documents into line with procedures for new private DUATs. The implications are discussed in the concluding chapter.

a more realistic final picture of the community which is richer in solutions and options for possible interventions.

PRA team members must be both researchers and facilitators. They *cannot act as teachers* transferring knowledge to community members as if they were students. In fact the main actors of a PRA are the community members (men, women, elders, youth, etc), with their different views and interests. The technical team, with representatives from the Cadastre, NGOs and maybe the local administration, may have its own specific interests, but acts principally as a facilitator.

The team must be open and flexible in relation to the reality they encounter. As facilitators, team members must listen and observe. Participation also implies being present, being heard and being observed by others. They must always make sure that as many community members of all kinds participate during the different stages of the appraisal. Special attention must be paid to the initial contacts with the community. Creating an environment with *increasing* participation requires time, patience and sensitivity. It takes a lot of effort to achieve real participation, but very little time to lose it.

During the first stages, community members are in a privileged position, because they are at home and expect the visitors to produce something. The team is new, unknown and is constantly observed. This is the moment when the team can gain confidence and become a trusted partner. It is important to establish clear working rules and regulations from the start, such as working hours, identifying key informants, deciding the best venues for individual and group meetings, etc.

A good team will therefore have a full range of technical and social skills, and each team member must be able to carry out his or her specific part of the process. Tasks and responsibilities within the team should also be well defined, and will include:

- *Interviewer or group moderator*
Asks questions, animates the dialogue, listens to the participants and shares in their emotions. The interviewer may never take notes, but maintains continuous eye-to-eye contact with the interviewees.
- *Secretary*
Takes notes discretely. Always ask permission, and explain why written notes are important. While guaranteeing anonymity is important, it may be necessary to note the key informants such as local leaders, traditional chiefs or other people with a specific function in the community.
- *Observer*
Carefully observes the process: participation, understanding, body language, attitude of the team and community members. The observer only intervenes when really necessary. Particular comments are discussed between team members after the interview when community participants have left.

3.2.12 Keys to best practice

Be prepared: arrive with background information about the community

The team must do its homework before starting! Although the team is there to help the community delimit itself, this does not mean that they simply arrive and let the community get on with the job. The team must research the major issues in the area so that it can provide clear guidance when working with community members. Team members should have some idea of the physical geography and history of the area, its language and cultural practices, and the main activities practiced by the people who live there. However, they must never interpret, judge or discount information on the basis of their own criteria or vision.

Ensure Popular Participation

Participation is more than involving a few key people. If it is limited to working only with leaders, community members can feel betrayed or marginalized when important decisions are taken over collective land rights³⁰. The *level of involvement* is therefore critical. The principle of co-titling which the Land Law applies to the internal management of a local community means that all community members at least know that a delimitation is underway, and that as many of them as possible have a chance to contribute. Many communities will of course involve them in the process, but the law is also a democratic document that encourages broader participation - communities must choose a committee of up to nine men and women to represent them and sign key documents.

Work with Different Groups

The participation of all segments of the community is important. It is particularly important not to work just with men. Men and women have different roles, do different things in the production and livelihoods strategy, and use different resources. If both groups are not involved, important resources can be overlooked and left out of the delimitation (see back to Diagram Seven). The active participation of all layers of society can also result in unexpected and innovative solutions to problems. Facilitators must stay alert to make sure that all participants can express their viewpoints.

Triangulation: Collect and compare information from different sources

PRA uses triangulation to confirm and clarify information being gathered on specific issues. Information is never exact and doubt free - we rarely all share the same perception of the reality we live in. The memory of any person is selective and people also often answer questions in a way that pleases the interviewer. Information generated during a PRA can suffer from this subjectivity, and the 'real picture' can then be unclear or even contradictory. By tackling the same topic from different angles and using different sources of information, triangulation can cross check information from each source to get a better idea of what the real situation is. For example, if different groups in a

³⁰ Inadequate *internal* consultation is a common cause of later conflict. See Baleira and Tanner (2004): *Relatório Final da Pesquisa sobre os Conflitos de Terra, Ambiente, e Florestas e Fauna Bravia*. Research report, Maputo, FAO and Centre for Juridical and Judicial Training; and Tanner and Baleira (2006): *Mozambique's legal framework for access to natural resources: The impact of new legal rights and community consultations on local livelihoods*. FAO, Livelihoods Support Programme, Working Paper 28.

community, and their neighbors, confirm that a certain tree marks the limits between two communities, this is likely to be the case, but they may disagree over where it is. Bringing in a fourth group who live nearby may help resolve the issue.

Be sensitive to the various “realities” within a community

PRA is a dynamic process in which different actors interact. “Reality” takes different shapes throughout the appraisal, becoming more complete as the process advances, and slowly growing and emerging as ‘the community’. It is a “learning-as-you-go” process, whereby each piece of information helps to set the agenda for the later stages of the analysis. Flexibility and adaptability are key words in any PRA.

Work through the process with relative speed and efficiency

PRA is relatively fast because it does not need to validate information with high levels of surveying or statistical precision. It pursues a strategy of “optimal ignorance” in which the amount and detail of information required to formulate useful hypotheses in a limited period of time are regarded as expenses, and thus kept to a minimum. The aim is to achieve a sufficient level of knowledge, using triangulation to validate information and obtain a sufficiently realistic image of a complex situation.

Use visual communication

Many rural people do not know how to read or write, and often speak only a local language that is different from that of the facilitator. Strong visual communication skills and tools are needed to ensure comprehension and the active participation of community members. Information, analysis and results are presented in the form of drawings, models, maps, and other visual techniques. When participants do have some writing and reading skills, visualization techniques can include the use of cards. Facilitators must be well trained in the use of these techniques.

Identify Useful Sources of Information

The type and level of detail needed in a PRA are determined by its objectives. Some people may be in a better position than others to provide more and “better” information on certain topics. Some information may also be more “valuable” and helpful than other information. It is important to identify these key informants, such as elderly people who may have special knowledge about the history of the community.

Do Intensive, systematic and semi-structured interviews with community members

PRA is a systematic process that makes the best use of available time and resources to produce a complete picture of a complex reality. It is also a very intense process, for community and facilitators alike. A lot of information is generated and analyzed in a short time, using a wide range of techniques. Interviews with community members are semi-structured, and take place in guided but informal and open-ended interview sessions. Only some questions are pre-determined and others will arise during the process.

Everything must be meticulously prepared and conducted to obtain good results. Facilitators must be attentive, sharp and ready to seize opportunities during interviews to

further explore the topic being discussed, or open up discussion on other topics. The team should not however lose sight of the main objective of the interview, returning when necessary to the main key questions.

3.3 Going one step further: getting a title document

While the delimitation exercise proves and identifies the area of the community held DUAT, in Mozambique at least the Certificate of Delimitation is *not* a title document (*Título*, in Portuguese). To get the *Título* requires titling, or *titulação*, in which full registration of the land right takes place and a Title Document is issued. In the case of new DUATs allocated to investors and others, this process is mandatory and is a part of ‘titling’ understood as the State issuing a new DUAT to the land applicant. In the case of communities, who *already have* their DUATs acquired by occupation, ‘titling’ does not involve giving the right, but is more a process of recognition and registration of existing rights, which results in the same kind of *documentary* evidence that new DUAT holders enjoy.

This might seem like a good thing – in an ideal world getting the full Title document would indeed provide an even stronger form of protection for local rights. However, ‘Titling’ requires a more rigorous survey procedure called ‘demarcation’, which takes its name from the physical fact of placing cement markers around the registered limits of the DUAT. This in turn requires much higher levels of surveying precision. In short it is a far more costly process than the simpler and more cost effective *delimitation* alternative. In fact flexibility and adaptability are key aspects of delimitation which, as we will see later; can be applied in a variety of contexts, such as land use planning and community-investor partnerships.

It is also important to underline again that for communities and “good faith” occupants, the absence of the *Título* does not mean that they do not have a DUAT. Once again, by law a DUAT acquired by customary or good faith occupation *already exists, and does not have to be registered* (recognizing the fact that the community may already feel relatively secure, or that it cannot afford to pay for the process).

Individual men and women inside communities who have rights acquired through the local customary system can also request a full Title document. They must however follow the same steps as any new land applicant, including consulting with their community, posting a notice (*edital*) in the local administration of their intention to register their right, and carrying out a full demarcation. Finally, for both communities and individuals requesting a Title document for their right acquired by occupation, the final resulting process must be cleared by the appropriate representative of the State³¹.

This situation differs from that in Angola, where FAO has also been supporting a delimitation programme to secure and protect local rights. Here however there is no pre-

³¹ Note that legally, this is not an approval (the Governor or Council of Ministers cannot deny the right), but is merely an administrative recognition of an existing reality. The regulatory amendment is however apparently being used by government to restrict legally acquired rights by administrative means.

existing DUAT recognized by law, and delimitation is part of the process whereby the State established the existence of local rights and then *confers the land right to the community*. The result of delimitation in Angola is therefore a full Title document, unlike Mozambique where a Certificate of Delimitation is issued.

While the *Título* provides a stronger form of documentary proof and protection, under Mozambican law delimitation should provide enough formalized proof of the existence of a DUAT acquired by occupation, with sufficiently accurate and detailed information about its limits and other spatial characteristics. It is also officially recorded in the cadastral database and on official maps. As such, it provides solid evidence of the local community DUAT, without the need to go through the far more expensive process of *titulação*.

4. Practical aspects of delimitation

4.1 Who or what is delimited?

It is important to be clear about what is delimited and what goes on inside it. Firstly communities with their own DUATs are not the same as single ‘landholders’ in the private sector. They are sometimes treated like this however, with the result that they are then seen as having too much land. For example, when the Mozambican Land Law Regulations were recently changed, some official pronouncements suggested that ‘185 communities have over 7.5 million hectares, and of these, 85 have more than 10 thousand hectares each’, implying that this is too much for one community.³²

Each community is in fact a *collective unit*. If a community has, say, one thousand households, then 10,000 hectares translates into 10 hectares per household. This is not a lot for extensive or rudimentary production systems, which move across a landscape and include common land such as forests. It also follows that each bundle of rights inside the community - also acquired through ‘customary norms and practices’ - is a DUAT as well³³. Thus the 10,000 hectares in fact includes a large number of individual DUATs which are now protected because the larger unit is recorded on a cadastral map. The ‘large’ community area in fact breaks down to many hundreds or even thousands of smaller units.

Communities are not homogeneous units either, with a lot of variation between households. Many households will occupy and use more land than others, either because they have more labour (including older children) or perhaps they have off-farm income or get remittances from relations overseas that allow them to employ labour or use machinery. Land within communities changes hands as household strategies and needs change, through active rental and sale markets. Designing a cadastral system to administer this process would stretch most governments.

Delimitation is then simply a cost effective way to secure a large number of rights that are not easily formalized by conventional survey and registration methods. By setting them within a collective unit which manages these rights, it devolves responsibility to local land managers and dispenses with the need to formally register (if that were possible) literally thousands of local rights that change over time.

³² www.portaldogoverno.gov.mz/noticias/news_folder_politica/outubro2007

³³ Expert legal opinion in Mozambique confirms that in this context local communities leaders have the legal authority to allocate and manage DUATs on behalf of the State. See André Calengo (2003), *A Lei de Terras Anotada e comentada*. Maputo, Kapicua Livros e Multimédia Lda and the Centre for Juridical and Judicial Training. Legal texts developed with FAO assistance and Netherlands Government funding.

4.2 When should it be done?

In Mozambique the Technical Annex to the Land Law Regulations summaries three situations where delimitation ‘is done as a priority’:

- where there are conflicts over the use of land and/or natural resources;
- in areas of local communities where the State and/or other investors intend to start up new economic activities and/or projects and development plans;
- at the request of the local communities³⁴.

This is a practical approach for countries with limited resources. Instead of mandatory measures that would require a national level campaign to delimit and record all existing rights, a demand-driven strategy is suggested. Almost by definition, this will focus on areas where need is greatest, as shown above. Resources can be targeted, including local civic education and awareness raising initiatives that can set the stage for later delimitation and the use of land legislation as a proactive rural development tool.

However, registration is expensive and takes time. The Mozambican Land Law therefore does not insist that rights acquired by occupation are registered, and goes even further to say that the absence of a title (i.e. document) or formal registration does not prejudice the DUAT acquired by occupation³⁵. So why do delimitation?

There are many good reasons. Especially in economies that are growing and where demand for land is increasing, it is extremely risky to leave rights invisible to all but the local people who know where they are. If local rights are not already mapped out, investors get the impression that large areas are ‘free from occupation’, and a government more interested in promoting new investment may be happy to promote this idea as well.

When the investors request an area of land and perhaps visit it (something they do not always do), local people who live there will have to prove their rights, and probably will not have much time to learn about the law and what rights they have. Indeed the Mozambican law adds an important rejoinder to the principle that customarily acquired DUATs do not need to be registered, saying that this is the case only ‘...so long as [*the DUAT*] can be proven in terms of the law³⁶. Article 15 of the law then outlines what is acceptable proof:

- presentation of the respective title (i.e. the *Título* document)
- verbal testimony presented by male and female members of the local communities
- expert opinion and other means permitted by law

Thus delimitation not only establishes a line around local rights, showing the outside world that local land is *not* ‘free from occupation’. It also *proves the right acquired by occupation*. It is one of the ‘means permitted by law’, accompanied by both ‘expert opinion’ and ‘verbal testimony’ presented by community members.

³⁴ Ministerial Diploma 29-A/2000, 17 March.

³⁵ Law 19/97, Article 13, line 2.

³⁶ Article 14, line 2, emphasis added.

4.2.1 Proactive delimitation

So when is the right moment to do a delimitation? Where should delimitation be a priority? Is there a practical rule of thumb that says, delimit these communities and leave those alone for the moment?

The opening chapter presents a macro-planning scenario where investor demand creating pressures on land in areas of good soils, or near roads, development corridors, and the coastline. The conclusion was that ‘being aware of development plans and the inherent economic potential of certain areas should enable us to focus land administration and other resources such as NGO programmes that can give local rights greater protection’. A similar approach can show where delimitation can be used proactively, with important consequences for local development (discussed in more detail below).

Armed with knowledge about a new highway or plans to create a new National Park, communities and those who support them can consider a campaign of delimitation in and around the areas affected, so that local rights are visible and taken into account when the investors and State agencies arrive.

In this ideal scenario delimitation is used *proactively* to establish rights and prepare local people *before investors arrive*. Proving a right after an investor arrives with supporting paperwork can be much more difficult, especially if the investor uses official maps that do not show any acquired DUATs and give the impression that the land is ‘free from occupation’.

Proactive delimitation can also be used however when local people want to use their own rights for their own development, for example by taking advantage of new opportunities presented by a new road or tourism development. Getting capital to do this is often a challenge however. Being able to show a Certificate that proves their land rights, and that they have enough land to support a new project, is an important argument for persuading banks and other to provide credit and other assistance.

4.2.2 Where there are conflicts

Delimitation can also be used *reactively*, when there are conflicts between local communities, or where an investor wants land and local people have to respond to the legal imperative to prove their rights ‘when necessary’. Mozambican legislation in fact gives local communities a clear role not just in defining their own borders (delimitation) and titling new DUATs (through the consultation), but also in revolving conflicts. Involving local institutions and using delimitation as both an empowering and mediatory instrument can contribute significantly to this process.

Tensions can always be expected in areas that are attractive both to local people and outsiders. These will have better soils and water, or have particular features that attract tourism and other interests. Marginal or uninteresting land far from roads and other points of interest attract little attention and will be relatively conflict free, other things being equal. The best areas in a growing economy will be where demand for land is rising, and where delimitation as a *reactive* measure can defuse and resolve conflict.

Used proactively delimitations can establish where local rights exist before demand rises, and facilitate a relatively peaceful process of land rights redistribution. Once conflicts begin, it can also help all those involved to consider the evidence and assess the validity of their competing claims. The participatory process described above can help resolve long standing inter community disputes over borders and the common use of resources, or address long running conflicts and tensions between outsiders and local people.

Some people think that delimitation actually causes conflicts – for example, by provoking disputes between communities when land is about to be allocated to one side or the other. Field experience shows that a well conducted and participatory delimitation can resolve long term disputes, and is a useful conflict resolution instrument.

Delimitations can also be useful in situations where investors already occupy land inside the area to be delimited. If a new land right was previously given without adequate attention to the consultation process, or where (as is often the case) the subsequent fencing of investor land either goes beyond agreed limits or cuts off local rights-of-way, delimitation can clarify and resolve these issues. Remember that not only rights-of-way should be recorded both on the final delimitation maps and in the descriptive information. The presence of investors and other DUATs outside community jurisdiction, but *inside the community* boundaries, should also be noted and recorded.

The use of what the Mozambican law calls ‘partial delimitations’ is particularly relevant in the conflict resolution context, where the methodology is applied only in and around the immediate area being argued over. This can be quicker and cheaper, and more effective than conventional conflict resolution mechanisms.

Unfortunately it seems that delimitation is *rarely promoted as a conflict resolution mechanism*. When there is conflict, local government commissions and other *ad hoc* administrative and political measures are resorted to instead. There is hardly ever any talk of using delimitation to resolve the problem³⁷.

This is a pity, as the whole participatory process of proving and defining limits, done together with neighbouring communities and other stakeholders, offers a unique chance to really discuss the issues and hear evidence from both sides. Final decisions are likely to be respected, and the whole process can also even result in a plan that details how the various stakeholders will work together in the future.

4.2.3 Where new projects are proposed

Delimitation as a *proactive* instrument comes into its own in situations where a new project is proposed. Governments and investors alike may be concerned that their plans

³⁷ See Baleira and Tanner (2004), who show how chronic conflicts go through a series of administrative channels until the provincial governor creates a commission, usually consisting of the same agencies that are part of the original problem. In many cases, a failure to adequately take into account the existence of local rights – which are rarely recorded on any map - is a root cause of the conflict.

do not jeopardize local livelihoods, or they may be keen to maximize the benefits that their investments can bring.

Few local people reject investment out of hand. The arrival of a new investor or a State project can be a threat, but it also brings opportunity. To manage this situation and ensure a peaceful and constructive outcome, it is helpful to know *beforehand* where local rights exist and who manages them.

Local rights are protected to some extent by the *community consultation* mechanism, which should avoid local rights being totally ignored or abused by outside interests. In practice however, unless local people are clear about which resources they control, and know how to negotiate with those who want access to them, the consultation is always a one-side process in which communities more than likely lose out³⁸.

For their part, investors also want to know if the land they want is ‘free from occupation’. If it is not, they need to know what to do in order to secure it, and how much this is going to cost. A blank cadastral map which gives the impression of vast ‘free areas’ does not help anyone in the long term.

Using delimitation to map out where local rights exist can provide an important baseline for subsequent discussions between interest groups, and the development of a local development plan that has the full support of all involved. Delimitation *before the investment begins* makes local rights visible and facilitates a constructive and *equitable* outcome when the investors finally arrive.

Communities or their advisors (for example a local NGO) might foresee the arrival of new investors when they are told that the local road is to be upgraded, or that a new national park is to be created nearby (as in the diagram on page six). Delimiting their land before the land rush starts puts them at an advantage, and they can use their stronger bargaining power to engage on a more level playing field with the investors and the State. Subsequent negotiations are then more proactive and than reactive and defensive.

4.2.4 “On demand” by the community

As communities become more aware of the pressures on their land, and of their rights under law, they may ask for a delimitation to be done even if there are no immediate conflicts or project proposals on the horizon. In this case delimitation offers a kind of pre-emptive protection to rights that are already formalized and guaranteed by law. They may also simply want to use documentary evidence of an acquired DUAT to lever new resources, especially credit and other support from the financial and other sectors.

The critical aspect here is that *delimitation is a right*. In principal it is not a process that depends upon state approval. Where rights are already recognized in law – as is the case in Mozambique – communities requesting delimitation are simply asking for an existing situation to be made more visible, and formally recorded in the appropriate official

³⁸ Tanner and Baleira (2008) show how most consultations are poorly carried out, with land administration staff seeing their principal objective as (rapidly) securing a local ‘no objection’ for a new DUAT.

database. Responding positively to this is in fact an *obligation* of a land administration that is concerned to see that all legally defined and existing rights are gradually incorporated into their records.

4.3 The costs of delimitation

4.3.1 How much does it cost?

Depending on your point of view, delimitation is either very expensive or very cheap. Looked at as a single process or event, costs can vary enormously in relation to the size of the community being delimited, the terrain it occupies, and how many of the geographical features it uses as boundaries appear on existing maps or aerial photographs.

The average cost of a delimitation exercise in Mozambique is around US\$10,000³⁹. This includes NGO salaries that would normally be paid in any case. Excluding these can bring the real additional cost down to US\$5-6000. While this might seem high, it must be remembered that delimitation establishes the limits for communities that will have anything between 500 and 1000 or more households living inside them. Seen in this way, the cost per household is extremely cheap – between US\$5 and US\$10 per household for a 1000 household community.

The cost effectiveness of delimitation is even clearer when compared with the cost of trying to register the rights of each individual household. In Mozambique this requires a more precise survey approach and the placing of cement markers around the parcel of land – *demarcation* as opposed to delimitation. Costs are therefore much higher. CTC report estimates that for a plot of 2-10 hectares, the cost is US\$400. If we assume that each household has an area about this size – and this would be a false assumption because it makes no allowance for crop rotation and use of common resources – the cost for a 1000 household community would be US\$ 400,000.

There are also ways to lower the costs. In Angola, where FAO has also championed the delimitation approach, a technique has been developed to lower costs by carrying out several delimitations at once. The high costs of 'sensibilization' are considerably reduced by addressing several neighbouring communities at the same time, and field costs are also lower as much of the data is shared between them (common boundaries such as rivers for example). Given that consultations with neighbouring communities are part of the process anyway; this is a logical extension of the methodology.

This approach has also been used in Mozambique, where a large multinational forestry company saw delimitation as a necessary condition for a successful consultation process, and was prepared to pay for the whole exercise. Nine communities were delimited in a relatively short period, which lowered the costs considerably. And a good agreement was

³⁹ The CTC land rights appraisal done for DfID Mozambique in 2003 assesses the costs of delimitation using a) Land Commission and FAO data at the time the methodology and Technical Annex for delimitation were being developed, with 21 pilot exercises; and b) a large dataset from ORAM, a national NGO that has done many delimitations since the Technical Annex was approved (CTC 2003:32-33).

then reached over the ceding of hundreds of thousands of hectares of local land, in exchange for substantial material support for local development and the setting aside of still very large areas for local agriculture to continue.

This is something of a flagship project involving a major international timber company, supported by Swedish funded technical assistance as it navigated its way through the Mozambican institutional and legal framework. It offers an excellent example of what can be done if the Land Law is properly used, and shows how delimitation can *facilitate rather than obstruct* substantial commercial investment over very large areas.

4.3.2 Who pays for it?

Article 7 of the Mozambican Technical Annex also addresses the issue of how to pay for delimitation. After indicating when it should be done, it goes on to say that the following criteria should determine who covers the costs:

- when the delimitation is done because there are conflicts, the division of costs is decided by the local Public Administration;
- when the delimitation is done because of new economic activities and/or projects and development plans, the costs are supported by the investors.

Unfortunately neither of these conditions has actually been applied in practice. The fact is that government agencies rarely promote delimitation in the first place. In principle, when investors are moving into a new area, local government agencies should begin informing local people about their rights and how they can exercise them, and their colleagues at higher levels should be telling the investors that they have to pay for a delimitation in the area they plan to use.

Many executive officers see delimitation as an obstacle to development however, too complex, time consuming and costly. Senior government officers in Mozambique have said that delimitation puts investors off, and that the consultation mechanism offers adequate protection for local rights. And without real public commitment, there will be little pressure on investors and others to pay the costs.

To be fair to the investors, there is no guarantee that paying for the delimitation will get them what they want. Indeed it might raise community awareness of their rights to the extent that the local population decides *not* to allow the investment. This is not the usual outcome – most communities welcome investment and the opportunities it brings. The issue is how it is implemented, and the nature of the relationship between local people and the newcomer.

On the other hand the community should pay when it wants to delimit its rights ‘on demand’. Few communities have the necessary resources however, and depend upon outside support. In this context a pro-poor approach would also imply a real commitment by government in the form of public money, perhaps derived from land and natural resources taxes paid by commercial interests using new DUATs.

It is therefore reasonable to expect some degree of public involvement, especially from governments with a strong pro-poor agenda. The evidence to date is not encouraging. In Angola there is *no state funding at all* for the process. In Mozambique, official data show that over the three years after the Technical Annex was approved, funding was never high and fell off dramatically, from enough to cover just five delimitations per year, to less than one per year⁴⁰. This has led to DfID and other donors creating a national level fund to support delimitation and registration of local rights⁴¹.

Government land administrators have also tended to see ‘community issues’ as somehow not being within their mandate – community matters are for NGOs. This reflects the fact that land administrations are mostly staffed by surveyors and topographers who are not adequately trained in the participatory community work at the heart of the delimitation approach. Most delimitation work in Mozambique is therefore done by NGOs, with development assistance funds in the background. Given that public agencies should be applying *all* aspects of the law, not just to promote investment but also to protect local rights, this approach raises many questions about the role of the State in the process.

Finally in this discussion of costs, it is important to set them within a broader analysis of costs and benefits. Without full local approval, a project will not have an easy time, and there are many cases of investors who have started off projects and immediately found themselves embroiled in bitter conflict with local people. A lot of time and money is then spent trying to resolve problems that a good delimitation could have avoided. These costs should also be included in any assessment by government.

Government officers also fail to understand the potential of delimitation as an effective and relatively economical conflict resolution mechanism. Compared with the costs of litigation and court cases, US\$10,000 for a delimitation that helps to resolve – and prevent – existing and potential conflicts could be a very good deal.

These observations point to the need to:

- show investors how these processes work and how they can bring benefits to everyone if well implemented;
- educate senior government figures about the advantages of following this rights based approach with delimitation as a core activity.

4.4 Women’s land rights

This is a sensitive issue for community land delimitation. Because delimitation also devolves power to local land management structures, there is a risk that the discriminatory aspects of ‘custom and practice’ will work against women who get their land mainly through marriage and other relationships with community men. Indeed when the Mozambican land law was being debated, women’s groups across the country were concerned about its impact on the rights of women at local level. They argued that

⁴⁰ CTC 2003:44

⁴¹ The ‘Community Land Initiative’ is a US\$12 million project over six years, supported also by Sweden, the Netherlands, Denmark and Ireland.

customary systems do not give women strong rights, and that giving local community leaders (who are mostly men) strong legally mandated powers would simply reinforce traditional practices that should instead be ended.

When relationships end – through divorce or the death of the male land right holder - women risk losing everything as ‘custom’ gives them no real control of the land they use. This is a major concern especially in the era of HIV-AIDS. Across Africa women are at a growing risk of losing their land and assets when they are seized by relations of deceased partners using various ‘customary’ rules to justify this. A growing body of field evidence is showing that this is occurring in many countries. Moreover women with weak customary rights are then often forced to seek their livelihoods in practices such as prostitution that expose them even more to the risks of HIV-AIDS. Securing their land rights is then an important part of the strategy to control and prevent the spread of the virus itself.⁴²

Most countries have constitutional provisions guaranteeing the equal rights of men and women, but in practice they are difficult to implement in the millions of situations that are still basically regulated and administered according to local traditions. In the case of Mozambique, women enjoy strong protection through the Constitution and in the Land Law itself. In fact the drafters of the Mozambican land law did listen to the concerns of the women’s lobby, putting a key phrase in the article which says that rights are acquired by customary norms and practices: *so long as these do not contradict constitutional principles*.

Other provisions can also be included in a legal framework that allows ‘custom’ to work in favour of women. Thus when the law recognizes rights acquired through custom as equivalent to the State DUAT, the rights women acquire through marriage and by being members of customary groups are also DUATs. They are then subject to the full range of constitutional and other guarantees, like any other DUAT.

In Mozambique other legal principles such as ‘co-titling’ say that all community members – including women - have an equal say in how land management decisions are taken. This offers women the possibility to assert some control over the way in which rights and resources inside the community are managed. And like any other community member, a woman can also elect to take her DUAT out of community jurisdiction and ask the public land administration to register it in her individual name. The fact is however that many local leaders do not know about constitutional principles, or the international conventions that protect women. Even if they did, they are unlikely to apply them in place of local norms.

Giving individual titles to women also raises questions about how best to use scarce land administration resources at a time when community resources as a whole are under threat from external pressures. Failing to protect the broad sweep of local rights within the single DUAT of a community, through delimitation, would leave *all local land*, not just

⁴² See the report of a recent FAO meeting on the land rights of women affected by the HIV-AIDS pandemic: *Gender, Property Rights and Livelihoods in the Era of AIDs*. FAO Rome, Technical Consultation, November 2007.

that of local women, at serious risk of capture by other interest groups. Moreover, the Local Community model in the Land Law is intended to devolve certain aspects of land and natural resources management to local leaders, and this is to be welcomed in the overall context of decentralization and establishing a more democratic system of governance and development planning. Taking away the devolved power of local (male) leaders is therefore not a solution.

The challenge is to continue using delimitation to protect these broader rights in a kind of pre-emptive way, and use the delimitation process itself to introduce the legal and ethical concepts and qualifications that safeguard the rights of women in the modern day – the national Constitution, and other legal frameworks such as CEDAW and other global conventions adopted by the country. Changing the attitudes of community ‘land administrators’ and local conflict resolution specialists – chiefs, community courts judges, even traditional healers - will protect a far more women than individual titling programmes. The participatory approach built into the delimitation process offers many opportunities for doing this.

4.5 The “Knock-on” effect of a good delimitation

Delimitation is not just about maps – it also generates a rich vein of information and gathers together a huge amount of local knowledge. This knowledge obviously centres around territorial boundaries, but it also includes information about natural resource use, including the location of unused resources that can be used for new or diversified activities (including ceding to investors in partnerships arrangements).

A well carried out delimitation is also a tremendously empowering process. It builds on and enhances local knowledge and promotes more understanding of local realities by the community, the technical team, and local government. Local people learn about their rights and what they can do with them. Local management structures are reinforced and, where appropriate, modified (for example by the legal obligation to include women amongst elected community members who represent the community in land law matters).

In fact delimitation can create the foundation for new community development plans, or for decentralized, stakeholder-based land use planning that promotes new economic activities and identifies opportunities for community-investor partnerships. Generating information and new ideas with the technical team can lead to new community initiatives, and strengthen local decision making and planning capacity. Delimitation can then induce or accelerate a more sustainable form of local development, reducing dependency on external assistance. Building it into the process of *exercising rights* - exploiting the new opportunities that were referred to right at the beginning of this discussion - is discussed briefly in the final chapter.

5. Delimitation and development

Delimitation by itself will not bring about development. In fact the lack of an immediate ‘development impact’ is often given by NGOs and government agencies alike as a reason for not doing it. Delimitation does cost money, and for large communities in difficult terrain, it can be really quite expensive. Spending several thousands dollars out of an already tight budget then has to bring with it the promise of something quite significant.

It is therefore important to be clear about what delimitation does bring in the absence of other processes and policies (there *are* important arguments for doing it whatever the immediate economic prospects); and what can be done to ensure that it has the social and economic impact promised by its supporters .

5.1 Protecting rights and livelihoods

In the most basic sense, delimitation is important because it protects rights. The law may recognize these rights, but if they are not made visible to others, and recorded in the public land office, they remain vulnerable to ‘elite capture’ and even ‘State capture’ when government imposes its grander vision of national development and other agendas such as conservation. Nothing else might happen, but several years later, when an investor turns up in a 4 x 4 to take over local land, people will be glad they did it.

In some countries where local rights are not yet legally recognized, delimitation, or at least the participatory mapping element of it, takes on a more political role. Remember that delimitation not only defends local rights by drawing lines around them, it also *proves them* and provides a range of cultural and socio-historical reasons why a government should change its policy and the law. Together with its empowerment and capacity building impact, delimitation then enables a community to argue and win its case for having its rights recognized, and perhaps even having the law changed⁴³.

To some extent this is what happened in Mozambique, where early research into production and local land management systems provided the justification for the incorporation of customary rights into the 1995 Land Policy. Subsequently, after all rights acquired by occupation were legally formalized, delimitation then provided a low cost method of officially recording local DUATs. Delimited areas drawn on official maps are now *visible to the outside world*. Those who want to use local land know that there are rights in the areas they want, and that they must strike a deal with local rights holders.

Looking again at the National Land Policy, this makes sense. First *ensure that rights are protected*; then *promote sustainable and equitable investment*. The resources needed to sustain local livelihoods are first secured, and communities *then* have the option of

⁴³ A key objective of participatory mapping and delimitation-type exercises in many countries is often to prove existing indigenous or historical rights that the State and others either do not recognize, or do not accept due to the lack of supporting evidence. See ILC 2008, *Participatory Mapping as a Tool for Empowerment: Experiences and lessons learned from the ILC network*. Rome, www.landcoalition.org

negotiating with investors to get some additional real benefit from the incoming investment that will *improve as well as protect* their livelihood base.

This does not happen on its own however – Land Law implementation, and delimitation, must be placed firmly at the center of a wider development strategy which attracts investors, generates economic linkages between the different actors, and provides the wider policy and physical investment programme for these potential partnerships and opportunities to assume tangible form and begin working in practice.

5.2 Delimitation and rural development

Delimitation is a powerful tool not only for proving and protecting existing acquired rights, but also for empowering the community and preparing it for the development process ahead. Community leaders and the population in general learn about their rights, and local land management structures are made more accountable and stronger. Women can be brought into land management institutions, and over-arching provisions that safeguard their rights can be explained and implemented without jeopardizing the wider objective of securing local rights.

When delimitation is done well, community members are better able to deal with the outside world. They also begin to understand the real value of the resources they control (including those they may not be using), and can be helped to develop local land use plans that might also include identifying areas for new projects or that can be set aside for allocating to new private investors.

This empowering feature of delimitation then enables communities to negotiate more effectively, and secure real benefits from incoming investment. It is more likely in this context that a negotiated package of benefits will have a real impact on local livelihoods, not only compensating for the loss of their resources, but also generating real added value for local people through partnerships or other agreements made with investors.

In the last chapter we saw how delimitation carried out in certain priority situations can resolve existing conflicts caused by resource pressures. Used ‘proactively’ however, it can also *prevent future conflict* by providing a clear picture of local rights *before investors make their claims*. If communities in a potential development area are delimited beforehand, consultations and agreements between them, the investor, and the State, can take place with all sides knowing where local rights begin and end. Everyone can then understand more clearly what the livelihoods and other economic implications of the proposed project are for both sides, and come up with consensual solutions and proposals that not only mitigate impact, but allow local people to participate in the benefits of what is proposed.

If this process is then linked to territorial and other local development planning exercises, it can bring local people more directly into public or State planning processes. As actors aware of their interests and rights, they can argue for these interests to be taken into account by public sector planners and administrators. Indeed a new Territorial Planning

Law has recently been approved in Mozambique into which the process of delimitation could fit extremely well, as the critically important bottom tier of activity upon which the whole range of local, district, provincial, and ultimately national plans can be constructed.

This operates in both directions, ‘top-down’ and ‘bottom-up’. While national concerns can be fed downwards, delimitation and participatory local development at local level can ensure that these are integrated into local plans in a more consensual way. And if delimitation is set within the wider local and national planning and development framework, local and higher level plans will then begin to respond to real needs, benefiting local people and the investors who also need good infrastructure and local services.

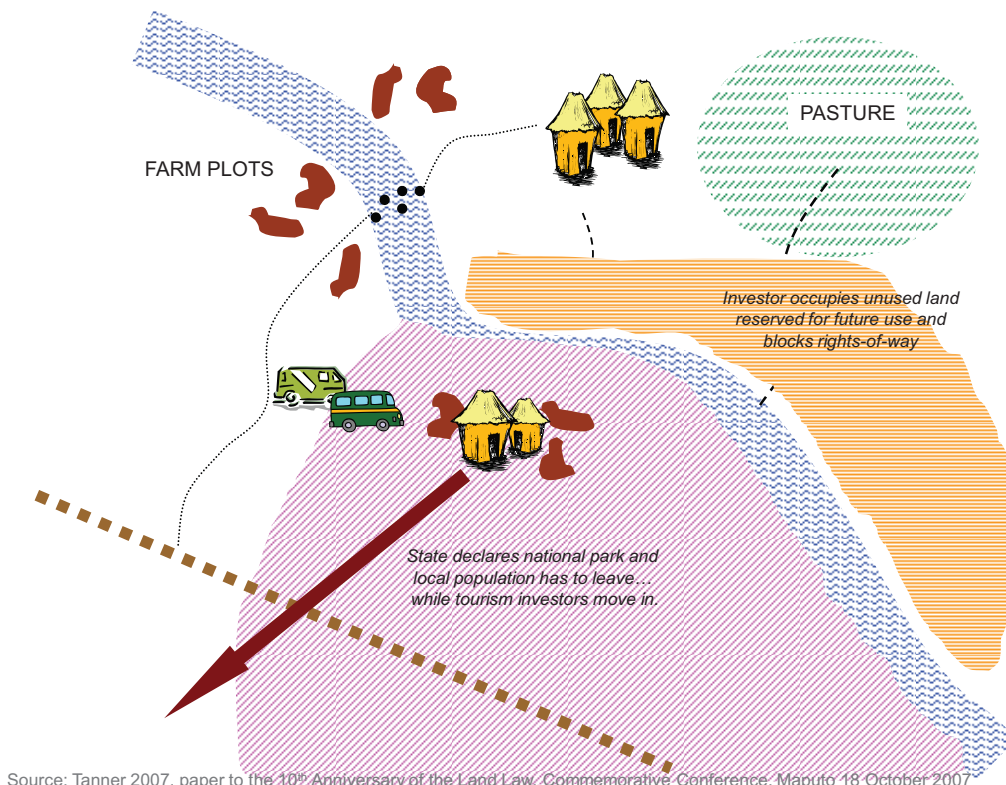
5.3 Practical application and benefits of delimitation

This kind of process with delimitation at its heart is shown in the diagrams below. Let us return to our typical village first shown on page fifteen, which we could say in ‘in balance’ with its environment, using a range of strategies to reduce risk and ensure a minimal level of food security. The villagers may be poor, but at least their livelihoods are relatively secure. As the wider economy grows and national policies in a distant capital change, it is possible to sketch out two scenarios: one ‘without delimitation’, one ‘with delimitation’. In each case the relationships established between the community, investors, and State-endorsed projects are very different, and so is ‘the plan’ that emerges.

In the first case, an agricultural investor appears with a land use right over land which government considers being ‘free’ because it is unused. Let us assume it is a woman entrepreneur for a change. She also fences off ‘her land’, not realizing that this area was set aside by the community for future use, when their existing plots lose their fertility, or for their children when they want to start a new village. She also fences off rights of way that are used by local people to take their cattle to the river. The local production system is at risk; local livelihoods strategies are compromised. Conflicts erupt, and nobody gets what they want.

Across the river where there is another village, the State also declares the creation of a new national park, and expects the villagers to leave because their activities do not fit with new conservation principles. As they leave, government approved investors move in. More conflicts erupt as local livelihoods are undermined, and worse still, local people see strangers with no historic links to the area being allowed to do things on ‘their land’ which might also involve cutting down trees and opening up new roads.

DIAGRAM 8
INVESTMENT WITHOUT DELIMITATION



Source: Tanner 2007, paper to the 10th Anniversary of the Land Law, Commemorative Conference, Maputo 18 October 2007

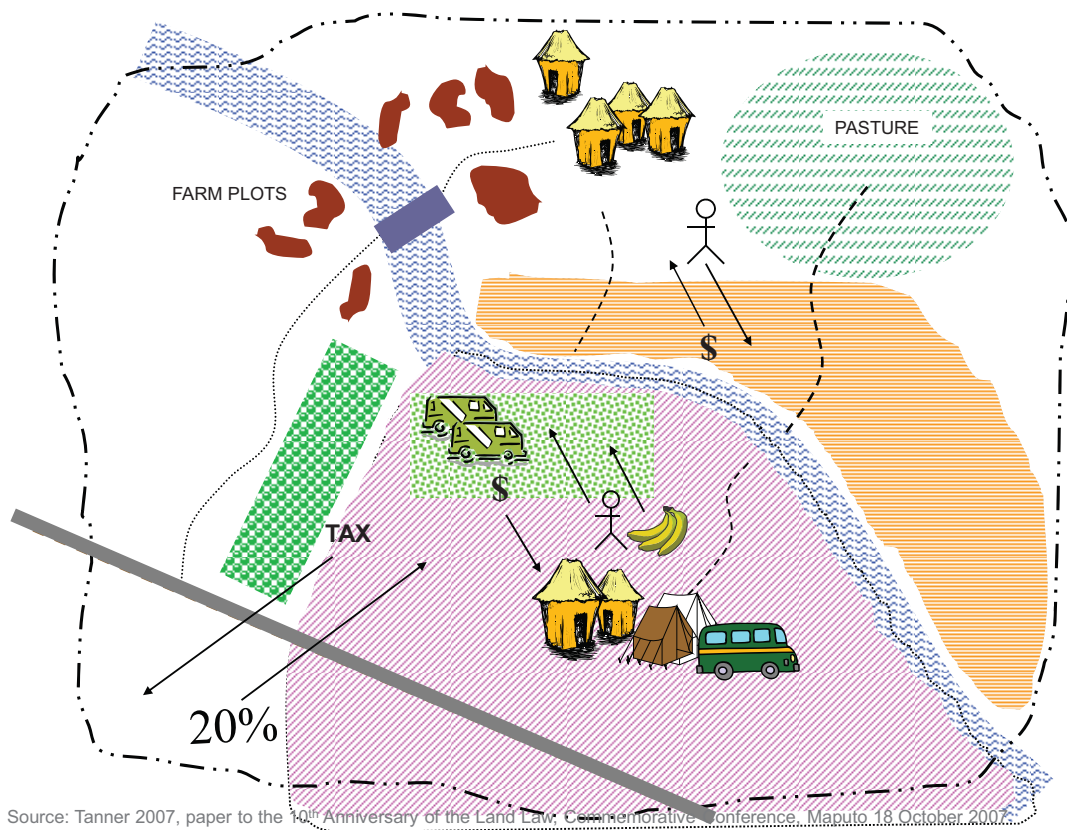
In the second scenario, NGOs aware of the implications of policy decisions taken far away have identified this area as one of high investment potential. They come to talk to the villagers and explain the rights under the new Land Law, and how it might be a good idea to secure their rights more effectively before the investors arrive. The two villages agree to take part in a delimitation exercise. The participatory fieldwork reveals that they are in fact one 'local community', with strong economic and kinship links between the two villages. They agree the limits of their community with their neighbours (dotted line in Diagram 9 below), and these limits and the community land use right are registered in official records.

They have also learned more about the potential of their resource base, and the specific importance (and tourism potential) of the forest and riverside area. They understand their rights better. Instead of just being aware of them, they now know they can use them in a more concrete way – they can say 'no' to newcomers who want their land; or they can negotiate a deal that brings real benefits, not just with new investors, but also with the Government.

Participatory land delimitation

When the first investor arrives they insist on a lengthy consultation and time to discuss things amongst themselves. They then make agreements with both the agricultural investor and the government. This agreement is quite detailed, and based on a sound analysis of what might make their exiting agriculture more viable, as well of the new opportunities presented by the proposed new project. In the first instance they insist that their rights of way are kept open, and that the investor will help to build a small bridge to improve market access for their crops. The investor will also provide employment for local people (at agree rates, specifying the number of jobs to be created over an agree period of time). He or she will also teach them new agricultural skills, which they can use on their home plots as well. This will allow them to produce higher yields on less land, so that giving up part of their land will not compromise their food security – indeed their incomes will actually rise.

DIAGRAM 9
INVESTMENT WITH DELIMITATION



On this basis the investor gets a new DUAT, and the agreed area is in effect removed from community jurisdiction at least as far as land management is concerned (the community retains a role in conflict resolution and the broader resource management picture through a range of other consultative forums).

In the second instance, a constructive agreement is also reached with the State over the National Park. The community already has some understanding of the conservation issues, gained during the delimitation process. Instead of simply declaring the park and then deciding how to resettle people, the government involves the community from the outset in developing plans for the park. The community understands the scientific importance of their land and why it should be conserved. They understand why elements of their current production strategy are incompatible with conservation objectives. But instead of simply relocating them, the State accepts their historical rights, and negotiates a package that allows them to draw economic benefit from the area when it becomes a park.

In the diagram above the community is allowed to build its own community owned campsite. They do not have to move out completely – they can leave the most sensitive areas and build a new village near the campsite. Their rights of way are maintained, and they may use key resources – water, medicinal plants, some wood for building their homes – provided that these are for local use only and do not damage the environment. They are allowed access to burial sites. It is also agreed that when a low-impact eco-tourism enterprise begins operating, it will pay a share of its turnover to the community, employ local guides, and train young people in conservation and tourism management. The lodge will also provide a new market for community produced fruit and fresh vegetables. The government might also propose to bring in a NGO to begin a horticultural project just outside the park.

This is evidently a better kind of process than that one in Diagram 8. But there is more to it than just agreements to share in economic benefits and the allocation of new DUATs. The participatory development approach in which the delimitation process is embedded can also make people aware of taxation issues and their rights as citizens who can expect to benefit from new taxes. Both of the new projects will pay taxes to the State, and a more aware local population can begin to demand that some of these return to local level to fund essential social services.

In fact under existing Mozambican law, 20 percent of the taxes from tourism (National Park fees for example) and from forestry and safari hunting has to be given to the communities in the areas where these activities take place. This is an innovative idea that is proving to be a challenge when it comes to implementation, but it is beginning to work with support from NGOs and cooperation programmes implemented by FAO. An important example is the case of the ‘Coutada 9’ model in Manica Province, Mozambique, where a safari hunting company is sharing revenues with local people, who are also receiving a 20 percent share of the taxes paid by the firm to the government. Other neighbouring communities are also beginning to share in public revenue streams from similar activities.

The state meanwhile still has access to the 80 percent of these taxes. By linking the development process constructed on the back of a successful delimitation and consultation exercise, local plans can be made that will *facilitate* that process and maximize the returns to community and investors alike. Thus the District Government

decides to use its new tax allocations to tarmac the local access road. This will improve market access for the community agriculture outside the park, and will bring in more tourists. This in turn will generate more taxes. These might pay for electricity to be brought to the region. And so on.

The outcome is *conflict free, sustainable and equitable development*. This approach is likely to have a greater impact not just on both poverty, but also on the 'human development' of the local population. In the 'Without Delimitation' scenario they essentially become a labour force for new investors after their livelihoods suffer a radical change that undermines their food security. Cultural and social life undergoes major upheavals. In the 'With Delimitation' scenario local people are respected, and treated as stakeholders with a right to participate in developing plans that will profoundly affect their lives. Their livelihoods are secure, and in fact are adapted – with new resources and markets – to become more productive and diversified. Everyone gains – the community, the investor, and the state.

Delimitation may not in fact always be necessary. What is important is the commitment to real participation at local level, and the realization by government and investors alike that they have to make an effort to work with local communities, even if this costs time and money in the short term. But at the root of this approach is a recognition that local rights exist, that local people are not merely pieces on a chessboard, and that in fact the chessboard itself is the basis of local livelihoods, culture, and future prosperity. Changing the way the squares are arranged and who gets to put their pieces on them will profoundly affect those who are already there.

Investment is welcome, and it brings opportunities for all. It will also transform the society it takes place within – indeed poverty alleviation *is* about transformation. While land may constitutionally belong to the State, managing transformation demands a respect for local rights that are real, tangible, and have to be taken into account. Delimitation makes everyone involved more aware of this, it strengthens local structures and makes them more accountable, and provides the blueprint on which new projects and development plans can be made.

5.4. Final comments

It is evident from this discussion that delimitation offers a powerful tool for local development that can articulate a wide range of often disparate interests and help to achieve results that give everyone at least something of what they want.

It is also clear however that done in isolation, it is likely to be literally a paper exercise. Maps might be produced and certificates given to community leaders, but if nothing else happens afterwards, the practical justification for doing it will be that much weaker.

This does not mean that delimitation should not be done for its own sake, especially if policy makers and civil society are aware that decisions taken at the macro level – the change to a market economy for example – will create demand for land where previously

there was no demand. Delimitation as a pre-emptive measure to secure local livelihoods, and prepare people for a likely surge in investor interest has its own justification. In this context it far more than just a land administration tool to provide formal documents and registration. It is part of a wider vision of development, and must be fully integrated into a rural – and even urban - development strategy that plans for and promotes the kinds of linkages described in the ‘With Delimitation’ scenario above.

To do this requires a great many things. At the level of the land administration, a range of new techniques and approaches to land management need to be taught to senior executive and field officers. Institutional reform and changing entrenched attitudes in what is traditionally a very conservative discipline are major challenges.

Effective working relationships with civil society are also essential. NGOs have a strong tradition of community level work. This does not mean that the community dimension of the law should be left entirely to them, but that state agencies and NGOs must find ways to address the issues described above *together*.

5.4.1 Civic education and changing attitudes

At local level, programmes of civic education are needed. These should have some element of state endorsement even if they are not implemented by public bodies. Local people – and local administrative officers – need to know that the new ideas being promoted by NGO and other field officers are legitimate, and have the full backing of government.

Providing new forms of support is also important. Investors and others come to these situations armed with a battery of technical and legal advisors. Communities should have the same technical and legal support. Paralegals and field officers are needed who are trained in the participatory approach, and who have a clear idea of how the various laws can be used to promote development, not just register rights and issue documents. Lastly, resources are needed, targeted on communities and the implementation of local level participatory models of development.

Mozambique has several innovative programmes in this area. The multi-donor ‘Community Land Initiative’ implemented by DfID with support from the Netherlands, Sweden, Denmark and Ireland, provides funding at local level for delimitation and other forms of rights formalization, as well as the development of local land use plans and projects that can link communities to new investment opportunities. This programme is also explicitly designed to create a stronger private sector capacity to work with communities, notably private surveyors, and legal advisors.

Linkages with the new Territorial Planning Law should also provide the essential local ingredient to the *process* of planning and integrating wide ranging local and national interests within a workable, sustainable and equitable development framework.

FAO is supporting a programme of community paralegal training and capacity building at district level that on the one hand makes local people more aware of their rights and how

to use them to produce real local development benefits.. This programme is being implemented by the Centre for Juridical and Judicial Training (CFJJ) of the Ministry of Justice, and includes basic Constitutional principles as well as guidelines on how to use the oversight function of the public prosecution service and judiciary in case things go wrong.

The same programme also addresses the need to change attitudes and create a corresponding response to new community demands at district level. Interactive seminars for district level administrators, resource managers, and judicial officers and police chiefs discuss the relationship between citizen and State, and underline the concept of rights enshrined in law that should be respected and built into their views of how local development should take place. The nuts and bolts of the natural resources laws are also explained, using case study and other participatory techniques. Gender issues are explicitly addressed, notably the complex interface between (legitimate) custom and practice, and the promoting of new ideas regarding women's rights using over-arching constitutional principles.

The focus of this programme is very much on generating a consensual model that builds upon the Land Law and the consultative and participatory instruments it provides. Securing local rights – and when necessary defending them by recourse to the judicial system – is an important element of this programme, but so is developing partnerships, facilitating agreements between people, State, and investors, along the lines described above. Indeed this more constructive, participatory development model is perhaps the key objective of the programme as a whole.

This kind of initiative promises great things, but once again it will come to nought if it is not part of a wider vision of development, where the use of new land and natural resources legislation is explicitly built into the strategic framework. This discussion has focused on one instrument – delimitation – which if placed at the heart of this process, can offer the possibility of real transformation at local level, and a genuinely participatory model of development that allows everyone to get what they want. Used imaginatively, within a wider vision of economic and social linkages and the synergies between sectors, delimitation can induce reform in institutions and a changed attitude regarding the role of the State and the role of the citizen.

Everyone benefits: the State and government with its specific national level agendas, including the increasingly urgent environmental and conservation question; investors who want land but without the hassle of conflict, and with the bonus of knowing they are helping local people; and local people themselves, who can use their own resources to achieve development goals that today they may not even be dreaming of. Delimitation, as part of this wider process, allows all these actors to achieve these goals in a dignified way that respects rights, and allows all the various interests to play a full and active role in determining the events and the plans that affect their lives today and those of their children tomorrow.

