

LTC Paper

Land Tenure Conflict Resolution in Mozambique: The Role of Conflict Resolution in Land Policy Reform

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Document # 1**

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September 1996**

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LTC Land Conflict Study Reporting

This document is the first in a set of documents to report on the Land Tenure Center's 'Land Conflict Study', as part of activities focused on land policy reform in Mozambique, for the June 1995 - December 1996 LTC project. As a set, the sequential documents in this reporting will cover different aspects and topics of the study. The purpose of organizing this reporting as a set is to comprehensively cover the topic, and provide a cohesive group of documents for subsequent reference. This initial document will outline the role of the activity within relevant USAID/LTC and GOM programs and objectives, and provide background on land policy reform in Mozambique, ending with a discussion of the central issues within the land conflict problem, and the approach to dispute resolution. Data analysis is to follow in subsequent reports.

Role of the Study Within Land Commission/USAID/LTC Activities

Government of Mozambique - Land Commission

In June 1995 the Ad Hoc Land Commission within the Ministry of Agriculture and Fisheries was constituted a Land Commission, officially charged to work on land policy reform and to initiate a program of activities for this reform. This reflected the priority of the government and the donor community to confront important and complex land policy issues as Mozambique moves from recovery to development. As part of this program the Land Commission was then in 1996 elevated to an Interministerial Land Commission (MOA 1996).

With support from the donor community, the government of Mozambique has been seeking to undertake land policy reform to more effectively address problems, and reflect the evolving tenure situation as Mozambique moves on to development agendas. Land conflicts and their consequences is one of the objectives of this land policy reform. The Inter-Ministerial Land Commission plans to have a revised land law ready to submit to Mozambican Parliament by

Commission plans to have a revised land law ready to submit to Mozambican Parliament by October 1996 as part of a National Land Program (MOA 1995b; MOA 1995c; MOA 1995d).

Within the 1995 "Program of Activities" articulated in the Land Commission's preliminary program (MOA 1995), the government's plan for land policy reform is detailed. This plan points out that while earlier work described the basic parameters of "the land question" in Mozambique, and provided enough knowledge and material for the Land Commission to begin work on revising land policy and formulate a National Land Program, some issues fundamental to land policy reform required additional work as the re-occupation of rural areas by displaced people bring to light additional problems (MOA 1995b). Among these were issues surrounding the resolution of land conflicts, including: how conflicts are being resolved in the absence of effective state intervention; how non-official mechanisms of dispute resolution operate; which groups use which mechanisms of dispute resolution; the principal constraints and weaknesses of conflict resolution between smallholders and larger land interests, and how these might be addressed to more suit real needs; and how customary and formal systems might be able to interact within a new legal and administrative framework. The Land Commission recognizes the importance of the 'disconnect' between customary and formal tenure systems and the role that conflict resolution has, as a link (or point of confrontation) between the two systems (Cuadros 1996). The Land Commission agreed that these issues can be adequately addressed by the USAID/Land Tenure Center project, for the 1995-1996 period (MOA 1995). The work described here is part of the government's program of land tenure dispute resolution between small and large holders, as recommended by the Land Tenure Center, with USAID funding. This research has informed land law formulation, and will continue to focus on contributing to the formation of the subsequent pertinent land law regulations.

USAID / LTC Activities

The Land Tenure Center's work on land conflict resolution comprises part of the Center's contribution to USAID-Mozambique objectives as stated in the Country Strategic Plan 1996 - 2000 (USAID 1995); by defining an approach for land tenure dispute resolution for smallholders and other producers as a tangible benchmark toward the realization of land policy reform.

Earlier LTC Work Leading to the Conflict Study

Past Land Tenure Center work in Mozambique has revealed serious land competition and confrontation as populations have attempted to move back to "home areas". As well, the large-scale and uncoordinated issuing of land concessions, contributed to an environment of land conflict and competition between smallholders, and between smallholders and larger land interests, especially in the more agriculturally favorable areas. LTC has documented the emergence of many overlapping and competitive land claims. This situation is a product of historical circumstances as well as current government policy regarding land concessions for a variety of uses, including: commercial agriculture, forestry, mining and mineral exploration, ecotourism, hunting, and game viewing. These claims are leading to new displacement of smallholders, insecurity for both smallholder and commercial producers, and, significantly, land conflicts among

smallholders, between smallholders and commercial interests, and between many landholders and the state. The potential cost in human and financial resources, let alone underutilization or abuse of resources, is large. In addition, this outcome is politically sensitive and potentially destabilizing, a troubling prospect for a country with a history of violent confrontation rather than negotiation. Because of the importance of these issues the Land Tenure Center Project focused a significant part of its 1995-1996 scope of work on the question of land conflict and conflict resolution, specifically focusing on understanding opportunities for resolving conflicts between large land interests and smallholder farmers.

The LTC Project has determined that one problem faced by smallholders is an incompatibility between their form of adjudication and that used by the state or commercial interests. This disjuncture leads to no-win scenarios where smallholders are not allowed to present evidence that is acceptable to courts or tribunals. Procedures in the formal court system do not favor smallholder participation. The objective of the LTC conflict study is to understand customary conflict resolution systems, then to formulate mechanisms for including customary procedures and forms of evidence in statutory proceedings. This will lend legitimacy to a tenure system (the state system) that has not been seen as legitimate by smallholders in the past, and it will indirectly strengthen tenure security for larger commercial interests by: a) leading to the resolution of disputes that in aggregate, or even locally, discourage investment; and, b) discouraging damage to land, crops, or other improvements by smallholders who believe land has been taken from them illegitimately.

Background: Land Policy Reform in Mozambique

Historically

From independence in 1975 until 1983 the Frelimo government pursued an ambitious strategy of socialist development. In agriculture this was based on organizing the dispersed rural population into communal villages and restructuring their productive activities into collective action through cooperatives and state farms (Bowen 1993; Kyle 1991). The government gave large scale state farms priority in agricultural investment, developing and extending the state farm sector in the hopes that use of high technology would increase urban food supply and provide export crops to bring in foreign currency (Bowen 1993; Kyle 1991). However the large investments in the state farm sector had disappointing results, and were made at the expense of peasant farmer production and private capitalist farmers (Bowen 1993). Attempts at organizing the rural population into communal villages had considerable disruptive effects. In the early 1980s nearly 20 percent of the agricultural population lived in these villages (Kyle 1991). Most of these however produced little if anything on a communal basis, with the government being unable to provide needed inputs, and reversion to subsistence production on private plots were common (Kyle 1991). Peasants were not willing to be workers on state farm land that they had originally occupied and had been expelled from. As a result they resisted the government's collectivization efforts (Bowen 1993; Kyle 1991). Rural dissatisfaction over these policies was widespread and frequently intense, and

contributed to support of the insurgency (Renamo) (Minter 1994; USCR 1993).

After the realization that not a single state farm was profitable, a new emphasis was placed on more decentralized, market oriented, small-scale or "family sector" agricultural projects (Bowen 1993). However the Renamo war meant that many of the communal villages were now used as secure areas, discouraging the return of the villagized population to "home areas". Among the reforms implemented by the government, was to channel scarce resources to priority areas. These were areas where economic, military, and water situations presented the best opportunity for positive results (Bowen 1993).

The new liberalized state agricultural policies however have not benefitted the small-scale producer (the majority of rural producers). Instead the main beneficiaries have been middle-scale producers and larger-scale private farmers. As a result it is very likely that these reforms could fuel peasants' dissatisfaction with Frelimo's agricultural policies (Bowen 1993). Even with the more liberalized reforms, all land continues to belong to the state in Mozambique. But with limited capacity to enforce this, there is considerable ambiguity over who actually is the "owner" of landholdings. As a result there is a great deal of confusion over exactly what rights individuals, communities and the state have. Nevertheless this arrangement allows large areas used for fallow, fuelwood collection, and grazing, to be declared "vacant and ownerless" national property to be subsequently distributed. The redistribution of this land has caused conflict, as local communities seek to continue to occupy, use, or reoccupy the same areas, or look to other areas (frequently already occupied) to use. At the same time state ownership has given license to land grabs and land speculation by civil servants and their informal clients--a situation that encourages land disputes, and discredits government legitimacy. The inability of the Mozambican state to insert itself in even a small proportion of land rights transactions (especially after being weakened by armed conflict) has created a situation where most activity involving land occur outside the domain of the state in a black market arrangement, where rules of national tenure do not apply. This invites corruption and conflict, further decreasing legitimacy.

In the context of state ownership, are titling procedures for "use rights". For smallholders however, these can frequently be close to impossible to fulfill. A recent effort by a Swiss NGO to demarcate and title a group of 300 smallholders, complying with all government regulations, has, over the course of several years, and at considerable expense, been unable to obtain even a single title (Pereira and Santos Alves 1994). However even if titling procedures were easy, cheap and quick for smallholders, it is unlikely that these would provide tenure security over time, and would very likely be a source of conflict.

Currently

Land tenure remains one of the most fraught national issues in Mozambique (Myers 1995; McGregor 1995; Negrao 1996b). There is general agreement within the government and donor community in Mozambique that a new land law is an exceedingly important goal, and that there presently exists a window of opportunity to make substantial progress toward significant policy

reform (Negrao 1996; MOA 1995a; LTC 1995; Tanner and Monnerat 1995; USAID 1995). The importance and priority of dealing with land tenure issues was raised at the 1995 Consultative Group meeting in Paris at which the donor community agree with the Mozambican government on amounts and purposes of foreign assistance. As a result the Minister of Agriculture has made land issues and a new land law a priority. The same issue was raised again with greater urgency at the April 1996 Consultative Group meeting.

Role of the 'Land Conflict Study' in the Land Law and Regulations

The role of this LTC activity within the formulation of the land law and subsequent regulations, is to: a) inform the process generally; b) to make specific recommendations regarding the land law; and, c) to construct a database that can be used as a tool in the derivation of realistic, workable, land law regulations. The findings in Nampula has highlighted the importance of smallholder participation in conflict resolution proceedings in a legal sense (for disputes between smallholders and large land interests), the legitimization of customary dispute resolution for disputes between smallholders, and the necessity for oral testimony to be admitted as evidence in a dispute resolution procedure for disputes between small and large holders. In the latest version (early September 1996) of the land law, all three of these items have been included. Subsequent to the approval of the land law, the regulations will be drawn up, and the LTC land conflict activity will make further specific recommendations to the regulations, involving particular forms of evidence legally presentable in land dispute resolution.

Description of Activities

Workplan Objectives

As per the LTC 1995-1996 Work Plan the objectives of the conflict resolution activity were to:

1. Document smallholder conflict resolution mechanisms as they presently exist and operate in representative areas of the country where tenure conflicts are particularly problematic. This will include how conflicts are and are not resolved both between smallholders, and between smallholders and a variety of more commercialized land interests.
2. Based on the information about how smallholders are dealing with dispute resolution, LTC will define critical issues and develop a framework for smallholder tenure conflict resolution. The priorities of this framework will be to:
 - a) legitimize in-place smallholder authority structures (including procedures) in resolving conflicts between smallholders;
 - b) make legitimate the presentation of customary evidence of occupation, use, and other aspects of customary tenure in conflict resolution procedures involving smallholders and other land interests. This will also strengthen commercial claims and interests by clearly articulating

ways in which disputes will be heard and resolved. This approach will also make land administration more feasible given the limited capacity of the government in this regard.

3. Consider and discuss with government the critical issues defined above, and develop a tightly packaged series of specific recommendations which will include, but not be limited to: 1) the legal form(s) the smallholder component of the land law and regulations can take; 2) options within the framework; 3) legal constructs able to embrace the many and varied kinds of customary tenure arrangements; 4) goals for continuing a transparent discussion regarding smallholder dispute resolution; and 5) procedures for making the recommendations an operative part of the land law and land policy reform.

4. LTC will work with the Land Commission, and other entities within government and the donor community toward the insertion of a dispute resolution component into the land law.

5. As part of LTC's approach for conflict resolution, specific locations of the country will be evaluated--likely sites include districts in Nampula Province which the Mission has identified as a priority area. Evaluation will focus on land conflicts and methods of dispute resolution.

Approach

The Land Tenure Center has sought to address the workplan objectives by: a) defining the problem of land disputes and dispute resolution; b) formulating a method for land tenure conflict resolution; and c) implementing this methodology.

Definition

The Land Tenure Center's work toward the definition of land tenure conflict was designed to understand smallholder conflict as it presently occurs in its major operative aspects. A survey effort comprised systematic data gathering involving a stratified random sample of 544 households in 22 villages in six districts in the provinces of Nampula and Cabo Delgado. Information on frequency, severity of conflicts, land area, persons and entities involved in conflicts and conflict outcomes, as well as tenure security, land access, and the role of the war in present land access and conflicts were addressed by this assessment. The survey also looked at the role of inheritance, history of land use, tree tenure, and commonly-held knowledge of different types of land, including land under cultivation, land in fallow, and other land held by the household and community. This effort took place over a two month period from mid-January to mid-March 1996.

Formulation

The Land Tenure Center's work toward the formulation of a method for land tenure conflict resolution involves the examination and categorization small-holder "evidence" of use and occupation of land, for potential use in the legalization of such forms of evidence in existing civil legal procedures. A problem in tenure conflict resolution in Mozambique is that while a

document of some kind currently provides legal evidence for a land claim in a dispute, a judge, tribunal, or state entity can legally only make a decision based on the evidence presented. If largeholders have documentation and smallholders do not, the decision must be made in favor of the document. Thus the categorization and legalization of forms of smallholder evidence in conflict resolution seeks to rectify this imbalance, an imbalance that encourages smallholders to "disconnect" from the national tenure system and avoid participation in it, ultimately undermining it.

Thus a central thrust of the Land Tenure Center's work on the "formulation" of a strategy for smallholder conflict resolution is to find out what precisely can be used as smallholder evidence of use and occupation of land, for different groups of smallholders; including marginalized groups such as women head of household and deslocados. This work focuses on the aspects of smallholder land tenure and land use that can be tied to physical features of the land and made legal. Using aspects of smallholder land use in this work is important in that it brings legitimacy to a conflict resolution procedure in the eyes of the smallholder. Legitimacy is a critical issue if smallholders are to participate in, and then abide by the decisions of a land conflict resolution procedure. Legitimacy in conflict resolution for smallholders is also important for the utilization of smallholder "customs and controls" in the administration and "group enforcement" of land decisions. In a Mozambique with limited capacity to enforce dispute resolution decisions this will be an important contribution to re-establishing a workable state tenure system.

Implementation

The Land Tenure Center's work toward the implementation of an approach for land tenure conflict resolution involves three priorities: the land law, the regulations to the Law, and the engagement of government and civil society in discussions and analyses concerning the need to bring smallholders and customary access arrangements into legitimacy within the pending land law.

The Land Tenure Center presently has been a member of the lawyer's technical group within the Land Commission, and this group has encouraged the insertion of articles in versions of the land law that deal with utilization of smallholder evidence, traditional authorities, and customary tenure--based on findings from the conflict study. The land law has undergone a process of open discussion and debate and revision, and the Land Tenure Center has continued to participate in this process.

The real teeth of the land law are the subsequent regulations and it is here where the real value of the survey on smallholder evidence can take place. The regulations will be more specifically worded than the land law, and like the law will need to be based on solid information regarding the reality of smallholder tenure and smallholder agriculture. The specifics of the smallholder survey regarding evidence will need to be the basis of the pertinent regulations, and the Land Tenure Center is in a position to pursue this when the timetable for the drafting of the regulations begins.

Land tenure database

The database generated by the systematic survey work in Nampula is the largest statistical land tenure database in Mozambique. Because this work was a collaboration between the Land Tenure Center and Michigan State University, and there exists complete compatibility of data for over 500 stratified randomly selected households (representing a large and varied population), as well as compatibility with MSU's other four rounds of survey work for the same sample. Thus the land tenure - agricultural relationships that can be investigated with this database are quite large. A number of analyses can be conducted with this database covering a wide variety of land tenure topics of interest to USAID and the Ministry of Agriculture, concerning one of the most agriculturally productive provinces of the country. A number of important topics that could be considered in the future involve the intricate interrelationships between land tenure and the economics of agriculture. Thus having both land tenure specialists (LTC) and agricultural economists (MSU) with a working knowledge of this database presents the opportunity for particularly in-depth and interdisciplinary analysis.

The Land Tenure Center will make available to the Land Commission the full database from the statistical survey. This database will serve as a valuable tool to enabling the Land Commission to link policy proposals to Mozambican reality in order to see if there is an adequate fit. This a capability that has thus far been lacking, and much needed in the Land Commission.

Tenure security and food security

A better understanding of the relationship between tenure security and food security was an important priority of the Land Tenure Center's systematic survey. Due to the collaborative effort between the Land Tenure Center and the Michigan State University Food Security Project, the study provides the opportunity for an in-depth analysis of the relationship between land tenure security and food security. This topic is to be a part of the analysis and reporting of this work. As well, the data allows a look at some of the problems associated with land access in Nampula for smallholders, and why and how such access is a problem for some land poor farmers.

Training

The survey work also had a two week training component prior to beginning the fieldwork, involving 22 enumerators and the training of four supervisory staff. As well, four more staff received training on SPSS. The database from the survey will be made available to the University (UEM) community, providing an opportunity for students and faculty to utilize relevant data in classroom projects, university research, and teaching. The database will also be made available to other organizations who would benefit from it in their own work--Dinajeca, Ministry of State Administration, other units within the Ministry of Agriculture, the World Bank and other donors.

Land Tenure Dispute Resolution: Central Issues

This section details the more important issues and problems surrounding land tenure conflict and conflict resolution in Mozambique. The section serves as a general introduction to these issues, and as a point of departure for further source materials (cited) on these issues and problems.

Land Resource Competition

The end to armed conflict and reintegration of dislocated populations, together with investment in large land interests and development efforts, focuses activities and energies on the reacquisition or acquisition of productive agricultural resources in Mozambique. As a result, issues of land allocation and land dispute resolution are contributing to growing tensions over land resources (Willett 1995). In the absence of other centers of attention, the state is likely to become the focus of criticism and attack from those experiencing negative outcomes from attempts to obtain or re-acquire access to land. Groups and individuals thus disenfranchised from the gains of transition from war to peace may then resort to violence to survive (Willett 1995; Bruce 1996; World Bank 1994). In a recent study by the UN's Wartorn Societies Project for Mozambique, the land question was highlighted as one of the most significant points of potential instability, and a possible flashpoint for a return to armed conflict (UNRISD 1996). The weakness of the new army and the limited capacity of the police in a country the size of Mozambique could also fuel a potential crisis (Vines 1995).

The case of the 270,000 demobilized combatants is illustrative (USAID 1995). Demobilization pay (by the UN) for this group ended in March 1996 and violent disruptions occurred in some areas of the country as a result (Mozambiquefile 1996c). The UN, the government, and international donors had assumed that approximately half of the ex-combatants would be absorbed by small-scale agriculture (Willett 1995; Clifton 1996; Vines 1995). However this has proved problematic for several reasons, not the least of which, is that policies for dealing with land tenure are still not yet defined. Problematic land tenure arrangements have meant that small-scale agriculture in many areas has not had the capacity itself to guarantee the subsistence of the rural family. The problem is further exacerbated by land shortages and land mines, as well as the slow recovery and reconstruction of rural shops, markets, and roads (Vines 1995). Many demobilized and dislocated have returned to find their lands occupied by others, resulting in large numbers of land disputes (Willett 1995). This is most frequent and problematic in the most fertile areas, where elites from Maputo, wealthy South Africans and Zimbabweans, and a host of other larger land interests have commandeered land (Willett 1995). As well, it became clear later in the war, some career military officers viewed the continuation of the war as being in their interest. As a result there was a program to give generals and some veteran guerilla fighters, and other officials land to which they could retire. Without access to land or jobs it is likely that many lower ranking demobilized combatants will return to the sort of banditry which was commonplace during the lead-up to elections (Vines 1995; Willett 1995). Such banditry is already on the increase and the wide availability of weapons adds further temptation in a fragile social environment (Vines 1995). As Willett (1995) observes: "The situation is acute because a fine line

exists between the present appearance of peace and stability and the potential for socio-economic crisis and disintegration".

While many agriculturalists have been able to relocate or return to areas of origin to resume farming and livestock raising, significant numbers continue to move from place to place, depending on land availability. Large areas of agricultural land remain problematic due to land mines and control by Renamo (Noticias 1995a; McGregor 1995; 1995a). At the same time rural households are expanding areas under cultivation with each successive season as farmers bring areas long under fallow due to war back into cultivation (USAID 1996). Further complicating land access, are large-scale recovery efforts to rehabilitate whole agricultural sectors, such as cashew and livestock production. These efforts involve, in this case, free or subsidized saplings and animals which then need to be connected to the landscape in some way--and are frequently used to claim land.

Land Access in Agricultural Areas

Reintegration is especially problematic in areas where aggressive land acquisition of various kinds are underway. In the most agronomically endowed areas, overlapping and conflicting claims and concessions to land are being granted (legally and extra-legally) at different ministries, agencies, and levels of government with no coordination, and usually on land already occupied by smallholder communities (Carrilho 1994; World Bank 1994; Hanson 1995b; Myers 1995). And international development activities are concentrated in the most agronomically productive and accessible areas, as these are the locations where results can be quickly and most easily realized (Levy 1996). Likewise donor supported recovery of trading, transportation, and marketing of agricultural produce, further encourages acquisition of the agronomically valuable and most easily accessible land. And an assumption that pending constitutional reform will have Mozambique move from a policy of state, to private ownership of land, has led many national elites and government officials to acquire land in the best areas for speculative purposes. At least nine million ha of land, by conservative estimate, have been awarded by the government in concessions involving farming, hunting, tourism, and mining activities (Moll 1996). Practically all these concessions include settlements of smallholders, who presently are not part of government land allocation decisions and do not enjoy rights of consultation or veto over allocations (Myers 1995; Moll 1996). These nine million ha occupy the highest quality land of the 35 million ha of arable land, including all the major river basins and land near infrastructure and towns (Moll 1996). This has generated large-scale conflict between smallholders and concession holders, with violent confrontation becoming more common (Moll 1996). During the recent war, the pro-Renamo sympathies generated by the villagization land policies of the government, could manifest itself again if the present land grab also disenfranchises large numbers of smallholders from land, with political consequences equally severe (Bruce 1996; World Bank 1994).

Tanner and Monnereat (1995) and Willett (1995), reviewing a number of recent studies on Mozambique, found that there is a direct correlation between the number of land conflicts, and

locations where fertile soil, perennial water, infrastructure, and market access, are present together; and are areas of high population density (in secure areas) as a result of the war (also USAID 1995; World Bank 1994; 1995). Especially problematic in these locations are disputes between smallholders operating within re-establishing customary tenure systems, and larger land interests utilizing the national tenure system to gain access to land. Several researchers state that conflicts between participants in customary and the national tenure system are very serious and will likely intensify (Negrao 1996a; McGregor 1995; Myers 1993; MOA/MSU 1994b)

Post-conflict perception of rights to land can originate in different situations at different points in time. Exercising such rights will not happen all at once, but over time, as claimants return or migrate to destination areas from different war-time conditions and locations, as well as attempt to take advantage of the confusion, weakened government capacity, and land emptied by dislocation to establish new access rights. These can include: 1) descendants of the original population which was expelled during the colonial era; 2) people who received parcels from the local administration after independence and during the war; 3) dislocated persons who abandoned their lands and are now returning; 4) people occupying land they found to be abandoned during the war; 5) former Portuguese or "assimilado" owners; 6) concessions given by state agencies; 7) state collectives dating from the early independence Frelimo era; 8) speculators and others who use the present fluid land tenure situation to acquire resources; and, 9) ex-combatants and current officials of both Frelimo and Renamo as part of the peace agreement (officially or unofficially).

Some of these claims also represent the opportunity for larger-scale commercial agricultural and other land resource interests to begin to be explored and realized, and these as well can contribute much to economic recovery. However land resources for this group can be accessed in a very different manner than that utilized by returning dislocatees and already returned smallholders attempting to make short to long-term agricultural decisions. While smallholders gain or regain access to land via local customary tenure structures, commercial and large land interests frequently gain access to land through the national land tenure system. Small-scale agriculturalists access land resources through local community leaders and community structures that can be re-established, albeit with a mix of new influences, with considerable rapidity following an end to conflict. Such local leaders are recognized at least at the community level as having the authority to allocate land, make legitimate old or new claims to land, and resolve conflicts. Larger commercial interests however access land resources through the granting of title, concessions, and 'joint ventures' with the government in varied form at the national, provincial, or district level. In one way or another this latter approach to land access usually involves a document of some sort, while land allocated according to customary rules usually does not carry with it such evidence. What emerges then is a situation whereby the state land tenure system which is used to acquire, control, dispose of, and defend rights to land resources in a post-war period, is profoundly out of step with the realities of re-emerging customary social, tenurial, and agroecological constructs. While variants of such a disconnect operate widely in the developing world, in Africa it is most pronounced. That this disconnect is more profound in situations of recovery from armed conflict is further evidenced by the greatly diminished capacity of a government following conflict to enforce even minor aspects of the existing national tenure system. This is made still more

problematic by the temporary (lasting years) division of national territory into areas under control of Renamo involved in the conflict, as part of an ongoing peace process.

Food security and agriculturally favored areas

Land degradation, food security, and land availability are tightly interconnected in areas where displaced populations have crowded around former secure areas due to the war. In such locations minimum fallow periods were and usually still are not possible. This has led to erosion, greatly reduced soil fertility, and decreased agricultural productivity (World Bank 1994; USAID 1995). Coupled with the high population density in these areas, this has led many smallholders to end up with very small parcels of land, with additional land in these areas largely unavailable. Tshirly and Weber (1994) have noted that food security is highly correlated with size of land holding in Mozambique (also MOA/MSU 1992). The central role of land holdings is primarily the result of serious market failure due to the disruptive effects of the war, causing smallholders to adopt a strategy of increased reliance on production from their own fields. Tschirley and Weber (1994) further suggest that land holding will continue to be a key determinant of food security for the foreseeable future in Mozambique, due to the severe damage to marketing systems and rural infrastructure. What results then is a situation where crowded areas experiencing land availability and land access problems, are also areas of very high food insecurity. That food security is so dependent on size of landholding means that conflict over land in these areas will be especially intense, and will reside more proximate to physical confrontation than they would otherwise.

Land Conflicts in an 'Out of Step' Tenure Context

Disputes over land resources between participants in a national versus customary tenure system, and the inability of the two to connect in terms of how such disputes are resolved in ways that are viewed as secure and legitimate (and therefore respected) by participants in both systems, can have especially serious repercussions. The issue of legitimacy is crucial. For land dispute resolution to work the question of legitimacy becomes paramount, and must be attended to directly. The importance of such legitimacy in resolving land conflicts (including armed conflict explicitly over land) has been noted elsewhere in studies on Chiapas (Howard and Homer-Dixon 1995), the Gaza Strip (Kelly and Homer-Dixon 1995) and South Africa (Percival and Homer-Dixon 1995) and generally in civil conflicts (Homer-Dixon 1991). And Latin America has provided many vivid examples of the link between a lacking legitimate land tenure dispute resolution mechanism, and civil conflict.

Competing and unresolvable claims to land resources results in resource users abandoning features of tenure systems because conflicts have made them unworkable, or they believe there to be little point in adhering to rules and decisions of dispute resolution that others are not following. Such a lack of tenure security for large numbers of farmers causes land degradation as there may be little to be gained by using resources rationally. This can lead to still more intense competition,

especially over scarce resources in densely populated areas, with users coming to regard each other as potential enemies competing for the same means. And as frequently occurs when use of resources is usurped, previous users can over-exploit what was formerly theirs, believing that it is better that they continue to benefit as long as possible rather than have others profit. Such confusion, competition, and resource degradation, especially pronounced in agriculturally favorable areas, then serves to obstruct further commercial investment, because such investment and associated trade opportunities (local, national, and international) are dependent upon predictability and security of outcomes associated with land resource utilization.

In such a situation the overall tenure organization will not only be insufficiently cohesive to mitigate the effects of land degradation, but can actively aggravate serious resource competition, resulting in a 'fast forwarding' of the destruction of important resources necessary for agricultural recovery (Unruh 1995). The impact on these resources can be greater than that which takes place simply as a result of increasing demographic pressure. This is due to the effect that tenure confusion, land use, ethnic and political rivalries, the granting of land concessions, large numbers of returnees and persons still dislocated, and a context of conflict have on overall resource use and access.

The role that land dispute resolution mechanisms play in reconciliation and economic rehabilitation in recovery from war should not be underestimated. That such resolution happens quickly is important to the secure re-engagement of populations in familiar land uses, agricultural production and food security, and agricultural contributions to economic recovery and associated trade opportunities. That it happens in ways that are seen as transparent and equitable by most claimants is important because disenfranchisement of local populations from land and water rights is a major factor contributing to instability and resource degradation (Hutchinson 1991). On the other hand tenure dispute resolution mechanisms widely viewed as legitimate and pursued by the State, contributes positively to such a situation by bringing increased legitimacy to a re-emerging government. Important questions here are: 1) what are the approaches for deriving workable tenure dispute resolution mechanisms that can operate widely as an interface between customary and national tenure systems; and, 2) what might be the role of such mechanisms in linking customary tenure to a post-conflict, re-formulating national tenure system.

For a dispute resolution mechanism to function well in such a situation five characteristics take on primary importance: 1) the construct needs to be able to be established quickly; 2) it should embrace and engage the evolving tenure situation and mitigate emerging problems, as opposed to aggravating these or imposing unfamiliar constructs; 3) it should be able to mesh easily with subsequent realities involving development efforts, and priorities and aspirations involving resource access, investment, export production, etc; 4) it should be low cost, with this based on a realistic assessment of existing formal and customary institutions; and 5) it should be seen as legitimate.

Tenure Dispute Resolution Mechanisms

Post-war customary land use systems in Mozambique have quickly re-established themselves as a complex mix of influences--traditional tribal and ethnic arrangements and variants of these, the colonial and post independence Frelimo villagization policies, the war and resulting dislocation, and drought (MOA/MSU 1994a; MOA/MSU/UA 1992b). While fraught with a number of problems and constraints, these systems allocate land and resolve tenure disputes for smallholders, and are able to quickly reintegrate large numbers of dislocatees into communities and smallholder agricultural production at no cost to the state (Tanner and Monnerat 1995; Myers 1995). The national tenure system on the other hand, presently operates in an extremely debilitated form, with a very poorly functioning, and poorly coordinated land titling procedure, a lack of a central institution for adjudicating overlapping claims (even within the national tenure system), and virtually no capacity for enforcement; with the added jurisdictional problem of areas still under Renamo control (Myers 1994; Myers and West 1993; Myers et al 1994; Alexander 1994; Zartman 1995; 1995a). The historical development of land use, together with the war, and the granting of concessions on top of customary claims with no real conflict resolution methods between customary and formal structures have created an unstable arrangement.

Even if the present national tenure framework operated perfectly and the necessary enforcement capacity existed, this would not be able to resolve the complicated land conflicts that are emerging in post-war Mozambique. The central issue is less the lack of a surveying service and an official agency of coordination and arbitrage, than the legitimacy itself of the existing services with the competence to solve land conflict problems given the realities of post-war Mozambique (Tanner and Monnerat 1995; Willett 1995; Stewart and Wilson 1994; 1991; Economist Intelligence Unit 1993). In the present period of recovery, the issue of legitimacy in government is of paramount importance to a continuing peace process. While recent national political change in Mozambique recognizes the legitimacy of local, customary authority structures (MOA 1995a), the existing land law does not recognize customary tenure systems and therefore denies community access rights to land not currently under cultivation. And more importantly does not recognize as legitimate, customary decisions that resolve conflicts between smallholders. Thus land incorporated in fallow systems, forest extraction, grazing, or land otherwise held in 'common', or areas belonging to the community but as yet unallocated for cultivation according to customary tenure, emerge as being empty, and are vulnerable to occupation by larger land interests able to get title (Tanner and Monnerat 1995).

Present land dispute resolution mechanisms employed by the Mozambican state favor those in possession of some form of documentation--which nearly all returning and reintegrating smallholders do not have. A tribunal or judge must make a decision based only on the evidence presented. While documents pertaining to land are admissible forms of evidence in such a proceeding, oral testimony and corroboration are not. Thus based on admissible forms of evidence, a judge or tribunal presently must make a decision in favor of documentation (Garvey 1995). Such an inequitable, and from the perspective of small holders, illegitimate arrangement of tenure dispute resolution, operating in aggregate, carries serious risks toward impoverisation,

Institute 1993). The recently revised land policy for Mozambique (which lays the groundwork for subsequent revision of the land law) makes this explicit for small-scale agriculturalists (MOA 1995a). However in addition to there being layers of superimposed claims made at different dates, the dislocation problem together with the recent war and the lack of state authority, creates a situation where the backing to such claims will be extremely variable. Strategies to deal with this complexity must be derived carefully.

Further Reporting

Subsequent documents in the LTC 'Land Conflict Study' will cover: study methodology; database description; categorization, legitimacy, and use of smallholder evidence; which evidence works for whom; evidence findings and land law regulations. Using the database description, LTC welcomes requests from USAID and others to look at particular aspects of land tenure and agriculture.

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