

Promoting Land Rights in Africa: How do NGOs Make a Difference?

Nazneen Kanji, Carla Braga and Winnie Mitullah (IIED, 2002)

Appendix 2:

The development of the 1997 Land Law in Mozambique

In this appendix we describe the process of formulation and dissemination of the 1997 land law in Mozambique. The information is based on the experience of the Mozambican researcher in this process, as a member of the Land Studies Unit at the University Eduardo Mondlane in Maputo, and supplemented by interviews with key informants.

A brief history

After the first multi-party elections in 1994 and Frelimo's victory, the government's Five Year Plan (1995-1999) included land legislation. The Ministerial Council approved the National Land Policy and an implementation strategy in 1995 (Republic Bulletin, 28,02,1996). The principles and goals that were to guide the National Land Policy are based on the following declaration in its 18th point: *"To guarantee the rights of the Mozambican people to land and other natural resources, as well as to promote the investment in and sustainable and equitable use of these resources"*.

By mid-1995, an Inter-ministerial Land Commission was in place, with a mandate to develop a new policy and draft a new land law. The Technical Secretariat became its executive organ, headed by Conceisao de Quadros, an experienced national lawyer who was also legal adviser to the Minister of Agriculture and Fisheries. A respected professor of the Eduardo Mondlane University, Jose Negrão also has an important role and later went on to head 'Campanha Terra', the dissemination campaign for the new law. He was viewed as highly competent, independent of any political party and capable of engaging with different interest groups. He argued against individual title as the only legal form of access to land, drawing on examples to show the costs and ineffectiveness of individual title in other parts of Africa. Alternatives were developed and debated to recognise collective land rights and the validity of verbal testimony, reflecting the reality of Mozambique.

Box: The creation of ORAM

The post-war resettlement of displaced people was carried out without major problems and conflicts, without costs for public administration systems, using customary systems of ownership. This served to illustrate of resilience of these systems.

Nevertheless, the Peace and Reconstruction Commission of the Mozambique Christian Council did come across some land conflicts during its resettlement work of displaced people. This was considered a very sensitive question and the Council opted to create an NGO to deal with land issues. Thus, in 1992, ORAM (Rural Association for Mutual Support), which participated in this study, was created. Its 10 founding members belonged to the Mozambique Christian Council and the initial funding came from Christian Aid, whose first president was then also president of the Christian Council.

The role of NGOs

Research carried out during the formulation of the land law by the Land Studies Unit, by NGOs and by church based organisations, such as the Nampula Diocesan Land Committee, showed the resilience of customary systems of ownership and tenure and was important for substantiating the proposal for collective land rights to be legally recognised.

The draft law was circulated very widely and working teams were sent to all 10 provinces. ORAM, which took part in this study, was involved in organising seminars at local level. The consultative process was particularly thorough in some provinces, notably in Nampula province in the north of Mozambique, which led the debate on women's land rights. The Nampula Diocesan Land Committee, in collaboration with ORAM, the representative of the Dutch embassy in this province and a Latin American sociologist, collected proposals from Nampula women for the draft Land Act project. They also held meetings in the districts to collect data about customary rights that underpinned the proposals presented by the women. A member of the Women's Forum²⁰, of Latin American origin, motivated by her continent's²¹ history and with sensitivity to gender issues in access to resources, became involved in the process of formulation/discussion of the new Land Act.

Within the Women's Forum, the women agreed on the need to guarantee the security of land tenure for future generations as the main objective of Mozambican women, independent of their region and of the particularities of each existing customary system. The Forum then contacted a lawyer from the Legal Women's Association (AMCJ) in order to elaborate concrete suggestions to alter the draft law to assure the equality of rights between women and men.

The National Conference on Land Issues 1996

A National Land Conference was convened in May 1996 to discuss the draft land law with more than 200 representatives from government, civil society organisations, political parties, traditional authorities, the private sector, national and foreign academic institutions, religious groups, donor agencies and the United Nations.

Some participants were worried about the rights given to communities in the draft law because it could lead to a situation where there would be little free land (because most land would belong, in one way or another, to a community). The debates around this issue were intense. Some participants suggested that the concept of community is mainly anthropological, difficult to define and with little juridical value. Another argument against the new law was that the legal recognition of customary rights would 'freeze' the rural population in systems which perpetuate gender discrimination. Others argued that what was really at stake was the recognition or the non-recognition of occupation rights. Recognising customary law implies recognising occupation rights as an important form of land access. This recognition could conflict with the interests of people who are in a position to make formal requests to government for land titles to use and develop land, on parcels where customary rights apply.

A well known figure from the Frelimo Party and former Minister of Agriculture, attending the conference in his capacity as a businessman, defended the importance of titles, arguing that they would allow the establishment of a society with investors, and promote development. A leader of UNAC, also previously employed by the Frelimo Party, opposed this position. He argued that individual titles were not accessible for the vast majority of smallholder farmers because the costs involved in the registration process were very high. He received a standing ovation from the conference participants.

The Nampula Women's Declaration was presented during the conference and women obtained a change of the draft land law text. They wanted to make sure that the reference to customary rights could not be invoked to justify discriminatory practices. The constitution affirms the equality of citizens before the law independently of sex, so the women asked for an explicit mention that the right of use and exploitation of lands could be acquired "... according to customary norms, which should not contradict the Constitution." [Article 12, line a].

After the National Land Conference, the Cabinet presented a definitive version of the Bill to Parliament. In this period, various initiatives contesting or supporting the approval of the Bill were put forward. The Nampula Diocesan Land Committee, for example, promoted an initiative signed by some 8,000 people in support of the Bill. This was published in the press and sent to Parliament.

The anti-privatisation demonstration

One week before the presentation of the Bill to Parliament, ORAM called for the first public demonstration of the postwar period under the slogan "*No to land privatisation*", involving participants from all political parties, but with lead speakers from Frelimo.

It is worth noting that the National Peasants' Association (UNAC), which participated in this study, did not take part in the demonstration, although they did oppose privatisation. They were concerned that the Bill did not include the recognition of customary rights and customary law, referring only to occupation rights for national citizens and local communities. UNAC issued an official statement asking for respect of occupation rights expressly obtained through customary law (*Domingo*, 20th December 1996). This was distributed to Members of Parliament and the President and published in the media. In Parliament, Renamo supported UNAC's statement and emphasised that the peasants' position on the recognition of customary rights had to be respected; this position was incorporated in the new law. Recognition of customary rights, and the representation of the communities in particular, are sensitive subjects with party connotations. Frelimo's policies in the first years post-independence led to the 'fight against beliefs and traditional practices' and to denunciations of the involvement of 'traditional authorities' in Portuguese colonial management, for example, the recruitment of forced labour and tax collection. Frelimo saw the 'dynamising groups' which were elected at local level as representing the people, whilst Renamo looked to 'traditional values' and upheld the legitimacy of traditional power and representation structures in rural areas.

In July 1997, the *Land Act* was finally approved. It recognises and attributes important roles to local communities. It represents a considerable advance in assuring land access for women as well as men. It provides that verbal evidence on the right of use and exploitation of the land can be given by women or men of local communities [15 Article line b); that transmission by inheritance occurs without gender discrimination [Article 16]; and that women have the right to possess individual titles [Article 13, paragraph 5].

The Land Campaign: 1997-99

The main goals of the Land Campaign were to:

- disseminate information about the new law
- promote justice and defend citizen rights
- stimulate the links between 'family' or subsistence and commercial agriculture

The main themes on land rights were identified as the 'delimitation' of the boundaries of community land, women and land, partnerships between the family and enterprise sectors, urban land legislation, and conflict resolution.

Donors such as the Swiss Agency for Development and Cooperation and MS (a Danish NGO) played a particularly supportive role. Jose Negrão, from the University of Eduardo Mondlane, mentioned above, was contracted to coordinate this initiative. What was initially thought of as a "*dissemination campaign*" became, under his leadership, the "*biggest civic movement*" in the recent history of Mozambique (Compete, 2000).

The Land Campaign was particularly broad based, bringing together about 200 organisations working at different levels: national, provincial and community and with different political, religious and social affiliations. It extended to all provinces of the country.

A National Committee²² was created; this structure allowed organisations to take part in decision making through the National Committee and to feel that the Campaign was theirs, although there may have been trade-offs between speed and effectiveness, on the one hand, and wider participation in decision-making on the other.

Given an illiteracy rate of around 70%, the Campaign did not rely only on written materials to disseminate its message, but also used cartoon strips and theatre and audio material to reach as wide an audience as possible. The materials were produced in Portuguese and 20 different national languages.

The Land Campaign was most active while the Technical Secretariat of the Inter-ministerial Land Commission was revising the Land Regulations. These were approved in 1998 and the Technical Appendix, which contains detailed instructions about the procedures to follow in the delimitation or demarcation process of community lands, was approved in 1999. Forum Terra, an affiliation of NGOs working on land issues, has recently been created to follow on from the Land Campaign.

Implementation issues

The *Land Act 19/97* applies to the entire national territory. However, as key informants in this study pointed out, the situation is different in urban areas due to greater pressure on land, its high value and the 'sale' of plots through speculation and corrupt practices. The regulations referred to above tend to be used for rural areas while the regulations for urban lands are still being formulated.

Many NGOs which were involved in the Land Campaign have since been involved in the implementation of the land law, but this process has been somewhat problematic, as discussed in the main report.