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Land Law, Power, Rural Development in post-Independence Mozambique

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Introduction

The development of land administration and management policies follows the movements and internal power struggles occurring during the regimes. At the centres of these powers there are struggles that delay, accelerate, influence, destabilize the policy-making process and the consolidation of land regimes. The cases of the conquests following the discoveries in the 15th century in search of resources; the land grabbing from African, Asian and South American kingdoms; the gentrification, the English enclosures and the end of communal land use; the Berlin conference and the need for effective occupation of land; proxy forms of exercising power - *companhias majestáticas* (Crown Lands), *prazos da Coroa* (long term leases by the Crown), the *Donas* and plantations, in Mozambique, etc. are examples that show how the exercise of power has always been linked to the control of the peoples, the labour force as well as land and other natural resources.

Currently, the design of land management and administration policies in Africa has been influenced by a reinterpretation of the relationship between the political

regime, the land regime and the labour regime according to (neo) patrimonial logic where personification and centralization of power around the elites that integrate the power systems, stand as a bigger concern. The new narratives mention, as if they were new, the challenges of increasing population growth, the occurrence of natural disasters, political and military instability, the 'discovery' of natural resources and the globalization of financial and food crisis, among others.

Confronting these discourses, land administration and management policy options and models have been debated to ensure the rights of individuals and communities and promote rural development (Peters 2009). Questions arise as to the level (central or local) these should be located and / or organized. What are the advantages and disadvantages of a centralized land management in a 'fragile' state and with weak popular control structures? To what extent, a non-formal recognition of individual and community usage rights would be better in view of the advantages and disadvantages of a land management decentralized to the district level in a state with weak local administrative capacity, where community leadership is not elected and where the precise boundaries of the sub-provincial units are not known, the communication infrastructure is poor and the presence of the judiciary at community level is low? Unless the history of power struggles is taken into account, these questions fail to be satisfactorily resolved.

This article intends to recall how the historical background and the current narratives relate to decentralization and the relationship between the law and customary norms in view of improving of land management.¹ The article has three sections. The first presents a brief review of the background of the current land legislation in Mozambique and its relation to the power regimes, given the great influence and the frequent use of current narratives of history. The second section presents the current legal land framework and its relationship with other relevant legislation, particularly with regard to local government and rural development policy and how they relate with the customs. The third section discusses the issues raised and suggests some possible future lines of study.

Background of current land tenure in Mozambique

Land tenure and the rural power in the 19th century

The abolition of the slave trade between 1836 and 1842 caused a competitive movement for natural and human resources in the African, Asian and South American colonies, by the imperialist powers. This led to the to the Berlin Conference (1884-1885) and the power sharing oriented to the exploitation of important raw materials, such as metals, wood, ivory, cocoa, existing in those countries. The 'civilizing mission' of the African man, then considered an inferior being, is an essential element of the colonial discourse, requiring the imposition of European life models. The division of Africa separated people, families, nations and ethnic groups, by drawing artificial borders,

and had also implications for the land tenure regime since the colonized peoples saw their lands and their land rights usurped. The colonial states combined the exercise of a direct power over land, resources and over the African people and indirect rule, setting policies and forms of use and appropriation of land and organization and exploitation of the labour. Through revolts, escapism and sometimes alliances with the colonial power, the populations in rural Africa were adopting different strategies of resistance to the expanding colonial penetration in order to protect their land, the most important resource for subsistence in rural areas.

The system of Crown lands long-term leases (*Prazos da Coroa*),² which lasted from 17th century until the second half of the 19th century, was one of the main forms of land occupation by the Portuguese in Mozambique. This system offered the Crown the possibility of occupying Mozambique with European settlers to whom proprietary land was granted on long-term lease arrangements (Pélissier 2000). Land was granted, upon paying an annual rent for a period of three lives (*ad tertiam generationem et nominationem*) to females (*Donas*) of European Portuguese descent, who were obliged to marry also European Portuguese (Coissoró 1965).³

With the '*Prazos*', a dual form of power over land and people was established, where one was administratively centralised in the Crown, responsible for the general land management and administration, and the other was actually decentralised, exercised at the 'local' level. The local population should pay a capitation tax (*mussoço*) for occupying the land. These long-term leases also resulted in a loss of power and prestige of the traditional chiefs whose privileged status stemmed largely from land tenure.

As a corollary of the measures adopted at the Berlin Conference, the European powers were forced to carry out effective occupation of colonial territories under their control. Due to the financial and staffing constraints that hindered its 'colonial adventure' (Cahen 1993), Portugal opted for the promotion of private investment in the form of Crown and leasing companies in central and northern areas, with higher agricultural potential, whilst the south remained as labour reserve for South African mines (Mosca 2005).

The Crown charts imposed a number of obligations to companies, which required a land regime that allowed them to get products for export, profits and make it sustainable. Companies have also been induced to develop the region in terms of transportation, production and marketing infrastructure. Traditional authorities were gradually being co-opted by the companies, resulting in a situation of land and labour exploitation by the settlers. The introduction of mandatory crops (cotton and sisal), forced labour and the poll tax, conditioned, excessively, the possibility that African natives had to choose a activity, their freedom and their land. The African man was a mere instrument able to work to achieve the objectives of the settlers without any rights on the land or its resources (Serra 2000).

Land tenure and the colonial power in the 20th century

In the last phase of the colonial period, land was classified into three different categories according to their location, purpose and type of user. The first class land was situated around the cities, towns and suburbs. This land was administered in a decentralised manner by the municipalities. African peasants could, individually, occupy this land (2 hectares per adult) and their property rights were likely to be recognized and registered formally at the end of ten years. The second class land was occupied and belonged to African peasants, in their entirety, who used it according to customary norms, hence also decentralised. These were, in fact, native reserves, with limited access to land. Collective ownership of land was considered the most appropriate for natives. In this class of land title deeds to individuals could not be issued. If they wished one, they should give up their customary rights, or abandon the reserves.

Finally, the third class land was considered 'vacant land' and therefore available to be granted by the state to any interested person (national or foreign). It was managed centrally.

Hence, once again in this period, a dual system of land management came into effect: the state or private ownership regime, originating from the Portuguese written law, and the customary system. The first was characterized by formal registration of ownership rights and the existence of monetary transactions (buying and selling) of land. The customary system⁴ was based on local practices where access, use and control of land by individuals were regulated by customs, which are different across the country, and accepted by the state (Myers 1992) but did not result in rights registration. Although the state recognized the right of customary occupation as a means of socializing and 'protection' of the communities, these were often excluded from their land by the colonial state that attributed their lands to private investors transferring communities to other areas (McGregor 1997).

The resettlement of rural communities in new areas was reflected directly in their ways of life. The decline in family farming areas caused the impoverishment of most families, developed social inequalities among families and increased labour market dependency as the primary means of generating cash income, indispensable to the survival and reproduction of rural family structure (Mosca 2005). Until 1961, all 14 to 60 years old African males were required to work for large companies for at least six months a year. These companies carried on their businesses in large cotton plantations, sugar, rice, tea, coconut plantations (copra), using the cheap labour in an economy oriented to the external market.⁵ During this period transport and communications infrastructure were built through public investments with participation of foreign investors, mostly from South Africa and the British colonies in the region. These infrastructures aimed at facilitating the flow of goods to and from the Rhodesias and Nyasaland. The intervention of the colonial state during this period was intended to prevent the formation of an African agrarian elite, although this attempt did not avoid a growing differentiation

within the peasantry itself, resulting from its subordination to capitalist relations of production (Bowen 2000).

In summary, during the colonial period, in what refers to land and resources, there was a mix of centralised and decentralised management. Centralised management was mainly directed to the attribution of large scale holdings, successively to *Prazos*, Crown Estates and individual colonial settlers, usually under an agenda of political, social, economic and cultural shaping of the colony. Decentralised powers were given to the municipalities in their areas of jurisdiction, and to traditional chiefs (*régulos*) in rural communities. Individual rights could be granted and registered in the former areas, while in the communities that could not be done. The law and the organization of local level administration was such that intended to make it difficult for indigenous individual to exist and develop outside the reserve – unless being a reserve of labour for the settlers' farms.

Post-colonial state and the first development models⁶

The independence of Mozambique was obtained by means of an armed struggle. One of the main objectives of the armed struggle was the "liberation of the land and of the people". The new Republic adopted and adapted the administrative division established by the colonial power and did not break clearly with the territorial expression of that power. However, there was a clear break with the administration system through the '*regulados*' (local chiefs), albeit using the traditional leaders to expand the power of the state.

Although, as said, resource management customary norms, including land, are different across the country, there are some similarities – the multidimensional nature of the land, collective ownership and use, incorporating some of the contributions of the colonial state to improve the administration of 'indigenous' people.⁷ Land and natural resources were nationalized in July 1975 and private infrastructure was abandoned by their owners. The first Land Law was enacted in 1979 and its by-laws in 1987, i.e., eight years after passage of the law and 12 years after independence. In the rural areas, economic policy promoted the rapid rural socialization, to as much as possible peasants into proletarians working for state companies and cooperatives. At local level, the process of creating settlements, known as communal villages, was also initiated. All in all, the colonial dual land management regime was maintained, with a twist.

In fact, customary land management by traditional leaders was formally eliminated, with their management institutions.⁸ However, their importance as key elements in the decision making process could not be eliminated. The power at the communal village was exercised by an elected body, chosen from among members of an elected assembly – the executive council of the communal village, whose exercise would be supervised by the people's assembly, but often times these assemblies were permeated by the traditional structures. These people's assemblies were established at the levels

of province, district, city and communal village. In fact, at one point, the administrative division was directly influenced by the fact that there was an elected people's assembly. A communal village with a people's assembly would acquire the status of a 'locality' with impact in the redefinition of the administrative boundaries. So, there was a trend to gradually open full citizenship to the indigenous people. This trend would eventually allow for the acquisition and registration of land rights to everybody if everybody in rural areas could elect their municipalities.

In 1986, Mozambique joined the Bretton Woods institutions. Questions were raised, as expected, about the efficiency and viability of the large state-owned enterprises, dependent on the increasingly scarce human, financial, technical and material resources, whilst the process of their privatization was initiated within the framework of a structural adjustment program. In several places there were experiences of land redistribution to the family sector, including in areas with irrigation infrastructure. These were initiatives of land redistribution outside a wider agrarian reform plan, seeking to implement an agrarian reform with no land redistribution.

Small family farms, previously considered to reflect subsistence farming and planned to disappear in the future as economic units, are now considered as units to be supported in order to achieve greater economic efficiency. Having failed the implementation of the first land law and its regulation, the need to pay attention to the agrarian policy in general, and land policy, in particular, begins to be discussed more openly.

52 The civil war of 16 years (1976-1992) intensified in late 1980s and interrupted that trend. It did not evolve in isolation, and had a regional context and support from some countries in the region. Its effects were felt at two levels: at the policy level and at the level of land occupation and use. In the countries of the region, land ownership could be private and access problems were linked to a clearly separate administration regimen for white and non-white populations. The administration of communal land was left to recognized traditional authorities (indirect rule). In addition to the cross border relationship between the populations, business relations between entrepreneurs from Mozambique and these countries were established.

As land had been nationalized, affecting not only the white Portuguese, but also the local elites who had renounced the customary regime, the war found fertile ground in the internal discontent with the dismantling of the institutions of traditional power. In the same way that power can change the reality on the ground, the reality on the ground can also be the seed of power contestation and these aspects influenced the way of thinking about land management.

The need for a high degree of mobility impacted land arrangements - all the land for all, the land for those who cultivated it, rights of way - even partly of fruit trees and tubers harvest - were secured and accepted by the population. Gradually the process of promoting the 'villagization' was interrupted and eventually abandoned altogether. With a weakly established state, customary practices of administration were quickly

restored, including with regard to access and use of land. In small communities those who were in favour and those who were against the restoration of traditional power could easily be identified, and battles between local clans and elites could hence happen. Investment in land also became unsafe; either it migrated to a safer neighbouring territory or they migrated to cities.

The district headquarters and some administrative posts and localities, where the state presence still remained, could protect land tenure rights relatively better, which also attracted a part of the rural population. Vegetable production in small plots intensified in cities and district centres, both in cooperative and in household plots. On the suburbs of main cities a process of demarcation and distribution of plots for housing of immigrants from the rural areas intensified, with some guidance, but in many instances on an *ad hoc* mode. This process was organized and implemented by decentralized administrative authorities under the supervision of the municipalities.

In the more isolated rural areas, the population either opted for moving or to disperse, abandoning their land and sometimes occupying lands abandoned by others. In the late 1980s, people displaced and directly affected by the war scored millions. State enterprises went through transformations and also two 'lines' emerged. One line proposed to deepen the model of large scale farm companies with the task of becoming development poles for large regions and, the other line that promoted the establishment of centres to support small peasant family farming and producers' associations, who were experiencing a difficult time, both in accessing inputs, such as seeds and agricultural tools, as well as accessing markets. In some places, large land holdings were granted in a process of partnerships with foreign companies, to which the power of armed defence of the territories under their influence and of their production operations, storage and marketing was attributed.⁹

In summary, after independence, most of the features of the dual land management setup inherited from the colonial regime was kept in place, with the difference that the notion of 'reserves' disappeared and all land could be directly and centrally managed by the state.

The new legal framework of land administration and organization of the state *Towards the end of the war and 'normalization of life'*

How is the law promoting land management decentralization and cadastre and registration of individual rights?

In the period immediately preceding the end of the war, the law on administration and management of land and natural resources needed to satisfy the various forces in confrontation, resulting in some inconsistencies that remain as of today. The Constitution was revised in 1990, incorporating some of the provisions of the 1979 Land Law. This meant that although the Constitution had a liberal orientation, it incorporated elements of the policy of the previous socialist regime. In the process of

revision of the Constitution, however, being power the central question, other topics took prominence regarding the political order: the adoption of a multi-party political system, the issue of nationality and the role of the private sector in the economy. In the same period, the people's assemblies were dissolved and legal instruments were developed to recognize the community authorities which in many cases meant the restoration of the regime of chiefdoms (*regulados*), pointing to the decentralization of the state administration. The principle of legal pluralism was also recognized. As such, a formal decentralisation¹⁰ process remained only for the cities and some towns and the cadastre and registration of individual rights were not encouraged.

A decade after the declaration of peace, a Law on Local State Organs (Law 8/2003 of 19 May) (LOLE) and its regulations (Decree 15/2005 of 10 June) were approved in view of transforming the districts into 'pole of development' and to ensure a more inclusive and participatory management by the different actors at the local level in identifying and solving problems. This law, in addition to recognizing the community authorities (traditional chiefs, neighbourhood secretaries and village chiefs - *régulos* -, etc.) as the legitimate representatives of the local communities, also provides for consultation mechanisms and deconcentrated management.¹¹ It should be noted that the 2004 constitutional amendment reinforces the recognition of the rights acquired through customary practices, as well as the recognition of the public domain, both at local government and community levels.

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Being agriculture the way of life of the majority of the rural population and an important means of creating wealth with a sizeable contribution to the GDP and to local employment (Norton 2005), the Constitution establishes agriculture as the basis for development and the government approves the basis for sector legislation, such as the agricultural policy (Resolution 11/95) and the National Land Policy (Resolution 10/95), the latter dealing essentially with land for agriculture and rural development. The process of normalization of life following the peace agreement, which included the return of the population to the sites they previously abandoned, forced a reflection on the land regime. Land management and administration gained the attention of academia and of some sectors within government, particularly those dealing most directly with peasant agriculture. Issues such as the need to articulate a land reform, the advantages and disadvantages of privatization of land, functioning and effectiveness of customary systems recognized by the new Constitution, have been favourite subjects of studies and theses and political debates. New definitions regarding the use of land emerged reflecting the political struggles in the centres of power.

The Land Law (Law No. 19/97 of 1 October) is a result of a legislative process to consolidate a favourable environment for the development of a market economy. Among the legislation passed just before or since the end of war, the following had the greatest impact on land regime: the Water Act (Law No. 16/91 of 3 August), the Investment Law (Law 3/93 of 24 June), the Law of Forestry and Wildlife (Law No. 10/99 of July 7), the Mining Law (Law No. 14/2002 of 26 June).¹²

The new land law in Mozambique is also part of a process of reviewing land policies across Africa.¹³ This movement had, as main cause, the protection of rights acquired through customary way and the occupation in good faith. The review process of the socialist period land law occurred in a participatory manner, led by civil society organizations and culminated with the approval of the 'new' Land Law. Perhaps intentionally, anticipating fluctuations in the balance of forces, it was decided to 'shield' the rights of communities, creating yet again, a dualistic situation of land management, consolidated in the regulation of the law and its respective technical annex. It was then recreated the dichotomy between investors and communities, as if there were no investors in the communities, partly on the grounds that there is wide availability of arable land, not all occupied by communities. In fact, today the cultivated area does not exceed 15% of what is classified as arable land.

The average cultivated area per household decreased from 2005 to 2012, from 1.8 to 1.4 hectares. As for the intensification of land use, the use of improved seeds in maize and beans production is done in 10% and 16% of farms, respectively, whilst 13% of holdings use irrigation. The use of fertilizers, pesticides and credit serves less than 5% of total holdings. The use of improved seeds, the use of irrigation, as well as the conservation and use of organic soil fertilization techniques still have significant room for expansion and improvement. This picture is not much different than it was the rural reality at the time of independence. The access to credit conditions and the implementation of local projects, which were often of a social protection nature, did not achieve the intended impact on productivity over the last four decades. Therefore, a still long way to rural transformation is to be expected.

But still, individual cadastre and registration of rights to land acquired through occupation and customary tenure was not encouraged. Some forces defending the socialist regime still think that such registration would lead to privatisation of at least some of the land.

*The Rural Development Strategy*¹⁴

In 2007 the Government approved the Rural Development Strategy (RDS) with the underlying objective of achieving a greater inclusion of the rural poor in the life of the country. The RDS assumes that the poor land use in rural areas, low productivity levels, poor access to basic services (health, education, transport) and unemployment contribute to the existence of regional disparities, for the difference in living conditions between rural and urban areas to the rural exodus and the growing number of rural poor. Its aim is to guide the process of searching for solutions and alternatives to combat poverty, promote sustainable development and improve living conditions of people in rural areas. As it cannot be completely decoupled from the general model of administration, the RDS is seen as a tool to materialize medium-term planning instruments (PARP and QGP).¹⁵ It also takes advantage of the official discourse that

one of the mechanisms to carry out its purpose is to strengthen the decentralization and devolution of functions and decision-making powers under the Law on Local State Organs.

Towards strengthening decentralization, several initiatives have been promoted by the central government or provincial governments to accelerate the development process in certain rural areas throughout the country: along transport corridors, the main lines of electricity supply as well as in the main valleys with abundant water resources. These initiatives took the form of programs or investment projects. Another initiative to consolidate the decentralization was the creation of the District Development Funds, an annual budget allocation to all districts of the country, aimed in part for infrastructure and partly for credit to agricultural development activities. Subject to a local selection process, its purpose is expressly to support local initiatives for food production and generation of employment opportunities, with similar expectations to those regional development initiatives.

The land administration institutions

Currently there is a set of institutions with mandates on land management and administration,¹⁶ which includes the agencies that oversee the state administration, the environment, planning and development, the mineral resources, the water, tourism, besides the agriculture, forestry and wildlife.¹⁷ The coordination among these institutions at various levels continues to present many challenges, particularly with regard to territorial planning, the use of incentives to improve land use and mechanisms to secure the rights of occupants while sharing the benefits among (domestic and foreign) investors and rural communities. The main institution of land administration has been subjected to changes reflecting the different economic and socio-political contexts that the country went through since the transition period to the consolidation of independence. It was initially subordinated to the institutions in charge of the agrarian sector, then subordinated to economic planning institutions, and returned, for most of the above period, to the agriculture sector supervision. Overall, the institutional framework for land administration is weak and with limited capacity to enforce the law. Most of the existing land in Mozambique has not been registered in cadastre and only 1/10 of rural communities gained mapping and registration of their land. The growing demand for land in Mozambique (by both nationals and foreigners), particularly in the period following the signing of the Peace Accords (1992), the emergence of (illegal) markets land and land conflicts and their implications the tenure security, particularly in rural areas, have not in the state an arbitrator and regulator able to enforce the law. This reflects, to a large extent, the fact that the corresponding and inherited colonial was designed to cadastre and register a relatively small number of estates and individual or family farmers leaving in rural communities did not need (or deserve?) to have land titles.

In summary, land legislation and rural development policies were very much influenced by the history and the distribution of power at central and local level, with a bias towards centralisation, and not always considering the interests of the smallholders living in rural communities, such as, for instance, by facilitating the registration of their individual and collective or group rights on land. Rightly so, however, there has been a consistent action to combine land legislation with the legislation on labour, rural development and environment, as well as local administration.

Discussion

To centralize or to decentralize?

The impact assessment of land legislation in land tenure security and rural development needs to take into account the historical background, the context in which it was applied and the internal conflicts of the regimes occurring at both central and local levels. The evidence presented above shows that, to a large extent, the colonial power structures of the management of natural resources and labour regimes were replicated. Despite the differences of the political forces who ruled before and after independence, the same trend in favour of the urban population and the elites privileged by development model was instrumental in establishing the land systems and their implementation. The independence only consolidated the centres of power.

Both before and after independence, there have been alliances between the central power, defining development policies, and the local authorities, which appear more like delegated powers, than as that devolved powers, similar to what was done in the colonial past. These alliances aim to make it possible not only to obtain the social license to operate a commercial farming of medium or large scale, but also to facilitate labour schemes in favour of agri-business, avoiding local reactions that cast doubt on the legitimacy of the power because it affects the rights acquired by customs. The recognition of customary practices, presented today as novelty in the law, was already practiced a century prior to independence. Today, we are looking for the 'vacant land' for investment in commercial agriculture, not in remote areas, where it still exists, but in areas where there is access to labour and market. Thus zone mapping was promoted on the basis of which the above mentioned initiatives for the development of extensive large-scale rural areas were designed. An optimal level of ignorance can be determined: it is possible to know the generic potential, but without the responsibility of detailed recognition of the area. It alleviates the need and cost of a subsequent administration for deeper integration of the peasantry and land users, in general, into economic and social life of the country – the responsibility to fully recognize the citizenship rights of the rural poor is thus deferred.

As the central colonial power resorted to royal and leasing companies, as well as to *prazeiros*, this secular trend of dualistic conception of land administration was re-taken in the rural areas. On the one hand, it is the city or the urbanized centres, civilized people

and the formal and publicly known rules, more integrated market. On the other hand, it is the rural population, family production, poorly integrated in the markets, working on what were previously the second-class land and native reserves. The practice of close integration between the land regime and the labour regime were also resumed as a way to address the issue of employment and income opportunities for a farming community known to be proletarianised and leave the sector, by design or by default. In fact, it can be argued that the authorization of commercial use of large areas is less related to the search for greater use of arable land than with the creation of opportunities for the development of the network of rural infrastructure and employment within the development model framework designed centrally.

In an attempt to counteract the negative effects of this model, through programs aimed at reducing inequalities and social exclusion, regional development initiatives and financial decentralization were promoted. However, in general, these initiatives focus directly a small group of more 'advanced' farmers in the hope that the poor also benefit indirectly in the form of expertise and employment opportunities. They, in fact, accelerate and deepen the differentiation within the rural population.¹⁸

There is a reasonable body of legislation to protect citizens' rights to use and enjoy from local resources. However, the weak local administrative capacities and popular control; the fact that the community leaders are not elected by the population, but rather appointed by political and partisan interests or simply through lineage; the poor presence of an independent judiciary at local level and the lack of knowledge of the rights by the respective communities contribute to the formation of a miniscule local elite. The same is particularly true for the central land institutions and local administration, where the scarcity of resources and permeability to patronage practices are maintained for long periods of time.

In view of that, resource management is not necessarily improved by granting autonomy or delegating powers to the community authorities. Although it is more likely that rural differentiation is slower in decentralization circumstances, it must take into account that what is stated as decentralization policies have little democratic decentralization, i.e., one in which the positions of authority are occupied by popular choices at the community level. The defence of the rural community as a forum for democracy is often romanticized, not taking into account local inequalities. Various laws, and not just in the land sector, consider systematically the need for consultation and community participation. But, also systematically, the capacity of traditional authorities in the choice of what is good or bad for the community is overestimated and their tendency to replicate the central power structure is not taken into account particularly considering the attractiveness of neo-patrimonial discourse to the local powers. Traditional authorities and local elites seek to maintain their power and domination through control over land and the community and national heritage, subordinating the public interest to their personal interests.

Some windows are provided by specific legislation. By law, the recognition of customary and in good faith occupations does not depend on the existence of a record, where testimonial evidence is sufficient. But also, by recognizing a dual regime, the law creates the conditions for that, as the central authorities, traditional authorities and elites of the community can negotiate which land remains under customary regime and which is granted to commercial investments through sub-division¹⁹ or some form of transfer of land rights. Being these transactions recorded, and given the greater strength of the written laws over customary norms, the legislation does not ensure the desired protection to farmers living in rural communities, whose territorial definition is not mapped in the cadastral maps or only partially protected where they are mapped. This reality led to a civil society movement aimed at the delimitation and local management of community lands and resources, influencing the regulation of the land law and its technical annex, which have anyway standards hardly implementable locally without technical assistance. The situation is even more serious for the poorest community members who become simple takers of a decision in which they participated only marginally.

Future lines of work

The examples that were presented show that there is need to permanently rethink policies and land management and administration models, questioning, among others: the level (central or local) what which land administration should be located and / or whether this is the correct question to be asked. Experience has shown that, in some circumstances, a centralized administration presents an advantage - even in autocratic regime - to promote the creation of infrastructure and diversify of economic and social opportunities and the rural economy. Experience shows, however, that this system is susceptible of dealing with this matter in an incomplete and sometimes illegal or even intentionally unfair way, in order to promote the dominant interests in power, at the expense of the smallholders.

Experience has also shown that the legislation for which an adequate capacity for implementation and monitoring was not developed will gradually become obsolete to the point of ceasing to have any relation to reality. Customary systems and distribution of rights at local level are not sufficiently documented. Its complexity can hardly be taken into account in a centralized management, especially in an unstable land administration environment. The combination of general standards and guidelines centralized with real decentralization efforts, with the devolution of rights and responsibilities to the local level seems to be the best option. However, this option may not always be controlled and therefore conditions need to be created for permanent monitoring of the development and implementation of land policies, which needs to be also at local level.

Meanwhile, more focused action is required to recognize the ability of rural communities

to choose their leaders responsible for the management of natural resources. More focus also need to be directed as to recognize a broader citizenship to the users of land, namely through a formal and documented recognition of their rights, that puts them on an equal footing with all other citizens who may resort to written law to enforce their rights. Studies to define methodologies and legislative revisions that support these goals are deemed important in the short term.

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NOTES:

- 1 - See also other contributions in this issue.
- 2 - The Portuguese word *prazo* mean period of time.
- 3 - Due to the requirement of 'uterine line' land lease transmission, those women had a privileged status in this society (*prazeira*), enjoying special rights such as possession of various lands, slaves, slave-soldiers (*Achikundas*) and other powers that sometimes were confused with true powers of the state (Newitt 1969).
- 4 - See also Chinigò on Malawi in this issue.
- 5 - See Serra (1998, cf Mosca 2005).
- 6 - For an analysis of rural development in Mozambique see the Special issue 2014 of *afriche e orienti*.
- 7 - For example the creation and generalization of the traditional Chief of Lands (*Cabo de Terras*).
- 8 - Succession systems, elders' councils, marshals and field officers, including the *indunas*, the police system of the *cipaios*, *Cabos de Terras*, etc.
- 9 - A well-known case in Mozambique was the "joint venture" between the State and LONRHO, with some similarities to the leasing companies in the past.
- 10 - Decentralization meaning devolution and participatory government.
- 11 - De-concentration meaning the delegation of power to appointed (not elected) officials, following orders from the centre. The forms of community organization established in the LOLE regulation are the following: Local Council, Local Forum, Community Committees and Community Funds. The regulation gives space for other forms of organization created by the communities themselves.
- 12 - In order to have a more precise picture of the existing legislation with impact on the lad regime, the Law of Territorial Organization (Lei nº 19/2007, de 18 de July) needs to be added albeit more recent.
- 13 - See also Zamponi (2014), Salomão (2014) and Zamponi in this issue.
- 14 - For rural development strategies in Mozambique see also Mosca (2014).
- 15 - Action Plan to Reduce Poverty: PARP - Programa de Acção para Redução da Pobreza; Government 5-year Plan: PQG- Plano Quinquenal do Governo.
- 16 - See also Peters in this issue.
- 17 - At the time this article was being prepared, the public institution in charge of land administration was placed under the subordination of a ministry in charge of Land, Environment and Rural Development Affairs.
- 18 - For example, in relation to the District Development Funds, its allocation is affected by traffic of influence and clientelism where the repayments are deficient or non-existent. Orre and Forquilha (2012) report that in many cases, the fund benefited only members of the ruling party, having been used in the rehabilitation or construction of homes and offices for local administration and its senior officers instead of being allocated to generate employment, income and food production. Often the initiatives funded by this or other sources imply that the land rights disputes and the employment opportunities and other commitments generally not formally registered, were not solved. It is interesting that the assessments do not result in a revision of the concept and functioning of decentralization instruments.
- 19 - This allows for the replication of the delimitation process (*enclosures*) that occurred during the Industrial Revolution in Great Britain.

References

- Bowen M. (2000), *The State Against the Peasantry. Rural Struggles in Colonial and Postcolonial Mozambique*, The University Press of Virginia, Charlottesville
- Cahen M. (1993), *Mozambique: histoire géopolitique d'un pays sans nation*, in «Lusotopie/Enjeux contemporains dans les espaces lusophones», vol. I, n. 1-2
- Coissoró N. (1965), "O Regime das Terras em Moçambique", in A. Moreira, *Moçambique*, ISCSPU, Lisboa
- Conselho de ministros (2007), *Estratégia de Desenvolvimento Rural (EDR)*, Conselho de Ministros, Maputo
- Cotula L. et al. (2009), *Land Grab or Development Opportunity? Agricultural Investment and International Land Deals in Africa*, FAO/IIED/IFAD, London/Rome
- Florêncio F. (2008), *Autoridades tradicionais va Ndau de Moçambique: o regresso do indirect rule ou uma espécie de néo-indirule?*, in «Análise Social», vol. XLIII, n. 2
- Gazibo M. (2009), *Introduction à la Politique Africaine*, 2ed., Presses de l'Université de Montréal, Montréal
- Lavigne-Delville P. (ed.) (1998), *Quelles politiques foncières pour l'Afrique rurale? Réconcilier pratiques, légitimité et légalité*, Karthala, Paris
- Le Bris E., E. Le Roy, F. Leimdorfer (1982), *Enjeux fonciers en Afrique noire*, Karthala, Paris
- Mcgregor J. (1997), *Staking their Claims: Land Disputes in Southern Mozambique*, Land Tenure Center - University of Wisconsin-Madison, London
- Médard J.-F. (1991), "L'Etat néopatrimonial en Afrique noire", in J.-F. Médard (ed.), *États d'Afrique noire: formation, mécanismes et crise*, Karthala, Paris
- Mosca J. (2005), *Economia de Moçambique século XX*, Instituto Piaget, Lisboa
- Mosca J. (2014), *Agricoltura familiare in Mozambico: la politica di non avere politica?*, in «afriche e orienti», Numero speciale 2014
- Myers G. (1992), *Reforma da posse da terra, da política de terras em África*, in «Revista Extra», especial, Junho
- Ney Ferreira J.C., V. S. Veiga (1957), *Estatuto dos Indígenas Portugueses das Províncias da Guiné, Angola e Moçambique*, 2ª ed., Lisboa
- Newitt M. D. D. (1969), *The Portuguese on the Zambezi: An Historical Interpretation of the Prazos System*, in «Journal of African History», vol. 10, n. 1
- Norton R. (2005), *Politiques de développement agricole. Matériel conceptuel et technique*, FAO, Rome
- Orre A., S. Forquilha (2012), "Uma Iniciativa Condenada ao Sucesso. O Fundo Distrital dos 7 Milhões e suas Consequências para a Governação em Moçambique", in B. Weimer (ed.), *Moçambique: Descentralizar o Centralismo. Economia Política, Recursos e Resultados*, IESE, Maputo
- Pélissier R. (2000), *História de Moçambique. Formação e oposição 1854-1918. Vol. I.*, Editorial Estampa, Lisboa
- Pélissier R. (2000), *História de Moçambique. Formação e oposição 1854-1918, Vol. II.*, Editorial Estampa, Lisboa
- Peters P. E. (2009), *Challenges in Land Tenure and Land Reform in Africa: Anthropological Contributions*, in «World Development», vol. 37, n. 8
- Salomão A. (2014), *Le sfide della governance partecipativa della terra: il decentramento ed il ruolo dei Governi locali nelle decisioni sulla terra per gli investimenti*, in «afriche e orienti», Numero speciale 2014
- Serra C. (ed.) (2000), *História de Moçambique, Vol. I.*, Livraria Universitária, Maputo
- Zamponi M. (2014), *Bilanciare due sistemi? Política agraria e dinamiche di sviluppo rurale in Mozambico*, in «afriche e orienti», Numero speciale 2014

Legislation

- Constituição da República de Moçambique, 2004.* Maputo
- Lei de minas* (Lei nº14/2002, de 26 de Junho)
- Lei de águas* (Lei nº 16/91, de 3 de Agosto)
- Lei de Terras* (Lei nº 17/97, de 1 de Outubro)
- Lei dos Órgãos Locais do Estado* (Lei nº 08/2003, de 19 de Maio)
- Lei do ordenamento do território* (Lei nº 19/2007, de 18 de Julho)
- Regulamento da Lei do ordenamento do território* (Decreto nº 23/2008, de 1 de Julho)
- Regulamento da Lei de Terras* (Decreto nº 66/98, de 8 de Dezembro)
- Regulamento da LOLE* (Decreto nº15/2005 de 10 de Junho)
- Resolução nº 10/95, de 17 de Outubro* (Aprova a Política Nacional de Terras e as respectivas Estratégias de Implementação)

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