

# Protecting Smallholder Land Rights in Mozambique, 1997–2017: Unfinished Business?

Michael Madison Walker 

**Abstract:** Mozambique's land law is notable for its intent to balance the recognition and protection of smallholder land use rights with attracting foreign and domestic investment to rural areas. However, the state's legitimacy may be undermined through the process of recognition, as state actors and local elites circumvent the law for private gain. Walker focuses on two areas where the law has failed to protect smallholder rights: issues of women's land rights, and the expansion of protected areas. These issues speak to the problem of recognition, revealing ways the state produces authority, but not necessarily legitimacy, in rural settings.

**Résumé:** La loi foncière du Mozambique est remarquable par son intention d'équilibrer la reconnaissance et la protection des droits d'utilisation des terres des petits exploitants et d'attirer les investissements étrangers et nationaux dans les zones rurales. Cependant, la légitimité de l'État peut être compromise par le processus de reconnaissance, car les acteurs étatiques et les élites locales contournent la loi pour des gains privés. Walker se concentre sur deux domaines dans lesquels la loi n'a pas réussi à protéger les droits des petits exploitants : les questions des droits fonciers des femmes et l'expansion des zones protégées. Ces questions évoquent le problème de la reconnaissance, révélant les façons dont l'État produit l'autorité, mais pas nécessairement la légitimité, dans les milieux ruraux.

**Resumo:** A lei de terra moçambicana destaca-se pela preocupação em equilibrar o reconhecimento e a proteção dos direitos de uso dos pequenos agricultores com a atração de investimento interno e externo nos territórios rurais. Contudo, esse

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processo de reconhecimento pode prejudicar a legitimidade do Estado, uma vez que os agentes estatais e as elites locais contornam a lei para benefício próprio. Walker centra a sua análise em dois domínios nos quais a legislação foi incapaz de proteger os direitos dos pequenos proprietários: nas questões relacionadas com os direitos das mulheres sobre a terra e na expansão das áreas protegidas. Estas questões relacionam-se com o problema do reconhecimento e põem a descoberto mecanismos através dos quais o Estado produz autoridade, mas não necessariamente legitimidade, nos territórios rurais.

**Keywords:** Mozambique; land laws; authority; the state

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October 2017 marked the twentieth anniversary of Mozambique’s current land law. The law has been broadly recognized for its intent to balance the recognition and protection of smallholder land use rights with attracting foreign and domestic investment to rural areas, leading some to label it “the best land law in Africa” (DFID 2008). Indeed, Mozambique’s land law is notable for its recognition of customary tenure.<sup>1</sup> To protect smallholder land use rights acquired through customary tenure and good-faith occupation, it requires third parties to engage in a community consultation before land can be leased or expropriated for other uses. Communities can formalize their land use rights through a delimitation and titling exercise, giving their rights equal legal status with the land rights of commercial entities. Over the last two decades, the lack of public financing to support community land delimitations, among other factors, has limited widespread implementation.<sup>2</sup> Although the implementation challenges are significant and offer a mixed record of success, the law’s effectiveness in meeting one of its core mandates—recognizing and protecting smallholder land use rights—warrants further analysis in an era of increasing pressure on land resources.

In fact, over the last two decades, scholars within and outside of Mozambique along with Mozambican organizations such as ORAM (Rural Mutual Aid Association), *Justiça Ambiental* (Environmental Justice), and UNAC (National Peasants’ Union) have questioned the law’s effectiveness in recognizing and protecting smallholder land use rights because of the numerous examples where land acquisitions have overridden smallholders’ rights. For example, large-scale land acquisitions in northern Mozambique dispossessed residents who depended on land and forest resources (Fairbairn 2013; Hanlon 2011; Matavel et al. 2011), while the controversial ProSavana development project, proposed along the Nacala corridor, also raised fears of land expropriation. Many residents in the region consider land delimitation exercises to lack consistency; they believe that smallholders affected by them were not properly consulted. (Shankland & Gonçalves 2016; Tankar & Rafael 2015; Wolford & Nehring 2015). And though illegal, the ongoing

commodification of land engenders growing inequalities, especially between longstanding residents and newcomers (Adalima 2016). These land dynamics attest to the entanglement and power of the state, the ruling party, and capital to shape land use and access in ways that contravene the land law.

The recognition of land use rights entwines access and authority, property and citizenship (Lund & Boone 2013). Contests over land are often affected by regimes of governance, linking land use and access to constitutional issues (Boone 2007), including the making and structure of state authority (Lund 2016). But struggles over land rights and their recognition entail cultural constructions of authority and historically-embedded processes that cannot be easily reduced to the structure of the state or constitutional mechanisms alone (Berry 2017). In a post-Cold War era characterized by diffuse forms of sovereignty (Piot 2010), competing claims to land can be recognized and legitimated by a range of actors and institutions besides the state. Furthermore, recognition may be strengthened or undermined by shifting scale, from customary authorities, to local state officials, national ministries, government departments, and high courts. Across the continent, democratization and decentralization generate contests over belonging and autochthony (Geschiere 2009), especially where histories of mobility are widespread (Lentz 2013). In Mozambique over the last three decades, more actors are now involved in land allocation and in sanctioning land use, including multiple state agencies, neo-customary authorities, donors, local elites, NGOs, and national and transnational corporations. Consequently, rural land users may have numerous possibilities available to them to substantiate land claims, and in the process of recognition, to legitimate various forms of political authority over land (Lund 2016). For this reason, the struggle for recognition becomes central to contestations over land.

Access, or the ability to benefit from land, is crucial to the livelihood strategies of many rural and even urban residents across the continent. In Mozambique, all land is legally categorized as state property and as such cannot be bought, sold, or mortgaged—a vestige of the country's socialist period.<sup>3</sup> In essence, the state holds land as a public trust and grants Mozambican citizens or foreign entities land use rights, which can be legitimated in a variety of ways, including through custom and good-faith occupancy. Land's significance to food production and livelihood strategies is only one reason why rights to land remain so essential. The recognition of land rights continues to be a highly-politicized issue in many contexts because land is not only a means of production, but it also plays a salient role in the distribution of other resources and is important to the construction of identity, belonging, and group membership (Ferguson 2013). Accordingly, land is both materially and symbolically significant to the production of persons, selves, and subjectivities.

In the wake of the 2008 global recession, transnational actors and investments received critical attention for their involvement in large-scale land deals (White et al. 2012), but African states and national elites are also essential to the implementation of these arrangements (Peters 2013). The

capacity of African states to negotiate leasing and concessionary arrangements is partially dependent on the legal status of the land in question. In settings where the legal status of customary tenure or communal rights is vague, rather than protecting smallholder land use rights, states frequently use national land laws to usurp land from less powerful claimants (Peters 2013; Wily 2011). Moreover, when customary tenure is not defined by the state as property, it becomes easier to expropriate land and turn it into private property (Peters 2013). In Rwanda, for example, the Organic Land Law of 2005 abolished customary tenure, leaving state officials to define “productive land” broadly to justify the eviction of smallholders in favor of commercial producers (Ansoms 2013). In Ethiopia, however, as in Mozambique, land is state property, but in contrast to Mozambique, the Ethiopian land law does not recognize and protect customary tenure. These brief examples suggest the state is not a passive victim, nor do states govern with one voice, but rather states—as assemblages of discourses, institutions, individuals, and contradictory logics—are active participants in leasing, selling, and negotiating land acquisitions (Wolford et al. 2013). The Mozambican state and *Frente de Libertação de Moçambique* (Frelimo) ruling party elites play a prominent role in structuring negotiations with foreign investors over land (Fairbairn 2013). Therefore, state agents shape the contours of land deals by using national land laws to facilitate and curtail access to land.

Mozambique’s current land law is the product of particular socio-historical conditions, most significantly the end of a violent and protracted armed conflict, accompanied by political and economic liberalization. The war caused widespread suffering, including the destruction of infrastructure, the reduction of agricultural production, and the disruption of rural trade. The fighting displaced approximately 1.7 million people to neighboring countries, while another 3.2 million relocated within Mozambique’s borders (Hanlon 1996:16). Following the end of the war in 1992, many displaced people did not return to their communities of origin, preferring instead to remain in place to take advantage of land claimed during the war or to use the roads, markets, and infrastructure that were less affected by the conflict. Moreover, because the government divested many state farms during the conflict, displaced people, ruling party elites, smallholders, and other new claimants vied for the available land, creating multiple and overlapping claims (Myers 1994; Walker 2012; West & Myers 1996). Thus, the new land law attempted to respond to these post-war realities: displaced people, entangled land claims and counter-claims, and the decline of rural commerce and investment.

Mozambique’s postwar economy displays impressive, but uneven, macroeconomic growth, with intensifying rural poverty (Cunguara & Hanlon 2012). While many rural areas have long been incorporated into regional and global political economies through labor migration, war, and trade, a growing number of foreign and domestic entities have requested and received land for agribusiness, mining, timber extraction, and tourism in the postwar period. For example, between 2004 and 2009, the Mozambican state granted

nearly three million hectares to investors, but approximately 50 percent of the allocations were under-used or never developed (Matavel et al. 2011). New opportunities for tourism incite longstanding conflicts over community boundaries (Alfredo 2015). As land pressure increases, smallholders must cultivate smaller plots of often inferior quality (Filipe & Norfolk 2017). These examples illustrate that although Mozambique is claimed to be one of Africa's most land abundant countries, large-scale land deals and new investments are layered over existing claims to land. Therefore, whose claims are recognized, and by whom, is central to how land rights are mediated in practice, giving shape to the political authority over land and people.

The conflicts surrounding large-scale land acquisitions in the postwar period reveal the tensions between protecting land rights and facilitating investment, making the recognition of land rights a contested terrain. In an era of diffuse sovereignties, the Frelimo state continues to struggle for legitimacy, especially in rural areas, and the law helps to produce state authority over a critical resource that most Mozambicans depend on. Importantly, customary rights to land are not vague under the law, yet the cases discussed below illustrate how recognition is re-worked to strengthen the state and the private interests aligned with it. African states such as Benin, Ghana, South Africa, South Sudan, Tanzania, and Uganda also make provisions for land rights claimed on the basis of custom. Tracing how the law is used to recognize land rights in practice reveals how access, property, and political authority are mutually constituted (Lund 2016). With this in mind, this article provides a partial overview of land contestations in Mozambique over the last twenty years and examines two case studies, women's land rights, and conflicts over land in protected areas, to show how state authority is created through the recognition of land rights at different scales. Paradoxically, the state's legitimacy may be undermined through the process of recognition, as state actors and local elites circumvent the law for private gain. Thus, the law helps make the state, but not necessarily its legitimacy. First, this article outlines the main tenets of the law and the context in which it emerged. Next, it examines women's land rights, followed by conflicts over protected areas. It concludes by returning to the tensions between recognition, authority, and state legitimacy that may be of interest to scholars and civil society groups concerned with inequalities over land use and access in Africa.

### Lawmaking in a Post-War Environment

Compared to neighboring states such as South Africa and Zimbabwe, Mozambique did not experience widespread land expropriation under colonial rule. However, the land use rights of Mozambicans under Portuguese colonialism were always tenuous in the face of Portuguese interests, and they could be usurped at any time and for any reason (O'Laughlin 1995). Portuguese and other European settlers, concessionary companies, and the colonial state did actually seize land in different times and places during Mozambique's long encounter with colonial rule. During the seventeenth

century, Portugal granted *prazos da coroa* (crown estates on large tracts of land) to settlers in the Zambezi Valley, but these estates rarely became productive agricultural enterprises, with settlers instead becoming involved in the regional trade in gold, ivory, and slaves (Isaacman 1972). Much later, during the nineteenth century “scramble for Africa,” European charter companies and their subsidiaries expropriated land for agriculture, mining, and other economic endeavors in northern and central Mozambique. By the mid-twentieth century, white settlers demarcated European farming communities in the Revué and Limpopo river valleys. The colonial regulation of African labor, especially through forced cash crop production, also affected land use and labor across the countryside (Isaacman 1996). Writing after the war but before the current land law, Bridget O’Laughlin (1995) observed that Mozambique’s land question and the question of labor are inextricably linked due to the ways in which colonialism exploited both. Today, patterns of land alienation are reproduced by new actors alongside the state, and in many agrarian communities the availability of labor continues to shape livelihood strategies (Tornimbeni 2015). In many ways, the colonial land map remains intact, but with different “owners” (Tanner 2010).

Following independence in 1975, the new Frelimo government was faced with a formidable task in addressing the socio-economic inequalities produced by—and essential to—colonial rule. The government nationalized all land by claiming it as state property. The Land Law of 1979 authorized state ownership of land; however, it was unclear whether the nationalization of land eliminated pre-independence land rights or reduced them to land use rights (Myers & West 1993:8). With Frelimo acting as a vanguard party, the state implemented a rural development program centered on state farms, cooperatives, and communal villages. In practice, state administrators allocated financial and logistical resources to the state farm sector to the detriment of smallholders (Bowen 2000). In addition to receiving more state resources than smallholders, state farms occupied some of the best land in the country located near infrastructure, such as roads, markets, and irrigation schemes, placing smallholders in direct competition with state enterprises. But despite the government support for state farms, the war (1977–1992) between Frelimo and the *Resistência Nacional Moçambicana* (Renamo) helped to undermine the state farm sector. Combined with drought and structural adjustment, the war also served to unravel Frelimo’s modernist, socialist state.

In 1990, as the armed conflict endured, the state divested farms and infrastructure, but the process lacked a clear legal framework for the transfer of land, resulting in the state giving away land as a free good (Myers & West 1993). Both land grabbing and speculation plagued the transfer of state farm land, producing land conflicts between smallholders, local families, and farm workers (West & Myers 1996). Following the cessation of the armed conflict in October of 1992, the state, donors, civil society groups, and international financial institutions began discussions on how to stimulate the economy and grapple with the postwar realities of returning refugees, state farm divestiture, and foreign investment, setting the stage for a new land law.

The current land law is the outcome of a two-year national debate that was widely accepted as a democratic process (Tanner 2002).<sup>4</sup> The council of ministers approved a new land policy in 1995 based on the recommendations of the National Land Commission, which oversaw the national discussions on land. The new land policy departed from existing policy by recognizing customary tenure and prescribing a role for community leaders in resolving land disputes. As a result of this process, the land law is comprised of three pieces of legislation: 1) *Lei de terras* (Law no. 19/97 of October 1); 2) a set of regulations for administering rural land called the *Regulamento da lei de terras* (Degree no. 66/98 of December 8); and 3) a technical annex (Ministerial Diploma of December 7, 1999), specifying how to delimit community lands. Together these three pieces of legislation provide the legal framework for recognizing and protecting land use rights and facilitating rural investment.

Mozambique's land law is not a land reform instrument; it does not alter the existing land tenure system or redistribute land from one group to another (Tanner 2002). Instead, it recognizes and formalizes the social and economic realities of land use and access at the end of the war and during economic liberalization. It accomplishes this goal by acknowledging and providing legal protection for existing rights to land, including rights claimed on the basis of custom or context-specific social practices, such as different inheritance patterns, and land allocated by kin-based leaders (i.e., chiefs). The law gives rural Mozambicans stronger land tenure security in the face of third-party encroachment, while also allowing communities to negotiate directly with investors. In this idealized scenario, communities, with legally recognized land rights, can enter into agreements with the private sector to stimulate the rural economy. The law's proponents envisioned communities leasing registered land to investors; however, it is debatable whether there is unclaimed or "free" land in the country today (Hanlon 2004; Tanner 2010). In cases where communities did enter agreements with investors, jobs often did not materialize or consultation processes were not followed (Porsani et al. 2017).

The law (chapter 3, article 12) recognizes three categories of land use rights: 1) occupation by individuals or communities in accordance with customary norms and practices that do not contradict the constitution; 2) occupation by Mozambican nationals who have used the land in good faith for at least ten years; 3) individuals or corporations authorized by the state in accordance with the law. There are several notable implications of these measures. First, land remains state property, a position reaffirmed by the 2004 constitution. Second, communities and private entities can legally register their land use rights, and community land use rights are accorded equal status in the law with those of private entities. Third, the law purposefully defines communities vaguely, allowing for different socio-spatial configurations, and recognizes only local customs and practices that do not contravene the constitution, leaving local party structures and publicly elected officials a voice in land-related matters.

Communities can choose to formalize their land use rights through three legitimacy-making processes: delimitation, certification, and demarcation. A delimitation registers land use rights that individuals or communities acquired through customary tenure or good faith occupation. Communities can take this process further by delimiting the land on a sketch map and entering it into the provincial land registry. Once registered, the community receives a *certidão* (certificate). Finally, communities and individuals can undertake a more expensive mapping exercise known as a demarcation that allows them to apply for a formal title, issued in the name of the community. This is the same title used for state-granted leases; however, it is not subject to a fifty-year expiration period. Regardless of whether there is a title, land acquired through good faith occupation or local custom and that is intended for subsistence production or residency is not subject to a time restriction. Individuals within a community may also request an individual title (subject to community approval) after the particular plot of land is delineated from the community land. If disputes emerge, courts must accept oral testimony by women and men, along with any state evidence.

### The Business of Land

While the land law protects smallholders' land use rights, it also includes a vision for the private sector to engage in land-based production. Individuals, businesses, and corporations who desire land for commercial activities may apply for a state-granted lease called a DUAT (Right to Use and Improve the Land), which is good for fifty years and can be renewed for another fifty years. To request a DUAT, individuals or commercial entities submit an application, along with a business plan, to the Provincial Mapping and Land Registry Service (SPGC) and undertake a full demarcation of the land before receiving a DUAT. If the application is successful, investors who are Mozambican citizens receive a five-year provisional authorization whereas foreign investors are given a two-year authorization in which the business plan must be carried out before receiving the formal title. Although land cannot be legally bought or sold, infrastructure on the land can be transferred according to market principles.

In cases where a potential land concession may exceed one thousand hectares, the law authorizes the state to play a more active role in the approval and title-granting processes. For example, during the first decade of the law's existence, provincial governors approved land concessions under one thousand hectares while the Minister of Agriculture approved concessions between one thousand and ten thousand hectares. In the event a request exceeded ten thousand hectares, then, the Council of Ministers approved the concession. Thus, the size of land under consideration determined the scale at which the state intervened. The central government amended the law in October 2007 to restrict the power of provincial governors to allocate land after reports alleged governors were allocating more than one thousand hectares to communities. The new amendment specified that governors



could only transfer up to one thousand hectares to any community, individual, or company. Under this new stipulation, similar to commercial entities, communities must now apply to the Minister of Agriculture and Rural Development for allocations greater than one thousand hectares, whereas before 2007 they were likely to petition the provincial governor. Accusations of complicity with land grabbing led to the Frelimo government's moratorium on authorizing land concessions above one thousand hectares from the end of 2009 to 2011 (Hanlon 2011).

Over the last decade, the state has modified the law and the constitution with regard to the allocation and recognition of land rights. The revised constitution of 2004 made subtle but significant changes to the wording around DUATs, adding the word “economic” to the phrase “social purpose” to now read “social or economic purpose” (Fairbairn 2013:349–50), equating the use of land for calculative, economic purposes with the recognition of land as the social foundation of rural communities. Alongside the elevated importance of economic considerations, the new constitution also omits a previous statement from the 1990 constitution that prioritized land use rights for smallholders (Fairbairn 2013). In addition to these changes to the constitution, a Presidential Decree revised article 35 of the land law to redefine the state's role from the formal recognition of land use rights to the approval of land use rights (Kaarhus & Dondeyne 2015:200). And finally, in 2010, the Council of Ministers approved changes to the law that reduced the number of community consultations needed to enter into an agreement with a private investor from two to one, but this measure was later overturned, allowing consultations to continue as before (Hanlon 2011). Taken together, these seemingly minute changes to the wording of state documents suggest pro-business Frelimo elites diminished the protections for smallholders originally envisioned in the law. These revisions include economic and market-friendly language that can be used to override other types of claims to land based on its social significance or historical occupation. Mozambique is, as a result, more in line with other African states that provide legal space for the private sector to acquire, lease, or invest in land.

The current law recognizes communities' legitimate claims to land, and it envisions their participation in the management of land and natural resources, including resolving land disputes and identifying the boundaries of community land. In cases where no community certificate or title is recorded, if an investor desires land, then the state must consult the community. In circumstances where the community does have a certificate or title, then the investor negotiates directly with the community without the state's involvement. In fact, because most community lands are not officially registered, their rights are easier to revoke (Norfolk & Tanner 2007). While there are cases where the land law has been used effectively to protect community lands from outside investors (Hughes 2001), many of the consultations between communities and investors have been of poor quality, with vague promises of jobs, with the result that few communities enter into contracts with private businesses for economic activities on their land

(Hanlon 2011:25; Tankar & Rafael 2015). Because there is no public land record and very few landholdings are registered, there is an overall lack of transparency regarding land deals.

Other legal and institutional changes to the mode of local governance during this time period also affect the recognition of land use rights and the ways in which communities participate in land management. In 2000, the government passed Decree 15/2000, which recognized and revalorized “traditional authority” by granting customary institutions and figures state-acknowledged responsibilities. The formal recognition of traditional authority catalyzed competition for acknowledgement by individuals who could claim “traditional authority” in various settings (Kyed & Buur 2006). These struggles for recognition also pivot on one’s ability to allocate and substantiate land claims as part of a broader resurgence of the “customary” in many African contexts (Comaroff & Comaroff 2018). In Mozambique’s legally pluralistic landscape, women and men may petition a range of state and customary institutions to have their land claims recognized and legitimized, resulting in, at times, overlapping claims to the same land.

The land question in Mozambique’s postwar period is tied to perspectives on national development. Following the end of the war, Frelimo’s ruling elite, along with donors and financial institutions, looked to foreign investment as the key driver of socio-economic development and poverty alleviation.<sup>5</sup> From this perspective, development is a technical and financial process that comes from outside national borders, eliciting hopes of wealth and prosperity (Hanlon 2004). But the role of agriculture in discussions of land and development varies in its emphasis, form, and scale. Ruling party elites shaped the contours of privatization and deregulation during the country’s shift from socialism to neoliberal capitalism, reflecting their political and economic priorities (Pitcher 2002). In the postwar period, state and donor perspectives on the scale of agriculture fluctuated between supporting large-scale initiatives such as sugar production (which has a long history in Mozambique), biofuels (2007–2012), and attracting white Zimbabwean commercial farmers to central Mozambique (2001–2007) to stressing the importance of small and medium-scale domestic agriculture (Hanlon 2011). Frelimo’s emphasis on commercial agriculture reproduces the colonial penchant for large-scale economic projects and mirrors the days of centralized state planning. Consequently, smallholders receive little state and donor support for agriculture, despite the significance accorded to their land use rights in the law. Mozambique’s recognition and protection of smallholder land use rights claimed on the basis of custom without the need to formalize these rights resembles land laws in Ghana, Tanzania, and Uganda. But unlike Tanzania, Mozambique does not have localized institutions such as elected village councils that can represent and defend a community’s land rights. Thus, what constitutes the community (and who speaks for it) that outside investors negotiate with in Mozambique is subject to tremendous variation and may undermine the communities’ bargaining power with commercial entities. As the land law surpasses two decades on the books, in practice, the

law's usage by various actors, including the state, has not reflected the non-discriminatory, pro-smallholder language central to the main tenets of the law. The next sections cover two areas—women's land rights and conflicts over protected areas—where the law is employed in struggles for recognition.

### The Gendered Politics of Land Use, Access, and Recognition

Gender specialists are divided over whether to strengthen customary laws or advocate for women's land rights to be enshrined in statutory law as the best means for securing women's access to land (Whitehead & Tsikata 2003). Formal land laws often assume that "women lack adequate land rights under discriminatory customary laws" and state laws will "guarantee equal rights and improved living standards for rural women" (Waterhouse & Vijfhuizen 2001:6). The gap between the "law on paper" and the "law in practice" is only one dimension of the struggle for women's land rights across the continent. The lack of integration between statutory laws for land, marriage, and inheritance disadvantages women when discriminatory inheritance laws undermine women's state-sanctioned land rights. The case of Rwanda is significant, because both its Organic Land Law of 2005 and its post-genocide constitutional reforms, including succession laws, prohibit gender-based discrimination. But in many African contexts, these laws work in concert to undermine women's land rights. In Mozambique, women's land use rights are codified in the land law. For example, article 13, which explains land titling, states that "Individual men and women who are members of a local community may request individual titles, after the particular plot of land has been partitioned from the relevant community land." Moreover, article 16, which specifies the mechanisms of land transfer, declares "The right of land use and benefit may be transferred by inheritance, without distinction by gender." But as Anne Pitcher (2002:212) notes, while women have a right to land titles and a right to inherit, there is no legal mechanism to ensure the realization of these rights, and the law may undermine context-specific ways that women claim land. Alongside the land law, the Mozambican constitution prohibits gender-based discrimination, and the Family Law of 2004 stipulates that women and men have equal rights to inherit property and hold transferable, inheritable rights to land, but it does not provide legal recognition for partners in cohabitating relationships or women in polygynous unions—social and familial arrangements that are common in many communities in Mozambique (Kaarhus & Dondeyne 2015:201) and across the continent.

But despite these legal protections, this non-discriminatory legal framework alone is insufficient to secure women's land use rights. Over the last two decades, two issues in particular challenge the realization of women's land rights in accordance with the law. First, community delimitation processes leave little space for women to articulate their voices in land matters. Thus, delimitation exercises reproduce existing gendered power relations. Second, the commercialization of smallholder agriculture and the introduction of water user fees, especially within irrigation schemes, jeopardizes women's

land rights by disadvantaging women who cannot afford them. Land dispossession in irrigation schemes draws on gendered assumptions about women's lack of "commercial production" that justifies the loss of their land rights.

Statutory land rights for women are challenged by the ways women's access to land is mediated through specific social-cultural milieus, including marriage and kinship relations, the gendered division of labor, the cultural politics of tradition and customary authority, and gender relations that shape the social recognition of land claims in particular settings. In many Mozambican contexts, women's access to land depends on social relations with men, such as marriage, and upon the dissolution of the marriage or the husband's death, family property (including land) may be claimed by other relatives. In some settings, although women use and manage land, control over land remains vested in senior male relatives. In practice, women's land use rights can be ignored, coopted, or expropriated through customary norms and institutions that privilege male control over resources and labor. In addition, local state structures (i.e., district agricultural offices) may also undermine women's land rights when women are viewed as only subsistence producers. Accordingly, state and customary practices, authorities, and discourses are entangled in nuanced and historically specific ways, requiring an approach that recognizes the locally flexible nature of customary practices by situating them in a historical, cultural, and gendered perspective that elides essentialisms (Gengenbach 1998). Moreover, women's and men's land use rights are further complicated by the ways in which being a woman or man is only one aspect of the multiple identities people embody. Pauline Peters (2013) warns against essentializing women, noting that women embody gendered positions (wives, daughters, widows, etc.) and because the category of woman is cross-cut by multiple identities, including age, marital status, religion, class, race, and ethnicity that position women and men differently in their ability to derive benefits from land. With these concerns in mind, I examine the gendered politics of community consultations and the commercialization of irrigation schemes that undermine women's claims to land.

### *Community Consultations and Land Delimitation*

Community consultations raise questions about power and authority, ownership of the process, and who speaks for communities, because the law does not specify the parameters of an adequate community consultation (Kyed 2013:994). Broadly speaking, local and national elites manipulate land delimitations to acquire land at the expense of smallholders (Filipe & Norfolk 2017). In central Mozambique, Randi Kaarhus and Stefaan Dondeyne (2015) document how the delimitation process works to strengthen the authority and legitimacy of male traditional leaders when local state officials and others conducting delimitations do not question the male bias in land tenure issues and when public meetings offer little space for women to participate. "While the legal framework provides equal rights for men and women, in practice the delimitation process provided no real space for women—as women—to put

their need for access to land on the agenda” (2015:207). The community delimitation processes they observed in Manica Province reflected community gender and power relations that marginalized women’s participation, while providing a public space for different men (chiefs and different levels of local state officials) to position themselves as gatekeepers of the process.

In 2009, during a series of community consultation meetings, Kaarhus and Dondeyne (2015) witnessed the gradual erosion of women’s participation in the land delimitation process. The procedure began with an initial Participatory Rural Appraisal (PRA) where women and men were both present but then moved to a larger community meeting where only men served as community representatives. Through several meetings to identify and delimit the community’s boundaries, the only woman’s voice recognized during the proceedings was the elder sister of the chief. Her recounting of the local history, however, served to strengthen her brother’s authority over the land in a dispute with other traditional authorities. Finally, before the delimitation process concluded, local state officials inserted themselves into the process to legitimate the entire undertaking. As the authors point out, when traditional leaders and state officials intervened to direct the process in a context where many women are dependent on relationships with men to gain access to land, delimitation exercises and community boundary-marking provide little space for various categories of women to assert their interests. Kaarhus and Dondeyne (2015) raise questions about voice and representation in public gatherings aimed to recognize land rights: Whose voices speak for the community? Traditional authorities? State officials? Influential elders? These categories of persons are almost exclusively male and cannot be assumed to share the same experiences, needs, and interests of everyone in a specific locality. Thus, the unquestioned, invisible male biases surrounding land tenure issues went unchallenged, at least publicly. Individual and community delimitation processes are embroiled in gendered power relations that marginalize women’s voices in collective decision-making and their ability to have individual land rights officially recognized. Community land delimitations—as public processes of recognition—strengthen (male) customary and state authority, partly because they depend on cultural constructions of authority that privilege men and kin-based leaders.

### *Irrigation Schemes and Commercial Agriculture*

In southern Mozambique, the colonial and postcolonial state intervened in irrigated agriculture, creating longstanding conflicts over land and water, contestations intensified by private investment and land concessions in the postwar environment. Competing claims to land in the lower Limpopo River Valley exemplify these processes. Land along the lower Limpopo River is prone to recurrent flooding, requiring investments in water infrastructure to make commercial agriculture feasible. Recognizing this challenge, in the 1950s, Portuguese settlers established a *colonato* (irrigated agricultural settlement) in Chókwé District, displacing local residents who lived and farmed

along the river.<sup>6</sup> Independence would further complicate land access on the sites of the former Portuguese farms. Local residents tried unsuccessfully to reclaim lost land, but when the river flooded in 1977, the government relocated residents into communal villages away from the river (Bowen 1989; Hermele 1988; Myers 1994). While the state established communal villages as part of its attempt to socialize the countryside, it also nationalized the irrigation scheme and former colonato lands, consolidating them into the *Complexo Agro-Industrial de Limpopo* (CAIL), the largest state farm during this period. In 1984, CAIL was divided into ten smaller state enterprises. These allocations created new conflicts over land within the scheme between former residents, agricultural laborers, and farm managers. These conflicts became more complicated during the late 1980s, as people displaced by the war settled in the district. This history of dispossession, claims, and counter-claims informs the current political economy of agricultural intensification, the introduction of new irrigation technologies and infrastructure, the organization of labor, and the growing commercialization of agriculture in the district.

More recently, agribusinesses redistributed land within the Chókwé irrigation scheme, located on the sites of the former colonato and socialist-era state farms.<sup>7</sup> In particular, *Mocfer Industrias Alimentares* (MIA) acquired a rice-processing facility within the scheme and established out-grower and contract farming arrangements, first with irrigator associations, then later with individual farmers (Veldwisch 2015). These arrangements provided the company with control over land use and access while enabling better-capitalized farmers to use relatively large tracts of land, some of which were cultivated by smallholders (Veldwisch 2015:1010). The state's push for a green revolution to end dependency on rice and other agricultural imports, while increasing rice yields and hectares under cultivation, centralized control over land and water within the scheme as state entities and private agribusinesses worked together in a process that mirrors land grabbing without the company taking direct control over land.<sup>8</sup> As Gert Jan Veldwisch (2015:1025; emphasis original) explains, "The rural transformations that resulted from this contract farming scheme closely resemble those that occur through other forms of large-scale land acquisition. The coordinated actions of an agribusiness investor, in collaboration with state institutions, have led to similar transformations, *without any transfer in formal land ownership to the company.*" This transformation has broad implications for women's land use rights within the scheme.

The restructuring of the scheme over the last half century has eroded women's claims to land through a renewed interest in commercial agricultural production, especially rice. The history of male labor migration in southern Mozambique left a large number of female-headed households, giving women's land rights an added significance in this region. The new commercial pressures exerted on land and water in the scheme coincide with increased water user fees that threaten to undermine women's claims to land if they are unable to pay for water (Pellizzoli 2010). Furthermore, the

government's desire to transform better-capitalized subsistence farmers into small-scale commercial farmers is likely to reduce support for subsistence agriculture. As agricultural production in the Chókwé irrigation scheme is once again oriented toward commercial rice production, women with long-standing land use rights face eviction if they are unable to meet the demands of commercial agriculture, particularly the new water user fees (Pellizzoli 2010). Meeting these demands can be a challenge, especially for female-headed households, due to the lack of markets and the arduous labor of growing rice, which may limit women's time and labor for other income-generating initiatives (Pellizzoli 2010:219).

The local parastatal *Hidráulica de Chókwé-Empresa Pública* (HICEP) demands that farmers grow rice "rather than 'unprofitable' subsistence crops" (Pellizzoli 2010:217). Thus, the importance the state, donors, and private capital place on economic efficiency and agricultural intensification threatens to marginalize women whose land and water usage is deemed inefficient. In a context of commercialization, subsistence practices provide a rationalization for the usurpation of land use rights that are in theory recognized under the law. Similar processes have occurred in other irrigation schemes. For example, in the Massaca irrigation scheme in Maputo Province, women who failed to earn enough money from irrigated agriculture lost their plots (Vijhuizen 2001). As agricultural intensification and commercialization increase, these examples suggest that *de jure* gender neutrality, without a legal mechanism to secure women's rights, is insufficient to protect women's land use rights. Moreover, within irrigation schemes, struggles for recognition hinge more closely on the role of private capital and how it aligns with or challenges state actors.

## National Parks and Protected Areas

Many of the country's more recent and publicized land disputes have occurred in and around national parks, a dynamic that resonates across eastern and southern Africa, where land for biodiversity conservation and ecotourism competes with land for local livelihoods. As Roderick Neumann (1998:4) notes for Tanzania, national parks and protected areas are forged from lands "with long histories of occupancy and use." Similar to Botswana, Kenya, South Africa, Tanzania, and Zimbabwe, the roots of nature preservation in Mozambique derive from colonial rule, when most of the country's national parks and game reserves were established, though these parks and reserves were not always as exclusionary as others in the region (Schafer & Black 2003:59). In the postwar period, the Mozambican state expanded the overall land area categorized as protected. In doing so, community-based natural resource management (CBNRM) and biodiversity conservation projects helped extend the state's reach into rural areas, where it lacked a presence and political legitimacy (Diallo 2015; Schafer & Bell 2002). Although the land law protects community land rights, the law makes special provisions for national parks, granting them the highest level of protected

status. Article 7 defines national parks as total protection zones designated for nature conservation and preservation activities, and where resource use and human occupation are prohibited. In practice, however, all national parks in Mozambique have people living in them, and the enforcement of these restrictions varies.

The state (supported by international conservation groups) used its sovereignty to designate land and resources as protected areas and created concessions for private investors that erode the protections rural communities are entitled to in other contexts, including the provision of a community consultation. Once a protected area is established, the state can make arbitrary decisions regarding who can use which resources within the boundaries of the demarcated area (Lunstrum 2008). Mozambique's expanding tourism sector now features prominently in national development strategies, making the state more invested in protected areas, and raising fears in some rural communities over forcible relocation and the loss of land and resource rights. Negotiating the tradeoffs between biodiversity conservation, tourism, and rural development speaks directly to questions about where rural communities will live and engage in livelihood activities (Dondeyne et al. 2012; Hughes 2006).

### *Limpopo National Park*

In 2001, the government inaugurated the Limpopo National Park (LNP), which forms the Mozambican side of the Great Limpopo Transfrontier Park (GLTP), shared between South Africa, Zimbabwe, and Mozambique.<sup>9</sup> The creation of the LNP from a former hunting reserve reconfigured land use and occupancy rights, as many people now found themselves living inside a protected area. In 2008, the first resettlement occurred in an area that was home to roughly 27,000 people, many of whom lived along the eastern and southern borders of LNP. The government and donors framed the voluntary resettlement as a development opportunity, offering better access to employment and services, such as education, health clinics, and public transportation, while ironically adopting the World Bank's involuntary resettlement framework to guide the process (Milgroom & Spierenburg 2008). Resettlement-as-development emerged as a dominant narrative, replacing appeals to wilderness as a justification for removing people from the park (Witter 2013).

While two villages were resettled in 2008, others continue to live with the daily threat of wildlife encounters and the damage to crops, fields, domestic animals, and water points incurred by wildlife (Masse 2016). The increased conflict between people and wildlife compelled many residents to settle elsewhere, functioning as an "induced-volition" (Milgroom & Spierenburg 2008), blurring the boundaries between "voluntary" and "involuntary" movements. Furthermore, the livelihood restrictions accompanying the designation as protected area also prompt many to "voluntarily" look for another place to settle. Thus, economic displacement offers the appearance of



voluntary resettlement as residents now deprived of various livelihood strategies (i.e., agriculture, livestock, and hunting) must now seek opportunities outside of the park if they are to sustain themselves. Following a history of relocation (i.e., villagization, civil war) in this part of southern Mozambique, biodiversity conservation and national development priorities work in tandem to once more dispossess smallholders of land and resource rights. The land law has played a contradictory role in this, facilitating access to land inside the park while offering smallholders a mechanism to protect their land outside of the park (Lunstrum 2008).

Finally, dispossession also unfolded through an assemblage of actors involved in and around the park, promoting disparate activities, such as conservation, tourism, biofuel cultivation, and local development. The state allocated land adjacent to the park to a company (ProCana) to produce biofuels on the assumption this land was “marginal”; however, this land was actually used by residents for livestock grazing (Borras Jr. et al. 2011). Complicating this case further, the African Wildlife Foundation (AWF) also sought land to create a community nature conservancy on the land conceded to ProCana. Jessica Milgroom (2015) reveals the range of actors involved—ProCana officials, the Ministry of Agriculture, the Ministry of Tourism, the AWF, World Bank, several local communities, the provincial governor, district administrators—in shaping the dynamics of land acquisition and its undoing. It is also noteworthy that the ProCana case positioned different arms of the state (Agriculture and Tourism) in conflict with each other. Ultimately, the land law both facilitated the land grab and helped to undo it.

### *Gorongosa National Park*

Gorongosa National Park (GNP) is celebrated as Mozambique’s flagship national park. Originally created in the 1920s as a hunting reserve for European visitors, in the 1960s the reserve obtained national park status, ushering in a period of scientific management, including promotion as a tourist destination (French 2009). But the ensuing years of war would change Gorongosa’s fortunes. Renamo established its main base in Gorongosa, and the area experienced extensive long-term fighting, which damaged park infrastructure and killed off most of the wildlife. Gorongosa remains an opposition stronghold today, and in 2013, Renamo’s former leader, Afonso Dhlakama, returned to the area as tensions between the two political parties turned violent.

Beginning in 2004, the Carr Foundation (a U.S. philanthropic organization) moved to rehabilitate the park. In 2006, the park’s representatives and the Carr Foundation held two community consultations to elicit support for the Gorongosa Restoration Project (GRP). The meetings’ attendees, however, displayed an openly rare and uniform dissent toward proposals made by the park officials (Schuetze 2015). However, in spite of these objections, the GRP began in 2008 as a public-private partnership between the state and the Carr Foundation. Then, in July 2010, the government expanded the borders

of GNP to include Mount Gorongosa, located twenty kilometers west of the park. This new delimitation increased the overall size of the park by 10 per cent. The incorporation of the mountain as a protected area made human occupancy and land use above seven hundred meters illegal, effectively criminalizing the livelihood activities of roughly two thousand residents at the time the decision was made. From 2010 onward, residents have lived with the insecurity that they might be involuntarily relocated. With the restrictions in place on land use and livelihood activities, they may eventually be compelled to move. The park's supporters justified the incorporation of Mount Gorongosa as a satellite protected area by drawing on scientific discourse that framed local residents as detrimental to the park's ecosystem (Walker 2015). In the case of both parks (LNP and GNP), residents affected by the demarcation of park boundaries had little voice in these territorializing processes. Moreover, in both cases, through the re-regulation of space as protected areas, the state and ruling party (with the help of trans-local actors) expanded its bureaucratic reach and its capacity to exert its sovereignty over territory (Lunstrum 2013) to rural areas where it had previously lacked authority, particularly in Gorongosa (Diallo 2015). The use of the land law to expand the boundaries of protected areas at the expense of smallholders' resource rights represents an ongoing challenge to the protection of smallholders' land use and one of the more contradictory effects of the law that is rooted in struggles over recognition, authority, and sovereignty.

## Conclusion

In an era of more diffuse forms of sovereignty over African land and productive resources, state land laws and policies extend state sovereignty over landscapes and resources where it lacks legitimacy. One of the primary sites for the ongoing process of state-making (cf. Lund 2016) is the use of the land law to facilitate different visions of national development, at times positioning different state offices in conflict with each other. The politics of recognition—from kin-based authorities to various state offices and transnational actors and their entanglements—shape the contours of land governance in fragmented and inequitable ways. As multiple and competing sovereignties govern African landscapes, national land laws and legal categories of property provide one set of discursive and material resources to articulate and contest land claims. Their efficacy in legitimating particular forms of political authority hinges not only on constitutional mechanisms, but also on how struggles for recognition pivot on cultural politics and political economies of wealth and power as competition over land intensifies (Berry 2017).

The case of Mozambique illustrates the contradictory effects of a law designed to protect rural people's livelihoods in the context of increasing pressure on land resources. The law is noteworthy for its legal recognition and protection of smallholder land use rights; however, it also strengthened the state by enhancing its role in land governance, even if it simultaneously undermines the protection of smallholders' rights. While the postcolonial

state has always intervened in land use, the current law outlines a more detailed framework for how the state should negotiate land allocation and promote an investor-friendly environment. Although there are cases where rural communities have successfully defended their land use rights against outside encroachment, there are fewer instances where rural communities have entered into the types of socio-economic arrangements with outside investors envisioned in the law.

The failure of Mozambique's land law to protect smallholder's land use rights at multiple scales diminishes the exceptionalism sometimes attributed to the law's recognition of smallholder land use rights. In practice, Mozambique's law works like land laws in Ghana, Tanzania, and Uganda (to name a few), where the law supports land claims based on custom and good-faith occupancy, but where translating these rights into property faces legal, economic, and social barriers. Thus, the question of scale becomes central to whose rights are recognized by whom and in what contexts. The case studies of women's land rights and conflicts over protected areas demonstrate how struggles for recognition at different scales remain central to the legitimation of land claims, and in the process, instantiate particular forms of political authority—whether embodied in kin-based leaders, local elites, or private and parastatal entities.

These examples also show a paradoxical effect of this politics of recognition that may undermine, rather than strengthen, the state's legitimacy. While the law expands and contributes to the state's authority, whether or not this authority is legitimate (and to whom) remains an open question. The answer to this question will vary by context, but it may partially depend on if and how various manifestations of the state contravene the law and to what effects they do so.

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## Notes

1. My usage of this term implies a dynamic and flexible set of idioms, practices, and institutions that are entangled with the state but still retain some autonomy.
2. Donors and NGOs gave financial support to most of the land delimitations to date.
3. The constitution and the land law define land as state property.
4. One of the critical debates was over the privatization of land and the creation of a freehold tenure system. International financial institutions and the United States advocated this position. While it was defeated, land privatization continues to be discussed from time to time among Mozambican donors.

5. Donors influenced the consultation process and the drafting of the new law.
6. The *Colonato da Vale do Rio Limpopo* was a large irrigation scheme, covering over 30,000 hectares (Myers 1994).
7. At 26,000 hectares, it is the largest irrigation scheme in the country.
8. The 2006 Poverty Reduction Action Plan outlined steps for a green revolution (2006–2009) to increase agricultural production, especially among better-capitalized smallholders.
9. Designs for a transfrontier park extend back to an earlier period (see Mavhunga & Spierenburg 2009).