

The new resource tenure framework in Mozambique: does it really give the tenancy to the rural communities?¹

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Abstract

Mozambique like other countries in the Southern Africa have been experiencing new approaches to resource use and access, especially as far as the rural community rights are concerned. The forestry sector went through various stages of policies after independence. First, the focus was on production plantation (late 70's) and state control over the processing industry through nationalization. The second phase from late 80's and early 90's agroforestry systems were being advocated and the aim was to get the users to assist the government in its reforestation strategy. The new paradigm gives emphasis on management of natural resources with community involvement as from the second half of the 90's. Despite the changes in policy framework and approaches one common question that arose thorough, which in fact may have dictated the failure of some of the strategies, is the issue of resource tenure. In Mozambique, the State owns the land and its resources, having the right to transfer the user rights to various stakeholders. The communities have certain privileges in the new policy and legal framework (land as well as forestry and wildlife). However, the question remains, how far can the community go in exercising those rights: recognition of customary laws, delimitation of community land, potential for having forest concessions, potential for negotiation with the private sector and others etc.. Is the delimitation of land as stated in the Land Law a step towards excludability? If so, who is in fact being excluded: the neighboring communities or the private investor? Who controls the resources and the decision-making? Furthermore, Community Based Natural Resources Management is one of the strategies for achieving the social objective of the Forestry and Wildlife policy (1997) which recognizes community participation and benefit sharing as a condition for sustainable use and management of the resources. Is there a real provision for control of the resources by the users so as to derive the benefits? This and other aspects of the current policy and legal framework are discussed in this paper, especially focussing on the issue of private tenure of agricultural land, trees, etc. and the collective tenure of common pool goods such as forests and grazing land.

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1. Introduction: understanding the current resources tenure context

An analysis of resources tenure in Mozambique has to be looked at not only in terms of the existing legal framework, but also in terms of types of resources available and their main users. As Forster (1999) states tenure assumes that resources are divisible and also highlights the fact that resources distribution are determined by power relations. In the context of Mozambique and other countries political and economic power determine the groups who have access to the resources and the ones who are classified as “resourceless”. The rural farmers since the colonial period have been farming marginal land in the surroundings of rich/fertile land farmed by the ones who have access to capital. And, the purpose of this setting was for the poor farmers to supply cheap labor to the companies (Carvalho, 1988).

Mozambique is a country rich in natural resources having about 78% (62 million ha) of its surface covered with vegetation of different types from small patches of high forest plus the abundant low forest and thicket to wooded grassland and mangroves. Nevertheless, as far as productive forest (valued in terms of abundance of commercial timber) it only cover 25% (19 million ha) of the land. The annual allowable cut is about 500 000 m³ of timber (Saket, 1994).

The forest area is divided into categories comprising State Protected Areas such as reserves, game areas and national parks (6.7 million ha), the productive forest in terms of timber as referred in the previous paragraph, and the multiple use forest areas (low productive forest). This includes land that can be converted into agricultural and other developments. The state owns and manages the protected areas as a sole player or in partnership with the private sector and lately with the community as well. The productive areas are reserved for timber concessions with the private sector being the major player, whereas the third category of forest is explored mainly for energy and construction materials. In the harvesting of these products the licensed are the middlemen who own lorries and have access to various regions linking the producers (the rural population) with the urban market. The middlemen are the main beneficiaries as they retain more profit through imposition of low price to farmers and the fact that the resources are under-valued, hence the negligible royalties paid to the government, on one hand, and the high capacity for transportation on the other.

In addition, the cultivable land is about 36 million ha of which only 5 million ha are actually under cultivation. In general, the agriculture is extensive with very low input and despite

having about 3 million ha of land with potential for irrigation only 37,500 hectares are actually irrigated. Natural pastures account for 33% (12 million hectares) of the cultivable land with a capacity to support at least 2 million head of cattle (Mlay, 1999).

Land and all other natural resources belong to the state, which adjudicates the user rights either to the communities in the rural areas, to the urban dwellers or to both local and foreign private entities. The main agricultural land user is the rural population mainly for subsistence, hence owning small plots without title deeds. Therefore, the rural population farms land obtained through occupation on the basis of the traditional rules or any other informal/formal structure at local level. Plots for agriculture are privately owned, hence with exclusive rights (unwritten rule), though without title deeds, whereas the access to forest and pasture resources is common. However, the private sector is issued with lease authorization for development of large-scale agricultural activities. Apart from agricultural land the private sector can have concession for harvesting forest products, to explore game reserves and land for private grazing.

Figure 1 illustrates the resource distribution pattern and underlines that in fact the poverty in the rural areas is associated with the kind of resources the population have access to. Whether we consider agricultural or forest areas, there is tendency that the rural community can use only the low productive areas. Is this issue addressed in the current legislation? How to improve the benefits, hence the well being of the rural population?

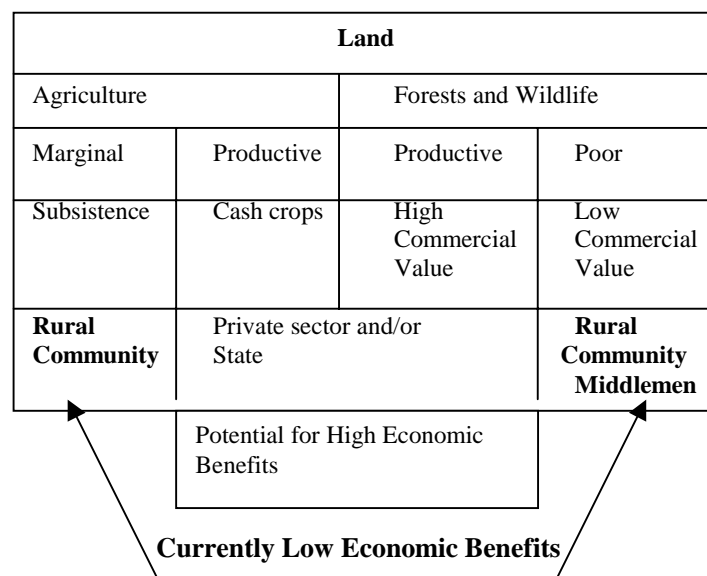


Fig. 1 Rural community in the periphery in terms of access to resources and benefits attained

Similar to some of other countries in Southern Africa, Mozambique went through a central planning stage in which the government set the rules of resource use and controlled the market. In 1987, however, there was a major shift to a market economy, which is being consolidated with substantial change on the resource tenure. In addition, there is change of the role of the state from provider to an enabler through development of policies and regulations, which facilitate the contribution of the stakeholders towards its major goal – economic development.

This paper attempts to explore the policy changes, especially as far as the land and forestry tenure is concerned and examine its impact on the access of the resources by the rural communities on the light of the common property regime that is currently envisaged. This option is in tune with the fact that most resources are indivisible, it can contain the problems in location of productive areas, productive efficiency enhanced through internalization of externalities caused by use of resources in different points in the area (Arnold, 1998).

2. Post independence resource tenure policies: State Ownership, State control and State supply

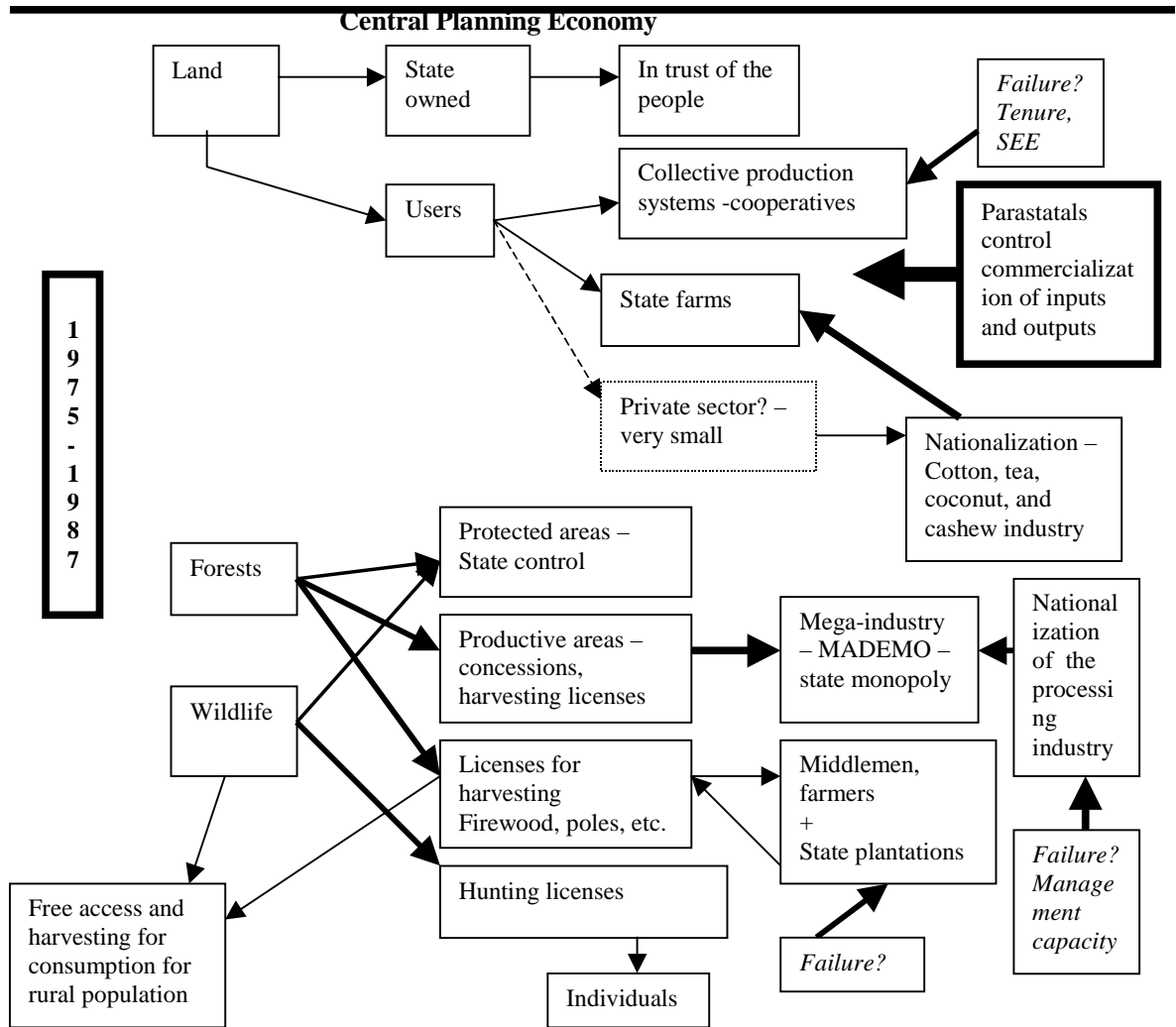
Mozambique gained its independence in 1975 from the Portuguese. Similarly to all colonized countries, it inherited part of the three-tier ownership system as described by Okoth-Ogendo (1996), that consists of state/public ownership, individual proprietorship (private) and community property. However, as noted by Negrão (1998), one of the characteristic typical of Mozambique (which distinguish perhaps the colonization approaches of Britain and Portugal) is the fact that there were no communal/community/tribal lands inasmuch as there were no native reserves. What existed were areas where communities resided and used the available resources for subsistence purposes without any clear ownership rights, despite allocation through the traditional leadership. Therefore, in community areas resources ownership resembled what is described by Forster (1999) as a situation in which no one has clear rights, hence no one has rights to exclude others and no potential user can be excluded. In addition, there is prevalence of two parallel systems in the country. On one hand, the formal which limited access and control over the use of the resources, especially in

productive and protected areas, and the traditional (where it survived after independence) which establishes the collective rules still guiding resource allocation and use.

Land and other natural resources tenure, particularly forests and wildlife are interrelated and have a great impact on the livelihood of the rural population in Mozambique. Figure 2 illustrates the policy change as regards resource tenure in Mozambique from independence to introduction of the Structural Adjustment Program (SAP) and also until the beginning of 1990's where peace made it possible to materialize the changes.

Figure 2 highlights the production structure in the agrarian sector and the fact that the type of economy influenced also the type of resource ownership, especially as to land. The collectivization of production, the role of state as the major supplier of all food and forest products dictated the control measures in the market and subsidized unprofitable production systems. It can be stated that since 1975 to 1987, only state property prevailed in the country, because even the farmers had to organize their production systems as determined by the government. Traditional institutions weakened and their role was no longer clear as regards allocation and control of resources. However, even though operational rules prevailed, there is no evidence that the collective choice/rules, which guided the harvesting of forestry products, disappeared completely during this period.

In the late 70's, the state created plantation to supply firewood and poles apart from the control of timber production. Management problems coupled with the change in the economy orientation led to a design of new strategy for forestry development in which the role of the rural population was recognized. The called reforestation strategy gave the community an important role in replacement of harvested areas, and provision of alternative sources of wood products for their consumption and supply to urban market. Inputs such as seedlings were distributed as incentive. However, lack of baseline socio-economic studies to evaluate issues of land tenure and implications of the new strategies as well as analysis of labor availability, and mechanisms for distribution and benefit sharing within the household were but few of the main reasons of the failure of this policy (Nhantumbo, 1997).



Consequence = progressive decline in production of agricultural produce and forest products

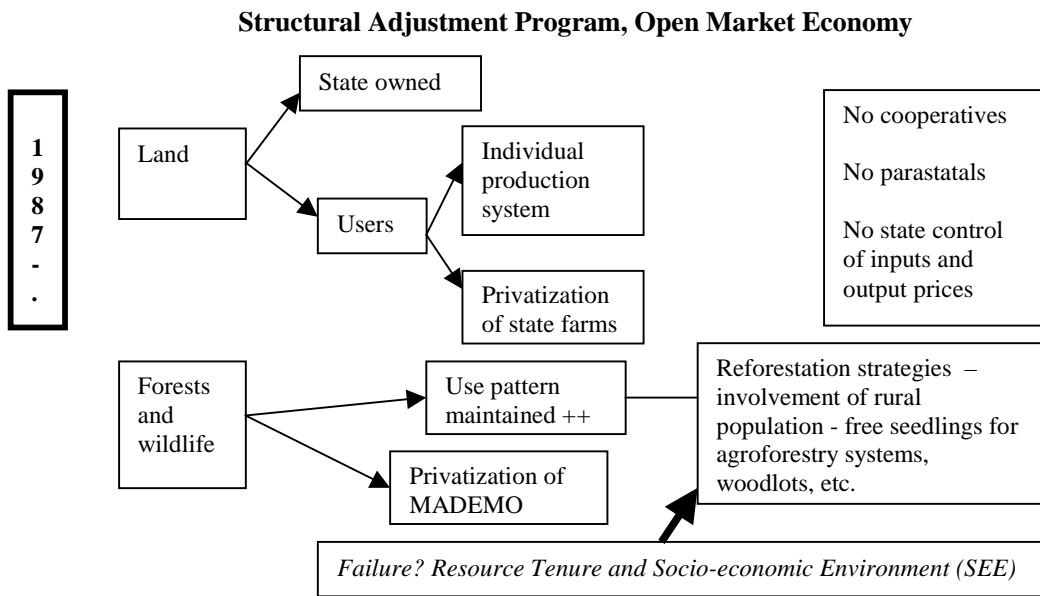


Fig.1 Change in resource tenure in Mozambique from independence to SAP

Many government policy interventions thorough the years, though well intentioned as far as the supply of food and forest products objective, they failed to address a fundamental platform for successful implementation of such initiatives. In fact, the lack of assignment of clear rights and obligations to all other stakeholders as highlighted in Figure 2, played a role in their exclusion from the decision-making process and active participation in development of the country. However, one important step is that the state started to acknowledge that it could no longer be the sole supplier, but an active role had to be played by the other stakeholders. This notion gained more ground with the new policy framework in the agrarian sector developed rather approved in the second half of the 1990's as discussed in the next section.

3. The Wave of Change: from state provision to involvement of stakeholders

3.1 The policy framework

Since early 1990's the land tenure became an issue of debate, which concerned not only the government, but also the civil society. MA (1992) identified the urgency of resolving the tenure over resources for the farm-household as well as the private sector in order to promote the increase on agricultural production. This coupled with incentives such as credit, according to the government, would create a basis for access to the market by smallholder farmers.

Debate at different levels including GO, NGO, academia, donors and other stakeholders led to a development of what can be considered not a complete, but more coherent natural resources policy framework. This is more in tune with both national economic and political environment as well as the global trends on resource management through the various international agreements as the Rio Agenda, Biodiversity Convention, CITES, etc.

The current resources tenure policy framework is comprised of the Forestry and Wildlife Development of 1997 (BRI:14, 1997), the Law of Forestry and Wildlife of 1999 (GoM:1,1999), the Land Law of 1997 (BR 1:40,1997), the Land Regulation of 1998 (GoM:2, 1998) and the Technical Appendix of 1999 (MAP, 1999). These are the main policy instruments governing the access and ownership of resources by all stakeholders. The state continues to be the guardian of the resources, holding power for allocation. However, the role of the other stakeholders is recognized and it is clearly stated in the land policy that the

traditional adjudication of land should be acknowledged and used to issue a formal title deed in case of need.

This is important given the fact that the new policy paradigm emphasizes the management of natural resources with community involvement. This policy was developed on the basis of major goals envisaged on the economic development policy, for instance, which include food security, sustainable economic development, and reduction of unemployment and poverty. The argument presented in the BR I: 14 (1997) on forestry policy, is that the rural community has not benefited from the harvesting activities going on in the surrounding of where they live. Hence the benefits have been only accruing for the state (through taxes and fees) and to the private sector, which gets the revenue of processed or unprocessed industrial timber and other valuable products. This resulted in the definition of the social objective as being the involvement of the community in the management of forestry and wildlife resources for conservation and sustainable use of resources. The strategies include community participation in resource use planning and law enforcement, capacity building, legal representation of the community, development of legal instruments for securing access of the community to resources and provision of direct benefits.

Therefore, the creation of community based organizations (Natural Resources Management Committees/Councils), as the legal representative of the community is crucial to acquisition of legal user rights of land and other resources. The Forestry and Wildlife Regulation states that such committee should include apart from community representatives, the private sector, and associations of farmers and local government, i.e., all interested parties in the area.

The full user rights of resources by the community are not obtained only with a title deed for land, but also with authorization through license or concession for harvesting other products such as forest products, and game. However, the latter requirement is only when the community explores the resources not only for its consumption, but also for commercial purposes, in which case is equally treated as a private entity with requirement to pay royalties. One can then ask, if the community is expected to perform some duties of state employees, such as law enforcement without remuneration and yet pay royalties for resource utilization. Is the community getting the benefits that the current policy is claiming?

The land law/regulation on the other hand states that the state recognizes first that land occupation through customary law if the land lies outside the protected areas. Oral testimony is recognized as a source of information for recognition of the rights of occupancy. Secondly, title to individuals and communities are not subject to a limit in time and it is free of charge. Thirdly, communities ought to be consulted in the adjudication of land to other user external to the community, and rural community has a role in natural resources management as well as conflict resolution. The regulation also emphasizes the fact that the community can delimit their land and this can be included in the official mapping system if the community so wishes. In addition, community should have access to water resources for public use available in the neighborhood, and any contracts with third parties for utilization of the resources within the boundaries of the community should be based on consensus within it. Finally, similarly to the Forestry and Wildlife law, an entity representing the community is also envisaged and 3 to 9 people including the District Government Officer and representatives of the local community should compose it. Are these two legal devices conflicting? Apparently not if wisely used in order to avoid duplication and conflicting decisions regarding the use of land and forestry resources.

As stated in this section, despite the fact that the State owns the land and its resources, having the right to transfer the user rights to various stakeholders, the communities have certain privileges in the new policy and legal framework (land as well as forestry and wildlife). This includes respect of the traditional rules, delimitation of community areas and participation in decision making through local structures. However, the question remains, how far can the community go in exercising those rights? Is the delimitation of land as stated in the Land Law a step towards excludability? If so, who is in fact being excluded: the neighboring communities or the private investor or the state? Who controls the resources and the decision-making? Lets look at some examples of delimitation of community areas to get insights on the opportunities and limitations associated.

3.2 The experience in implementation of the policies

Land delimitation

According to the MAP (1999), the steps to be followed in the delimitation include first the awareness rising as to their rights and obligation stated in the law. Then follows a Participatory Rural Appraisal to understand the socio-cultural and the economic context of the interested and affected target as well as initiate the identification of community limits/boundaries. A draft map is drawn and later discussed with the community. After consensus has been reached then the limits can be registered in the national maps. The final stage is the demarcation of the land, which is done if the community aims at acquiring a title of the land and or other resources.

There are two main agents in land delimitation: government offices at provincial/district level, projects and NGOs. According to an informal interview carried out with people involved in this work in seven provinces of Mozambique, there are criteria or situations that lead to a need/priority for delimitation. First, delimitation to protect the community stake when there is an interest from the private sector to invest in a certain area. Second, when the community or organization working with community requests and finally when there are conflicts on resources use either between the community and external users (private sector) or between two neighboring communities, the latter being less frequent. A multidisciplinary team including agriculturists, geographers and lawyers carry out land delimitation (apart from the community). From the examples cited by the group of people interviewed there are more than 30 community areas being delimited in the country. The resources in the areas include agricultural land, pasture, fishing, salt production sites, elephant reserves and even areas with non-renewable resources such as diamonds.

Some of the problems encountered by the different practitioners in the field are related first with the reluctance of the community to understand the changing roles and especially the fact that it can participate in the decision making on resources allocation. Therefore, the Land law dissemination becomes a very slow process, hence costly. The other aspect is related to the definition of the community in the law versus the understanding at local level. The law states that the community is a group of people sharing resources within the limits of a locality (administrative unit) or below. However, in Gaza province not only people identified limits which go beyond the administrative boundaries, but also delimitation raised conflict between

communities as one claimed exclusive rights over the resources including the common pool goods such as water and grazing land.

In addition, it is reported that the delimitation has been raising expectation to the traditional leaders who see it as a way to regain power lost after the independence. This seems to confirm Bruce's (1999) statement that one of the major difficulties faced in the attempt to secure rights for the communities is poor integration of national systems of statutes and custom. However, this limitation is not always a hindrance and in Zambézia province 4 out of 12 communities have successfully completed the process required for land acquisition, having the title deeds.

Helvetas is one of the pioneers on the land delimitation and zoning especially in Maputo province, which started with farms associations in Boane district 1991, simultaneously with debate for land reform. This was followed by an active involvement in dissemination of the new legal framework on land tenure, under the direction of the 'Land Campaign', a congregation of various NGOs which lobbied particularly for the rights of the community. One of the motivations/opportunities for expanding the work in Maputo was the mega-project Blanchard that was a source of conflict with the community. About 22 000 ha have been delimited in Matutuine and a map of existing and potential conflicts has been produced (Appendix 1). The experience of Helvetas as previously mentioned for other provinces is related to the awareness of the communities about their rights and also the role of delimitation and land mapping as an instrument for negotiation and celebration of land use contract with private investors and others. Furthermore, the creation of community law enforcers without the same status as the government employed in this field is source of discontent/reluctance for involvement and also not all the government officials agree with the delimitation of land (indicated by the unnecessarily delays). Despite that, there are three communities in Maputo province that gained recently the title deeds (Dinis & Nhancale, 1999; Dinis, 1999).

Community based Natural Resources management: access to land, forestry and wildlife resources

There are about 41 CBNRM in Mozambique initiated by government, projects and NGOs and an unknown number initiated locally based on indigenous knowledge. CBNRM are implemented as a conflict resolution mechanism and benefit sharing for the different users of the resources, or simply as a way to promote sustainable utilization of resources as envisaged in the government strategy for achieving the social objective of the 1997 Forestry and Wildlife. A typical example of a conflict as opportunity for CBNRM is Tchuma Tchatu, whereas the second is the DNFFB/FAO/Dutch project with pilot areas in Maputo and Nampula provinces aiming at development of methodologies for CBNRM. Such methodologies include application of participatory approaches, delimitation of community areas, participatory inventory, management plan and zoning, which will lead eventually to a title deed for the land and concession for commercial use of other resources. Promotion of alternative sources of income is also a core activity. In the face of CBNRM, is there a real provision for control of the resources by the users so as to derive the benefits?

In the case of Tchuma Tchatu the community manage the resource or benefit from the contribution given by the safari operator to the community and to the local government. The real owner in the sense of having a legal right to use the resource is the operator and not the community. The experiences of the pilot projects in Maputo and Nampula are different due to the fact that the community is involved in harvesting forest products such as charcoal in one case and timber for furniture in the other. Therefore, the title deeds complemented by the concession authorization for forest products are instruments that the community can use to get better prices for their products or for negotiation of partnership with the private sector or other stakeholders. However, the process of getting either of these authorizations has been rather slow. The reasons can be related with the lack of clarity on the procedure for recognition of the legal entity representing the community on one hand, but also the government may not be ready to adjudicate the resources to the communities for their own benefit. Readiness to adjudicate and to receive and manage the resources as stated by Mansur and Nhantumbo (1999) are two determinants for successful implementation of CBNRM in Mozambique. Bruce (1999) also lists other challenges to foresters, economists and the community itself. The first actor is concerned with the development of strategies for involvement of communities in conservation, whereas for the economist concern is to

demonstrate the comparative advantage of Common Property. In turn, the community hope is that access and ownership can ensure conservation of cultural values as well as lead to political and economic autonomy. However, as earlier illustrated in the Figure 1, the land that is being delimited in most cases falls under the two categories of either marginal land for agriculture or low productive forests. Therefore, there is likelihood that the system of resource distribution favoring the class with capital will continue.

4. Common property and implications of the new policies on natural resources management

In the last sections various aspects of the current resource tenure in Mozambique were raised. These included the fact that communities are mainly in marginal land, hence it is this land that they will have legal rights to. Forster (1999) on a study of the land tenure in Latin America highlights the fact that land reforms in fact target marginal quality land where peasants are pushed into fragile lands with high environmental costs. These include high propensity for erosion, deforestation, reduction on biodiversity and even an effect at large scale, i.e., regional and global climate modification. The author add that decisions on resources are influenced by internal variables including production factors (land, labor and capital), livelihood strategies and local institutions as well as external factors which include the markets and government policies and legislation. As indicated earlier, this situation is similar to Mozambique in that communities have easy access to marginal land and the problems above mentioned can be observed in various settlement especially were the population density is relatively high. Land markets even though not formally recognized in the policy and legislation, they exist and in fact tend to push further to non-productive land the peasants who in exchange of few dollars accept to give up their land.

The second aspect is the intrinsic characteristic of delimitation/demarcation, which is exclusion and potential conflicts that might result if no adequate regulations to address the sharing of common pool resources are formulated. Rural communities in Mozambique like in other Southern African countries apart from the agricultural plot which is exclusive for the household, they share all other resources such as water points, pasture land, forests, etc. Delimitation brings the notion of exclusion - whose exclusion? There are two levels, one that is the exclusion of the neighboring community from the use of a resource, which was formerly shared, or the exclusion of external users, mainly investors. The delimitation as it is

envisaged by the government is to recognize the limits of a community and allow it to benefit from any contracts signed with investors in order to add value to the natural (land, forests, water, etc) and human resources they have. However, it is not to exclude other communities from having access to basic resources for their livelihood.

Third, institutions formal and informal as well as integration of the new ones envisaged in the land and forestry and wildlife laws need to be addressed carefully. The question of institutions also seems to be contentious (as indicated in case of Gaza province) when the roles of the traditional and the local formal structures are not clear and well articulated. One important aspect referred by Munker (1996) is that autochthonous land use systems were guided by flexible rules, which reflected the local and changing conditions. This may suggest that there is requirement for rescuing the useful rules for the present context and clarify the role of the various institutions, especially taking into consideration the creation of the new and encompassing institution for management of land and other resources: the committees or councils. One of the aspects highlighted by Arnold (1998) when listing the principles for enduring common property regime institutions conflict resolution mechanisms, authority of the community to devise its own institutions and nested enterprises are essential. However, projects, NGOs and others facilitators for implementation of CBNRM tend to take a rather top-down approach as far as the devise of institutions is concerned. For example, for some gender equity is translated as equal number of men and women in the committees. Nevertheless, this should be so if a detailed study of the social and hierarchical structure indicates this is in fact the way to voice concerns and solutions to those concerns for all groups in the community. The lack of such analysis has potential for undermining the role that the committees and other representative entities have to play for successful implementation of common property regimes. Other principles apart from clear boundaries include congruence between appropriation and provision rules and local conditions, collective choice arrangements, monitoring mechanisms, and graduated sanctions (*ibid.*). These are being taken into consideration at various levels in the implementation process.

The fourth aspect not discussed earlier refers to the size of the community. DNFFB/FAO/Dutch project have, respectively, a community of 300 households in Goba and almost 10000 ha of land without so much high production potential, and 680 households in Senhote and Niviria with 12000 ha of land with relatively rich resources in terms of tree species (Mansur and Nhantumbo, 1999). The management of resources in both cases is

through interest groups (*ibid.*). Is there evidence that the management of the first community in Goba is better than Senhote and Niviria due to size? Perhaps not, however, experience from elsewhere as indicated by Bruce (1999) suggests that common property regime is predisposed for success when the group of users is small and the resources not too extensive. The reasons according to the author include low cost of intra-group enforcement of rules, extra-group exclusion, easy detection of problems and infractions, better coordination and participation in the decision making.

Despite having listed few issues to be addressed to enable successful implementation, common property regime is a way forward for sustainable management of resources. As stated by Bruce (1999) common property is a strategy to increase incentives and ensuring community confidence to undertake long term investment. Furthermore, the resources such as rivers, fish, wildlife are not always divisible by household and resources like forests and pasture land may be costly to partition. Panayotou (1998/9) add that creating and enforcing restrictions and regulations of the private use bear more cost than adopting collective ownership, which are more efficient as far environmental quality is concerned. Mozambique's legal framework for land tenure and the CBNRM strategy attempt to give such rights to the community, with the expectation of boosting awareness and participation for sustainable use and management of resources. Nevertheless, regulations have to be rather detailed and clear on how the communities should share the resources, especially as regards the common pool goods. In Namibia, for example, the conservancies are delimited with the objective of identifying the extension of land within which a community would like to manage jointly the resources, generally wildlife. However, fencing is not allowed and the neighboring community cannot be totally excluded from the common pool resources such as water and grazing, both very scarce in the dry conditions of this country (Nhantumbo, 1999). However, appropriate exclusion is beneficial in that the cost of depletion is internal to the users and rational users will only extract products whose costs do not surpass the price of the commodity including the forgone future benefits (Panayotou, 1998/9).

To conclude, this paper discussed the changes on the resource tenure policies in Mozambique starting from when the state assumed the role of owner, provider and controller to the recent policy framework, which is inclusive to all stakeholders. The new paradigm for sustainable use of resources is involvement of the community in the management of resources. Clear

ownership user rights are given to the community through common property regimes. However, some hindrances encountered in the implementation process were looked at.

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