

# Women's Land Rights in Post-War Mozambique

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Women are disadvantaged in the post-war struggle for land

A prolonged struggle for independence, followed by natural disasters, economic crisis and sixteen years' civil war, has led to the deep impoverishment and massive displacement of rural people in Mozambique. During the civil war, over one third of the nation's estimated 16 million people were forced to flee their homes (see Wilson 1992). Agriculture was devastated with the loss of livestock, trees, agricultural tools and seed stocks and the collapse of rural marketing. A Peace Accord was signed in 1992. With its national infrastructure in ruins and state spending tightly restricted by an IMF-guided structural adjustment programme, Mozambique's Government has emphasised a policy of persuading people to 'go back to the land'<sup>17</sup>.

After the war, there has been a gradual and partial return of refugees and displaced people to the lands they formerly occupied (see Waterhouse and Lauriciano 1994a, 1994b; Waterhouse 1997b; Dolan 1997). This has occurred in a context of increasing competition for the most fertile land with best access to markets (see Mario 1996; Myers et al. 1993).

As Mozambique pursues a liberalisation policy under IMF auspices, the new political and business élite have taken advantage of a weak and confusing legal-bureaucratic system (see Garvey 1994) to stake a claim on huge swathes of the country's best land (see ORAM 1996; Hanlon 1995). Meanwhile, even as they try to rebuild their lives from almost nothing, peasant farmers have been struggling to maintain their existing hold on the land.

Burdened with a historical legacy of secondary land and property rights, and relatively poor access to education, waged labour or legal advice, women peasant farmers are particularly disadvantaged in the on-going struggle for land compared to men.

<sup>17</sup> An indication of this thinking was when, in response to a crisis in the cashew processing industry, threatening thousands of workers with job losses, the Mozambican Prime Minister argued (in October 1997) that the solution to their predicament was simple: the redundant workers should go back to farming.

I wish to illustrate some of the problems, but also opportunities, that Mozambique's rural women face in reconstructing their lives, through reference to a case study on gender relations and land rights, which I carried out in one village of the South - namely Ndixe, in the district of Marracuene.

**Most women in Mozambique depend principally on subsistence agriculture, and thus on access to land, to ensure their livelihoods.**

Through over a hundred years' colonial policy of forced labour and heavy taxation, men in the south of Mozambique tended to migrate for work, either to nearby towns or to South Africa. Women were obliged to stay home in the rural reserves, producing food for their families and for the market and ensuring the welfare needs of their children and sick or elderly male labourers (see Hermele 1986; First 1983). This legacy still informs gender relations today.

In recent history, the war forced hundreds of thousands of rural people to abandon their homes, often taking refuge near towns or in peri-urban slums. In Ndixe, following a massacre by the then rebel movement, RENAMO, on New Year's Eve, 1985, the village was completely deserted for eight years (see Waterhouse 1996).

With virtually no access to employment, many Ndixe women found urban life incredibly hard. After the war, they were often obliged to leave the small plots of land that sympathetic relatives or councils had allowed them to occupy. With no other means of survival, they made their way back to the village. One woman told me: 'I was a useless dependent in the city - the best thing I could do was to come back here, to grow food for my children'<sup>18</sup>.

Many women came back alone, or with young children. Some lost their husbands to the war. Many others were abandoned by husbands who went for work in South Africa or elsewhere. Others left their husbands in town, whilst they returned full-, or part-time to the village to ensure the family's food supply (see Waterhouse 1997b).

Married women have relatively better access to labour (through their husbands' work on the farm - and sometimes that of co-wives) or to capital (through their wages). But women heading households alone - over 40% of women in Ndixe - face particularly severe labour and capital constraints.

This is reflected in their food security situation. For six to twelve months of the year, married women generally have enough produce from their farms, but women heading households alone grow only enough food for around four months, depending for the rest of the year on casual farm labour and gathering fruits, leaves and firewood (see Waterhouse 1997c).

<sup>18</sup> Interview with Alice Moamba, in Ndixe, 1997.

This situation of gender inequality is exacerbated by the fact that, under widely practised customary law, men have direct inheritance rights to farm land, cattle and property - particularly housing - whereas women do not. Under customary law, women's access to all these resources depends on kinship or marriage: in other words, women acquire access to land and a house through their parents, brothers or husbands (See Waterhouse 1997a, Dominguez 1996, Junod 1962, and Loforte 1996). (Even though formal law establishes the legal equality of women and men, spouses are only fourth in line for inheritance<sup>19</sup> - which is a problem for women, when traditional property rights are vested in

men). Divorce generally means that a woman loses all access to the resources of her husband's household and, traditionally, even access to her children (see Waterhouse 1997c).

**Women have only secondary land rights under a resurgent customary law; but the rules may be changing.**

At national independence in 1975, the new Mozambican government (composed of the former liberation movement, FRELIMO) denounced customary law as backward and superstitious. The traditional leaders who underwrote it were dubbed collaborators with the colonial regime, and FRELIMO promptly deposed them from power (see Roque 1995). Nonetheless, customary norms and practices continue to be followed, especially at household level, for example in regard to inheritance rights and the division of labour and power between women and men<sup>20</sup>. During the civil war, RENAMO rebels sought to champion the cause of some embittered traditional chiefs. Peace was partly achieved on the promise of some kind of formal reinstatement for traditional leaders (see Lundin 1996).

In the patrilinear south, under customary law men have primary land rights through inheritance and the right to request more land, if necessary, from the traditional authorities. Women's access to cultivated land depends on kinship (through male relatives) or marriage. When a woman marries, traditionally she moves to her in-laws' house, and her mother-in-law, or husband, will show her where to work. Although in northern Mozambique land is inherited through the matrilineal line, control rights over land are still vested in men, principally in a woman's maternal uncles and nephews.

<sup>19</sup> Article 2133 of the civil code.

<sup>20</sup> Interview with Ismael Ossemane, Vice-President of the National Peasants' Union of Mozambique (UNAC), 1996

In the south, women are particularly vulnerable in the case of divorce or separation from their husbands: the wife is obliged to leave the family homestead. If this happens, she loses all rights of access to the land, considered to be her husband's. Her main recourse would be to go back to the land of her parents or brothers. Yet, after the dislocation by the war, many women no longer see this as an option<sup>21</sup>.

Despite their secondary rights to farm-land, it is important to note that under customary law, women have independent rights of access to common lands, such as forest and scrub lands used for grazing and, particularly relevant to women, for gathering firewood, fruits and leaves<sup>22</sup>. See also Waterhouse (1997a).

In Ndixe, as in so many other areas of rural Mozambique, agricultural wealth was devastated by the war. Now, five years later, most families depend heavily on these common-land resources for their survival. However, until a new

land law was passed, in June 1997, these rights were not legally protected<sup>23</sup>. (See also Mazula (1996), Gengenbach (1997), and Wilson (1992)). Meanwhile, an interesting change seems to be taking place in Ndixe. Many younger women are now refusing to live with their in-laws, but insisting on having their own homes. This could partly reflect a loss of wealth and authority that elders in the rural south experienced during the war<sup>24</sup>.

It may also reflect the fact that some women have achieved direct control over land, through three processes:

- the local FRELIMO secretary has redistributed valley lands that were abandoned after independence, or during the civil war, to local families, including those headed solely by women;
- in the absence of their husbands, widowed or abandoned wives have been able to return, unchallenged, to the land of their former husbands;
- national unemployment levels being high and rising, a number of men have recently migrated into Ndixe, to take advantage of the firewood and charcoal markets in the nearby capital city, Maputo. Some of them have secured a place on the land by marrying local women - reversing the usual rule whereby wives live on their husbands' land (see Waterhouse 1997a).

<sup>21</sup> Interviews with women in Ndixe, 1997.

<sup>22</sup> Bina Agarwal (p. 19) distinguishes between land rights based on individual or joint family rights, and those based on community membership.

<sup>23</sup> Under the former *Land Law of 1979* and its regulations of 1986, it was possible for family sector farmers to acquire either an individual or an association land use and a benefit title deed; however, these titles would not cover rights to uncultivated common lands (unless these could be clearly demarcated as the grazing lands used by individuals or association members). The revised *Land Law of 1997*, however, foresees the specific protection of common lands, under the clause allowing for community land titles, which reads as follows:

Article 9: Acquisition

The right of land use and benefit is acquired by occupation in the case of individual persons and local communities, in accordance with customary norms and practices provided that such norms and practices do not contradict the Constitution.

<sup>24</sup> Cabaco describes how in the early years of national independence, after 1975, Mozambique's FRELIMO party discredited tradition and the elder generation who upheld it, promoting instead a philosophy of the 'new man'. See B. Mazula (ed.) *The Long March of Mozambican Democracy and Development*.

**Women have equal land rights to men under formal law, but most rural women are ignorant of these rights and hardly make use of them.**

Under the Mozambican Constitution, all land is national property. The old law gave peasant farmers the right to continue farming land they 'traditionally' occupied, and to apply for 'land use title deeds' to cultivated lands<sup>25</sup>. Although the title deeds were free, the costs of demarcation made it impossible for the

vast majority of individual peasant farmers to even dream of acquiring a title<sup>26</sup>. (See also Hanlon (1995).

The new land law of 1997 confirms the constitutional principle that women and men have equal rights to occupy and use land. It further spells out that women have the right to inherit land. And, for the first time since national independence, it recognises the right of 'local communities' to secure a collective title to their lands, including cultivated, grazing and common lands; it further foresees that such lands may be governed according to customary laws - so long as these laws do not contradict the Constitution of Mozambique<sup>27</sup>.

As far as women are concerned, the terms of the law are progressive. However, its implementation is likely to be highly problematic. The first problem is that most rural women are ignorant, or make little use, of their formal land rights. Even when the national peasants' organisations, like UNAC, and other NGOs are able to carry this message to them, most towns, let alone villages, have no functioning court or tribunal. Local justice is usually meted out according to a mixture of formal law and custom, by male elders, traditional leaders, FRELIMO party secretaries or religious leaders, all of whom are almost exclusively male. Even in Ndixe, where male absenteeism is high and a large proportion of households are headed solely by women, until the time I began my research in 1996, women were not allowed to participate in local meetings on land management.

The new land law of 1997 offers land rights for all, on a 'the-user-pays' basis. The dual challenge is to secure women's rights of access to land under customary law, whilst promoting their formal rights to inherit and control land.

<sup>25</sup> See the '1986 Regulations of the 1979 Land Law'.

<sup>26</sup> Interview with Ismael Ossemane, UNAC, 1996.

<sup>27</sup> See footnote 7 above.

Women's secure rights of access to land under customary law have been eroded by the social disruption by war and the economic transition to an increasingly market-based economy. At the same time, however, as the experience of Ndixe suggests, new opportunities arise for women's direct access to, and control over, land.

In keeping with the national Constitution, the new Land Law of 1997 does not allocate rights on the basis of gender difference, but of equality before the law. Although it allows for local communities to follow customary law, this will happen only when the law in question does not contradict the Constitution.

Despite the apparently progressive terms of the law, there are likely to be serious problems with its implementation. The likely danger is that stronger actors in the market - such as private, commercial investors or speculators - have the best chance of securing land concessions and titles. This could reinforce peasant farmers' already marginalised position.

Meanwhile, at community level, the partial revalidation of traditional authority, and the shift to an increasingly market economy, opens the opportunity for a new power alliance between local government and traditional authorities, both of which institutions are heavily male-dominated.

Given peasant women's generally lower social status and weaker access than men's to labour and capital resources, they tend to be weaker players in the market, which reinforces their dependence on men and means that their relationships with men are a key aspect of their survival strategies. This aspect of gender relations should not be ignored. It suggests that strategies aimed to protect women's independent land rights, without associating men in the process, may not be successful<sup>28</sup>. (See also Dominguez (1996).

A first step in defending rural women's land rights may be to secure their customary rights of access to land. One practical opportunity for doing this is to facilitate peasant farmers' access to collective land titles, which would protect not only cultivated, but also common lands from alienation. The significance of common land for women's livelihoods, in particular, has already been indicated.

This may be a first step, but it does not go far enough. Within local communities, further measures are needed to facilitate women's use of their formal rights, to inherit and directly control the land that they farm. This is a major challenge facing advocacy work in the future.

<sup>28</sup> Several studies in the south of Mozambique have found that women receiving land titles feel that the land actually belongs to their husbands. (Interview with Margarida Mejia, Centro dos Estudos, UEM, Maputo.)

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