

## **Postwar land dispute resolution: land tenure and the peace process in Mozambique**

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### **ABSTRACT**

Land tenure issues are fundamentally important to a peace process and agricultural recovery. Disputes over land resources between participants in formal versus customary tenure systems, and the inability of the two to connect in terms of how such disputes are resolved in ways that are viewed as secure and legitimate (and therefore respected) can have especially serious repercussions in periods of recovery from armed conflict. The lack of legitimate adjudication institutions able to resolve disputes between tenure systems has, as the fundamental problem, the existence of evidence relevant to a claim that is available and legitimate within tenure systems, but not between systems. The present work considers the constraints and opportunities for land tenure dispute resolution for groups belonging to customary and migrant tenure systems and formal tenure systems in critical resource (agronomically endowed) areas of postwar Mozambique. From a social survey carried out on 521 households in two provinces of northern Mozambique, the research focused on aspects of postwar customary tenure systems for potential utility as evidence in land dispute resolution within the formal tenure system.

Following a brief discussion of the role of land tenure in a peace process, and the land tenure dynamic following civil conflict, the paper looks at critical resources within the landscape of agricultural recovery, and the role of evidence in land dispute resolution. The analysis examines differences between two critical resource areas, and between these and a control, with regard to: evidence type, evidence response to land conflict, and relationships of conflict resolution. The paper ends with look at policy implications.

## LAND TENURE AND THE PEACE PROCESS

Land and property rights issues play a significant role in the consolidation of many peace processes. However with contention surrounding such rights after a war particularly high, approaches for the reconstitution of land and property tenure regimes during a peace process which are able to effectively and legitimately operate in a postwar environment, are proving difficult to assemble. The role that land dispute resolution plays in postwar reconciliation and economic recovery is significantly important. That such resolution occurs in a timely fashion is critical to the secure re-engagement of agricultural populations in familiar land uses, food security, and agricultural contributions to economic recovery and associated trade opportunities. That it happens in ways that are seen as legitimate and equitable by most claimants is important because disenfranchisement of local populations from land and water rights is a major factor contributing to instability and resource degradation.<sup>1</sup> Civil conflict is based on the perception of non-legitimacy in various forms. For land dispute resolution to work in a context of recent armed conflict, the question of legitimacy becomes paramount, and must be attended to directly, or the resulting risks to the process can be significant. The importance of legitimacy in resolving land conflicts (including armed conflict explicitly over land) is noted in studies on Chiapas,<sup>2</sup> the Gaza Strip,<sup>3</sup> South Africa,<sup>4</sup> and civil conflicts generally.<sup>5</sup> And Latin America has provided many vivid examples of the link between the lack of legitimate land tenure dispute resolution mechanisms, and civil conflict.

This article considers the postwar tensions between (a) the evidentiary constructs which legitimize property rights under local customary tenure, (b) formal tenure (state law), and (c) evidence used by migrants or non-local populations (particularly large in postwar environments) for whom neither customary nor state tenure institutions effectively apply. The paper specifically explores the roles of land tenure dispute resolution and the evidence used in such resolution, in the consolidation of a peace process for countries where agriculture and food security are important to recovery. With data collected in postwar Mozambique, this analysis suggests that tensions regarding land tenure are likely to be particularly acute in areas with significant: (1) postwar co-location of agricultural, relief, market, infrastructure, and household resources (or 'critical resource' areas for the purpose of this paper); (2) competition between large landholders and smallholders; and, (3) substantial return or in-migration by migrants or dislocatees. Such that dispute resolution rulings operating from a formal (state) tenure system which neglect to take into account postwar customary and migrant evidentiary constructs can result in outcomes which are considered inequitable and illegitimate, with aggregate adverse impacts on a peace process. The problem quickly becomes one of the nature of legitimate evidence itself and who has access to what evidence. This study finds that while the disconnect in evidence between local customary groups, migrants, and large holders is significant enough to cause problems for a peace process, at the same time opportunities in land dispute resolution exist for mitigating this disconnect.

## THE LAND TENURE DYNAMIC FOLLOWING CIVIL CONFLICT

### *Change in Tenure Institutions*

While a great deal of important work has investigated the disconnect between customary and formal land tenure regimes, especially in Africa<sup>6</sup> the nature of this disconnect in a postwar context and its influence on land conflict resolution during a peace process remains unexamined. The character of this disconnect at the conclusion of armed conflict, especially after prolonged periods of conflict, present formidable challenges to recovery. The formal land tenure system will be crippled in a number of ways rendering itself more open to abuses and non-compliance with important steps within formal law. The reduction of resources, personnel, and cohesive institutions responsible for executing and enforcing formal procedures, together with continued insecurity in numerous parts of the country, can combine to significantly reduce the capacity and legitimacy of the formal system at a time when land tenure issues are being thrust to the fore with considerable urgency for large numbers of people over extensive areas. The legitimacy of the formal system can be further reduced due to its connection with a state that represented one side in a conflict. At the same time customary land tenure systems can undergo substantial change during armed conflict, especially for those for whom dislocation and migration to new areas is a significant experience.

The resulting postwar land tenure situation, especially in favorable or important areas, is one where the formal tenure system will be used by large-scale land interests seeking access to land that is also allocated under customary tenure regimes to smallholders, but that can also be occupied by significant numbers of migrants seeking to legitimize their occupation either temporarily or permanently. As these different groups appeal to different sets of evidence that reside within different, and often incompatible or opposing notions of legitimacy (often due to the war) for claim or rights to land, the result is a lack of land conflict resolution institutions able to legitimately consider different forms of evidence. This paper examines three aspects of the evidence question important to a peace process: (1) the differences that exist between forms of evidence available and used by the primary groups attempting land access subsequent to armed conflict; (2) the ability of small land holders to derive or constitute forms of evidence for use in dispute resolution when conflicts are a problem; and, (3) the notions of legitimacy or 'justness' that apply to existing postwar institutional opportunities for land dispute resolution, given the different groups involved, forms of evidence, and postwar condition of the institutions involved.

### *The Role of Evidence*

Postwar land dispute resolution begins with a wider evidentiary problem between formal and customary tenure systems. Formal land dispute resolution mechanisms employed by the state favor claimants in possession of some form of documentation-- which most smallholders, especially in a postwar context, do not have. Instead, smallholders use an array of customary evidence which connects them to a community and to community land, with history of occupation and physical signs of occupation playing a significant role in this connection. Customary institutions for land dispute resolution hold membership in local lineages and community, and testimony from lineage and community members regarding history of land use and occupation, to be

legitimate evidence—all evidence that larger scale or ‘outside’ land interests do not have. However formal decisions in a land dispute must be based on the evidence presented.<sup>7</sup> And while documents are admissible forms of evidence, oral testimony and corroboration (common in customary institutions of dispute resolution) usually are not, due to legal concerns regarding the integrity of the formal land tenure system. Thus based on admissible forms of evidence, formal decisions must be made in favor of documentation.<sup>8</sup> Such an inequitable, and from the perspective of smallholders, illegitimate arrangement of land dispute resolution, operating in aggregate, carries serious risks toward instability, impoverization, land degradation, and rural exodus.

The problem, more generally, becomes one of defining what is regarded as legitimate evidence. Within the domain of adjudication, the question of who gets to control the ‘language,’ and the ‘translations,’ of reality into evidence for use in adjudication, mapping, and demarcations, becomes critically important.<sup>9</sup> This control legitimizes or de-legitimizes units of aggregation, kinds of rights, or ways of land use, or they justify appropriations and expropriations.<sup>10</sup> Such an evidentiary problem in a postwar context becomes particularly difficult because: (1) recent armed conflict and the prevalence of weapons quickly leads to violence in land disputes; and, (2) as this study shows, a significant migrant population is created that seeks to legitimize land access, but with evidence that is difficult to connect with either customary or formal tenure systems.

Opportunities for engaging evidentiary aspects of postwar land tenure for use as tools to assist with the consolidation of a peace process face two realities: (1) dispute resolution will need to be based on evidence for claims to land; and, (2) customary evidentiary constructs must ultimately reside within the formal tenure system because largeholders will not submit to land dispute resolution decisions made within a customary institution.

### *Critical Resources*

For largely agrarian societies, the postwar rehabilitation of many households, land uses, and production systems, as well as regional and national food security and economy, will initially focus on access to land resources where physical security, cultivable land, perennial water, fuelwood, relief assistance, and market and transport infrastructure are present together.<sup>11</sup> These ‘critical resource’ areas will be especially important where they exist within or in proximity to less usable, accessible, secure, or arable zones.<sup>12</sup> Migration to such areas from more problematic locations is frequently foremost among the coping strategies available to those fleeing armed conflict and the resulting food shortage. These areas will also draw back pre-conflict inhabitants seeking re-access to valuable agronomic resources; and will be primary locations for larger-scale agricultural ventures seeking to capitalize on a tentative peace, a confused and fluid tenure situation, and valuable and optimally located land resources.<sup>13</sup> Intense resource competition in these areas in the early years of recovery occurs in an environment rife with complicated land disputes, and lacking in functioning tenure dispute resolution mechanisms viewed as legitimate and workable by the parties concerned. Such that these areas, while crucial to beginning a sustained recovery and a nascent peace process, can also become locations that spark renewed instability.<sup>14</sup>

## MOZAMBIQUE: BACKGROUND

### *The Renamo - Frelimo War*

Mozambique has produced more refugees than any other country in Africa.<sup>15</sup> The six million people dislocated in the 16-year civil war between Renamo (insurgency) and Frelimo (government) are reclaiming land resources and reassembling agricultural production systems--comprising the largest reintegration of displaced persons in the history of Africa.<sup>16</sup>

The war began during the Zimbabwean liberation struggle as Rhodesian security forces encouraged destabilizing insurgent efforts inside Mozambique due to the latter's support of Zimbabwean rebels. Subsequent to Zimbabwean independence in 1980 the South African Defense Forces took over sponsorship of Renamo insurgents inside Mozambique, largely because of Mozambique's support of the then exiled African National Congress (ANC). By the mid-1980s destabilization efforts in Mozambique had transformed Renamo into a rebel movement that posed a major military challenge and thrived on external involvement.<sup>17</sup> Meanwhile the Mozambican government's villagization program in the country's interior was widely unpopular and is thought to have contributed significant support for Renamo. Although a peace accord was signed between Frelimo and Renamo in October of 1992, there was little initial confidence that peace would follow. The accord was signed during a prolonged drought and expectations of peace had been dashed repeatedly, with years of problematic negotiations producing little more than intensified war.<sup>18</sup> Moves back into agriculture by the dislocated population were delayed due to uncertainty about whether the war would in fact end, and problems with the implementation of the peace accord.

### *Postwar Land Access*

While access to land is of fundamental importance to the recovery of agriculture in Mozambique, the reintegration of six million displaced people will complicate recovery for some time.<sup>19</sup> And because the number of dislocated persons equaled approximately 40 percent of the national population<sup>20</sup> the resettlement of rural populations into agricultural production systems will be critical to food security, political stability, and to the re-formation of the social and land-use foundations upon which relevant development agendas can be built. Land tenure continues as one of the most problematic national issues in Mozambique. And several authors have noted that the land question will be one of the most important political issues in the postwar period.<sup>21</sup>

As recovery progresses and returnees pursue agriculture, in any one area there may be several persons or entities claiming land access, especially in the critical resource areas. These include:

- 1) descendants of the original population expelled during the colonial era;
- 2) persons who received land from the local administration after independence and during the war;
- 3) dislocated persons who abandoned their lands and are now returning;
- 4) people occupying land they found to be abandoned during the war;

- 5) former Portuguese or "assimilado" owners;
- 6) concessions given by state agencies to individual largeholders or commercial interests;
- 7) state collectives dating from the early Frelimo era;
- 8) speculators and others who use the present fluid land tenure situation to acquire resources; and,
- 9) ex-combatants and current officials of both Frelimo and Renamo as part of the peace agreement.

As well, international development activities are concentrated in the most agronomically productive and accessible (critical resource) areas, as these are locations where results can be quickly and most easily realized. Donor supported recovery of trading, transportation, and marketing of agricultural produce further encourages acquisition of the agronomically valuable and most easily accessible land. Some of these claims represent the opportunity for larger-scale commercial land resource interests to be explored and realized, and these can contribute much to economic recovery. However land resources for this group are accessed in a very different manner than that utilized by returning dislocatees and in-place smallholders attempting to make short to long-term agricultural decisions. What emerges is a situation whereby the features of the state land tenure system used to acquire, control, transfer, and defend rights to land resources in postwar Mozambique, are profoundly out of step with re-forming constructs used to access land by smallholders.

Tanner and Monnerat<sup>22</sup> and Willett,<sup>23</sup> reviewing a number of studies on Mozambique, found that there is a direct correlation between the number of land conflicts, and locations where fertile soil, perennial water, infrastructure, market access, and high population density as a result of the war are present together.<sup>24</sup> Especially<sup>25</sup> contentious in these locations are disputes between smallholders and largeholders.

Peace processes usually include a rework of national legislation on a number of topics, and revising national land policy to incorporate functional aspects of a peace accord involving land, and to promote the peace process, is an important part of this.<sup>26</sup> In Mozambique the General Peace Accord between Renamo and Frelimo states that: "Mozambican refugees and displaced persons shall be guaranteed restitution of property owned by them which is still in existence and the right to take legal action to secure the return of such property from individuals in possession of it."<sup>27</sup> The revised land policy for Mozambique makes this explicit for small-scale agriculturalists.<sup>28</sup> Recent efforts to revise national land legislation in the country have highlighted the importance of considering how and which customary evidence could be incorporated into a revised land policy.

However even if the national tenure framework operated perfectly it would not be able to resolve the complicated land conflicts that are emerging in postwar Mozambique. The issue is less the lack of a surveying service and an official agency of coordination and arbitration, than the legitimacy of legal instruments and services with the competence to solve land conflict problems given the realities of postwar Mozambique.<sup>29</sup> To a significant degree this legitimacy problem is about the disconnect

between the evidence relevant to a land claim within the formal system, and the evidence possessed by smallholders useful for land conflict resolution within local communities.

#### SITE AND SAMPLE SELECTION

To examine the evidentiary constructs operable in critical resource areas of postwar Mozambique, data were gathered with a social survey carried out in 521 households in three sets of villages in the provinces of Nampula and Cabo Delgado in northern Mozambique (Figure 1). Two village sets were situated in agronomically endowed critical resource locations where markets, infrastructure, relief assistance, and transport are also located. These are places where, as a result of the co-location of the above, are also favored by large landholders. Thus they are locations of greater land competition and conflict between smallholders and largeholders seeking to take advantage of the optimally located best land. These two sets comprised seven villages in Monapo district in Nampula province, and seven villages in Montepuez district in Cabo Delgado province. A third set of seven villages is dispersed within Nampula province and are located in non-critical resource areas, and serve as a control. These three village sets are compared in order to examine differences in evidence, land disputes, dispute resolution, and tenure constructs. Table 1 presents the village sets.

Villages within the Monapo and Montepuez critical resource sets were randomly selected according to a stratification based on participation in a relationship with a large landholder (cotton producers in this case). Smallholder proximity to cotton production is the largest source of smallholder -- largeholder land conflict in Nampula and Cabo Delgado.<sup>30</sup> Villages for the control set were selected based on their location in less agronomically favored areas in Nampula province. Households within villages were selected according to a stratified random sampling, whereby all households of each village were divided according to their relationship with a large land interest and then randomly selected. For control villages, households were stratified according to their participation in an oil seeds project and not (separate study), and then randomly selected. Participation in the oil seeds project in a village was up to the household's own choice, and although this choice and the subsequent stratification are not directly relevant to the present land tenure study, the control sub-sample adequately represents households in non-critical resource areas for the purpose of the present study. Subsequent to selection, it was found that two villages in Nampula selected according to the critical resource stratification, were instead closer to the control set in a number of characteristics important to their classification as non-critical resources. Thus while slightly different in stratification than the control set, it was felt that these two villages did adequately represent the important characteristics of the control set for the purpose of comparison with the critical resource sets, and so were added to the list of control villages.

#### DIFFERENCES BETWEEN VILLAGE SETS

The three village sets were significantly different for a number of important land tenure variables. Four of these, percentage of migrants, actual land conflict, perception of land conflict, and land tenure security, are presented in this section for the purpose of introducing differences in land tenure for the three sets.

- (1) Significant differences exist in the percentages of migrants in each village set.

- Montepuez had the highest percentage of migrants (73), Followed by Monapo (23 percent) and the control (10 percent).
- (2) The average number of land conflicts was highest for the two critical resource village sets, with Monapo having 0.53 per household, and Montepuez 0.49, while the control had 0.21 conflicts per household--the value for the control being significantly different (0.05 level) from the two critical resource village sets.
  - (3) Land conflict in a given area however affects more than the individuals experiencing them, as members of smallholder communities interact and agricultural decisions are influenced by an aggregate sense of the frequency and severity of conflict in an area and the nature of their outcome. Survey respondents were asked several questions regarding their general sense of conflict within their community. For the Montepuez and Monapo samples, 92 and 91 percent indicated that conflicts over land are a problem for the community, while 64 percent of the control indicated the same.
  - (4) The reconstitution of household agriculture following armed conflict will depend significantly on the degree to which sufficient agronomic resources can be accessed and utilized in a secure manner.<sup>31</sup> Land tenure security is fundamental to agricultural systems and production, and has been the focus of significant attention in development and academic circles.<sup>32</sup> Using 21 variables from the survey, a tenure security index was derived, ranging from 8 (low security) to 30 (high security). Index means for tenure security are significantly different at the 0.05 level between the critical resource areas (Montepuez 15.8, Monapo 18.2) and between the control (21.4) and the critical resource areas. Table 2 summarizes this index for the three village sets.

The differences in these variables for the three village sets continue to be important in the subsequent analysis.

#### EVIDENCE TYPES

To ascertain the nature of the differences in actual evidence between the three sets, forms of evidence were grouped according to their social, cultural-ecological, or physical character. Social evidence is largely oral or testimonial, and is provided or confirmed by members of a community. This type of evidence relates to historical occupation, and ties individuals, households, and land to local communities. Social evidence corroborates physical, cultural-ecological, and other social evidence. Cultural-ecological evidence is defined as that which exists due to smallholder activity on the landscape, such as the presence of economically valuable trees, current and historical field boundaries, tombs, etc. This type of evidence best demonstrates occupation, and can corroborate social evidence regarding human activities relevant to land. Cultural ecological evidence however is problematic on its own, and to a significant degree needs corroborative social evidence for meaning. Physical evidence is comprised of naturally occurring terrain features. Such features are easily observable to anyone, demonstrate relative familiarity with an area, and corroborate no other category of evidence.

For these three evidence types the interplay between social and cultural-ecological evidence is significant. Testimony from neighbors, relatives, and the customary leadership regarding boundaries, land occupation, land and tree tenure, land



inheritance and the history of these, will be much more valuable in a land claim than knowledge of only physical evidence, i.e., location of rivers and streams, fallen trees, depressions, termite hills, etc. Because the location of natural terrain features is easily observed by anyone, it does not carry meaning which lends itself to corroboration by other types. Social evidence on the other hand ties individuals to communities, and cultural-ecological evidence corroborated by social evidence constitutes the connection between the physical signs of human occupation of land and the social aspects which play a large role in creating cultural-ecological evidence. Table 3 shows the percent of village set samples preferring social, cultural-ecological, and physical evidence. The entry in Table 3 for "economic trees" under "Cultural Ecological Evidence" merits some elaboration. Uniformly high across all village sets, this evidence refers largely to the cashew trees historically common on much smallholder land in Mozambique. Cashew production began in the colonial era and continues on smallholder land largely from older trees. While prevalent over much of the country, cashew and other agroforestry trees by themselves do not serve as workable evidence without corroborating social evidence attesting to who is connected to which trees. Thus a claimant who intended to use economically valuable trees as evidence, would also need to possess adequate corroborating social evidence.

Table 3 illustrates that the different village sets prefer different types of evidence. The control set favors social evidence more than the other two. The Monapo set favors no evidence type over the other, having more of a balance between evidence categories. The Montepuez set favors physical evidence, and has very low scores for social and most cultural-ecological evidence. The differences in evidence type for the three village sets reflects what evidence can be accessed given different situations following the war.

The Montepuez set is perhaps most noteworthy. Because most inhabitants in the Montepuez set are migrants from elsewhere due to the war, and thus do not possess the same community - land connection or community cohesion, as do households within the control or the Monapo village sets, availability of social evidence is problematic. Again, 73 percent of the Montepuez sample indicated they were not native to the area, while 23 percent indicated the same for Monapo, and 10 percent for the control. The 'dislocatee' or 'migrant' variant of customary land tenure is an extremely important one to look at due to the frequency and magnitude with which this exists in postwar contexts, and the relative fragility of social circumstances in locations where these occur.

#### THE EVIDENCE 'RESPONSE' TO LAND CONFLICT

Important to the issue of land dispute resolution in a peace process is the degree to which smallholders are able to respond to the presence of problematic land conflicts by constituting or 'forming up' workable forms of evidence. In other words, to what degree are smallholders able to 'translate' aspects of their reality into evidence for use in adjudication. Table 4 illustrates, for the three village sets, differences in evidence type between groups that think land conflicts are, and are not, a problem, although not in a 'before-and-after' manner. While the low number of households for the Monapo and Montepuez sets for those that think "conflicts are not a problem" (9 and 8 percent respectively) make comparison difficult within this group, the differences for the control are noteworthy, as are differences between evidence type for Monapo and Montepuez

for those that think “conflicts are a problem.”

For the primary evidence in Table 4, (column A under "Successive Evidence"), there are differences between those that think conflicts over land are a problem or not. For households in the control and Monapo sets who think "conflicts are a problem," social and cultural-ecological evidence is more present and physical evidence less so, than for those who think "conflicts are not a problem." For households in the Montepuez set who believe "conflicts are a problem," physical evidence is more present and cultural-ecological evidence less so, than for households who believe "conflicts are not a problem." Social evidence is extremely low for Montepuez, and essentially not different for those who think conflicts are, and are not a problem. While the Montepuez set has the greatest percent mentioning cultural-ecological evidence compared to the other village sets, this is almost entirely due to the presence of cashew trees already in the area prior to the arrival of migrants. However the lack of social evidence connectable to the presence of trees greatly compromises the value of such evidence for this village set.

Columns A - E in Table 4 present a sequential response by households regarding evidence, i.e., what would a household be able to present first (A), second (B), third (C), etc., as evidence in a land dispute with a largeholder. Such a sequence illustrates 'depth' of evidence. Although the number of households responding to subsequent instances of query (A to E), decreases, two aspects are noteworthy for the three village sets. First, for those that think conflicts are a problem, more evidence is listed for all types (A through E) than for those who think conflicts are not a problem, (columns C and D have been responded to for "Conflicts are a problem" compared with "Conflicts not a problem"). Second, the types of evidence that the responses tend toward (i.e., the change in the proportion of specific evidence types for the village sets) with each successive listing, is, social for the control, physical for Montepuez, and social and physical for Monapo. Again Montepuez with its largely migrant community is distinct. Physical evidence is favored over other types, especially for those that think conflicts are a problem.

These comparisons suggest that for all three sets, households would be able to constitute or 'translate' relationships to communities and to land, into available evidence when land conflicts are a problem. The ability to constitute and use what evidence is available is fundamental to the real adoption of legitimate dispute resolution institutions as tools in a peace process. The intersection of this available evidence with existing and evolving institutions for dispute resolution (available evidence considered admissible and of value by the institution), results in perceptions of institutional legitimacy or illegitimacy, considered below.

## EXISTING OPPORTUNITIES FOR LAND DISPUTE RESOLUTION

### *Legitimacy of Existing Institutions*

With postwar land disputes contentious and evidentiary constructs reconfigured for smallholders who become migrants, what are the opportunities for existing institutions of dispute resolution, in their postwar form and capacity, to equitably deal with land disputes? This section examines how equitable or 'just' and hence legitimate such in-place institutions are perceived to be, as they function in a postwar environment in Mozambique. An important question here is, what are the constraints and opportunities for the peace process to use and/or to build upon such institutions?

There are five types of land dispute resolution institutional ‘encounters’ applicable to large areas of postwar Mozambique, to which different notions of ‘justness’ apply. These exist where significant interaction takes place: (1) internal to established customary communities; (2) internal to migrant customary communities; (3) between established customary and migrant customary groups; (4) between established customary and largeholder groups; and (5) between migrant customary and largeholder groups. Conflict resolution internal to the largeholder group occurs within the formal land tenure system and is not considered here. Table 5 and the subsequent discussion consider data from the different village sets on the perception of how ‘just’ different institutions are perceived to be for different groups.

*Disputes Internal to Established Customary Smallholder Communities (Control)*

With the control the most established customary group (least number of migrants) it has the highest percent (85) believing that existing customary institutions for land dispute resolution are “very just” (first block “Resolution between smallholders using the customary system”). Also, there is a large drop in the percentage of respondents in the control that believe dispute resolution to be “very just” between using customary institutions (first block), versus formal state institutions for land dispute resolution among customary smallholders (52 percent, second block for the control under the “very just” column).

*Disputes Internal to the Primarily Migrant Smallholder Communities (Montepuez)*

The first block of data in Table 5 (“Resolution between smallholders using the customary system”) illustrates that the Montepuez set has the lowest proportion that believes the existing customary dispute resolution institution between smallholders is “very just” (29 percent) and the highest believing it to be “unjust,” (17 percent). Comparing the first and second blocks in Table 5 for the “very just” column is also relevant to migrants. The Montepuez village set was the only one to express a greater percentage of respondents answering “very just,” for formal state resolution between smallholders (47 percent, second block), compared to resolution “using the customary system” (29 percent, first block). For both the control and Monapo sets the change was in the other direction. Thus the Montepuez set appears to express less confidence in local customary ways of resolving land disputes and greater confidence in formal state mechanisms for dispute resolution between smallholders, compared to the control or Monapo sets.

*Disputes between Established Customary Smallholders (Control) and Migrant Smallholders (Montepuez)*

The status of this encounter in dispute resolution is less straightforward from the data collected. For purposes of general comparison with other types of encounters however, an estimate may be approximated by considering values in Table 5 between the Monapo and Montepuez sets. With 23 and 73 percent of smallholders not native to the Monapo and Montepuez sets, respectively, values between those expressed by these two sets for the first block (“Resolution between smallholders . . . ,”) may approximate a situation of half locals and half migrants, with the assumption that this generally

estimates significant interaction between locals and migrants. Such an approximation, compared to Montepuez, suggests that customary - migrant dispute resolution using the customary system is considered "very just" by between 29 and 59 percent (or, more than Montepuez but less than Monapo, i.e., less than half). Similarly, resolution between migrants and customary smallholders using the formal state institution would be considered "very just" by about half.

#### *Disputes between Established Customary Smallholders and Largeholders*

With the lowest percentage of customary smallholders believing dispute resolution in this encounter using the formal system (third block for the control) to be "unjust" (33 percent) this would seem to suggest either greater evidence compatibility between the customary and formal tenure systems, or fewer largeholders and hence less interaction and experience with conflicts with largeholders. However compared to the Montepuez and Monapo sets (elaborated below) there is also a parallel with the percentage of migrants in the village sets, i.e., the greater the number of migrants the more "unjust" dispute resolution is perceived to be between small and largeholders, generally.

#### *Disputes between the Migrant and Largeholder Groups*

As noted above, the differences in the percentage of respondents that view the smallholder - largeholder encounter to be unjust (33 percent for the control, 55 percent for Monapo, 71 percent for Montepuez) parallel the differences in the percentage of migrants for the three sites (10 percent for the control, 23 percent for Monapo, and 73 percent for Montepuez). This, together with similarity between Monapo and Montepuez for number of conflicts per household (0.53 and 0.49 respectively) and percent indicating conflicts over land are a problem (91 and 92 percent respectively) suggests that the primary land dispute resolution problem between smallholders and largeholders using the formal tenure system depends on the number of migrants in a smallholder community.

#### *A Problem, an Opportunity*

In assessing the above interactions (and hence utility) for institutions of dispute resolution which exists after the war, two patterns emerge. First, for smallholder groups with low proportions of migrants the customary system appears able to 'justly' handle postwar land disputes. However when significant numbers of migrants are involved, or when disputes are with largeholders, the situation is different. For the Montepuez (migrant) sample, 64 percent more believed the formal system to be "unjust" when the dispute was between small and largeholders, compared to use of the formal system for resolving disputes between smallholders. For Monapo this increase was 51 percent, and for the control, 29 percent. However for dispute resolution between smallholders using the formal system, approximately the same percentage (half) of all village sets believed this to be "very just," with the addition of "very just" and "just" equaling approximately 95 percent for all village sets. This is important to land tenure dispute resolution institutions as a tool in a peace process for critical resource areas, because such a situation presents both a problem and an opportunity regarding formal forms of land dispute resolution. The opportunity is that smallholders do believe, to a significant degree, that state forms of land dispute resolution are just and have legitimacy, and this

could be built upon in a peace process, especially in critical resource areas with a significant proportion of migrants and conflicts. This would increase the legitimacy of the formal system for smallholders and utilize the customs and controls (existing in various degrees) of smallholder communities in land administration and enforcement of decisions. The problem is that formal forms of dispute resolution are of much reduced legitimacy when the dispute is between small and largeholders, significantly compromising the opportunity. Second, along with available evidence, notions of 'justness' for dispute resolution institutions for largely migrant customary communities is quite different than for established customary communities. Particularly interesting is the difference between Montepuez and the control for dispute resolution between smallholders using the customary versus the formal system. For Montepuez, the percent believing dispute resolution is "very just" is larger when the formal system is used (47 percent) than when the customary system is used (29 percent). However for the control, this is the reverse (52 percent for the formal system versus 85 percent for the customary system).

### CONCLUSIONS

The 'disconnect' between customary and formal tenure regimes in Africa was highlighted earlier as particularly problematic in postwar situations. This study suggests that in postwar critical resource areas that draw significant numbers of migrants, the land tenure situation is yet more complex than this single disconnect. The lack of social evidence in Montepuez suggests that the disruptions that attend migrant populations significantly complicates land tenure dispute resolution beyond that which occurs between a more intact customary tenure system and the formal tenure system. Given the problems that exist due to the first disconnect, that yet an additional disconnect occurs in the most agriculturally endowed areas where land competition and confrontation is greatest, underscores the extremely precarious status of such areas in terms of land tenure and recovery from armed conflict.

The differences in availability of evidence type between the three village sets is important with regard to land policy reform efforts in the context of a peace process. Because such reform can designate social and cultural-ecological evidence as formal legal evidence, as in the case of Mozambique, the availability of such evidence for smallholders will influence the utility and legitimacy of formal dispute resolution institutions. With this the case, the question then for established customary groups may be: will notions of "unjust" be mitigated to a degree between largeholders and smallholders? However for migrant groups, the lack of social evidence that can effectively corroborate cultural-ecological evidence for smallholders suggests that largely migrant ideas, aspirations, and need, regarding land tenure arrangements will exist outside of policy efforts to deal with land disputes in a postwar context. However as this study shows, despite the problems associated with migrants' lack of customary evidence and distrust of the customary system for dispute resolution, there do exist nascent opportunities for engaging migrant groups in dispute resolution, especially given their apparent ability to 'form up' evidence. The formal land tenure system has a role to play in this regard. Migrants clearly favor the formal system when in dispute with established customary smallholders. This may be because obtainable formal evidence and rulings are available outside the customary system. One important question for

future research is, if customary social and cultural-ecological evidence is included as formal evidence along with non-customary forms of formal evidence (documents, demarcations, etc.), will this significantly amplify the legal evidence available for both migrants and established customary smallholders to engage the formal system in areas where there is significant interaction between the two groups, and these groups and largeholders, in a postwar context? Another possibility for locations where migrants are present is that suggested by Bruce and Migot-Adholla<sup>33</sup> more generally, where formal demarcation can play a role in particularly problematic areas. Expensive and time consuming, such demarcation along with fixed term use rights arrangements for migrant occupants of critical resource areas, may prove useful.

Because all societies experience land conflict, what is important to a peace process is equitable access to legitimate land tenure dispute resolution institutions between groups who may view land resources very differently, possess profoundly different evidence with which to pursue claims, and may have occupied different sides in the armed conflict. For dispute resolution institutions to effectively operate between different forms of informal and formal tenure systems in the context of a peace process, it must be ultimately realized that it is easier to modify national land legislation to accommodate what is seen as legitimate evidence, than it is to legislate out of existence smallholder norms regarding land tenure and land use, in an attempt at replacing the local tenure systems with the formal.

Tenure dispute resolution mechanisms widely viewed as legitimate and pursued by the state, can contribute to a peace process by bringing increased legitimacy to a post-conflict, re-emerging government. Such legitimacy is especially important following civil conflict, when the state can be of questionable legitimacy in the eyes of many in a re-forming civil society. Given the importance of land issues in armed conflicts and peace processes in Africa, the Middle East, Latin America, and Asia, greater focus needs to be brought to bear on workable technical aspects involving the formulation of effective, legitimate land tenure institutions as an integral part of the peace process.

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Table 1-Village sets in northern Mozambique

District	Village	No. Households Sampled	Village Population
Agronomically Endowed Sets			
Monapo, Nampula	Mepine	20	163
	Natete	19	83
	Tres de Fevereiro	26	225
	Namacopa	23	251
	Nacololo	19	285
	Picadane	15	136
	Napipine	14	100
Montepuez, Cabo Delgado	Mararange	44	1200
	Nacuca	46	1081
	Nacuaia	21	208
	N'ropa\Mondjane	32	534
	Nacimoja	23	610
	25 de Setembro	19	420
	Linde	23	908
Control Set			
Dispersed within Nampula	Varrua	23	133
	Napita	21	132
	Nametumula	27	600
	Jakoko	32	437
	Ratane	31	123
	Namina	32	1000
	Namwali	34	503

Table 2. Tenure Security for each of the three village sets. Presented as percentage of respondents within each set that fall within low, medium, and high measures for the tenure security index\*.

Tenure Security Index	Monapo	Montepuez	Control
Low: 8-15	27	50	10
Medium: 16-21	45	43	34
High: 22-30	28	7	56

\*The index was derived using 21 variables comprising (1) four variables dealing with presence and severity of land conflict; (2) eight variables dealing with land loss, and possibilities for losing land, including the role of title in land loss; (3) three variables dealing with land lending, its occurrence, lent to whom, plans to lend; (4) six variables dealing with agricultural investments in land.

Table 3. Percent of village sets mentioning social, cultural-ecological, and physical evidence.

Evidence List	Control	Monapo	Montepuez
	<u>Social Evidence</u>		
Village elders	13	10	0
Local Leaders	25	10	0
Local organization	3	0	0
Testimony family	16	11	0
History of occupation	7	2	0
Knowledge of community area	3	0	0
Testimony neighbors	36	45	3
History of economic trees			1
	1	2	
	<u>Cultural - Ecological Evidence</u>		
Trails	4	3	1
Cemeteries	3	7	1
Location roads	4	0	0
Sacred areas	1	3	0
Ruins, old village	3	0	0
Economic trees	86	93	90
Tombs	15	7	0
Field boundaries	3	2	15
Location old crops	0	0	1
	<u>Physical Evidence</u>		
Local terrain differences	5	5	4
Very large trees	11	5	48
Location mountains	4	6	5
Termite hills	5	5	28
Rivers	8	11	28
Soil type	31	26	61
Near cotton land	0	3	0
Boulders	1	5	1
Location hills	0	1	8

Table 4-Evidence, location, and conflicts.

Evidence Type	Site	Successive Evidence (percent)				
		A	B	C	D	E
Conflicts Not a Problem (Control 35% Monapo 9% Montepuez 8%)						
Social	Control	16.5	32.9	28.5	--	--
	Monapo	8.0	16.7	14.0	--	--
	Montepuez	0.0	6.3	--	--	--
Physical	Control	28.4	35.9	34.4	--	--
	Monapo	17.0	50.3	86.0	--	--
	Montepuez	18.8	68.9	--	--	--
Cultural- Ecological	Control	55.1	31.2	40.2	--	--
	Monapo	75.0	33.0	0.0	--	--
	Montepuez	81.3	24.8	--	--	--
Conflicts Are a Problem (Control 64% onapo 91% Montepuez 92%)						
Social	Control	23.4	33.4	50.0	75.0	100
	Monapo	16.5	38.4	35.5	75.0	--
	Montepuez	0.5	0.5	0.8	0.0	--
Physical	Control	9.1	35.0	19.0	11.0	0.0
	Monapo	7.4	30.4	48.4	6.3	--
	Montepuez	21.5	77.8	84.8	87.9	--
Cultural- Ecological	Control	67.5	29.9	31.0	14.0	0.0
	Monapo	76.1	31.4	16.1	18.7	--
	Montepuez	78.0	21.7	14.4	12.1	--

Notes: Evidence level indicates the first (A), second (B), third (C), etc., responses of evidence mentioned by smallholders.) Values are percentages of site samples that responded at that level (A - E).

Table 5. Legitimacy of land dispute resolution for smallholders. Data expressed as a percentage of each village set=s sample.

Village Set	Very Just	Just	Unjust
Resolution between smallholders, using the customary system*			
Monapo	59	38	3
Montepuez	29	53	17
Control	85	12	3
Resolution between smallholders, using the formal, legal tenure system			
Monapo	50	46	4
Montepuez	47	47	7
Control	52	43	4
Resolution between smallholders and largeholders, using the formal, legal tenure system*			
Monapo	14	31	55
Montepuez	13	17	71
Control	24	44	33

\* Values between village sets significantly different at the 0.05 level

