

Customary law and institutions - Protecting or undermining community land rights in Southern Africa?

Mozambique

Google form returns summarised

Approximately what percentage of land used for grazing, farming, forests and conservation is held under customary tenure systems?

- 70%
- 60%
- 80%
- 60%
- 80%

Data source

- None
- Odk aena.info@infon.mz-org
- 80% <https://landportal.org/pt/organization/iniciativa-para-terras-comunitarias-fundacao> <https://www.open.ac.uk/technology/mozambique/sites/www.open.ac.uk.technology.mozambique/files/pics/d128224.pdf>; fundação iniciativa de terras comunitárias
- Various publications
- <https://land-links.org/country-profile/mozambique/>
- Mozambique land policy

Are there established chiefdoms and customary decision making fora playing a role in land allocation and governance

- Yes. The role of customary institutions is recognised and incorporated in various ways; community representatives, often 'customary leaders' are formally recognised by the state under statutory law (Decree 15/2000); 'local communities' are recognised as having a formal
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role in land allocation, may define themselves through customary allegiance, and must be consulted regarding land in their areas; 'customary norms and practises' are recognised as legal forms of obtaining a right to land.

- No. Most of the land in my country are from government politics person
- Yes. Traditional leaders represent the community in customary land systems. There's difference around the country, patrilineal system center and south and matrilineal system north, which means different social organisation of chieftaincy in terms of succession and locality. colonial and post colonial states had influenced the role of traditional leaders.
- Yes. Consists of a hierarchically organized territorial structure of so called "regulos", often selected on the basis of kinship position in local social structure but formally recognized by the government.
- Yes. Mozambique has a system of about 1,600 community courts that have evolved separately from the formal court system. In addition, community leaders are appointed by the state and govern affairs usually in conjunction or separately from traditional leaders. The community courts are highly accessible, and community members often bring land disputes to these forums . Because the new Land Law does not require communities to register their rights, local governments and investors often fail to recognize the extent of community land and the nature of community land uses, and community consultations are often ineffective. The Constitution recognizes legal pluralism whenever fundamental rights are not contradicted, resulting in a legal regime that combines formal and customary law. Most rural lands are managed by customary law and by traditional authorities, although traditional leaders are not formally recognized. Land is held by communities and individuals with unregistered legal deed acquired through customary and good faith occupation. Only around 951 of 5000 rural communities in Mozambique had actually registered their lands.
- Yes

Is there national legislation governing the role of traditional leadership institutions?

- No
- Yes. Land Law
- Yes. Lei de terras (Lei no 19/97, de 1 de Outubro, [.http://www.verdeazul.co.mz/wp-content/uploads/2020/09/Legislacao_de_Terras-3.pdf](http://www.verdeazul.co.mz/wp-content/uploads/2020/09/Legislacao_de_Terras-3.pdf))
- Not explicitly but indirectly through e.g., the land law - Land Law, Law of Decentralization

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- Yes. The 2004 Constitution of Mozambique states that the ownership of all lands and natural resources vests in the state. The 1997 Land Law lays out the DUAT system, and provides rules for the protection and utilisation of communal land. All customary land has been automatically recognized as indigenous property. The 1998 Rural Land Law creates laws for the acquisition and transfer of use-rights. This mechanism facilitates and supports the current informal land market, where basic assets are sold for large sums.
 - Mozambican Land Law of 1997 Law No. 19/98
https://jurisafrika.org/docs/statutes/Translation_of_Land_Act_of_1997.pdf

What is the legal status of customary law in Mozambique

- It is legally recognised alongside statutory law
- It is legally recognised alongside statutory law
- There are legally recognised traditional courts
- There are legally recognised traditional courts
- There are legally recognised customary courts
- There is a reliance on living customary law
- Customary law remains informal and in the margins
- It is legally recognised alongside statutory law
- There is a reliance on living customary law
- It is legally recognised alongside statutory law
- There are legally recognised traditional courts
- There is a reliance on codified customary law
- There is a reliance on living customary law
- There is a reliance on living customary law
- Customary law remains informal and in the margins

Is traditional leadership hereditary?

- Not necessarily
- Yes
- Yes
- Yes
- Yes
- Yes

Are there instances when traditional leaders are locally elected by their community?

- Yes
- Yes
- No
- No
- Yes
- No

Are there mechanisms in customary law to replace a hereditary traditional leader if they lose the confidence of the community?

- Yes
- Yes
- Yes
- No. In practice communities might however ask government authorities to replace a regulo they are dissatisfied with
- No. Not sure - traditional leaders have generally been mistrusted by the state, and replaced with state actors. However, customary 'living' law generally is applied and customary rules of succession are upheld in rural areas.
- Yes

Can women assume traditional leadership positions?

- Yes
- Yes
- Yes
- Yes
- Yes
- Yes

Do recognised traditional leaders receive salaries or stipends from the state?

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- The right to a stipend flows from their recognition as a 'community representative' rather than a 'traditional leader'
 - Don't know
 - Yes
 - Other: Provided they are formally recognised by the state
 - No
 - Yes

Can they legitimately impose levies or fines on communities they represent?

- Yes. Customary fines can be applied, and commissions are paid for witnessing local transactions, including for land
- No
- No. Traditional leaders - represent the community in their relationship to state, and NGO representative and also investors; examples in consultancy; traditional leaders are recognised as land owners, which means that they allocate the land for members of the community and outsiders.
- Yes. Collection of taxes within their areas of influence
- Not sure if they can impose levies, but because traditional leadership positions overlap with state positions in many cases they can. In many matrilineal areas (in the north) women can assume leadership positions but this is not so in the southern areas.
- Especially in communities without "community-based institutions", leaders have power to impose order and take decisions about the management of land and the existing natural resources in their territories.

How would you rank the political influence of traditional leadership institutions?

- [2]
- [5] Corruption
- [8] Formally establish the link between state and communities; so the state representatives and politicians tend to have them in their side; in crucial moments, for example, during the elections, they play an important role

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- [7] After the re-recognition of traditional authorities in the early 1990s there has been a tendency of the government to govern rural areas through the local chiefs, strengthening the power position of the latter locally. To some extent the 1997 land law adds to this.
 - [6] Generally it is experiencing a resurgence due to DUATs
 - [6] The influence only occurs when the government has an interest in using the land of the territory under the governance of a certain leader. Here the leader is used to influence the ceding of land, even without consulting its residents.

What role do traditional leaders and customary institutions play in allocating land to those living in areas under customary tenure?

- Customary tenure largely recognises family/clan level rights to land, with higher level customary institutions intervening only to resolve conflict or approving allocation of land to 'outsiders'.
- No answer
- Formally they are land owners in the communities. Historically they were constituted as [incomplete]
- They are usually considered the ultimate "lords of the land" and decide over the allocation of especially still unoccupied community land
- A big role - many areas of Mozambique are remote, and customary institutions still govern land allocation.
- Traditional leadership institutions are often used to operationalize the government's interests when it wants to obtain land for any purpose.

How is land inherited and passed down the generations?

- Depends on geographic area. Both matrilineal and patrilineal systems exist. Customary systems at odds with statute but gap closing.
- In the community
- No answer
- Through sons or daughters depending on the descent system of the area, e.g., patrilineal or matrilineal
- Through the male line - this applies to matrilineal areas as well. However, under law women can inherit land.

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- Generally, younger people inherit land from their parents, grandparents, great-grandparents, etc.

Do customary law and institutions enable women to access land independently of men?

- Increasingly yes
- Increasingly yes
- Generally no
- Increasingly yes in the matrilineal societies in Northern Mozambique
- Increasingly yes
- Increasingly yes

How would you rank the security of women's land rights under customary tenure systems in Mozambique

- [7]
- [7]
- [9] Generally, women access to land indirectly, intermediated by men, as wives, daughters, nieces; even in the context of matrilineal systems, in northern Mozambique, women access to land via men
- [5] Depends very much on the descent system. See above
- [6] I think that women do not have much access to land in rural and remote areas and that under those areas that are not urbanized this is particularly so. However, in villages and towns that are resettled and have a state appointed leader or community leader land allocation can be made irrespective of gender. This is also the case in urban areas.
- [6] The land law defends security of woman's land rights, but the reality shows that there is still hard work to be done in order to make it possible.

What role do traditional leaders and customary institutions play in mediating land related disputes?

- Can be arbiters, but only where disputants need intervention since costs are usually involved
- No answer
- They have different roles: participate in conflict resolution, judge cases, represent lineage groups,

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- A crucial role - especially in the case of intra-community conflicts
 - A big role, but in many cases state appointed courts and boards play a role in mediating conflicts in urban areas or towns.
 - The customary institutions play strong role in mediating land related disputes

Which statement best describes customary institutions in the country under review?

- They remain adaptive and downwardly accountable and responsive to the land rights and needs of communities
- No answer
- There are examples of both types of practice - accountable and responsive and corrupt and authoritarian
- There are examples of both types of practice - accountable and responsive and corrupt and authoritarian
- There are examples of both types of practice - accountable and responsive and corrupt and authoritarian
- They have been increasingly captured by elites and have become vehicles to accumulate power and wealth

General remarks and additional information

- Traditional leaders are under pressure from different driving forces. Historically they were manipulated by colonial power. They were banned after independence and, in the context of neoliberal reforms, they were replaced in different conditions.
- Mozambique has a large informal urban population that operates under informal land rules.
- Mozambique's land law is good, but communities are not sufficiently informed and prepared to act actively in defense of their land rights.