



Food and Agriculture
Organization of the
United Nations

Legal pluralism, women's land rights and gender equality in Mozambique

Harmonizing statutory and
customary law

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ISBN 978-92-5-109936-0

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ACKNOWLEDGEMENTS

The authors of this publication are Marianna Bicchieri, Land Tenure Officer and Anabel Ayala, Land Consultant, who contributed to the Mozambican land programme and component projects between 2010 and 2014. The publication was developed under the technical supervision of Margret Vidar, Legal Officer in the Development Law Branch.

The Food and Agriculture Organization of the United Nations (FAO) is grateful to all the people and institutions who supported the development of this study: in particular, the Chairman of the Committee of the Community Courts of the city of Maputo, His Honour Bernardo Deve, who organized and supported the visit to different courts; the paralegals who actively collaborated in the organization of the field work, especially Paciencia Inácio Tomás, Maria Angelina Sales Conceição and Esmeralda E. Angalaze of the Associação de Paralegais de Inhambane (API) – Association of Paralegals of Inhambane, Teresa Pedro Samuel Boa from Associação das Mulheres Desfavorecidas da Indústria Açucareira (AMUDEIA) – Association of Disadvantaged Women in the Sugar Industry, and Samuel Manuel Guambe and Rogério Jaime Cumbane from the district of Zavala, Inhambane. The authors also wish to thank all the interviewees for their invaluable and significant contributions.

Comments and suggestions were gratefully received from Christopher Tanner, Naomi Kenney, Paolo Groppo and Rubén Villanueva, including further review from Clara Park and Tina Lorizzo, all to whom FAO wishes to express its deep appreciation. FAO also wishes to thank the Embassies of the Netherlands and Norway for their financial support to the land programme in Mozambique.

ACRONYMS AND ABBREVIATIONS

AIDS	Acquired Immune Deficiency Syndrome
AMETRAMO	Associação dos Médicos Tradicionais de Moçambique (Association of Traditional Doctors of Mozambique)
AMMCJ	Associação Moçambicana das Mulheres de Carreira Jurídica (Association of Mozambican Women in Legal Careers)
AMUDEIA	Associação das Mulheres Desfavorecidas da Indústria Açucareira (Association of Disadvantaged Women in the Sugar Industry)
API	Associação de Paralegais de Inhambane (Association of Paralegals of Inhambane)
CC	Community Court
CEDAW	Convention on the Elimination of all Forms of Discrimination Against Women
CEPAJI	Centro de Pesquisa e Apoio à Justiça Informal (Centre for Research and Support to Informal Justice)
CESAB	Centro de Estudos Sociais Aquino de Bragança (Centre for Social Studies in Aquino de Bragança)
CFJJ	Centro de Formação Jurídica e Judiciária (Centre for Juridical and Judicial Training)
CRM	Constitution of the Republic of Mozambique
CSO	Civil society organization
CTV	Centro Terra Viva (Living Earth Centre)
DC	District Judicial Court
DNTF	Direção Nacional de Terras e Florestas (National Land and Forestry Directorate)
DUAT	Direito de Uso e Aproveitamento da Terra (Land Use and Benefit Right)
FAO	Food and Agriculture Organization of the United Nations
FRELIMO	Frente de Libertação de Moçambique (Mozambican Liberation Front)
GAMC	Gabinete de Atendimento à Família e Menores Vítimas de Violência (Office of Family and Children's Victim of Violence)
GAMC-AMUDEIA	Gabinete de Atendimento à Mulher e Criança Vítimas de Violência (Office of Women and Children's Services Victim of Violence at AMUDEIA)
GDP	Gross Domestic Product
HIV	Human Immunodeficiency Virus
IPAJ	Instituto de Patrocínio e Assistência Jurídica (Institute of Legal Patronage and Assistance)
MCA	Millennium Challenge Account
MMAS	Ministério do Género, Criança e Acção Social (Ministry of Gender, Children and Social Action)
MISAU	Ministério da Saúde (Ministry of Health)
MULEIDE	Associação Mulher, Lei e Desenvolvimento (Association of Women, Law and Development)
NGO	Non-governmental organization
PC	Provincial Judicial Court
PEDSA	Plano Estratégico para o Desenvolvimento do Sector Agrário (Agricultural Sector Development Strategic Plan)

PRM	Police of the Republic of Mozambique
RENAMO	Resistência Nacional Moçambicana (Mozambican National Resistance)
UNDP	United Nations Development Programme
VGGT	Voluntary Guidelines on the Responsible Governance of Tenure of Land, Fisheries and Forests in the Context of National Food Security
WLSA	Women and Law in Southern Africa

1. INTRODUCTION

Throughout history, land has been considered a main source of wealth, social status and power. In many rural societies land is the basis for housing, food and economic activities, the most important source of employment opportunities in rural areas, and an increasingly scarce commodity in urban centres. Land also has great cultural, religious and legal significance. In many societies, there is a close relationship between a person's decision-making power and the number and the quality of his/her rights to the land. In rural areas, social integration or exclusion often depends solely on the status of the person in relation to the land (FAO, 2003).

This definition of the importance of land in many societies over the course of history applies well to Mozambique, where land provides both a home and the livelihood for most part of the population: approximately 70 percent of Mozambicans live in rural areas and depend on agriculture for their livelihoods (Census, 2007). Agriculture continues to be a fundamental instrument to achieve sustainable development and poverty reduction (World Bank, 2008), and access to productive resources, such as a land, a determining factor in promoting the agricultural productivity and food security of rural populations (FAO, 2011).

In countries where women are the major work force on the land, the security of their rights over this key resource is a fundamental pre-condition of household food security and equitable economic development. Unfortunately, in many such countries, including Mozambique, these rights are in fact not so secure. Rural women in Mozambique face a great deal of vulnerability – they are both the major producers of food and responsible for the management of their households, but they do not have real decision-making power in their families, or real rights over land, as will be further explained in this document. Increasing mortality rates due to HIV/AIDS¹ are leading to growing numbers of widows and orphans and can amplify the challenges women and children already face in securing their land and inheritance rights (Save the Children and FAO, 2009). The lack of decision-making power, generally attributed to the male relatives, and the lack of access to resources, force women to remain in situations of disadvantage. The disadvantageous situation of women becomes even more acute due to the difficulties they face in protecting their right of access to land, which creates a vicious circle that perpetuates the poverty and generates greater gender inequality (Budlender and Alma, 2011). Gender inequalities have a negative impact not only on the lives of women, but also on that of their children, households, communities and, ultimately, on society as a whole.

The creation of policies, programmes and laws that promote gender equality is often mentioned as a fundamental aspect of strategies to achieve food security and sustainable economic development. Mozambique is a country where these directives were duly followed. The country is internationally recognised for its progressive legislation and policies in acknowledging rural communities' land rights, and in promoting gender equality. There are sound policies and laws currently in place on gender equality. Gender equality and women's rights over land are well established principles in Mozambique's legal and policy framework, including in the 1995 National Land Policy principle of "guaranteeing women's access to and use of the land". The Constitution of the Republic of Mozambique is strong on

¹ AIDS deaths in Mozambique increased by roughly 72 percent from 2001 to 2007 (UNAIDS, 2008). According to UNAIDS, in 2014, an estimated 1.5 million people were living with HIV in the country and HIV prevalence was estimated at 10.6 percent, the eighth highest in the world.

women's rights, and Mozambique has signed several conventions that promote gender equality. The land law also guarantees women's rights over land and ensures that customary law takes second place to constitutional principles. Mozambican legislation is mostly aligned and compliant with the internationally accepted standards of good practices provided by the Voluntary Guidelines on the Responsible Governance of Tenure of Land, Fisheries and Forests in the Context of National Food Security (hereafter 'VGGT'). In fact, the VGGT benefitted considerably from field-based lessons on land governance from Mozambique, specifically on recognition of customary land rights and protection of the equal rights of men and women, which preceded the VGGT by several years.

Even so, there is still significant gender inequality in the country, both in urban and rural areas, and particularly in terms of access to land and natural resources. Even if there are good laws, implementation of these laws has been difficult. It is also difficult to spread legal information to the population due to still high illiteracy rates, particularly among women, and difficulties in accessing remote areas where the State's presence is not widely felt. Moreover, discriminatory customary practices are deeply entrenched in both rural and urban areas, and so new ideas are resisted.

Customary law has considerable influence in Mozambican society, and community and traditional authorities² are in fact the first port of call for conflict management for the majority of the population, particularly in the rural areas. The Constitution recognizes customary systems for conflict management and resolution (legal pluralism) as long as these systems do not contradict constitutional values and principles (Article 4).³ At the same time, Mozambique's land law turned de facto customary rights into de jure tenure by recognizing customary norms and practices as one way of acquiring formally recognized land rights – *Direito de Uso e Aproveitamento da Terra (DUAT)*, the right for land use and benefit. The legislation is very clear in affirming that customary conflict management systems are accepted, as long as these do not contradict constitutional values and principles. However, this is where the problem in promoting gender equality lies. Community lands are managed under customary tenure systems and there is much empirical evidence suggesting that under some customary tenure systems and within families, women do not have equal rights to hold, manage, transfer or inherit land (FAO, 2010). Widows' and children's dispossession of their homes and lands after the death of their husbands/partners is quite common, not only in rural areas but also in urban areas. Often, women are subjected to discrimination in the customary systems (and even in formal ones) in matters of land tenure (UN Habitat, 2008). Because informal conflict management systems are strongly influenced by customary practices that discriminate against women, gender equality, though enshrined in Mozambican legislation, becomes a distant and hard to achieve target.

In the framework of informal or customary-based access to justice, recognizing and ensuring women's land rights is a matter of extreme complexity. There is growing concern about how the two legal systems interact and more specifically, how women confront the recognition of their land rights in the context of informal or customary-based systems. By analysing the Mozambican legislation and the informal justice system, as well as how it operates, the aim

² According to the definition of decree 15/2000 (community authorities), which will be discussed in more detail in this document, community authorities are traditional chiefs, neighbourhood or village secretaries and other leaders legitimized by the communities.

³ Article 4 of the Constitution recognizes all the "different legal systems and customary norms that coexist in Mozambican society as long as they do not contradict the fundamental principles and values of the Constitution".

of this study is to analyse why and how legal pluralism can affect the women's land rights in Mozambique. The ultimate objective is to identify paths and practices to achieve harmonization between the progressive Mozambican legislation and the customary justice systems in order to promote social justice and equal rights for men and women, particularly with regard to access to, and control over, land and natural resources.

3.7 million small farms per average area of 1.1 ha/family, dominates the general agricultural scene (Ministry of Agriculture, 2008). Agricultural productivity is very low, in spite of Mozambique's large tracts of fertile land. Farmers generally make enough to meet their households' basic food requirements, with a small surplus for sale in some cases. Incomes from both farming and fishing are meagre and most of the rural population survives at subsistence level (IFAD, 2010).

Rural communities are highly vulnerable to natural disasters such as floods and droughts. The production, storage and sales capability of products is limited due to a variety of factors, such as lack of inputs and technical assistance, inadequate financing and difficulties in accessing rural loans. Precarious infrastructures, non-existent storage facilities and the high costs of transportation are additional difficulties that small producers must face (SIDA, 2007). Rural poverty is directly related to the limited development of agriculture, which generates 80 percent of the income of rural families, thus making agricultural development a priority area of intervention for the government (Ministry of Agriculture, 2002).

3. GENDER ISSUES AND WOMEN'S LAND RIGHTS

3.1 Gender issues

Mozambique has several ethnic groups and different sets of traditional practices and customary tenure arrangements. In general, these fall into two groups: matrilineal systems in the north and central parts of the country, and patrilineal systems in the south of the country. Under matrilineal systems, land rights are allocated through the maternal line; under patrilineal systems, they are allocated through the paternal line. However, during recent years both systems have undergone a process of change due to migration flows, rapid urban concentration and population growth. Thus, it is now difficult to speak about pure kinship systems, with mixed matrilineal and patrilineal practices becoming the norm (Villanueva, 2011).

Nevertheless, under both systems, men are those who have the authority to allocate land rights and make decisions about land tenure. Whether in patrilineal or matrilineal areas, the patriarchal system predominates and, in general, women live subordinate to men (Seuane, 2009). Women largely gain access to and control over land through some form of relationship with men in the community – their fathers, husbands, uncles or brothers. Before the HIV-AIDS epidemic, in a normal household reproduction cycle, women used the land and the resources received through these relationships with men and even if they cultivated the land and produced food for the family, they had no land rights or control over the land. Even so, in the event of the death of their husbands, the older women and widows had a certain degree of security, insofar as the land was inherited by their grown-up sons who afforded them use rights and protection within the customary system. However, with HIV-AIDS, men are dying earlier and their sons are still too young to inherit the land. At the same time, land is becoming increasingly scarce due to increased population, climate change and large-scale investments which require large tracts of land – all factors which significantly decrease the amount of available land. In this context, many families are seeking new ways to maintain or make the most of the land and young widows with small children are dispossessed by their in-laws of their homes and land (*machamba*)⁴ after the death of their husbands. These negative recent changes in customary practices not only affect the women, but also the children who end up losing their inheritance rights.

Deprived of a parent and residing in communities where little alternative care options and support exist, children are increasingly vulnerable to abuse and exploitation. While the extended family is traditionally expected to support them, there is considerable evidence to show that in many cases the opposite occurs. Wishing to further their own economic interests, some family members will seize the property and belongings that a widow and her children should inherit. Valuable resources such as land, housing, money, household furniture, cattle, agricultural implements, and clothing are taken away in the name of culture and tradition, leaving the widow and children in even greater need. Within this system, daughters do not have inheritance rights; only the male line has rights, the sons of the deceased being the first in line to inherit, followed by male ascendants (father or uncles) and male siblings and their descendants (Save the Children, 2007). Therefore, daughters who do not have rights over their parent's land are likely to not have access to any land in case of eviction from their marital home. Very often, with nowhere to go, these young families end

⁴ *Machamba* is the term used in Mozambique to define small plots of land for household agricultural activities.

up in poverty and vulnerability, since in the woman's family there is no land available to them and are forced to migrate to urban and peri-urban areas in search of their survival. Sometimes young women end up resorting to high-risk means of subsistence such as prostitution and other exploratory work; there is evidence linking these processes of marginalization to the feminization of HIV/AIDS in Mozambique (*op.cit.* Seuane, 2009). Furthermore, in cases where women become ill due to HIV-AIDS infection, they are abandoned or expelled by their husband or his family. In some situations, agreements are established in which the women have to pay by giving an asset or money in order to "earn" the right to stay in the home (CFJJ, 2012).

In matrilineal families in the northern part of the country, control over resources is generally also in the hands of men but property is inherited through the wife's lineage. Cases of expropriation are less frequent compared to patrilineal areas and the degree of security over land for women who divorce or are widowed is greater. Combined with matrilocal residence patterns where new families live with or near the wife's family, matrilineal practices traditionally give women increased influence over access to lineage property and land. However, there has been a progressive change or negation of such customary rights in favour of men, due to growing pressure on land, the mass dissemination of values that promote profit-making and taking advantage "at any cost", and to the high degree of social mobility, among other reasons (FAO, 2013).

In the last decades, patrilineal norms have begun to replace customary practice in matrilineal societies on a large scale and women have lost considerable power to their brothers, sons and uncles, who are nowadays commonly identified as the head of the family and owner of the land. Indeed, a recent field study carried out in Niassa province pointed out that women do not take any decisions concerning their land and if a husband dies, the wife cannot be sure that she will be allowed to continue to cultivate their land. The same study concluded that a matrilineal structured community does not ensure women's unthreatened access to land. While women in matrilineal northern Mozambique may enjoy better rights to land than women in the patrilineal south, men still have the final say in decisions on how family land is utilized and accessed. Hence, the study concludes that the matrilineal structure does not necessarily guarantee women's rights; instead it places greater societal and family responsibilities on women as they do the work but do not decide over the agriculture (Lidström, 2014).

Furthermore, even if in matrilineal lineage systems women's situation is slightly more stable, the patriarchal system continues to be dominant and women in general participate very little in decision-making. Power and authority are invested in men and in the cultural and economic position they occupy and women are, by definition, excluded from decisions that affect their lives, their children and their families. Also, according to a research conducted by Save the Children and FAO in 2009, most families now seem to choose the location of their residence either according to patrilocal patterns, or in a totally new area such as the provincial capital (neolocal). This alienates women from their relatives and diminishes the control they would traditionally have had over assets in their families' land and other property. Where a widow's male family members – her brothers and uncles – would have normally decided on the division and management of assets, this role has been increasingly taken over by the husband's relatives, reflecting norms of a patrilineal society.

Therefore, in practical terms, the fieldwork of that study found little difference between the patrilineal communities in Gaza, Manica and Zambézia and the matrilineal communities in Nampula (*op. cit.* Save the Children and FAO, 2009). Similar results were also found in a

research conducted by the International Development Research Centre in 2011, covering several countries in southern Africa, including Mozambique. According to the research, a woman's supposed tenured security in matrilineal societies is less secure than it might be expected. With increasing pressure on land due to commercialization, "the same uncles that are supposed to protect women are now the ones that are actually abusers" (*op. cit.* Budlender and Alma, 2011). Despite the facts, it is curious to note that there is popular belief that women's tenure rights in matrilineal areas are safe. This frequent misconception was also evidenced by a study carried out by CARE in 2007:

"during interviews with national and international non-governmental organizations (NGOs) in Maputo we were repeatedly told that we would find that property rights violations were not an issue in Nampula, as the north was predominantly a matrilineal area. However, focus groups interviews in the north revealed that property rights violations were common and a real fear among the women. In fact one woman explained that her husband had recently died and she was fighting with his family as they tried to take her home and other property. A local judge we spoke with in Nampula reinforced that property rights violations were common in the north and that there was an inadequate understanding of the laws regarding property and inheritance rights among local law enforcement and judicial agencies".

(CARE, 2007)

3.2 Women's Land rights

Overcoming these challenges is vital not only to create a more just and balanced society, but for the socio-economic development of Mozambique. Agriculture plays an extremely important role, both in social and socio-economic terms. Since land is the core element in agriculture, guaranteeing the right to land for the majority of Mozambicans who depend on that same land for their housing and livelihoods, is a critical issue. Considering the relevant role played by women, both in agriculture and in household food security, guaranteeing equitable access to land and to natural resources for men and women is indispensable. The Mozambican legal framework has a set of articles throughout different pieces of legislation that provide for social justice and gender equality between men and women. Even if this legislation was passed before the endorsement of the VGGT, its provisions are aligned and offered several examples of good practices, which were mainstreamed into selected sections of the VGGT during its development.

The Mozambican Constitution affirms the State's recognition of customary systems of conflict management and resolution (legal pluralism) as long as these systems do not contradict constitutional values and principles (Article 4).⁵ Through this provision, the statutory law formally recognizes customary law as a source of law under the Constitution.

⁵ Article 4 of the Constitution recognizes all the "different legal systems and customary norms that coexist in Mozambican society as long as they do not contradict the fundamental principles and values of the Constitution".

Women's equal right to hold land use and benefit rights is a central tenet of Mozambique's land law. The Land Law affirms that "National individual and corporate persons, men and women, as well as local communities may be holders of the right of land use and benefit" (Article 10§1). Article 12 highlights that customary practices are only accepted if they do not contradict the Constitution. Therefore, there is no space for any negative or discriminatory customary practice towards women, and men and women have the same rights of access to and control over land and natural resources. Article 13§5 states that "Individual men and women who are members of a local community may request individual titles, after the particular plot of land has been partitioned from the relevant community land". In addition to that, the Constitution establishes the principles of universality and equality of all people (Article 35) and gender equality (Article 36), recognizing the equality of rights, duties and opportunities for all citizens, and specifically among men and women.

The Land Law foresees that "The right of land use and benefit may be transferred by inheritance, without distinction by gender" (Article 16§1). In the Constitution, equal inheritance rights are recognized in Article 83. It also asserts that "In the formal recognition of the right for land use and benefit, the State recognizes and protects the rights acquired through inheritance or occupation, unless there is a legal reserve or if the land has been legally attributed to other person or entity" (Article 111).

The Family Law, which regulates the division of property between spouses within marriage, upon separation and death, underlines these provisions. It recognizes not only civil marriages but also customary and religious marriages and informal unions between men and women (Articles 202 and 203). In combination with the Civil Code, the Family Law provides that all men and women, who have lived with their partners for more than one year are entitled to half of the property built during the relationship. The Law also explicitly gives both spouses responsibility over the family, as well as

VGGT and the Mozambican Law

Articles 10, 12 and 13 of the Land Law, and 35 and 36 of the Constitution, are aligned with the tenure guidelines or VGGT, which refers that 'States should ensure that policy, legal and organizational frameworks for tenure governance recognize and respect, in accordance with national laws, legitimate tenure rights including legitimate customary tenure rights that are not currently protected by law; and facilitate, promote and protect the exercise of tenure rights. Frameworks should reflect the social, cultural, economic and environmental significance of land, fisheries and forests. States should provide frameworks that are non-discriminatory and promote social equity and gender equality'

(VGGT, par. 5.3)

VGGT and the Mozambican Law

Articles 16 of the Land Law, and 83 and 111 of the Constitution, are aligned with the VGGT, which specifies that 'States should ensure equal tenure rights for women and men, including the right to inherit and bequeath these rights.'

(VGGT, par. 4.6)

VGGT and the Mozambican Law

Articles 202 and 203 of the Family Law, and 29 of the Law on Domestic Violence against Women, relate with the VGGT, which refers that 'States should consider the particular obstacles faced by women and girls with regard to tenure and associated tenure rights, and take measures to ensure that legal and policy frameworks provide adequate protection for women and that laws that recognize women's tenure rights are implemented and enforced.'

(VGGT, par. 5.4)

equal say in family decisions regarding assets and property. Together, the Land Law and Family Law provide strong protections for women's land and property rights, both during marriage and in widowhood. Additionally, the Law on Domestic Violence against Women, in Article 29, states that it is a crime to dispossess a widow after her partner dies; punishable with up to 6 months in prison.

Furthermore, the Land Law is carefully and consistently explicit about women's inclusion in every step of community land-related procedures; during community delimitations or every time community inputs are deemed necessary, the Law mandates that women and vulnerable groups are to be included. For example, the Technical Annex to the Law establishes that all steps of the community delimitation process must include women's presence, active participation and input. The working group guiding the delimitation must take care to "work with men and women and with different socio-economic and age groups within local communities" in all steps of the process (Technical Annex Article 5§2); women must take part in the participatory community map drawing process – drawing their own separate "women's map" (Technical Annex Article 2§8), and the forms completed during the delimitation process must be signed by no less than three and no more than 9 "men and women from the communities, chosen at a public meeting" (Technical Annex Article 6§3). In addition, as described above, because women are "co-owners" of a joint community land right, women have equal rights to community property and must be involved in land and natural resource management decisions (Article 10§3 of the Land Law; Article 12 of the Land Law Regulations; Article 1403 of the Civil Code). Mozambique's Land Law therefore not only generally establishes women's right to hold land in their own name, but also encourages communities to involve women at every step of community processes (*op.cit.* FAO, 2010).

This longstanding experience has been inspirational during the discussions that led to the current text of the VGGT. In this respect, it can be argued that the VGGT's implementation principle on gender inequality finds its roots in concrete cases like the Mozambican one. The VGGT address gender inequality with the mandate to:

"ensure the equal right of women and men to the enjoyment of all human rights, while acknowledging differences between women and men and taking specific measures aimed at accelerating de facto equality when necessary. States should ensure that women and girls have equal tenure rights and access to land, fisheries and forests independent of their civil and marital status."

(VGGT, par. 3b.4)

Mozambican legislation is compliant with this precept.

However, although formal legislation is very clear in promoting gender equality and discouraging discriminatory practices against women, in practice, these discriminatory practices still prevail in customary systems, as shown above.

The Land Law addresses this possible conflict between customary law and women's rights by clearly establishing that land rights may be acquired only "according to those customary rules and practices that do not contradict the constitution" (Article 12, referred above). Yet the lack of oversight mechanisms or formal checks on abuses of customary power means that community members and leaders cannot be held accountable for the implementation of the Law or breaches of women's constitutional rights. Due to the lack of enforcement mechanisms within communities, women seeking justice must leave the community and file

an action in court. In this respect, the Land Law lacks in oversight and enforcement mechanisms and relies too heavily on the supposed goodwill and efficacy of customary systems (*op. cit.* FAO, 2010).

The Mozambican experience demonstrates that without concrete mechanisms, customary practices that are discriminatory towards women may prevail over sound statutory law. A practical way to address the divide between women's statutory land rights and community practices would be to establish mechanisms to assess and amend customary rules during the delimitation process, when government officials and development agents are quite frequently working side by side with communities. Legal reform could be considered to address this issue. In particular, the Technical Annex of the Land Law could be reviewed to include provisions in this sense.

In this context, it is important to balance protections for customary rights with provisions for gender equality and respect for human rights (FAO, 2016); not only in terms of developing legislation but also in terms of designing and implementing practical measures to translate legal principles into practice. Therefore, harmonizing customary practices and statutory law by transforming statutory law into practical tools to influence and modify the negative aspects of customary practices, is a key issue. Equally important, ensuring that checks and balance mechanisms are in place to monitor and address inequality within customary systems.

VGGT and the Mozambican Law

Although Mozambican Statutory Law created dispositions to protect gender equality in the recognition of local customs, more can be done to ensure that customary systems do not discriminate against women. On this note, the VGGT states that “communities with customary tenure systems that exercise self-governance of land, fisheries and forests should promote and provide equitable, secure and sustainable rights to those resources, with special attention to the provision of equitable access for women. Effective participation of all members, men, women and youth, in decisions regarding their tenure systems should be promoted through their local or traditional institutions, including in the case of collective tenure systems. Where necessary, communities should be assisted to increase the capacity of their members to participate fully in decision-making and governance of their tenure systems”.

(VGGT, par. 9.2)

4. MOZAMBICAN JUDICIAL SYSTEM AND LEGAL PLURALISM

Legal pluralism, resulting from the State's recognition of the existence of two systems of rules – the formal statutory system with the laws of the State and the informal system with the customary laws – is not an isolated occurrence limited to Mozambique. Proof of this is present in a large number of African countries. Some of these countries recognize the existence of different systems as alternatives to access to justice directly in their constitutions⁶, and generally under the principle of not infringing on and not contradicting the laws defined in these constitutions.

In this way, access to justice for the citizens of these countries is not limited to the formal statutory channel, but rather, they have different systems of conflict resolution available to them. These systems tend to be deeply entrenched in their given historical contexts.

In Mozambique, different stages of history have had an influence on the definition of the legal and juridical framework up to the establishment of the most recent Constitution, which has been in force since 2004. During the colonial period, the legal code enforced by the Portuguese was known as a dualist system. The Europeans and the “*assimilados*” (assimilated)⁷ had particular rights engraved in the official legal system. Some examples of these rights include the right to register different assets, such as land, and to appeal to the state courts for the settlement of legal conflicts (Meneses, 2005).

In contrast, the African population in general was governed by a system subject mainly to traditional laws regulated by People's Courts. The use in these courts of customary law for conflict resolution guaranteed the continuity of a legal system closely linked to the history of its peoples and to the observance of its traditions.

It was not until 1975 that Mozambique managed to establish the first Constitution, following the achievement of independence from Portugal. In it, the bases of a socialist state, led by a single party, the *Frente de Libertação de Moçambique* (FRELIMO) – Mozambican Liberation Front, were defined. There was no separation of powers between the executive branch and the judiciary, which gave this party total control over all aspects of public life (Open Society Foundation, 2006).

The Judicial Organization Act 12/78, dated 2 December 1978, established the following court hierarchy: Supreme Court in Maputo; Provincial Courts (a total of 11, one in each of the 10 provinces and one in the capital, Maputo); District Courts (for the localities and municipalities); and Town and Neighbourhood Courts.

The judges who presided over these Town and Neighbourhood Courts were elected by the local communities by means of public consultation and received no remuneration whatsoever for the activities they performed. These courts operated on the fringes of the statutory law and gave priority to public participation in the resolution of conflicts. The consultations tended to be carried out in a simple manner and in the local dialect, and the conflicts were mainly concerned with family disputes and smaller criminal offences to which jail sentences did not apply. In cases where crimes were more severe, entailing the need to

⁶ Some examples of these countries are Angola, South Africa, Zimbabwe, Uganda, Rwanda and Liberia.

⁷ Status acquired by some Africans, Asians and mulattos of mixed race as of 1929, upon demonstrating their knowledge of the Portuguese language, renouncing their ties to tribal customs, and justifying their category as employees (Meneses, 2004).

impose a jail sentence, or if an agreement could not be reached in the conflict resolution, the Town and Neighbourhood Courts would refer them to the District Courts (Penal Reform International, 2000).

In the framework of the peace negotiations that put an end to 15 years of civil war between FRELIMO and the *Resistência Nacional Moçambicana* (RENAMO), the 1990 Constitution was established. In it, the recognition of citizens' rights was expanded and the bases of a democratic Rule of Law are now defined through the consolidation of a multi-party system along with the independence of the judiciary (Women and Law in Southern Africa - WLSA, 2008). In 1992, with the new Courts of Law Act (Law Nº 10/92, dated 6 May) the justice system in Mozambique was reorganized, with one of the main changes being the disappearance of the Town and Neighbourhood Courts as grassroots structures.⁸

At the same time, the Community Court (CC) Act was enacted (Law Nº 4/92, dated 6 May), along with the legal framework for its recognition as a legal forum for minor civil and criminal conflict resolution. The CCs are the legacy of the former Town and Neighbourhood Courts that were operating during the FRELIMO government after independence and until the peace accord was signed in Rome in 1992. The CCs provide the most common form of access to justice

“States should respect and promote customary approaches used (...) communities with customary tenure systems to resolving tenure conflicts within communities consistent with their existing obligations under national and international law, and with due regard to voluntary commitments under applicable regional and international instruments (...).”

(VGGT, par. 9.11)

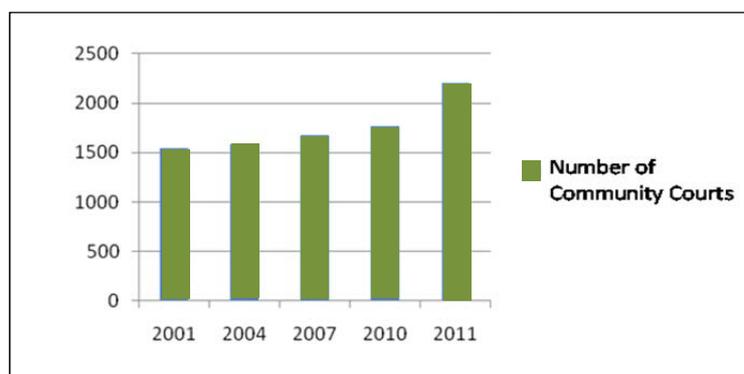
for the majority of the people in Mozambique (*op. cit.* WLSA, 2008). Its Article 3 outlines the jurisdiction corresponding to the CCs as: “dealing with those small conflicts of civil nature and with any matters that arise from family relations resulting from unions constituted on the basis of habits and customs, trying whenever possible for a reconciliation between the parties”.

A few years later, in support of the differentiation of duties and powers developed by the CCs and other authorities, Decree Nº 15/2000 of 20 June was promulgated, establishing the coordination between the local governing bodies of the State and the community authorities. In Article 1.1., ‘community authorities’ are defined as “the traditional heads, the neighbourhood and village officials and other leaders legitimized as such by the respective local communities”. Article 5 (general duties of the community authorities), subparagraph b, states that “the community authorities must coordinate with the CCs, where they exist, for the resolution of minor conflicts of a civil nature, taking into consideration the local habits and customs, within the limits of the law”. Section 5 of Judicial Organization Law Nº 24/2007, dated 20 August, defines the CCs as “independent, institutionalized, non-judicial, conflict-resolution authorities who judge according to common sense and fairness, informally and in a non-professional capacity, favouring the spoken word and meeting the existing social and cultural values in Mozambican society, while observing the Constitution”. Article 29 (categories of courts), determines that the judicial function (formal justice) is carried out by: i) the Supreme Court; ii) the Superior Courts of Appeal; and iii) Provincial Judicial Courts (PC) and District Judicial Courts (DC).

⁸ Information obtained from the interview with Samuel Salimo, Advisor to the Minister of Justice and to Parliamentary Affairs.

It is difficult to determine the exact number of CCs that are active at present and how many community judges form part of them. Government sources state that, at present there are some 2 015 CCs distributed throughout the country, with approximately 10 000 elected judges. However, the latest officially recorded figures date from 2011, with a total number of 2 201 CCs.⁹

Figure 2: Evolution of the Number of Community Courts



Source: Author notes¹⁰

In 2004, the new Constitution of the Republic of Mozambique, which is still in force, was adopted. Its most significant difference *vis à vis* the previous versions is the strengthening of individual rights. The Constitution includes a principle considered to be innovative in the establishment of the fundamental principle of legal pluralism (Article 4). This principle, mentioned earlier in this document, enshrines in the Constitution the recognition of the important role played by the different systems of justice (i.e. customary and statutory), and the validity of the regulatory practices that these entail in the management of diverse aspects of life in the local communities.

The percentage of conflict resolution cases handled by customary systems, whether through the Community Courts or Community Authorities, is high in Mozambique (Serra, 2010). This principle recognizes and legitimizes the important duties carried out by these systems in the administration of justice in the country, as long as principles of non-discrimination are applied with respect to the rights established in the Constitution.

Any traditional practice that violates human rights and contradicts any of the rights set down in the Constitution will automatically be considered invalid and overall illegal. For example, in the specific case of women's rights, many traditional practices such as the case of widows who are evicted from their houses by the deceased husband's relatives are considered to be a violation of the statutory laws. In this context, evicting widows under the current formal statutory system is in fact a crime (FAO, 2013). Many other traditional practices, which will be analysed in more detail later in this document, are identified as customs that violate the human rights of women and are considered to be unacceptable in the current legislation of Mozambique.

⁹ Information obtained from the interview with Samuel Salimo, Advisor to the Minister of Justice and to Parliamentary Affairs.

¹⁰ Information obtained from the interview with Samuel Salimo, Advisor to the Minister of Justice and to Parliamentary Affairs.

Marriage, family, inheritance, and the rights of access to, use and control of the land, are some of the matters that are generally regulated by customs and tradition. Statutory law guarantees the principles of equality but that does not prevent a high percentage of women from continuing to be subject to practices that are discriminatory in practice (in particular, for women who are widowed, separated or single) (World Bank, 2011).

The different pieces of legislation mentioned above recognize legal pluralism, create and regulate the way CCs operate, and establish the means of articulation between the State and community authorities. They all emphasise that the decisions made by these entities shall not contradict or affect the principles of formal legislation, but do not establish any mechanism to control or facilitate this. Likewise, there is no system to guarantee that judges and community authorities know the principles of the formal justice that should be observed in their decisions.

Thus, it is not surprising that the decisions of the CC and the community authorities very often contradict formal legislation. In this context, the duty to not contradict constitutional principles is only a statement of good intentions, particularly when dealing with issues relating to gender and women's rights. To address these discrepancies, good governance mechanisms should be established by creating appropriate checks and balances between customary/local leadership and state officials and setting up appropriate mechanisms to ensure the law's enforcement (*op. cit.* FAO, 2010). As suggested earlier, this could be achieved by legal reform of pertinent legislation, to ensure that checks and balances between customary and statutory law become part of formal legislation. Equally important is providing training to community leaders and judges, religious leaders and traditional healers ('curandeiros') to ensure that their customary decisions respect, and are aligned with, statutory law (this will be further discussed later in the document).

"States should ensure that people whose tenure rights are recognized or who are allocated new tenure rights have full knowledge of their rights and also their duties. Where necessary, States should provide support to such people so that they can enjoy their tenure rights and fulfil their duties."

(VGGT, par. 7.5)

5. CUSTOMARY PRACTICES: PAST AND PRESENT

Structural transformation of agrarian and tenure systems are affecting communities and contributing to land scarcity. Climate change, environmental degradation and land speculation by investors are decreasing the amount of fertile, arable land available and accessed by rural communities. As a result, in many regions fertile land is no longer abundant, particularly in peri-urban areas closer to main roads, markets, schools, hospitals and other infrastructure. At the same time, population growth is increasing demands on arable and productive land. This has led to overcrowding and over-use of family and communal holdings, increasing degradation of land and fostering a breakdown in the customary rules that govern sustainable community use of common resources. These trends are impacting how individuals and families allocate, use and manage their land. In this process, certain groups lose out as other groups gain. As land becomes scarcer, existing customary safeguards of women's land rights erode: men are reinterpreting and "rediscovering" customary rules that undermine women's land rights (*op. cit.* FAO, 2010).

In this context, customary practices need to be carefully analysed to understand that in many of the rights violations seen nowadays – particularly those linked to women and children being dispossessed of their land and belongings and being justified as 'customs and traditions' – in reality have nothing to do with customs and traditions. In both matrilineal and patrilineal areas, the customary practices and rules of the past always aimed at keeping the land and assets built by the family/couple within the extended family or clan, including after the death of a spouse. This was a "customary/traditional social protection system", where widows and their small children were supported by the extended family when needed. The assets were managed by the extended family who had a duty to provide support and solidarity.

"States should strengthen and develop alternative forms of dispute resolution, especially at the local level. Where customary or other established forms of dispute settlement exist they should provide for fair, reliable, accessible and non-discriminatory ways of promptly resolving disputes over tenure rights."

(VGGT, par. 21.3)

In patrilineal areas specifically, although men have traditionally held property in the name of the family, wives, daughters and under-age sons used to be allowed to benefit from this property. As women were not allowed to own or inherit property themselves, this implied an obligation on the part of male members of the family to ensure their survival and wellbeing. Sons who inherited from their parents were supposed to take care of their sisters and allow them to use some of the land to secure their livelihood until marriage. Widows who were still of child-bearing age would remain in the family through the practice of widow inheritance (see Box 1 below). Elderly widows who were not expected to marry again were allowed life-time usage of the land, which was passed on to male heirs so that they could stay in their marital homes. Relatives would take care of a widow so that she in turn would be able to take care of her children. The traditional norm of taking care of widows and their children was a duty intrinsically related to the right to inherit property. Property grabbing from widows and orphaned children clearly breaks the tradition of solidarity within the extended family (*op. cit.* Save the Children and FAO, 2009).

Box 1: Widow inheritance

According to tradition, after her husband's death, a widow would be married to another man from her deceased husband's family (usually one of his brothers) to ensure she still belonged to that family. This practice is related to the payment of *lobolo* (bride wealth) by the family of the groom to the family of the bride, which marks her passage to her husband's family as well as the fruits of her labour and her offspring. One could argue that this practice prevents a woman from becoming destitute and her needing to inherit property, and indeed, not all women oppose it. Many Mozambicans, men as well as women, consider marriage a social contract that is agreed to after careful consideration of the advantages and disadvantages it offers – quite different to the romantic act of love it now represents in some Western cultures. Many widows have therefore happily accepted this chance of securing their and their children's livelihoods, rather than considering it an obligation forced upon them.

Women's rights organizations in Mozambique have actively opposed the practice because it is considered a violation of the rights of both men and women. It denies them the free choice of a life partner. It can relegate a widow to the status of second wife in a polygamous marriage. It also implies a serious health risk for both the widow and the brother-in-law in the era of HIV. Where these practices are still followed, widows are more likely to give up their home and property 'voluntarily' to prevent being 'inherited'. In addition, her deceased husband's family can use her refusal to be inherited as a reason to evict her from her home and land. Support for this practice is declining slowly, both because widows refuse to be inherited and because brothers of the deceased refuse to accept his widow as their wife (...).

Source: *op. cit.* Save the Children and FAO, 2009.

Although the practices reported above are questionable in many respects constituting, violations of human rights, their objectives of providing social protection for widows and orphans are clear. However, nowadays these social protection practices within the extended family have become a distant memory of the past. What is currently seen in both matrilineal and patrilineal areas is that old time customs and practices are used as a justification to dispossess widows and children of their land and belongings, both by the deceased husband's family and, in some cases, by the woman's uncles and brothers. However, instead of providing support, the extended family simply sells, leases or uses the assets taken as if they were their own, without any concern for the future of the widow and orphans.

At the same time, the changes in gender roles and relationships over the last decades have drastically changed women's position in society, not only in the West, but also in Africa. Their contribution to the welfare of the household – which can be a full time and considerably demanding job – finally started being recognized after decades overlooked. Apart from reproductive roles in which women tended to depend on their husbands, women increased their adoption of productive roles: they study, work, produce and contribute economically to support the household. Furthermore, they have become more independent and have acquired new rights (at least according to statutory law), which previously were only granted to men (such as the right to vote). Customary solutions of the past are no longer valid for many women – even in a rural context. A modern woman who has had only slight contact with new models of gender equality and contributes to household livelihoods through her productive and reproductive work, will not easily accept being "inherited" by a brother-in-law, or want to abandon all of her belongings, built up with her husband after a life of working together.

Within this framework of significant asymmetries of power and profound socio-cultural changes, the rights of the past are demanded by families wishing to take advantage of the death of a family member, sometimes in a threatening and distorted manner. They demand the right to keep all household belongings but forget their duty of providing support to the wife and children of their deceased kin, using “culture and tradition” as an excuse, which is nothing more than opportunism. However, many women no longer accept the solutions and customs of the past, including those that now constitute violations of human rights, such as “widow inheritance”.

Box 2: Culture and tradition versus opportunism: Good practices from Manica Province

Maria P. R. is the head of an Administrative Post in one of the districts of Manica Province. In 2012, she received training in a paralegal course¹¹ offered by the *Centro de Formação Jurídica e Judiciária* (CFJJ) – Centre for Juridical and Judicial Training – of the Ministry of Justice, held under FAO's Land and Gender Project (GCP/MOZ/086/NOR), and strengthened her knowledge on legislation pertaining to inheritance, land and gender issues.

Since then, she has been doing all she can to prevent tradition from becoming twisted and customary practices used as an excuse by some opportunistic individuals acting in bad faith to grab property from widows and orphans and earning ‘easy money’, in her own words. “The problem here is that some people suffer from ‘mental laziness’, says Maria. “They do not think of the best ways to improve their living conditions; they do not care about working hard to build something for their families. They just watch their relatives work hard and progress in life, but they do not think about doing the same. They just wait for their brothers to die and then grab their property, and finally have something of their own in life. That is not our culture; that is not our tradition. Our tradition is taking care of each other, taking care of our extended family when someone is in need”, Maria states. She says that very often cases of widows’ and orphans’ evictions are brought to her attention in the Administrative Post. “As I always do in these cases, I explain to the family that according to the law, the children and the widow are those who have rights over the property left by the deceased. And according to the Domestic Violence Law,¹² anyone who evicts a widow can be arrested and spend up to 6 months in jail. Maybe they can challenge a scared widow, but they cannot challenge the law, not without being punished.”

Maria explains that she always tries to raise awareness among the families, reminding them that the African tradition is to keep the property and the land for the next generations, and to take care of the orphans and their property until they are old enough to claim their inheritance. Maria recalls that when her brother died a few years ago, she and her family set a good example of solidarity, reminding their community how ‘their tradition’ really works. “After the burial my sister-in-law decided to move to Sofala Province to attend University. She wanted to improve her skills to get a better job and take better care of my niece. She leased out the house she built with my brother using half of the money to cover my niece’s expenses and the other half to cover her expenses in Beira (accommodation, study materials, university fees). I am taking care of my niece, she is staying with me and this arrangement was blessed by the entire family. In a few years her mother will be back; they will still have a house, and my sister-in-law will be able to provide a better life for my niece. One day, if I or my children are in need, or if anyone in our family is in need, we know we will be able to count on my sister-in-law’s support. That is our culture, our tradition; solidarity for those in need and not opportunism”, concludes Maria.

¹¹ Additional information on the training and work of paralegals will be provided in Chapter 6 of this document.

¹² Law no. 29/2009, 29 September, 2009 (Law on Domestic Violence against Women).

In addition to all the difficulties linked to inheritance, there are other issues such as the lack of participation in decision-making and gender-based violence, where past traditions conflict with the reality and needs of the present, and with the statutory laws.

Historically, women were subordinate to and dependent on men. During the fieldwork for this study, some women, especially the older ones, refused to express their opinions, arguing that “the men are the ones who know”. In other words, implying that having an opinion and expressing it publicly is the man's role. This attitude, which is entrenched in traditional norms and patriarchal gender relations, keeps women out of the decision-making fora, relegating them to a secondary role. Authority and power are invested in men, and the power asymmetries between men and women, and women's dependency on men are compounded.

Box 3: The economic power goes to the men in the province of Zambezia¹³

The total number of women who lived in a given community was higher than that of men, but there was a lower rate of participation recorded for women when the DUAT allocation process was initiated. Upon asking the women directly why they had participated less and what had happened to make them get less involved, it was determined that, when it came to matters that entailed some economic gain, or simply matters linked to money, the men did everything possible to exclude the women from such activities.

Box 4: The subordination of women to their male relatives in decision-making¹⁴

When asked if she wanted to initiate land-registration procedures during the Millennium Challenge Account (MCA) *Acesso Seguro a Terra* project, a married woman in Marracuene stated that she first had to call her brother-in-law to ask his opinion, as her husband was working in South Africa at the time. This woman was the one who worked on the *machamba* (land), but even so, she demonstrated hesitation and lack of ability to make decisions and referred this task to the closest male relative. Single, divorced and widowed women have greater independence in their decision-making and display less fear at the time of initiating the registration of their land.

While the older generation tend to present more rigid and traditional points of view, younger generations with more access to education, information and new paradigms, seem more open to equality and changes in gender relations. However, this search for participation, equality and rights is sometimes badly interpreted and frowned upon by the older and more conservative generation.

In addition to the problems linked to the division of property, inheritance, participation in decision-making, and access to information, gender-based violence is another huge problem faced by Mozambican women. Gender-based violence, which leads to the death of many women, and has a high socio-economic cost for the State, is very often considered a private issue that has to be resolved within the family (Universidade Eduardo Mondlane, 2011). Violence against women is widespread: from all domestic violence cases reported to authorities in 2015, 76 percent were perpetrated against women and girls (INE, 2015). In

¹³ Information obtained from the interview of Halima Selemane, Gender Focal Point of the National Land and Forestry Directorate (DNTF) and Catarina Chidiamassamba, Gender Focal Point of the MCA project.

¹⁴ Information obtained from the interview of Halima Selemane, Gender Focal Point of the National Land and Forestry Directorate (DNTF) and Catarina Chidiamassamba, Gender Focal Point of the MCA project.

some rural communities, violence against women is seen as a normal phenomenon that women are taught to accept. There are reports of young women who seek the support of their families after being beaten by their husbands, being advised by their mothers and aunts to accept the physical abuse – “of course, we have all been through the same situation”. This shows that violence against women has been legitimized over the course of history through the different socially constructed roles for men and women (Cossa José *et al*, 2011). Other serious problems are not unknown, like forced marriages or sexual abuse of children, and underwritten by customary practices, which do not inhibit sexual involvement between adults and minors, even of a very young age. What used to be accepted customary practices in the past, are today a series of crimes and violations of human rights.

It is in this context of clashes between the customs of the past and the challenges of a modern society that the community and traditional authorities act. The lack of awareness and knowledge of key gender issues and of the legal framework – addressing not only the promotion of equality between men and women, but also inheritance, division of property upon separation, gender-based violence, human rights and women's and children's rights – negatively affect the outcome of the decisions made by the community authorities. In the specific case of widows, very frequently the practices of the past prevail and the widow loses everything upon the death of her husband; at the same time, the traditional duty to support her and the orphans is ignored, not only by the extended families, but also by the community authorities themselves.

Trainings, like the one reported in Box 2, are essential to guarantee that traditional authorities apply customary practices without contradicting the principles of formal legislation. Without training and specific knowledge of the Mozambican law and human rights principles, community authorities will continue to be caught between the traditions of the past and the needs of the present, with the risk of perpetuating injustice that disproportionately affects women, widows and children. Moreover, it is not enough to state that the decisions based on customs should not contradict formal legislation; it is necessary to guarantee that there are mechanisms to ensure that community authorities, including judges and community leaders, traditional chiefs and neighbourhood and village secretaries, are aware of and have access to formal legislation. Furthermore, cases of malpractice or contradiction of the law need to be reported. Legislation is of little effect without the necessary resources for implementation, without informing and educating all relevant actors on the provisions of the legislation, without monitoring the reforms, and without effective sanctions on failure to implement (*op. cit.* Budlender and Alma, 2011).

6. CUSTOMARY LAW IN ACTION: COMMUNITY COURTS, CIVIL SOCIETY ORGANIZATIONS AND PARALEGALS

The different laws mentioned earlier recognise legal pluralism, and create and regulate the operation of CCs. Legal pluralism, established in Article 4 of the Constitution, validates access to justice, both through the formal statutory system of justice based on statutory laws, and through the customary law based on customs and traditions (as long as it does not contradict the values and principles set out in the Constitution). However, the constitutional principle of not allowing decisions that contradict formal legislation, remains only a declaration of good intentions in many cases, particularly when addressing issues related to gender and women's rights, as noted in the previous chapters.

In Mozambique, customary law and community authorities play an extremely important role in the resolution of conflicts at the community level, based on informal justice systems and local customs. While it is true that community authorities act as regulators of social order and facilitate access to justice for most of the population, cautious analysis must be carried out to determine whether they are respecting human rights in the resolution of conflicts, and in particular, women's rights.

Due to the complexity of the subject under study, in which various issues come into play, and in order to better understand the role and potential negative implications of the customary law in effect in Mozambique for gender equality and women's rights, the role of the different civil society organizations (CSOs) and of the paralegals in conflict resolution, will also be analysed in depth as it relates to the operation of the CCs.

Concrete examples of different situations entailing the participation of both the CCs, the CSOs and paralegals in conflict resolution around women's and/or children's rights, are presented below.

6.1 Community courts as forums for conflict resolution

In the words of Kaelina P. Z., Chief Justice of the 23 CCs of the city of Inhambane, some of the main tasks carried out by the CCs are:

“Harmonizing social coexistence through community participation and recognition of the ethnic and cultural diversity of Mozambican society. The CCs defend equal rights in the communities and reinforce social stability. In the CCs, minor conflicts of a civil nature are dealt with based on the habits and customs, traditions, and social and cultural values, always trying, where possible, to bring about a reconciliation between the parties”.¹⁵

As this quote highlights, CCs are increasingly important in the promotion of human rights and must include mechanisms that enable women's rights and gender equality to be guaranteed.

However, the operation of the CCs is uncoordinated, lacks definition and their legal scope is vague; there is no single standard course of action and conflict resolution varies markedly from province to province, and substantial differences can be seen even in the same

¹⁵ Interview held in Inhambane.

province.¹⁶ However, within this high degree of variability, some general tendencies can be identified. It is common for the first source of conflict resolution to be carried out in the family itself. If an agreement is not reached between the parties, they can turn to the community leaders (*'chefe das 10 casas'* - leader of 10 houses, *'chefe de quarterão'* - leader of the block, *'chefe do Bairro'* - leader of the neighbourhood and *'Régulo'*- traditional authority). The process that is followed, to go from some leaders to others, is not precise. If one of the parties involved does not agree with the solution offered, then they turn to the CC; and once all these options have been exhausted, they can bring the case before the DC.

The different stages in the resolution of a conflict may vary according to the case, as already stated. At the same time, this complex process is also influenced by several variables of a social-cultural origin. For example, in many communities, wives who are victims of violence are afraid to bring their cases before the formal authorities for fear that their husbands will be thrown in jail. Another important aspect is the difference in the symbolic elements associated with the formal courts, where Portuguese is used to the detriment of the local languages, and the clothing worn and practices used appear strange to the people from the rural communities.¹⁷ This indicates that the strengths of informal systems of justice *vis-à-vis* the rural populations, male and female, should also be assessed in terms of cost, proximity, language, culture and shared values. The statutory law and formal justice system may often be perceived by the women and the community itself to be a distant and strange system of social regulation (*op. cit.* World Bank, 2011).

The dichotomy that exists between the operation of the CCs in the city of Maputo and the rest of the country, i.e. between urban and rural areas, displays a significant difference in terms of organization, availability of infrastructures, and the use of materials in the performance of their tasks. The CCs in urban areas focus predominantly on the settlement of disputes about land demarcations. By contrast, the expropriation of land and eviction of widows, along with problems of DUAT sales and renting, are the main land-related conflicts which women take to the rural CCs. In general, it was difficult to obtain information about land conflicts in both areas. An in-depth inquiry reveals that they are included in the category of "social cases" when the people involved see the situation as a family or domestic matter (for example, disputes between widows, their children and the families of the deceased husband, domestic violence, divorces, issues faced by single mothers, etc.).

6.1.1 Community courts in urban areas

The CCs located in the city and the province of Maputo have their own physical space, which is generally shared with other administrative authorities such as the Neighbourhood Office and/or premises belonging to the FRELIMO political party. These courts are open to the citizens from Monday to Friday, from 08:00 to 13:00, and Friday or Saturday is the day set aside for holding trials. Some courts have their own typewriter to record the cases and official documents provided by the Ministry of Justice. The availability of manuals on laws is minimal. The courts make a general record of the cases with no subsequent cataloguing. The parties involved in the claims should each pay a standard fee of 200 meticaís (around USD 2.7).¹⁸

¹⁶ Information obtained from the interview of João Carlos Trindade, Deputy Director of *Centro de Estudos Sociais Aquino de Bragança (CESAB)* – Centre for Social Studies in Aquino de Bragança.

¹⁷ Interview with Sergio Baleira, researcher and instructor at the CFJJ.

¹⁸ Exchange rate USD 1 = MZN 72,4 (August 2016).

In order to understand how the cases involving women's rights are tried in the CCs, several practical cases recorded throughout the study are presented in the next boxes. These cases are useful examples of different situations involving the participation of the CCs, the CSOs and the paralegals.

Box 5: Trial 1 – The Regret of Felisberto G. J. N.¹⁹

Felisberto filed a complaint with the CC of Zimpeto accusing his wife of wanting to sell their house, under the influence and manipulation of their son Belgencio. Felisberto explained that the problems with his wife began in 2007. Because his wife was not taking care of him, he decided to leave her and go to live with his "friend" (who is now his new wife/partner). While at the trial, Felisberto completely changed his mind and agreed that his wife may sell the house to get the money she needed to treat her "disease".²⁰ At the same time, he accused his son of having already started procedures to sell the house without his consent; he also stated that Belgencio was inciting his mother "to make trouble for him". He requested half the proceeds from the sale of the house. The CC did not authorize the sale of the house by the son, not trusting the statements he made throughout the trial and for replying in a confused and contradictory manner to certain concrete questions. The CC considered that it was important for the wife to be able to live in her house and furthermore ruled that she would receive a monthly sum from Felisberto, who was required to provide her with part of the pension that he received from the Government. Felisberto had tried to conceal the fact that he was receiving that payment; for this reason the CC summoned the family again the following Saturday to inform them of the final decision (once the CC had verified the sum that Felisberto received and set the amount that his first wife would receive). Although Felisberto displayed regret for his actions, this did not affect the judges' final decision. The CC completely mistrusted the son and chose to defend the rights of the wife.

In the case above, the woman intended to sell the house she had built with her ex-husband, in which she resided, in order to get the cash she needed. However, the CC did not authorize the sale anticipating that she would probably not have anywhere to live if she proceeded to sell the house. Looking after the broader welfare of the family, the decisions of the CCs allow for this type of situation, which would not be acceptable in a formal court. A formal court could not prohibit an individual from selling his/her property, even if this were to lead to future problems, since this would go beyond the competencies of a formal court in terms of applying the law. Contrary to formal courts, this type of situation is seen in the CCs. In this specific case, the CC not only decided what would be better for the woman (to keep the house), but also introduced other aspects (right to alimony from her ex-husband) to guarantee her livelihood.

¹⁹ Information obtained from attending the trial at the Zimpeto Neighbourhood CC (city of Maputo).

²⁰ The real disease, which is HIV/AIDS, is not mentioned during the entire trial. Both the CC judges and the people in the trial choose by default to use the word '*doença*', which means 'disease' in English. This peculiarity highlights the taboo that still exists around HIV/AIDS in present-day Mozambique.

Box 6: Trial 2 – The Mafalala Neighbourhood CC limits the entrepreneurial actions of Carolina T.²¹

Carolina T. is the mother of 8 children, the youngest of which was conceived with another man other than her husband. Her husband, Orlando M., migrated to South Africa and left her without any economic support. Since her husband abandoned her and all their underaged children, Carolina decided to present her case to the Mafalala's Neighbour CC, requesting child support. In the previous year, the CC decided that Carolina should leave her house and move in with her husband's family, who should look after her and her children. Carolina never complied with the CC decision. Then, a cousin of Orlando, Antonio T., filed a new case with the CC alleging that Carolina was not living in her house and was currently living with another man. Antonio T. reported that Carolina was receiving an income from the rental of her house without the prior authorization of the family. He also claimed that the family instead should be the receiving the rent.

The presiding judge reproached all the people in the trial because the directions issued by the CC the previous year had not been followed, saying that this attitude showed a lack of respect for authority. Carolina should have informed the CC that the living conditions with her husband's family were not acceptable, if she was intending not to follow the CC order. The CC could have verified this information by going directly to the dwelling. The CC also reproached Carolina for not having informed the court of her intention of living with a new man and having rented out the house without first consulting the CC. In her defence, Carolina argued that she had no financial means for supporting her children and that neither her ex-husband nor his family gave her money for that. The husband's family insisted that she was obtaining some very high benefits. Carolina, who had some knowledge of the law, presented the written lease agreement, which amounted to 3,500 meticaïs (approx. USD 49) per month.

During the course of the trial, the judge questioned all the people present and tried to verify the information that conflicted with what was recorded in writing during the previous trial. Subsequently, the CC deliberated behind closed doors and raised doubts about the truthfulness of the facts presented by the cousin. Even so, their final decision was that, from now on, the Machaba family would receive the money from the rental of the house, but in exchange must pay in full, the alimony for the 7 children Carolina and Orlando had together. Carolina would thus receive a higher income, but her entrepreneurial action to solve the problem had been punished. The question remained as to whether the husband's family would actually give any money to Carolina or not.

The case above mixes elements from statutory law and customary law. According to statutory law, in the absence of her husband, Carolina would be entitled to manage the couple's assets, to which the husband's family have no right. In the case of her husband's death or absence, these assets would be left to Carolina and to the couple's children. However, customary practices determine that in the absence of the husband, his assets "belong" to his family (fathers, uncles, brothers, male cousins). This practice contradicts statutory law, which recognizes only the rights of the spouse and the children. The CC states that Carolina should have informed it of her intention to live with another man. This presents another violation of the statutory law, since this is a private decision that does not require authorization from anyone whatsoever. At the same time, customary practice determines that the husband's family must support the wife and children. Nowadays, this rarely happens. Even so, following customary rules and contradicting the Mozambican law, the CC determined that the income from the rental of the house, which Carolina had been

²¹ Information obtained from attending the trial in the Mafalala Neighbourhood CC, Minkadeuine (city of Maputo).

using to support her 7 children, must be handed over to the husband's family. The CC determined that it was the family's responsibility to pay maintenance for the 7 children. However, it is unlikely that maintenance will be paid. Furthermore, the CCs do not have any mechanism to guarantee that their decisions are complied with and implemented. Different cases reported in studies and empirical evidence show that, in general, the families dispossess the women and children of their assets and fail to provide any kind of support to them. Faced with the decision of the CC, Carolina will be left without the rent money. Considering current practices in Mozambique, it is unlikely that she will receive anything from her husband's family; therefore, she will probably have to support the 7 children on her own. In this specific case, if statutory laws had been followed, Carolina would have been considered the legitimate party to receive the rental fee, which would have allowed her to have an income to continue supporting her children after having been abandoned by her husband.

6.1.2 Community courts in rural areas

Rural CCs suffer from lack of adequate infrastructure and a marked lack of human resources to carry out their activities. They also do not have the materials to make a written record of the conflicts presented nor access to information on laws or the Constitution itself. In many cases, they do not have a physical space where they can meet. As an alternative, these courts use an open space to discuss the different cases, generally in the shade of trees, and the meetings are cancelled when it rains. The CCs tend to establish two set days a week to take in cases and the judges will go to the court if there is a conflict to resolve.

Article 7 of the Community Court Act defines the composition of the CCs, which must be made up of eight members (five active judges and three in reserve). Direct observation²² confirmed that only one of the rural CCs visited was composed by all five judges. Many of the elected judges had died and were never replaced or do not carry out their duties because they clash with other economic activities they engage in (such as working on the *machamba*). Moreover, some of these judges have overlapping roles, also being community leaders or neighbourhood officers.

²² During this research, 32 judges from 16 CCs had been interviewed. Detailed information is provided under Annex II below.

Box 7: Community leaders, paralegals and traditional authorities are judges at the Gondo CC, in Muane (Zavala, Inhambane)²³

This CC was set up in 2008 and is made up of eight people, comprising community leaders, representatives of civil society and traditional authorities. Mr. Samuel M. G. received recognition from the government as a community leader in 2001 and was subsequently elected judge of the CC by the people themselves. Samuel was also trained as a paralegal within the CFJJ/FAO paralegals training programme. In the CC, everyone works together to resolve conflicts and no fees are charged for the services offered except in cases where it is necessary to travel. The court dealt with two cases involving widows in 2012, and with a further two cases in 2013. Community Court Judge Samuel explained that widows' rights are being violated after the death of their husbands and one of the awareness-raising activities carried out by the courts consists of showing that the law defends these women. The Judge highlighted that after taking the paralegal course, the court rejects discriminatory practices against widows, thereby protecting and recognizing their rights.

As regards to the charging of fees for services rendered in the CCs, the amount varies according to each court and no standard sum can be identified. According to the information collected at all the visited courts, the sum may range from 120 meticaís (approx. USD 2) as a basic cost, to 500 meticaís (USD 7) for more complicated cases requiring an additional cost for transportation. This sum may be covered by and shared between the parties involved or, as happens more generally, both parties must pay that amount. There are also some CCs that claim that their services are rendered completely free of charge (basically, this occurs in CCs that receive support from a CSO), or that they do not charge a fee to people who have no financial resources. These people may pay in kind with animals (hens or goats) or by performing social services for the community (like clearing the community *machamba*).²⁴

6.1.3 Common considerations to urban and rural community courts

Most of the Mozambican population living in the rural areas resort to CCs and community authorities as their first recourse for conflict management. People have immense respect for community authorities and so the CCs and its members are perceived as being highly legitimate and have significant influence over the populations, both urban and particularly rural ones.

The judges in general do not receive any kind of financial subsidy or support from the State in either the urban or rural CCs; as result, they engage simultaneously in other activities (generally activities directed at subsistence, as farming tends to be). Many interviewed judges mentioned that it would be important to receive some type of financial aid for the performance of their activities. The CC judges stated that they charge the court fees to maintain the system itself, using the incomes to buy paper and pens to record the cases.

The perception of having been abandoned by the State is widespread among CC court members. Most of the judges interviewed emphasized that there is an imperative need for training, the lack of which may negatively impact on the effectiveness of these forums. Some judges have a little knowledge of statutory laws, which they have acquired through

²³ Information obtained from the interview of Samuel M. G., customary judge of the Gondo CC, community leader and paralegal in Muane (Province of Inhambane).

²⁴ Information obtained from the interview of Joaquim Bata, Chief Justice of the CC of Chamane (Inhambane Province).

awareness-raising actions or their own experience. However, knowledge is very limited. In general, the CCs do not have printed copies of the laws or information materials on formal legislation. Regarding gender issues and women's rights specifically, it was noted that the CCs with judges who participated in some form of awareness-raising or capacity-building tended to issue sentences that are in compliance with the principles of equality and with the right to inherit, established in formal legislation. This was shown in Boxes 2 and 7 above, and is also illustrated in Box 8 below.

Box 8: Women's rights and social justice in Customary Courts

Samuel M. G. is a community leader and customary judge in Zavala District, Inhambane Province. In November 2010, he participated in a paralegal training course promoted by CFJJ and the FAO Land and Gender Project. Through the training, Samuel gained knowledge regarding the most relevant legislation on land and natural resources rights. He was also sensitized on the importance of gender equality for social and economic development and learned about gender issues and women's rights. In 2012, Samuel received a not uncommon case in his local customary court.

A widow and her children had been evicted after the death of her husband. A few days after the funeral, some of the deceased's relatives tried to evict the widow and her small children, claiming that, according to tradition the property left by the deceased should be given to his relatives. Samuel recalls that he called a meeting with the husband's family and explained to them that, according to Mozambican statutory law – especially the Constitution, the Land Law and the Family Law – the widow and her children were the ones who had legal rights to the land and the house jointly built during that marriage. "When they saw the books (legislation) they finally accepted that these are the only rules now; and these rules are good for everyone in the community. Otherwise, what would have happened to that widow with her small children? They would have been left with nothing. And without land, without shelter, how could they have survived? From then on, everybody in our community knows that widows are no longer evicted", concludes Samuel.

Source: FAO, 2014.

The exact process for electing judges and the mechanisms in place for their re-election are not known. Article 13 (elections) of the Community Court Act states that "it is the Government's responsibility to establish the mechanisms and deadlines for the election of community court members", while Article 14 (monitoring of elections) does not go into detail on the procedure to be followed, and limits itself to awarding the general responsibility for monitoring to the DCs. Most of the people interviewed indicated that the election of the judges is always done through the people. The election methods vary minimally from one court to another; in some cases, a pre-selected group of judges is chosen and put forward for the people to make the final election. In other cases, it is the people themselves who appoint the judges, with the entire population participating in the election of these offices. It is important to note that as part of the process of social self-regulation, the role of a judge is associated with emblematic people who have a good reputation and who possess certain leadership qualities, and who have knowledge of their own community.²⁵

²⁵ Many of the judges fulfil the duties of community leaders and neighbourhood officers at the same time, and may also be '*régulos*' - Chiefs of petty states (and in the historical context some Chiefs of petty states can be associated with their political-party membership).

Some of the general directions followed in the CCs are: no one involved is allowed to be unreasonable, to be rude to or confront the judges, and everyone must display an attitude of respect towards them. If one of the parties involved does not agree with the CC's decision, the CC gives them full freedom to refer to the DC or even courts of higher instance.²⁶

Similarly, on those occasions when the community judges feel that the cases are beyond their scope, they coordinate their proceedings with other authorities, such as the police, DCs, the prosecution office, *Associação dos Médicos Tradicionais de Moçambique* (AMETRAMO) – Association of Traditional Doctors of Mozambique and the Gabinete de Atendimento à Família e Menores Vítimas de Violência – Office of Family and Children's Victim of Violence.²⁷ They stay in close contact with AMETRAMO when settling cases involving witchcraft.²⁸ At the same time, situations are identified in which the communications go in the opposite direction, that is to say, in which the police or DC themselves ask what the decisions handed down by the CC have been; or they refer the case to this forum (especially in cases involving the petty theft of ducks or hens). The CSOs also tend to receive a high number of cases brought by parties who do not agree with the CC decision and who are looking for alternative ways to deal with their cases.

Box 9: Women as judges in the CCs: Some limitations to their participation²⁹

In the Chamane CC, in Inhambane, one of the women elected as active judge was forced to step down from office by her husband. The husband requested her to step down alleging that she was not fulfilling her domestic duties of cleaning the house, preparing the meals and looking after their children. More specifically, she was not heating the water for his bath when he came home tired from work. From his perspective, his wife was being distracted from her main tasks. When the woman explained her reasons for stepping down to the members of the CC, they decided to talk to the husband to negotiate a possible part-time position for her in the CC, reducing the number of days that she would put in. They also explained to him that his wife had been elected by the community and that it was important to respect that decision. However, the husband directly forbade his wife to take part in the CC and threatened to restrict her freedom even further, to the point of locking her up at home, if the pressure did not stop. Finally, the CC decided not to press the matter any further and replace that judge (in this case, she was replaced by a female paralegal, whose experience is described in detail in another of the cases).

²⁶ Information obtained from the focus group interview held in Inhambane. Detailed information is provided under Appendix II.

²⁷ The *Gabinete de Atendimento à Família e Menores Vítimas de Violência* (Office of Family and Children's Victim of Violence) aim to provide a safe space where women and children victims of violence, abuse and exploitation can report these situations and receive the necessary care. The Offices are coordinated by the Department for Women and Child Care of the General Command of the Republic of Mozambique Police (PRM), and is a multi-sector intervention involving also the Ministries of Health (MISAU), Women and Social Action (MMAS) and Justice.

²⁸ '*Feitiçaria*' (witchcraft) is the Portuguese term that refers to traditional practices that involve attributing a magical dimension to a given phenomenon. They are frequently recurring practices and are deeply embedded in the culture of Mozambique. An illness, a death, an accident, the loss of property or any other misfortune is considered to be an unforeseeable event in science-based or Western thinking, whereas in Mozambique, it is associated with the result of *feitiçaria* practices. These practices vary from province to province and from community to community, with their unforeseeable and uncontrollable nature being the common denominator (Meneses, 2008).

²⁹ Information obtained from the focus group held in Inhambane.

The case above shows the strength of the patriarchal system and male's dominance in Mozambique, particularly in rural areas, but also in some urban areas. While formal legislation, particularly the Constitution, recognizes gender equality and women's rights, the reality is different. The customary system, in which the husband, as "head of the family" has total power over his wife, remains in force. The husband determines which activities his wife can carry out, where she can go and with whom she can interact. In the case above, the husband even threatened to "lock his wife in the house", if she continued to insist on participating as a community judge. According to statutory law, this practice is a crime (forced confinement), punishable with a prison sentence. Unfortunately, cases such as this one are very common, and they show the imbalance between customary practices and the Mozambican legislation. The crystallization of gender roles, whereby women subordinate to the "head of the family" are responsible for domestic chores and caring for the husband and family, and for anything else the husband may decide, is very closely linked to social problems faced by women. These problems include low levels of schooling and illiteracy, poor socio-economic development and, ultimately, complete dependence on their husbands, among others. These issues need to be considered in the context of the relative isolation and distance, both physical and in terms of values, in which certain rural communities are immersed.

Box 10: Actively listening to the various people involved to detect possible alliances or liars in a *feiticharia* case from the Gungulo CC³⁰

In the community court of Gungulo, a case was brought forward in which a group of 12 children reported their widowed mother for practising *feiticharia* inside the home, with the aim of evicting her from it. The procedure called for listening to all the parties involved, particularly each child separately. In this way, the court was attempting to ensure the truthfulness of the information provided, discarding possible alliances between the children and detecting potential lies. Subsequently, a meeting was held with the witch doctors, who vigorously asserted that this widowed mother was engaging in various *feiticharia* practices at home. Permission was obtained from all the parties involved to enter the house and make a detailed examination to see whether there was evidence of the *feiticharia* practices reported by the children and corroborated by the group of witch doctors. Once the house had been examined, no evidence was found that justified the accusations. The court ruled that the children, joined with the interests of the witch doctors, were lying in order to evict the mother and subsequently sell the house and make money that way. There was no credible basis to prove the *feiticharia* practices and the mother was able to remain in her home without being evicted.

Active listening and talking with the various parties involved are the main tools of information-gathering and case analysis used by the judges. They try to reach a consensus and bring about mutual understanding between the parties, in line whenever possible, with the strategies of coexistence deeply rooted in the community itself, which largely guide the conflict resolution, based on the application of common sense.

³⁰ Case reported by Alfredo Q. M., Chief Justice of the Muane CC (Zavala, Inhambane).

Box 11: Women are being accused of causing their husbands' deaths³¹

In the face of the chronic illness of a husband (in many cases, infected by HIV), it is a recurring practice for the family members to accuse his wife of being responsible for the origin of his disease and, eventually, his death.

Olinda C. was married to Jacinto M. and they shared a house along with their children, aged 18 and 21, and a 15-year old son who was the offspring of a relationship that the husband had with another woman. Jacinto, who used to engage in extramarital sexual relations, was suffering from HIV/AIDS, which in turn he transmitted to his wife Olinda. Olinda accepted this condition and even raised the child Jacinto had with the other woman, as though he was her own (his mother died of HIV/AIDS shortly after his birth). When Jacinto got worse because of the HIV/AIDS, his brother accused Olinda of having engaged in *feiticharia* practices to bring about her husband's death. The brother-in-law decided to evict Olinda and she was forced to leave her home and her children and return to her parents' house. During the terminal stage of the disease, Jacinto asked for Olinda to return home to look after him. When her husband died, the brother-in-law again accused Olivia of *feiticharia* and forced her to hand over the keys to him and leave the house along with the children. The sale of the house had been previously agreed to in the event of his brother's death. Olivia had some knowledge of the law and knew that upon the death of her husband, the house should be inherited by his children, so she went straight to the Head of Neighbourhood in search for help to resolve her case. The Head referred the case directly to the CC of Zimpeto, as that was a matter that went beyond his jurisdiction.

The case was brought before the CC of Zimpeto, and the judges of the court, in the face of the reiterated accusations of *feiticharia* practices, decided to consult AMETRAMO on how to approach this conflict. AMETRAMO concluded that the wife was not responsible for her husband's death, as he had contracted HIV/AIDS through the extramarital relationship he had for years with the mother of his last son. Therefore, Olivia had not engaged in any *feiticharia* practices. With that information, the CC concluded that the wife should remain in the house to take care of her children and that the brother-in-law could not proceed to sell the property. The decision-making process took approximately three weeks from the time the case was brought before the CC.

These practical cases serve as an illustration of the interactions that occur between the various informal forums of justice and the exchange of experiences that was generated between the CC of the Zimpeto Neighbourhood and AMETRAMO.

Accusations of witchcraft are frequent in Mozambique. Generally, they result in widows, children and the elderly being dispossessed of their property. With the increased prevalence of HIV/AIDS and early deaths, combined with growing pressures on land, these cases have been on the rise. In the examples provided above, the CCs showed a good understanding of the basic principles enshrined in Mozambican legislation, and statutory law prevailed over customary practices. Unfortunately, this is not always the case. There is great fear of witchcraft and violence, and sometimes widows prefer to leave their homes and property, instead of running the risk of being lynched after being accused of witchcraft, or even falling victim to witchcraft. According to the former Attorney General Augusto Paulino, "lynching in rural areas became real homicides, in which small groups murder their relatives or neighbours for alleged reasons of 'witchcraft'" (Paulino quoted in Open Society Initiative for Southern Africa, 2012). Serra (2009) and Granjo (2012) noted that, lynching cases of people accused of witchcraft are normally targeted to vulnerable and socially weakened individuals (mostly women and elders), and strongly gendered. While the most feared and famous

³¹ Case reported by the judges of the CC of the Zimpeto Neighbourhood (Maputo).

sorcerers are usually men, the overwhelming majority of people accused of witchcraft are women. The kin resulting from marriage have a privileged structural position as primary suspects, particularly women living with the husband's family. If these women demonstrate behaviours deemed undesirable by their in-laws they will automatically become suspects of witchcraft. This could for instance, include situations where the women, according to their in laws, are argumentative or defiant of their mother-in-law and sisters-in-law, allegedly insufficiently respectful of or zealous toward their husbands and his elders, or envious of the assets or children of other women. Widows are also in a weak position with regard to possible accusation, particularly if they own locally significant assets and started to behave in a more independent way after widowhood. These women are affected by a convergence of factors, including: limited defence capacity, the economic expectations of the possible beneficiaries of the accusation, a life experience that might have supposedly given them access to magic secrets, and gender power imbalances. These are factors which, in turn, will add to the already existing and common suspicion about the widow's likely responsibility for her husband's death, which may be revived and work as complementary 'evidence' in the presence of new suspicions. Furthermore, behaviours that diverge from the local role models of femininity and gender power may become sufficient reason for suspicion and consequent accusation (*op. cit.* Granjo, 2012).

While the cases presented in Boxes 10 and 11 are positive examples where reason and statutory law prevailed over accusations based on subjective and questionable means of proof, in most cases especially at rural level, procedures follow a reasoning diverse and distant from the fairness and logic entailed in statutory law, as reported in Box 12 below.

Box 12: 'A woman who defended herself from gender-based violence 'was a sorcerer'!

The case started at a Community Court. The complainant was a married woman who applied for divorce due to repeated aggression by her husband over the years they had spent together. The last time she was beaten she was able to run away and seek refuge with her family of origin, when she filed the claim. The detailed description of the events showed that, on this last occasion, the woman stood up to the husband and hit him on the head with a frying pan in order to escape. The mood changed instantly as soon as this was disclosed at the trial. The 'judge' was astonished, and both he and the people representing the husband set about questioning whether such an unusual reaction from the woman would not be explainable solely by the fact that she had become a sorcerer. The judge, feeling incompetent to try such matters, immediately summoned a 'Sorcery Court' against the woman who had arrived there as a complainant. The new trial, albeit an *ad hoc* one, started in accordance with the usual procedures. However, given that the woman insisted on not admitting her guilt, one of the judges gave her a mirror and asked her what she saw in it. As expected, the woman said she saw her image reflected in it. 'That is the proof', someone answered her, adding that: 'This is a magical mirror and only shows sorcerers!'. It is not known what happened to this woman, who continued to deny the accusation, though 'such an extraordinary piece of evidence' convinced most of those present.

Source: *op. cit.* Granjo, 2012.

In addition to the fear of being accused of witchcraft, the fear of being victim of witchcraft is powerful and widespread in Mozambique. A study carried out by the Eduardo Mondlane University pointed out that some of the interviewees alleged to be victims of 'spiritual violence'. According to them, they were victims of the violence caused by evil spirits acting on the request of their antagonists. It was reported that in some cases of husband's deaths, mothers-in-law and brothers-in-law have used the powers of evil spirits (and also death

threats) to scare widows and their children out of their homes, who escape leaving behind all their property and belongings (*op. cit.* Cossa José *et al*, 2011).

This delicate subject has been the root cause of diverse human rights violations. The abuses suffered from women due to accusations of witchcraft have been immense in recent years. In this context, it is relevant that traditional authorities are trained and technically prepared to properly deal with these cases in accordance with statutory law and human rights principles. As a reminder, the VGGT recommend that states provide timely, affordable and effective means of resolving disputes over tenure rights (VGGT, par. 21.1). The principles of rule of law and gender equality should guarantee that the law and custom be equally enforced between men and women and that the challenges that women face in exercising their tenure rights be addressed through specific measures aimed at accelerating de facto gender equality (VGGT, Principles 3B.4 and 3B.7).

“In providing dispute resolution mechanisms, States should strive to provide legal assistance to vulnerable and marginalized persons to ensure safe access for all to justice without discrimination. Judicial authorities and other bodies should ensure that their staff have the necessary skills and competencies to provide such services.”

(VGGT, par. 21.6)

The principles of rule of law and gender equality should guarantee that the law and custom be equally enforced between men and women and that the challenges that women face in exercising their tenure rights be addressed through specific measures aimed at accelerating de facto gender equality (VGGT, Principles 3B.4 and 3B.7).

This reference to special measures comes from the realization that gender-neutral legislation does not automatically translate into gender equality in practice. In fact, not even legislation that clearly supports women's rights – such as the Mozambican one – will necessarily translate in gender equality. In some cases, to achieve de facto gender equality it may be useful and needed to support the adoption of temporary special measures to address the imbalances caused by legal and traditional culture and systems that cater to the needs of a patriarchal society. Temporary special measures find their legal basis in Article 4 of the Convention on the Elimination of all Forms of Discrimination Against Women (CEDAW), that Mozambique ratified in 1997 without reservation. Discussions around affirmative action however, can be divisive and generate strong objections. They should take place within an inclusive policy-making exercise to build adherence to reform. The nature of these temporary special measures should be determined on the basis of expert consultations and tailored to the country's needs. They could for instance require that women make up a certain share of the composition of community courts, or mandate or facilitate women's access to justice by creating special time slots to hear cases brought by women. Implementation decrees could make training in gender equality a compulsory part of a lawyer's curriculum.

6.1.4 Efforts to revitalize the CCs

Many of the CCs were made official by the Government between 2008 and 2015. That was part of the Government's effort to strengthen the systems that regulated order at the community level and as a way to reduce the workload of the official district authorities.³² Various Government representatives consulted during this study mentioned that there is a very scattered approach to CCs and stated that the work carried out by these courts should be somehow validated or legally recognized.³³ Faced with the challenge of revitalizing the

³² Information obtained from the interview of Samuel Salimo, Advisor to the Minister of Justice and to Parliamentary Affairs.

³³ Information obtained from the interview of Gaspar Moniquele, the Director of the National Office of Justice Administration.

CCs and establishing a new regulatory legal framework, several positive government initiatives emerged:

- In November of 2012, the National Office of Justice Administration was created as the organic unit in charge of developing and defining strategic policies, and coordinating and implementing actions.
- The Integrated Strategic Plan of Justice 2009-2014 defined the efforts that the sector will invest into the CCs, as these courts are one of the mechanisms of conflict resolution closest to most of the Mozambican citizens. The sector will monitor the CC's mechanisms and evaluate the performance of informal justice through coordination between the judicial system and the CCs. In this sense, the Courts of Law must render the necessary assistance to the CCs with the aim of promoting, supporting and adopting the necessary measures to make these courts more independent and impartial. This should also guide CCs that have not been observing the statutory law, as is the case with some discriminatory practices against women that end up being recognized as lawful in the CCs.
- In terms of planning and socio-political impact, the Economic and Social Plan for 2013 targeted the CCs aiming at developing capacities of 900 community judges; in the Economic and Social Plan for 2014 that number was raised to 1400.³⁴
- The *Instituto de Patrocínio e Assistência Jurídica* (IPAJ) – Institute of Legal Patronage and Assistance, a Government institution under the Ministry of Justice, is an important state institution which guarantees access to justice to people with limited financial means in the form of free legal assistance. In 2012, in collaboration with the United Nations Development Programme (UNDP), the institute prepared a study about the current situation of the CCs. One of the objectives of this study was to bring the work carried out by the IPAJ closer to community judges in the CCs, possibly creating space for synergies. The IPAJ has a written record in which it details the typology of its cases. During 2012, 204 cases about the division of assets, which indirectly include conflicts linked to access to land, were dealt with by the IPAJ at its regional office in the city of Maputo. These cases represented 52.58 percent of the total number of cases dealt with³⁵; of which, 174 cases were brought by women (85 percent of the total number of these cases). During the first quarter of 2013, 59 cases relating to the division of assets were recorded (48.36 percent of the general total of cases), of which, 42 were brought by women (71 percent of the cases) (IPAJ, 2012). The high number of women who access the services of the IPAJ demonstrates the change in women's attitudes, as they now seek to defend their rights and no longer passively accept negative or discriminatory traditional practices.
- The central office organized four regional seminars in which 35 CC judges took part (140 CC judges trained per year). The main objective of these seminars was to provide legal training for the customary judges, who in turn will train other judges at the provincial and district levels (the exact mechanisms followed to reach this objective is not clear). The seminars were meant to sensitize the community judges to the need to observe statutory laws and human rights in

³⁴ These efforts were not kept in the Economic and Social Plan for following years 2015 and 2016;

³⁵ The classification made by the IPAJ includes cases of divorce, alimony and maintenance, division of assets, regulation of parental authority, physical violence, psychological violence and separation.

their decision-making and to facilitate dialogue between the different parties that make up the formal and informal justice systems.

The Government has drawn up a proposal for a new CC Act.³⁶ The proposal introduces a series of innovations that are expected to improve the quality of the services provided by the CCs, such as the directive to record all sentences in writing. This will allow the quality of the CC's decisions to be monitored, particularly in relation to compliance with statutory laws. Furthermore, mechanisms have been suggested to guarantee enforcement of the CCs decisions. For example, in the case of defaulting on a CC decision, the affected party can request the CC to take measures to guarantee enforcement, and a fine is stipulated for those who fail to comply without justification.

There is growing effort by the Government and its development partners to improve the conditions of the CCs and as a result, improve the quality of their decisions. The training courses for community judges are an important measure in this direction. The examples in Boxes 7 and 8 show that with appropriate training, the CC judges start to implement decisions that are in line with statutory law, particularly in relation to issues addressing gender and women's rights, avoiding situations of extreme injustice that cause constraints and further vulnerabilities for widows and orphans. At the same time, the current lack of a precise mapping of CCs, with the exact number of judges and their location, makes this task difficult. It is important for a data survey to be conducted, if periodic training is to be organized covering a significant number of CC judges countrywide.

6.2 Civil society organizations and their role on gender issues and conflict resolution

Interviews have been conducted with the main organizations working on land-related issues and to advance gender equality and women's and children's rights in Mozambique. All these CSOs run important awareness-raising campaigns with rural communities and broader society in general. The majority of people interviewed say that some of the factors that influence the dynamics of women's access, use, and control of land, are related to gendered roles and relations, traditional socio-cultural norms and women's marital status. Patriarchal systems and values restrict women's rights of access, use, and control over land and natural resources, as well as to other productive resources at community and household level.

Most of the cases that reach these CSOs do so through word of mouth of previous users and generally, the parties who do not agree with the CC's decision turn to the CSOs in search of alternatives for resolving their conflicts. The emergence of networks of connections between the various organizations can be observed when the same case is dealt with at the same time by different CSOs and/or in the CCs. From among the organizations interviewed, information and communication sharing was noted between the *Associação Mulher Lei e Desenvolvimento (MULEIDE)*, the *Associação Moçambicana das Mulheres de Carreira Jurídica (AMMCI)* and the Mozambican Human Rights League, for instance when confirming whether a case has ever been brought in to any of the other organizations and checking which process was followed. This search for synergies between these organizations avoids overlaps in conflict management, thereby increasing their effectiveness.

³⁶ To date of publishing, this Act had not yet been passed.

Some practical cases set out below serve to illustrate the interactions that occur in the different informal forums of justice and between the CSOs. At present, these CSOs enjoy great prestige in the community, and on occasion, communities' members would rather go straight to these civil-society forums instead of bringing their cases to the DCs. A clear example of this occurred in the province of Manhiça, where the CC of Palmeira received very few cases (a total of eight cases in 2010³⁷) compared to the 31 cases³⁸ received by the *Gabinete de Atendimento à Mulher e Criança Vítimas de Violência* of the *Associação das Mulheres Desfavorecidas da Indústria Açucareira (GAMC-AMUDEIA)* during the same year. Most of the cases were related to land conflicts and issues regarding alimony for minors. Knowledge about the CSO's role in dispute resolution is also increasingly spreading among communities and the general public by word of mouth and the media.

Box 13: The case of the widow Carmen in the CC of Hulene B Neighbourhood and the coordination between the various forums of informal justice³⁹

Carmen, a 55-year-old widow, was accused of *feitiçaria* practices by her youngest son who wanted to evict his mother from her own home. Carmen was also the victim of abuse by her now deceased husband and initiated several complaints with the AMMCJ. Carmen learned about the existence of the AMMCJ from a radio programme on civic education, aired by the association until 2003.

When her husband was still alive, he evicted her from their house, leaving her with no alternative but to live outdoors on the same plot of land that they had acquired together during the marriage. When her husband died, she was able to return to her own house. She had six children, all sons, who had moved out on their own, except for the youngest, aged 30, who still lived in the house. This son did not work and displayed a violent attitude. He was also involved in illegal activities such as selling drugs and threatened to evict his mother from her house. Carmen went to the CC of the Hulene B Municipal Neighbourhood to report her son who was attacking her violently and threatening to evict her. The CC moved the case straight to the police station, saying that they do not have the jurisdiction over it. The police did not reply to the case filed by Carmen and it was at that point that she turned to the AMMCJ for help.

One of the AMMCJ officers went to the police in order to obtain further details and understand why Carmen was not receiving due and proper protection. The reply from the police was that the son reported his own mother for witchcraft and wanted her to leave the house for that reason. According to the police, if a case involves *feitiçaria*, it falls outside their jurisdiction and must be referred to the AMETRAMO. In her attempt to mediate with the police, the AMMCJ officer tried to learn the causes that led the son to accuse his mother of *feitiçaria*, and concluded that there were no grounds to that accusation. The police maintained their stand that it was AMETRAMO who must resolve the conflict.

The AMMCJ thus decided to present the case directly to the criminal investigations police authorities, requesting an investigation into the son (who was accusing his mother for no apparent reason, merely for the purpose of evicting her from her house and thereby appropriating that space) and likewise with the police station, as they were not capable to effectively provide support in the conflict resolution. To date, this case has still not been resolved, and the woman continues to live in her house with her son, being subjected to constant threats of violence by him.

³⁷ Information obtained from the interview of João Carlos Trindade, Deputy Director of the CESAB.

³⁸ Information obtained from the visit paid directly to the GAMC of AMUDEIA.

³⁹ Information obtained from the interview of Latifa Rijal Ibraimo, a founding member of AMMCJ.

The case in Box 13 illustrates the extent to which the formal justice system is influenced by the customary system. Even though threats and violence are crimes that should be addressed by the police, the police refuse to take action, saying that “because it is witchcraft”, AMETRAMO should intervene. Accusations of witchcraft against widows are fairly frequent, as mentioned previously, particularly when there is property involved. Widows do not always benefit from the rights enshrined in Mozambican legislation, nor are they protected by the system. In the case in question, in spite of the lack of any evidence of witchcraft, and the son's criminal record (unlawful acts and involvement with drugs), the police preferred not get involved.

6.3 The role of paralegals on gender issues and conflict resolution

From 2006 to 2014, FAO worked in partnership with the Centre for Juridical and Judicial Training of the Ministry of Justice in the training of paralegals. The training programmes aimed to promote capacity building and legal training for local populations and to raise their awareness of their legal rights. These courses were offered to members of NGOs, CSOs, development agents, community leaders and base level government institution employees, covering the most relevant laws on access to land and natural resources, gender equality and women's and children's rights, among others. Paralegals also received training on alternative conflict management methods, such as mediation and arbitration. Approximately 60 percent of the participants were from CSOs and 40 percent were from government institutions. In this way, the training served two purposes – to educate the participants and to bridge the gap between civil society and state actors, by providing them with similar information on controversial issues and by discussing and seeking solutions jointly (*op. cit.* FAO, 2014).

After the training, selected paralegals received support to organize community meetings, where they would transmit the knowledge acquired during the course to the rural communities where they were active. Assessments and impact studies revealed the success of the paralegals' actions on harmonizing customary practices and statutory law. In addition to supporting the dissemination of legislation related to land and natural resources issues and promoting awareness-raising in the communities on the importance and advantages of gender equality, some paralegals began to support the CCs, either as judges or through providing technical support. Some cases involving these paralegals are reported below.

**Box 14: Women with fertility problems who cannot have children
are not valid as wives**⁴⁰

Géma C. C. is a 29-year-old woman living in the Mulebja Neighbourhood, in Manhiça. She had been married for 9 years but had encountered fertility problems within the marriage, which her husband alleges lie with Géma, because he had a son with his first wife 12 years ago. This was the only evidence presented by the husband to insist that his wife was not able to have children and, as a consequence, did not deserve to be his wife. Throughout, Géma has taken care of the son that her husband had in his previous relationship and has brought him up. By mutual agreement, and since she did not manage to get pregnant, the couple decided to separate. A week after the separation, her husband started a new relationship with another woman and left the home. Géma was the only one taking responsibility for paying back the bank loan they got together for the house and continued to look after her husband's 12-year-old son, as if he was her own.

The two families agreed that neither of the parties involved could live in the marital home until an agreement had been reached. In the meantime, Géma and the boy returned to her parents' house but her husband moved back into the marital home with his new wife. Now, the husband wants to sell the house and keep all the money for himself. Géma is the only one who continues to make the loan payments, as her husband is unemployed. She also wants to sell the house, but according to her, the profit should be shared equally between them both. Both parties first tried to resolve the conflict at the family level, with several written statements drafted assuring that the house would not be sold. Different witnesses stated that the husband has already started negotiations to sell the house. Géma brought her case directly to the AMUDEIA's paralegals at the advice of one her aunts, who was acquainted with someone who had already turned to them.

AMUDEIA activists were trained as paralegals in 2010 and they have good knowledge of the legislation and women's rights. They have been supporting women victims of violence for a long time and try to raise awareness in communities in the area on gender equality and women's and children's rights. For this case, the actions initiated by the paralegals consisted of summoning the family members to hear their testimony. At the same time, the AMUDEIA's paralegal was considering filing an application with the DC and making a request for maintenance for the son who is still being taken care of by Géma (stepmother), without any support from his father.

The case mentioned in Box 14 is extremely complex, because it involves customs and traditions that are deeply rooted in Mozambican society. Even though the reported situation is extremely unfair contradicting formal legislation, it is entrenched in the way in which things have traditionally worked in Mozambique. Change and transition to more socially fair practices is a lengthy and complicated task. Through the intervention of paralegals, who know the legislation and who to refer the case to if there is no amicable resolution between the parties, violations of rights and many injustices are avoided or at least mitigated. More importantly, the interventions and support of paralegals provide new paradigms in this patriarchal culture where the lack of social justice and gender inequalities have become part of the fabric of the society.

The paralegals receive extensive training on Mozambican and international legislation related to land and natural resources, gender equality and women's and children's rights. The paralegals have also been providing support to the CCs, which in different occasions turned to the paralegals for guidance on legal matters. They have been resolving questions and doubts raised by the CCs, or even becoming customary judges.

⁴⁰ Information obtained from the visit to the GAMC of AMUDEIA.

**Box 15: The paralegals in action: Some successful experiences of collaboration
with Community Courts**

Paralegal Angelina S.C. and the CC of Chamane (Inhambane)⁴¹

Angelina was one of the paralegals trained by the CFJJ in collaboration with the Gender and Land project implemented by FAO in Mozambique. She was initially trained in May 2012, in Inhambane; subsequently in November 2012, she took part in an advanced level paralegal training organized by the *Centro Terra Viva (CTV)*, in collaboration with the Land and Gender project. Following the trainings, Angelina began her activities as a paralegal raising awareness about gender equality and women's land rights in different neighbourhoods. She had an initial meeting with the judges of the CC of Chamane Neighbourhood and they agreed to start activities in spreading information about the laws and raising community awareness on the Land Law and gender issues. As a result, the CC suggested paralegal Angelina to be a member of their court, as two positions were open at the time. One of these vacancies was due to the fact that the husband of one of the elected female judges would not allow her to take part in the CC, alleging that the woman was not carrying out her mandatory domestic tasks (see case in Box 9). The paralegal accepted this offer and became a member of the CC of Chamane, where she actively collaborates in conflict resolution using the knowledge she acquired during her legal training as a paralegal – the paralegal also organizes, along with the CC, awareness raising activities in the community.

Paralegal Paciencia I.T. and the CC of the Muele 3 Neighbourhood⁴²

Paralegal Paciencia received the same training as Angelina. What is different in respect to the conditions of participation with the CC, is that this paralegal went directly to various CCs to fulfil her wish to take part in conflict-resolution trials. This paralegal asserts that it is necessary to go directly to the CCs because they lack knowledge of the work that the paralegals do. Paralegal Paciencia is present on the days when people meet and present cases to the CC of Muele 3. Her contribution consists of clarifying issues related to the laws of which the CC is often unaware. This paralegal also donated different written materials, such as manuals on the Land Law and the Constitution, thereby providing the CC with easy access to legal materials and information.

The practices presented above are considered as good experiences in terms of collaboration between the CCs and paralegals.

⁴¹ Information obtained from the visit paid to the CC of Chamane (Inhambane).

⁴² Information obtained from the visit paid to the CC of the Muele 3 Neighbourhood (Inhambane).

7. CONCLUSION

As demonstrated throughout this document, there is a clear gap and imbalance between the comprehensive Mozambican legal framework on access to land and promotion of gender equality, and the reality in the field. While statutory legislation created provisions to protect women's land rights in the recognition of customary systems, mechanisms to ensure that customary rules are compliant with statutory law are still absent. Furthermore, CCs and community authorities are the first port of call for conflict resolution for the large majority of Mozambicans, and they are highly respected by the local population. These informal conflict management mechanisms have the autonomy to resolve conflicts, but their decisions must not contradict the principles of formal legislation. However, particularly with regard to the cases involving women's and children's rights, the CCs tend to pass sentences based on customary practices, even if these contradict formal legislation. Instead of abiding by the principles of gender equality, the CC rulings are likely to follow traditional rules, which are often unfair and discriminatory against women. Furthermore, there seems to be a distortion of customary rules and practices. Pressure on the natural resource base, processes of commodification of land, and the changes within society and in its values, have created a series of new dynamics which have had a negative impact on the gender-sensitive provisions of customary land management systems; more specifically in terms of the protection of widows' and children's rights. Even in the context of increased cases of extended families selling widows' and children's assets, the traditional authorities continue to allow this usurpation of assets, instead of supporting them as used to be the case in the past.

The discrepancies between statutory and customary law and the prevalence of local traditions and power imbalances between men and women have been detrimental to women and children. Some of the cultural practices discussed throughout this study discriminate against women, jeopardizing their access to and control over land and natural resources.

As a result, many women have been suffering serious violations of their rights. These violations, regrettably, are considered "facts of life": violence becomes a private issue; restrictions to education, information and opportunities, with total dependence on men, is considered "normal"; the loss of land and property after the death or separation from the husband becomes a family matter. These injustices have a negative impact not only on women, but also on children, who are ultimately affected by the vulnerability of their mothers. These situations have been leading to several issues, from low agricultural productivity and poor socio-economic development, to the feminization of HIV/AIDS.

The results of this study have also shown disparities in the way the CCs and community authorities operate. While some decisions are more just and equitable in terms of gender and women's rights, others have been given primacy to custom and its distortions. The legislation that establishes and regulates the operation of the CCs decrees a series of directives on their operation, and reiterates that the courts' decisions cannot contradict the principles of the constitution. However, there is no provision on how community judges can access the formal legislation which they are supposed to follow. Without a knowledge base and nowhere to turn for information, many CCs have absolutely no knowledge of statutory law, and obviously grant decisions that are incompatible with it. As illustrated, trainings and awareness-raising for CC judges and community authorities have a significant positive impact on their decisions. Moreover, the accessibility and legitimacy, both social and cultural, that the CCs enjoy must be considered a useful mechanism for promoting not only women's rights but also human rights. Because of their importance in the resolution of

minor conflicts through fostering dialogue and understanding between the parties involved, the CCs also become key actors in grassroots structures and promote a society where rights and duties are more equally distributed between men and women.

In this context, it is crucial to harmonize and adapt customary law to statutory law, particularly in rural areas but also in urban areas. Legal education and awareness-raising of CC judges and community authorities is an essential part of strategies to promote gender equality and offset the negative aspects of customary practices.

However, the work with community authorities cannot be done in isolation. It is necessary to adopt a systematic approach, training community authorities and at the same time raising awareness at community level with both men and women. In this way, while citizens are aware of their rights and able to exercise them, the community authorities are given the skills to respect women's rights and promote gender equality, finally aligning customary rules to the progressive Mozambican statutory law.

There is a slow but steady rise of awareness on gender equality and women's rights in Mozambique. This process of change is occurring thanks to the increasing number of trainings given by the Government, its counterparts, international development agencies and various CSOs. Progressively, this work is curtailing the negative aspects of local customs and traditions. It is important to highlight the fundamental role of the CSOs and the paralegals in this transformation. They are key actors in land-related conflict resolution and awareness-raising about statutory law in rural areas. While it is true that cultural practices have been relegating women to a subordinated role in relation to men and restricting their decision-making ability, new movements are emerging in defence of the rights of the most vulnerable women – as in the example of the GAMC AMUDEIA in Manhica and the influence that it wields in the resolution of conflicts, thanks to the high degree of recognition it enjoys.

Although Mozambican legislation is compliant with the principles and good practices established by the VGGT, this study has demonstrated that legislation *per se* does not translate into gender equality in practice. The implementation of principles of the VGGT need to be complemented with specific measures aimed at accelerating de facto equality (paragraph 3B.4). For that purpose, developing capacities of Government and CSOs, and continuing to work on the legal empowerment of local populations is fundamental to change norms and traditions that violate human rights, and in particular, women's rights.

8. RECOMMENDATIONS: ACTIONS TO ALIGN CUSTOMARY LAW WITH STATUTORY LAW

“Assuming that men and women are born equal and should remain equal, the entire gender issue has to be looked at not only as an issue of women. Unfortunately, many people associate the term gender with women; when we talk of gender issues, they immediately think of women, and not of issues regarding the relationship between men and women. Customary laws often give supremacy to men, in terms of rights, to the detriment of women. But we know that women are equally valued, and even according to fundamental law have the same rights as men. So we have to create the bases at both rural and urban levels so that men and women can enjoy the same rights and duties.”

(Maria Benvinda Delfina Levi, Mozambican's President Legal Advisor)

Based on the results of this study, this session specifies concrete actions to: i) harmonize customary and statutory law, thereby converting formal legislation into a source for customary law; and ii) use improved customary rules as a practical instrument to promote social justice and gender equitable access to land and natural resources, which are essential to socio-economic development in Mozambique.

The proposed actions are divided into four specific areas: i) systematization of information on CCs; ii) legal education of CCs and community leaders; iii) training of paralegals; and iv) awareness-raising and dissemination of information on gender equality and women's and children's rights, and the advantages that these bring for society as a whole. With greater knowledge of the CCs, their judges and decisions, it will be possible to organize training actions targeting judges and traditional community authorities, to educate them on the formal legislation and make them aware of the importance and advantages of gender equality. Through systematic work at grassroots level, based on advocacy campaigns and awareness-raising actions, women will be prepared to exercise their rights, men will be aware about the existence of these rights, and the communities will be prepared to respect them. The CCs and community authorities will be prepared to carry out their activities and to resolve any possible conflict, based on the formal legislation and towards the common good, moving away from any type of discriminatory practice.

a) Systematizing the information on the CCs and creating mechanisms to align customary with statutory law

Data needs to be gathered and systematized consistently to generate a solid database that includes detailed information on: the actual number of CCs, their exact location and the number of active judges, broken down by gender. This information will also facilitate the design of policies and evaluation. It is also important to have written records of the CCs' decisions, in order to monitor and assess the decisions, and guarantee that these do not contradict the formal legislation.

It is important to encourage studies that facilitate an understanding of CCs structure, decision-making mechanisms, and their effect on the promotion of human rights, particularly those related to women, children and other vulnerable groups' access to and control over land.

Furthermore, a revision of the Technical Annex on the Land Law could be considered, to create mechanisms to assess and amend communities' customary rules during the delimitation process. During that process, government officials and development agents can raise awareness and inform communities about statutory law, and assess customary rules against it. Discriminatory practices can be analysed and replaced by new and equitable customary rules. A participatory process in which all community members actively participate in the discussion can create a sense of ownership by all community members, men and women, which is a fundamental step for the future enforcement of new and equitable customary rules.

b) Legal education of the judges of the community courts and of the community leaders

The CCs and the community authorities are the first port of call for conflict resolution for the majority of the Mozambican population. It is important to organize training courses on formal legislation and gender equality and women's and children's rights, targeting CC judges and community authorities. Gender equality could be made a compulsory part of any law curriculum.

c) Training of paralegals

The actions of paralegals have proved effective in harmonizing issues in the field between customary practices and formal legislation. Through awareness-raising activities in the communities and providing assistance in cases of conflict, paralegals have been promoting a new and more balanced way of resolving the problems affecting the local populations, both in terms of land issues and gender equality.

The *Centro de Formação Jurídica e Judiciária* (CFJJ) – Centre for Juridical and Judicial Training, in partnership with FAO and MCA, has held 38 training courses countrywide, training approximately 899 paralegals from 2006 to 2013 (*op. cit.* FAO, 2014). From 2012 to 2014, 545 community meetings were held under the Land and Gender Project in partnership with CTV and AMUDEIA, in which paralegals transmitted the knowledge learned during the training activities to the rural communities in the remotest areas of the country (FAO, 2014). Reducing power asymmetries in the rural landscape and promoting a more gender equitable access to land and natural resources is a “work in progress”. This “work in progress” is far from being concluded – both worldwide and particularly in the developing world. However, through the work of paralegals, and as illustrated in this document, some rural communities, have changed discriminatory practices towards women; traditional courts started recognizing and fostering widow's and children's rights; women have been appointed as customary judges (in general just elderly men used to be appointed as traditional judges); and paralegals managed to obtain land titles in favour of vulnerable women.

“States and other parties should consider additional measures to support vulnerable or marginalized groups who could not otherwise access administrative and judicial services. These measures should include legal support, such as affordable legal aid, and may also include the provision of services of paralegals or parasurveyors (...).”

(VGGT, par. 6.6)

Considering the success and the importance of the paralegals' actions, continuing with the training sessions and increasing the number of community meetings should be considered one of the priorities in promoting more gender equitable access to land and natural

resources. It is important to stress that training should target both men and women. Training and sensitization on gender and land would be much more productive than training on women's land issues alone, and will help to avoid marginalization and misconception of gender issues as being only about women (FAO, 2013b).

d) Awareness and dissemination of information on gender equality and women's and children's rights

It is also necessary to continue raising awareness and disseminating information on gender equality and on women's and children's rights more broadly, especially pointing out the advantages that these bring to society. At rural and community level, it is important to promote new ways of looking at the world, leaving behind discriminatory practices and showing the advantages of social justice and equality between all citizens. It is crucial to work with the entire community, both men and women. Men should always be involved so they understand what gender equality means, and all the advantages it brings to society. Women should also receive the same information and know their rights. Through awareness-raising, legal literacy and support, women can begin to exercise their rights; having been sensitized, men will hopefully be prepared for the change and willing to give women space, as they begin to slowly appreciate the benefits of gender equality.

The laws, combined with awareness-raising of gender issues, are a valuable instrument not only for conflict resolution but also to influence people's behaviour. When a person recognizes that a certain conduct is a crime, and that he/she will likely be punished if the crime is committed, he/she will think before conducting that crime again. For example, the practice of 'widow eviction' is now considered a crime and those who perpetrate it may be sentenced to prison. With knowledge of the laws, traditional authorities can promote increased awareness among people, thereby encouraging social change. Furthermore, due to the simple fact that people would know their rights and exercise them, they would be able to avoid or to correct situations of injustice. For instance, knowing their rights, widows can refuse to leave their houses and land, and turn to the State for help if their rights are violated, or community authorities fail to protect them. Equally, those breaking the law may give up for fear of the consequences (FAO, 2013a).

Several CSOs have been working for many years at community level providing legal training, even in the most remote parts of Mozambique. It is important these organizations are supported to continue and increase the number of awareness-raising meetings to promote behavioural change at community level. People can only exercise and defend their rights, if they are aware. It is necessary to guarantee that the Mozambican people know their rights. This will facilitate change processes within communities, which can lead to a more just society, with gender equitable distribution of resources and, in the long term, to truly sustainable socio-economic development in Mozambique.

APPENDIX I — METHODOLOGY

The methodology used in this study has been based on participatory action investigation⁴³ and bibliographical review. The study adopted mostly qualitative data collect methods rather than quantitative approaches because of its aim to look deeply into a societal structure and not to generalize in the statistical sense.

The main instruments used were in-depth interviews⁴⁴ with various key informers, who contribute an informed opinion and/or experience to the subject under analysis (identified for the most part through the waterfall strategy, which allows new contacts to be obtained from the previous interviewees), and a focus group.⁴⁵

A total of five CCs in rural areas were visited (located in the province of Inhambane) and a focus group was conducted in which a total of 15 community judges took part (city of Inhambane). At the urban level, two CCs were visited (Mafalala–Minkadeuine Neighbourhood and Zimpeto Neighbourhood), and a total of seven trials was attended, four of which specifically involved women and land conflicts.

In addition, interviews were held with various government representatives and with the main CSOs, whose work is linked to legal issues and to the defence of women's rights (please refer to the list of interviewees below).

⁴³ Method of research and collective learning of real-life situations, based on a critical analysis with the active participation of the groups involved, which is aimed at stimulating the practice of transformation and social change. Please refer to it at: <http://www.dicc.hegoa.ehu.es/listar/mostrar/132>

⁴⁴ The interviews were conducted in person and most of them were open in order to obtain the maximum amount of information possible, with the exception of a few cases in which it was decided to use a brief list of semi-structured questions to guide certain issues in particular (which were applied in the final stage of the study) (Basagoiti et al, 2001).

⁴⁵ The use of the focus group method provides a detailed view and a deep understanding of how a given group perceives the phenomenon under study. Some of its main advantages with respect to the use of one-on-one interviews are the various interactions that emerge between the participants, and non-verbal communication (Greenbaum, 1997).

APPENDIX II — LIST OF INTERVIEWEES

1. From the Government

- Halima Selemane – Gender Focal Point of the *Direcção Nacional de Terras e Florestas(DNTF)*(National Land and Forestry Directorate) – 12/06/2013, in Maputo.
- Catarina Chidiamassamba – Gender Focal Point of the *Millennium Challenge Account (MCA)* Project – 12/06/2013, in Maputo.
- Sergio Baleira – Sociologist, researcher and instructor at the *Centro de Formação Jurídica e Judiciária (CFJJ)* (Centre for Juridical and Judicial Training)– 18/06/2013, in Matola.
- Carlos Serra – Deputy Director of the *Centro de Formação Jurídica e Judiciária (CFJJ)*(Centre for Juridical and Judicial Training) – 18/06/2013, in Matola.
- Ribeiro Cuna – Judge of the Republic of Mozambique and instructor at the *Centro de Formação Jurídica e Judiciária (CFJJ)* (Centre for Juridical and Judicial Training) – 18/06/2013, in Matola.
- Albachir Macassar – National Director of Human Rights and Citizenship of the Ministry of Justice – 02/07/2013, in Maputo.
- Samuel Salimo – Advisor to the Minister of Justice and to Parliamentary Affairs of the Ministry of Justice– 02/07/2013, in Maputo.
- Gaspar Moniquele – National Director of Justice Administration – 15/07/2013, in Maputo.
- Raufo Rufino Bilole Lasquinho – Assistant to the National Director of Justice Administration– 15/07/2013, in Maputo.
- Virginia Telma A. Guambe – Justice Administration Officer – 15/07/2013, in Maputo.
- Adelino de Assis Laice – Coordinator of the *Instituto do Patrocínio e Assistência Jurídica (IPAJ)* (*Institute of Legal Patronage and Assistance*) – 16/07/2013, in Maputo.
- Amilcar Andela – Vice-president of the *Liga Moçambicana dos Direitos Humanos (Mozambican Human Rights League)* – 16/07/2013, in Maputo.
- João Carlos Trindade – Deputy Director of the *Centro de Estudos Sociais Aquino de Bragança (CESAB)* (*Aquino de Bragança Centre for Social Studies*) – 19/07/2013, in Maputo.

2. From Community Courts

- Samuel Manuel Guambe – Judge of the CC of Gondo, community leader and paralegal in Muane (Province of Inhambane) – 26/06/2013, in Zavala.
- Alfredo Quimisse Muanguambe –Chief Justice of the CC of Muane (Province of Zavala, Inhambane) – 26/06/2013, in Zavala.
- Alberto Naene Bamze – Judge of the CC of the Muele 3 Neighbourhood and Neighbourhood Officer – 27/06/2013, in Inhambane.
- Domingos Rubi José – Chief Justice of the CC of the Muele 3 Neighbourhood – 27/06/2013, in Inhambane.
- Maria Izais –Judge of the CC of the Muele 3 Neighbourhood – 27/06/2013, in Inhambane.
- Albertina Wetimane – Judge of the CC of the Muele 3 Neighbourhood – 27/06/2013, in Inhambane.
- Joaquim Bata – Chief Justice of the CC of Chamane – 27/06/2013, in Inhambane.
- Ricardo Bata – Judge of the CC of Chamane – 27/06/2013, in Inhambane.
- Joana Vitorino – Judge of the CC of Chamane – 27/06/2013, in Inhambane.
- Isabel Tamela – Judge of the CC of Chamane – 27/06/2013, in Inhambane.
- Bernardo Deve – Chief Justice of the Community Courts of the City of Maputo and Judge of the Mafalala / Minkadjuine Neighbourhood – from 05 to13/07/2013, in Maputo.

- Joana Abilio Banze – Judge of the CC of the Zimpeto Neighbourhood – 12/07/2013, in Maputo.
- Fátima Cussal – Judge of the CC of the Zimpeto Neighbourhood – 12/07/2013, in Maputo.
- Maria Sagenta Paulo – Judge of the CC of the Zimpeto Neighbourhood – 12/07/2013, in Maputo.
- Maria das Assuncas F. Simbine – Judge of the CC of the Zimpeto Neighbourhood – 12/07/2013, in Maputo.
- Gabriel João Tamele – Judge of the CC of the Zimpeto Neighbourhood – 12/07/2013, in Maputo.
- Joana Abilio Banze -- Judge of the CC of the Zimpeto Neighbourhood – 12/07/2013, in Maputo.
- Barbosa Jacinto – Judge of the CC of the Inhagoia “B” Neighbourhood – 12/07/2013, in Maputo.
- Felisberto Gabriel Jossias Nhantumbo – User of the CC of the Zimpeto Neighbourhood – 12/07/2013, in Maputo.
- Carolina Tembe – User of the CC of the Mafalala / Minkadjuine Neighbourhood – 13/07/2013, in Maputo.
- Antonio Timane – User of the CC of the Mafalala / Minkadjuine Neighbourhood – 13/07/2013, in Maputo.

3. From the Grassroots Social Organizations

- Terezinha da Silva – Coordinator of *Women and Law in Southern Africa (WLSA)* – 17/06/2013, in Maputo.
- Latifa Rijal Ibramo – Founding Member of the *Associação Moçambicana das Mulheres de Carreira Jurídica (AMMCJ)* (Association of Mozambican Women in Legal Careers) – 17/06/2013, in Maputo.
- Teresa Pedro Samuel Boa – Paralegal of the *Associação das Mulheres Despedidas da Indústria Açucareira (AMUDEIA)* (Association of Disadvantaged Women in the Sugar Industry) – 19/06/2013, in Manhiça.
- Louícia Estrela Munjuambe – Paralegal and Ministry Head *Gabinete de Atendimento à Mulher e Criança Vítimas de Violência (GAMC)* of AMUDEIA – 19/06/2013, in Manhiça.
- Géma Carlota Grngsto Chimene – User of the *Gabinete de Atendimento à Mulher e Criança Vítimas de Violência (GAMC)* of AMUDEIA – 19/06/2013, in Manhiça.
- Celeste N. Muchanga – User of the *Gabinete de Atendimento à Mulher e Criança Vítimas de Violência (GAMC)* of AMUDEIA (*Office of Women and Children's Services Victim of Domestic Violence*) – 19/06/2013, in Manhiça.
- Paciencia Inácio Tomás – Paralegal of the *Associação de Paralegales de Inhambane (API)* (Association of Paralegals of Inhambane) and Collaborator of the CC of the Muele 3 Neighbourhood – from 27 to 29/06/2013, in Inhambane.
- Maria Angelina Sales Conceição – Paralegal of the *Associação de Paralegales de Inhambane (API)* (Association of Paralegals of Inhambane) and Judge of the CC of Chamane – from 27 to 29/06/2013, in Inhambane.
- Esmeralda E. Angalaze – Paralegal of the *Associação de Paralegales de Inhambane (API)* (Association of Paralegals of Inhambane) – from 27 to 29/06/2013, in Inhambane.
- Deolinda Mário J. Barros – Chairwoman of the *Associação de Paralegales de Inhambane (API)* (Association of Paralegals of Inhambane) and paralegal – 28/06/2013, in Inhambane.

- Benilolo Malope - Vice-president of the *Associação de Paralegales de Inhambane (API)* (Association of Paralegals of Inhambane) and paralegal – 28/06/2013, in Inhambane.
- Alda das Neves Quiliboi – Chairwoman of the Board of the *Associação de Paralegales de Inhambane (API)* (Association of Paralegals of Inhambane) and paralegal – 28/06/2013, in Inhambane.
- Joaquina Macuácuá – Coordinator of the *Associação de Paralegales de Inhambane (API)* (Association of Paralegals of Inhambane) and paralegal – 28/06/2013, in Inhambane.
- Maria Alberto Somissone – Paralegal of the *Associação de Paralegales de Inhambane (API)* (Association of Paralegals of Inhambane) – 28/06/2013, in Inhambane.
- Nilsa da Graça Horácio Buque – Paralegal of the *Associação de Paralegales de Inhambane (API)* (Association of Paralegals of Inhambane) – 28/06/2013, in Inhambane.
- Avelino J.S. David – Paralegal of the *Associação de Paralegales de Inhambane (API)* (Association of Paralegals of Inhambane) – 28/06/2013, in Inhambane.
- Casimiro Brigido Maoco – Project-planning Officer of the *Centro de Pesquisa e Apoio à Justiça Informal (CEPAJI)* Centre for Research and Support to Informal Justice – 03/07/2013, in Maputo.
- Franciso Assis – General Administration Officer of *Justa Paz Centro de Estudo e Transformação de Conflitos* (Study Centre Fair Peace and Conflict Transformation) – 04/07/2013, in Matola.
- Filomena David – Research coordinator at *Justa Paz Centro de Estudo e Transformação de Conflitos* (Study Centre Fair Peace and Conflict Transformation) – 04/07/2013, in Matola.
- Adelaida Sebastian Moiane – Officer in Charge of the *Associação dos Médicos Tradicionais de Moçambique (AMETRAMO)* (Association of Traditional Doctors of Mozambique) of the Mafalala Neighbourhood – 08/07/2013, in Maputo.
- Nilza Chipe – Coordinator of the Economy and Gender Program of *Forum Mulher* (Woman Forum) – 10/07/2013, in Maputo.
- Issufo Tankar – Coordinator of the Land, Forests and Biodiversity Program of the *Centro Terra Viva (CTV)* (Terra Viva Centre) – 10/07/2013, in Maputo.
- Regina dos Santos – Gender Officer of the *Centro Terra Viva (CTV)* (Terra Viva Centre) – 10/07/2013.
- Tânia Marisa Pedro Jossias – Research Assistant of the *Centro Terra Viva (CTV)* (Terra Viva Centre) – 10/07/2013, in Maputo.
- Dulce Maria Novela Mavone – Coordinator of the Secretariat of the *Organização Rural de ajuda mútua (ORAM)* (Rural Mutual Support Organisation) – 11/07/2013, in Maputo.
- Rafa Valente Machava – Executive Director of the *Associação Mulher Lei e Desenvolvimento (MULEIDE)* (Association of Women, Law and Development) – 15/07/2003, in Maputo.
- Maria Luisa de Castro Vitorino – Paralegal at the *Associação Mulher Lei e Desenvolvimento (MULEIDE)* (Association of Women, Law and Development) – 15/07/2003, in Maputo.
- Amilcar Andela – Vice-president of the *Liga Moçambicana dos Direitos Humanos (Mozambican Human Rights League)* – 16/07/2013, in Maputo.
- João Carlos Trindade – Deputy Director of the *Centro de Estudos Sociais Aquino de Bragança (CESAB)* (*Aquino de Bragança Centre for Social Studies*) – 19/07/2013, in Maputo.
- Rogério Jaime Cumbane – Paralegal at the *Associação para o Desenvolvimento de Macomane* (Macomane Association for Development) – Telephone contacts were maintained throughout the entire study, as Rogério was in South Africa.

4. List of the Judges Who Took Part in the Focus Group on 20/06/2013 in Inhambane

- Alberto Maribelane – Judge of the CC of Chalambe 1.
- Feliciano Gueifãe Mendoves – Judge of the CC of Muencume.
- Ricardo Bata – Judge of the CC of Chamane.
- Joaquim Bata – Judge of the CC of Chamane.
- Filipo Hernando – Judge of the CC of Gonguiana.
- Ricardo Guninvosse – Judge of the CC of Chambe 2.
- Elias Alfonso – Judge of the CC of Chalambe 2.
- Salvador Dafilaum – Judge of the CC of Bibalane 2.
- António Alberto – Judge of the CC of Menauisse.
- João Manuel – Judge of the CC of Siquiriva.
- Maria Helena João – Judge of the CC of Chalambe 1.
- Carlos José Maria Januáivo – Judge of the CC of Liberdade 3.
- Mauricio Wads – Judge of the CC of Chalambe 1.
- Kaelina Pedro Zango – Chief Justice of the 23 Neighbourhood CCs of the city of Inhambane.

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