



After the consent: Re-imagining participatory land governance in Massingir, Mozambique



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ABSTRACT

Massingir district is located in southern Mozambique, bordering South Africa. From the mid-2000s onwards, foreign private and domestic investments in the district have been on the rise in the agribusiness, tourism, and conservation sectors. This has resulted in events that scholars and activists have come to describe as land, water, and green grabs. The on-going discussions have urged the government to fully implement the policy and legal frameworks that oblige investors to undertake community consultations based on the principle of Free and Prior Informed Consent (FPIC) and to safeguard the communities' land right acquisition. However, little has been clarified about how the consulted communities actually have experienced the consequences of their consent after they agreed to resettle or to concede parts of their communally managed land to investors. This article elaborates on a case study of a community resettled from the Limpopo National Park in Massingir and the neighboring community, which, after struggling to secure land and to improve their livelihood, began to reflect on their initial consent, interact with various actors, and craft strategies for expressing dissent and re-negotiating the deal they had struck. The article argues that the current emphasis on consultation for the purposes of building consent overlooks the importance of paying systemic attention to these strategies that are emerging from the community's everyday experiences with the consequences of their act of giving consent. Inclusive land governance entails an institutional mechanism that closely responds to people's experiences with policy practices.

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1. Introduction: Experiencing the consent

Massingir district in Gaza Province in southern Mozambique has been attracting scholarly and activist attention. Being adjacent to South Africa and hosting the country's second-largest dam – the Massingir Dam on the Elephant River – and, after Mozambique began to host one of the fastest growing markets in the world (Hanlon and Smart, 2008; Kirshner and Power, 2015), public and private and both domestic and foreign (mainly South African) investments began to flow into the district's agribusiness and tourism sectors in the 2000s. As witnessed so far in other parts of Africa, the investments worked to establish “enclaves” in which selective capital investments benefit a handful of entrepreneurs and domestic elites and from which the majority of the district's population – which are small farmers – and their livelihoods are excluded (Ferguson, 2006).

This situation has led the scholars and activists to describe the investments in the district's earlier sugarcane plantations as the *ProCana* land and water grabbing case (Borras et al., 2011; Nhantumbo and Salomão, 2010; Milgroom, 2015); and the investments in conservation and tourism development by the Limpopo National Park, which led to the displacement of local communities from the Park within the district, a typical green grabbing case (Milgroom and Spierenburg, 2008; Lunstrum, 2015). In addition, in the 2010s, the Massingir Agro-Industrial practically replaced the company *ProCana*, claiming additional concessions for expanding sugarcane plantations, and private game reserves and new eco-tourism initiatives were introduced to communities around the Limpopo National Park. These newer investment developments are thought to aggravate the land, water, and green grabs and to intensify “capital accumulation by dispossession” in Massingir (Massé and Lunstrum, 2016: 239).

The on-going dispossession in Massingir is contradictory to what the existing Mozambican policy and legal frameworks are meant to achieve. Mozambique nationalized the nation's land after independence in 1975, and it instituted the relatively progressive

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national land policy, consisting of Land Act in 1997 and the Land Regulation in 1998 (Knight et al., 2012; Tanner, 2016). These frameworks affirm the power of the state to attribute the land use rights called *Direito de Uso e Aproveitamento da Terra* (DUAT) to individual or collective entities, and they recognize local communities' land use rights by occupation, inheritance, and custom. External investors who seek to appropriate the community land can only negotiate the DUAT when there is an officially approved process of community consultation (Art. 13, Land Act 19/97). This "mandatory community consultation is meant to pave the way for the negotiation of benefit-sharing agreements between local groups and the investor" and to minimize the chance of dispossession for local communities (Vermeulen and Cotula, 2010: 909). In other words, the officially mediated negotiations over land titling and building partnerships between investors and local communities for "sustainable and equitable benefit sharing" should have worked to reduce the incidents of land grabbing in Mozambique (Deininger and Byerlee, 2011; see also Boche et al., 2013; National Directorate for Promoting Rural Development, 2014).

The policy emphasis on consultation, partnership-building, and benefit sharing is in line with a wider international development focus on inclusive and participatory governance that centers on democratization, participatory planning, and community-public-private partnerships and on the promotion of Free, Prior and Informed Consent (FPIC) (Fontana and Grugel, 2016). The recent rights-based development approaches and environmental and social justice frameworks endorse this trend to ensure procedural equity and to enhance the less powerful parties' bargaining power (Lake, 1996; Velicu and Kaika, 2015).

However, the above-mentioned cases in Massingir show that the assumption that led to this emphasis on consultation for the purposes of building consent—i.e., the partnerships and building of consent through mandatory consultation processes would lead to fair benefit-sharing—may be problematic. Firstly, as Fairbairn (2013) observes, there is an inherent and historically entrenched political inequality between national elites, local elites, community leaders, and the ordinary and more vulnerable parts of the community, including women, and this comes into play when large-scale investment projects are introduced to communities. This inequality in practice results in a consent that is *given anyway*, since there are no ways for all the community members to fully evaluate the fairness of the conditions presented at the table of negotiation, usually set up by district administration personnel and the investors and attended by a few community members close to the community leader (on average about five). Secondly, giving titles to communities in the face of investments through FPIC could actually "provide a legal means of foreclosure, alienation and expropriation" and excuses for "external actors to operate in areas where otherwise they would have been viewed with suspicion or barred" (Edelman et al., 2014: 923). At the same time, there are no actual institutional and judicial instruments to solve conflicts between external and community based actors and, even if benefit-sharing agreements are reached under relatively fair circumstances, the agreements are unlikely to be fulfilled due to a lack of clear documentation and elite capture by the local leadership (Fairbairn, 2013; Chachuaio et al., 2015).

In spite of these known problems, FPIC and participatory approaches to land governance are strongly promoted, not only by the state but also by the civil society organizations supporting local communities (Wijeratna, 2015; Pearce, 2016). Thanks to the promotion, local community members in Massingir would generally assert that the consultation had taken place and they agreed with the conditions presented to them. The problem is that, after giving their consent, they start perceiving problems and often seeking a remedy but do not know how or where to officially file complaints about the unfairness or absence of documentation of

the initial consultation. Even if they filed the complaints with the district administration, where the documents of consultations are supposed to be officially filed, they would have to face the prohibitive bureaucracy or blunt indifference and neglect. In general, "investment contracts have not commonly included grievance mechanism provisions", and this lack is acutely felt on the ground (International Senior Lawyers Project and Columbia Center on Sustainable Investment, 2016: 21).

This means that the dispossession in Massingir is not exactly stemming from a lack of community participation in consultations or a failure of building consent; rather, is caused by the unfolding "micro-politics of how the policies get enacted in practice" (Milgroom, 2015: 585) and by the actual consequences of the built consent. In particular, when communities realize that their consent was a mistake or when they want to change the conditions they agreed to, it is extremely difficult to express dissent. Yet, little is known about how people actually deal with this difficulty in their on-going everyday life after they have agreed to concede their land and properties.

This article aims to explore how the participants who went through the consultation process experience and learn from the agreement being in effect, acquire new knowledge, and come to raise their voices and propose alternative agendas. It shows actual narratives and actions that shape the alternative agendas based on field research conducted intermittently between February and October 2015 in the communities affected by the Limpopo National Park and the Massingir Agroindustrial's sugarcane concession in Massingir (Otsuki et al., 2015). We explore questions such as: How do community members understand and tell each other about their initial consent, reflect on its consequences, and come to outline their alternative agendas? What are the outcomes of community members' everyday struggles with the consequences of their consent, and what does a potential follow-up mechanism look like, which would go beyond the current, rather ad-hoc mechanism of NGO advocacy and nominal local government involvement?

In what follows, this article first gives an overview of the historical process by which participatory approaches to land governance came to emphasize the importance of consultations and consent-building and highlights what our focus on experiencing the consequences of the consent specifically seeks to address. This overview is followed by methodology and a case study of the communities in Massingir, which clearly shows that the everyday struggles after the official consultations come to involve new actors and lead to new claims. The initial consultations should anticipate, from the beginning, the emergence of such new claims after the agreement has come into effect and include plans for the active involvement, officially, of the state (district administration personnel in particular), which enforces the consultation. This article argues that land governance is only inclusive when the everyday experiences of consent are taken into account in investment projects. And, the possibility for this genuine inclusiveness is critically analyzed by reference to the historical and international policy process that came to emphasize participation in African land governance.

2. Participatory turn in land governance

According to Colin and Woodhouse (2010: 3), "all but 10 per cent of land in Africa is considered to be occupied under customary land tenure". Historically, scholars and development agencies have studied and interpreted the customary – and mostly communal – land tenure in different ways, primarily in relation to recurrent land grabs (initially by colonial and domestic elites) and the directions of agricultural development (Peters, 2004; Lund and Boone, 2013). Earlier development studies and policies considered

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