Mozambique: Context and Background Summary

Mozambique currently has one of the highest rates of land concessions in Africa. Between 2004 and 2009 alone, the Mozambican government granted 405 large-scale investment projects (over 1,000 hectares) more than 2.7 million hectares of land – a full 7% of the nation’s arable land. Most of these investments have not yet been fully operationalized. In the coming years, as these investments are realized and further concessions are granted, the amount of land still held and managed by rural Mozambicans will decrease significantly, with associated negative impacts on already impoverished rural communities. The potential negative impacts may include displacement and dispossession, environmental damage, loss of livelihoods, increased competition for land, and an associated increase in land conflict, which may have more wide-ranging destabilizing effects. Indeed, research has found that investors in Mozambique have damaged non-renewable natural resources (such as water sources), created significantly fewer jobs than were promised, and transgressed the agreed boundaries of their concessions, displacing communities’ access to their farms and grazing lands.

These trends also have negative intra-community impacts. Community members describe a recent situation of growing land scarcity: while in the past, land could be acquired by meeting with community leaders and requesting a piece of land that did not yet belong to anyone, then clearing and claiming the land offered, this no longer occurs. The groups explained that there is no longer any “free” land available and that within communities, land is now frequently sold and rented.

Moreover, increased land scarcity, rising competition for land, and resulting land commoditization tend to precipitate a breakdown of the customary rules that protect women and other vulnerable groups’ land rights. As a result, there is increasing evidence of a rise in the dispossession of widows and orphans from their lands. Indeed, in the study region of Inhambane, women’s focus groups reported frequent incidents of land dispossession; describing the tenor of intra-family land conflicts, every focus group explained that widow dispossession and the bad faith appropriation of land from the elderly were the cause of a high percentage of land-related disputes within their community.

Positively, Mozambique’s Land Law, the Lei de Terras (1997), has significant potential to help safeguard community land. The Lei de Terras automatically grants de jure “rights of land use and benefit” to individuals and communities living on land acquired by custom. While such rights do not need to be formally registered, if communities choose to do so, the law sets out a “community land delimitation process” through which customary claims can be mapped and entered into the national cadastre. Importantly, customarily-acquired land rights are equal in weight and validity to administratively-granted land rights. Although delimitation and

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2 Ibid., xxi; The Oakland Institute, Understanding Land investment Deals in Africa: Country Report Mozambique (Oakland, CA: The Oakland Institute, 2011), http://www.oaklandinstitute.org/sites/oaklandinstitute.org/files/OI_country_report_mozambique_0.pdf. Of note is that international attention tends to focus on the large tracts of land being sought and allocated, but the large number of smaller land claims also add up to a significant threat to local livelihoods, especially where prime land with water is the target.
3 The World Bank report found that “it was difficult to identify any projects operating on the ground. Among the projects that had started, the areas in operation were typically much smaller than those allocated. This lag in implementation was normally attributed to unanticipated technical difficulties, reduced profitability, changed market conditions, or tensions with local communities... For example, none of the biofuel operations in Mozambique were operating at the envisaged scale and all of them reported delays of at least three to five years.” World Bank Group, Rising Interest in Farmland, 67.
4 For example, World Bank research found that although one biofuels project in Mozambique had promised to hire 2,650 workers, by the time of this report only 35 to 40 people were employed full-time, as well as 30 seasonal workers. Moreover, the wages provided were insufficient to compensate for the loss of livelihoods resulting from loss of farmland and access to natural resources. World Bank Group, Rising Interest in Farmland, 69.
5 Ibid., 65; The Oakland Institute, Understanding Land Investment.
6 Community members shared these observations in focus groups convened as part of the research for this study; see below the section on methodology.
7 The Mozambican Constitution also affirms that “the use and enjoyment of land shall be the right of all the Mozambican people” (Constitution of the Republic of Mozambique, 1990, Article 46(3); 2004, Article 109(3)), and moreover, that this right can be granted to individuals or to groups/corporate persons (1990, Article 47(2); 2004, Article 110(2)). Importantly, the Constitution also mandates that in awarding land use titles, the State should respect existing “rights acquired through inheritance or occupation” (1990, Article 48; 2004, Article 111) although the 2004 version adds the caveat, “unless there is a legal reservation or the land has been lawfully granted to another person or entity.”
8 Lawmakers adopted a pre-colonial model of land holding; they started from the premise that all land was already claimed by indigenous African communities according to historical tribal boundaries. The outcome was that the law considers all land to be held a priori by a community, regardless of whether a Portuguese settler farm or plantation, international investor, or state cooperative once occupied it.
registration of community land claims does not create any new rights, communities may choose to pursue this option because it does provide documentary evidence of community lands, which offers stronger protection of these rights.\(^9\) Once registered, the community holds a single “right of land use and benefit” with respect to its land. As a delimitation certificate holder, the community acquires legal personality and can thereafter enter into contracts with investors, open bank accounts and undertake other legal actions.

Importantly, the *Lei de Terras* establishes a model for integrated development and rural investment designed to protect communities’ customary land rights: investors may only lease lands for periods of 50 to 100 years, and must consult with and seek the permission of the communities whose land they seek to use. Communities may negotiate with investors for “mutual benefits agreements” in exchange for investors’ use of their lands.\(^10\) In this way, the *Lei de Terras* is structured to both allow for investment as well as to protect rural livelihoods and contribute to community prosperity.\(^11\)

However, despite widespread education and sensitization efforts by civil society organizations and the *Centro de Formacao Juridica e Judiciaria* (CFJJ),\(^12\) fifteen years after the law was passed, the law has not been well or widely implemented. These implementation problems have their roots in weak political will and lack of resources. To date, the Mozambican Government has not allocated adequate funding, training, or personnel to local, district and provincial land administration bodies, and has instead focused primarily on promoting investment. As a result of more than ten years of inadequate funding, lack of trained personnel and the absence of other necessary resources, the National Land Cadastre, overseen by the National Directorate of Land and Forests (DNTF) of the Ministry of Agriculture, has been unable to extensively delimit and record – and therefore safeguard – community landholdings across the country. By 2010, a DNTF briefing indicated that out of an estimated 3,000 or more communities in Mozambique, only 323 communities, covering 7,993.8 km\(^2\) (less than 10% of the area of the Mozambique), have had their lands delimited.\(^13\) As a result, land rights acquired by custom and occupation remain invisible on official maps and thus vulnerable to expropriation and elite capture.\(^14\) Describing this trend, Negrao observed that successful implementation of the *Lei de Terras* was obstructed by “resistance from employees in the title deeds offices to accept the new law … [because] they would no longer have the monopoly in the decision-making regarding land adjudications.”\(^15\)

Moreover, Mozambique’s *Lei de Terras* does not create any measures to establish downward accountability for community leaders. There is no state oversight to ensure that intra-community land and natural resources management norms do not violate constitutional principles and no oversight mechanisms to ensure that local leaders are managing community lands in good faith. Should a community leader administer and manage community land and natural resources in a manner that disadvantages the community or with which the community does not agree, there are no complaints procedures set out that communities can use to overturn the action or decision or to make that leader responsive to the community’s demands and interests. Communities can bring the matter to court, but this process is expensive and burdened by bureaucratic procedures that are often difficult for rural villagers to navigate.

Most importantly, although communities must approve an investor’s application to use communally-held lands, there are no mechanisms (short of filing a lawsuit) to ensure that investors fulfill any benefit-sharing

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9. Titling and registration may be perceived as important for several reasons. In the event of a land conflict, or in circumstances where a community stands to lose some of its land or natural resource claims, it is sometimes necessary to document and provide proof of the community’s land claims. Further, after being formally delimited and registered, the community is recorded as a private legal entity, capable of entering into contracts with outside investors.


12. The *Centre for Legal and Judicial Training*, a legal training institution under the aegis of the Mozambican Ministry of Justice.


14. Simon Norfolk and Christopher Tanner, *Improving Tenure Security for the Rural Poor: Mozambique Country Case Study*, Legal Empowerment of the Poor Working Paper 5 (FAO, 2007): 7, ftp://ftp.fao.org/docrep/fao/010/k0786e/k0786e00.pdf. Given the definition of ‘community’ in the *Lei de Terras* (1997) and the resulting implication that all land in Mozambique is already and always has been held according to custom by communities, according to the law’s precepts, if all communities had been delimited, cadastral maps would now show most, if not all, of Mozambique already occupied and with secure community-held title, leaving little, if any, ‘free’ land.

agreements that they enter into with communities.\textsuperscript{16} The agreements are not recorded as formal contracts; an investor may arrive in a community and make significant promises of employment or infrastructure development and then fail to fulfill these promises without any negative repercussions. Indeed, when asked “what mutual benefits would you ask for from a potential investor,” focus groups in communities where investors are currently operating replied:

We would not ask for anything in return for our lands because it is not worth it to ask for anything – these investors never fulfill their promises”; “Investors do not fulfill their promises, so it would only complicate things to ask them for anything when we know that they will not comply – we would ask for schools, hospitals, piped water, employment – but we know they would not deliver;” and “Well, we could ask for something in return [for our land], but we feel that it is no use asking for anything, because investors do not keep their promises to the community. They promise to build this or that but do not fulfill their promises.

\textsuperscript{16} Research indicates that almost every application by an investor for a right of land use and benefit does indeed include a community consultation. However, the extent to which the aims of community consultations have been achieved in practice is somewhat mixed. A review of 260 community consultations found that communities were not provided with a genuine opportunity to negotiate and bargain with investors for mutual benefits, payments or the provision of amenities in exchange for their land. Christopher Tanner and Sergio Baleira, Mozambique’s Legal Framework for Access to Natural Resources: The Impact of New Legal Rights and Community Consultations on Local Livelihoods, Livelihood Support Program Working Paper 28 (Rome: FAO, 2006). In the vast majority of consultations, there was only one meeting, lasting only a few hours, with no time allowed for the community to discuss the matter among themselves. The borders of the land being requested were rarely walked or physically verified. Norfolk and Tanner, Improving Tenure Security; Tanner and Baleira, Mozambique’s Legal Framework. Calengo et al. find that such brief community consultations merely served to give the “whole process a veneer of legitimacy.” Calengo, Monteiro, and Tanner, Mozambique Land, 13-14. The research concluded that both investors and government officials tended to view consultations not as a mechanism to promote community development and partnership, but rather as an administrative hurdle to ‘check off’ before an application for a right of land use and benefit can be granted. Likewise, anecdotal evidence collected by Calengo et al. indicate that during community consultations government officials often appear to be aligned with investor interests rather than focused on protecting community interests, promoting partnership ventures, or ensuring that communities are appropriately compensated. Calengo, Monteiro, and Tanner, Mozambique Land, 13-14.