FOOD SECURITY AND LAND GOVERNANCE FACTSHEET

ABSTRACT
Mozambique has a land governance system that allows for strong protection of community-based land rights, community consultation with respect to partnerships with investors, and also secure rights to land for investors. However, the implementation of legislation has been slow and the capacity among state actors is weak. Tensions exist between a government keen on promoting foreign investment and agro-industry and a rural population that is insufficiently aware of and not always able to exercise their legal rights. This is resulting in frequent conflicts between government, investors and communities. Overtime, a support program is put in place, the community land fund (iTC), which assist communities with the delimitation of their land. However, the programme is not present in all provinces. About ten percent of the communities have their rights recorded. Moreover, state agencies involved in land administration and management need to dispose of sufficient capacity to provide appropriate and accessible services to both communities and investors.

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About IS Academy on Land Governance for Equitable and Sustainable Development

LANDac, the IS Academy on Land Governance for Equitable and Sustainable Development, aims at bringing together researchers, policy makers and practitioners in the field of land governance and development. It is a partnership between several Dutch organisations and their Southern partners involved in development-related research, policy and practice. LANDac is one of the IS Academies for International Cooperation sponsored by the Netherlands Ministry of Foreign Affairs.

About KIT

The Royal Tropical Institute (KIT) in Amsterdam is an independent centre of knowledge and expertise in the areas of international and intercultural cooperation, operating at the interface between theory and practice and between policy and implementation. The Institute contributes to sustainable development, poverty alleviation and cultural preservation and exchange.

Country expert contribution:

We acknowledge and thank Mrs. Celia Jordao (Dutch Embassy in Maputo) for her insights and comments on the latest development impacting land governance in Mozambique.
1 POLICY AND LEGISLATION

1.1 Regulatory land governance framework

The state owns all land in Mozambique. Land rights may not be sold, mortgaged or otherwise alienated (GOM Land Law 1997).

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<thead>
<tr>
<th>Law</th>
<th>Content</th>
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<tbody>
<tr>
<td>Constitution 2004, articles 109 and 111</td>
<td>All ownership of land is vested in the state. The state shall recognize and protect land rights acquired through inheritance or by occupation, unless there is a legal reservation or the land has been lawfully granted to another person or entity.</td>
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<tr>
<td>1997 Land Law</td>
<td>Drafted with the objective of supporting and protecting the land rights of communities, women and smallholder farmers, while also encouraging investment. Reasserts the state’s ownership of land and provides that individuals, communities and entities can obtain long-term or perpetual rights to use and benefit from land. Protects customary rights of communities to their traditional territories and recognizes rights obtained through traditional and good-faith land occupancy as equivalent to rights obtained by government grant. Community land use rights are legally equivalent to rights granted by the government to individuals and entities. Women and men have equal rights to hold land. Nationals have unrestricted rights of access to land; foreign individuals and entities must have local residence and an approved investment plan.</td>
</tr>
<tr>
<td>1998 Rural Land Law</td>
<td>Provides rules for the acquisition and transfer of use-rights.</td>
</tr>
<tr>
<td>2000 Technical Annex to the Land Law</td>
<td>process for identifying and recording the rights of local communities and good-faith occupants is governed.</td>
</tr>
<tr>
<td>2009 National Policy and Strategy for Biofuels (Resolution No. 22)</td>
<td>Provide strategic policy orientation for the sector, objectives: Promoting sustainable production of biofuels; Reducing the country’s dependence on imported fossil fuels; Diversifying the sources of energy; Promoting sustainable rural development; Contributing to foreign exchange generation through increased exports; Exploring regional and international markets; Promoting research on technologies for production of biofuels by national teaching and research institutions including technologies applicable to local communities; promoting food and nutritional security; Reducing the cost of fuel for the final consumer; Protecting the national consumers against the volatile prices of fossil fuels and energy insecurity.</td>
</tr>
<tr>
<td>Decree No. 1/2003</td>
<td>established new provisions for the National Land Registry and Real Estate Cadastre. procedures for the registration of inherited land use rights and secure rights to customary rights-of-way.</td>
</tr>
</tbody>
</table>
1.2 Land tenure forms

Land use rights are obtained by inheritance, occupation, state grant, purchase or lease. In urban Mozambique, most residents access land through the land market (62%), either obtaining land on the formal market by buying or leasing use-rights held by DUAT-holders or, more commonly, obtaining use-rights on the informal market.

The Land Law recognizes use right to land, known by the Portuguese acronym, DUAT (direito de uso e aproveitamento dos terras). DUATs can be held individually or jointly. A policy for the transferability of DUATs under 10 hectares is under discussion (2012).

<table>
<thead>
<tr>
<th>DUATs</th>
<th>Description</th>
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<tbody>
<tr>
<td>DUAT obtained by</td>
<td>Obtained through: (a) occupancy of land according to customary norms and practices; or (b) good faith occupation of land for 10 years. Local</td>
</tr>
<tr>
<td>occupancy</td>
<td>communities have DUATs to their traditional territory. DUATs obtained by occupancy are perpetual and do not require plans for exploitation of the</td>
</tr>
<tr>
<td></td>
<td>land.</td>
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<tr>
<td>DUAT obtained by grant</td>
<td>The state grants DUATs for renewable periods of 50 years. (USAID, GOM Land Law 1997; Akesson et al. 2009; NAI 2007; Norfolk and Tanner 2007).</td>
</tr>
</tbody>
</table>

Most rural land is held by communities, which have perpetual DUATs based on their traditional occupancy. Delimitation and registration of this land is voluntary: communities are not required to delimit or register their land to assert their DUAT. However, pursuant to a 2008 resolution, if local communities want to register their DUAT, they must prepare an exploitation plan. Local communities can also grant third parties, such as investors, rights to use land within their territories.

Duat grants- There are no minimum or maximum sizes of land available through a government grant. Grant applicants must prepare an exploitation plan. The state reviews the application and issues a provisional grant for either two years (to foreign persons or entities) or five years (to nationals). If the exploitation plan is fulfilled, the grant becomes final, if not the land reverts to the state. Any investment made on the land, as opposed to the land itself, is private property, and can be bought, sold or mortgaged.

1.3 Institutional land governance framework

The overall responsibility for land administration and cadastre lies with the National Directorate of Land and Forests (DNTF) of the Ministry of Agriculture, and which disposes of provincial and district services (decentralized). At a national level, the DNTF is the regulatory authority, charged with holding and organising the national land cadastre records and, in the case of large-scale land applications over 1000 ha, responsible for processing applications for approval. The DNTF also provides technical guidance to the cadastral services of the provincial administrations and the decentralised municipalities. For rural land, the Provincial Service of Geography and Cadastre (SPGC) has primary operational responsibility (Norfolk and Tanner 2007; CTC 2003). In addition, also the (urban) municipality cadastre services, which is a devolved entity, issues DUAT documents.

DNTF is required to collaborate with a number of other national institutions:
• CENACARTA which has the responsibility for producing base maps and remote imagery to underpin the cadastral system;
• Conservatoria do Registo Predial in the Ministry of Justice, where DUATs should also be registered;
• MICOA, which has environmental inspection responsibilities in the case of large-scale land applications and a coordinating/technical support role in the context of land use planning activities carried out by decentralised authorities;
• All other national institutions that collect and hold spatial data in respect to land and other natural resources as a result of the mandate to maintain a single national database on land;
• CEPAGRI, which has a formal role in advising the MINAG and Council of Ministers regarding the approval of large-scale land applications.

1.4 Institutions dealing with land disputes

Disputes over boundaries, inheritance and other intra-family rights or land transactions can cause conflict also. Informal mediation and conciliation processes are most commonly used by the population resolve disputes. Elders, traditional leaders, neighborhood heads, district officials and many NGOs provide informal dispute-resolution services. (Alfai 2007; CTC 2003; Hendricks and Meagher 2007).

Land-related disputes are dealt with also by the formal court system (district courts, provincial courts and a supreme court). The administrative court hears challenges to state administrative actions. However, procedures are lengthy and costly and the judicial system is plagued also with corruption (CTC 2003; AfDB 2008). Mozambique’s community courts are separate from the formal court system, and handle civil and criminal matters, including land disputes. Staffed by elected community members, community courts apply a blend of formal law, customary law and other principles. Parties to disputes are free to initiate an action at the district court without exhausting remedies available in community courts (Hendricks and Meagher 2007; Ikdahl et al. 2005).

The Centre for Juridical and Judicial Training (CFJJ) of the Ministry of Justice began training judges and prosecutors in the land, environment, forest and wildlife laws in 2001. This programme has since evolved into a major legal empowerment and local government capacity building programme, focusing on the dissemination of information about acquired rights at community level, and how to use existing rights and the legal instruments in the various laws to promote a participatory model of rural development which is predicated on a) recognizing and registering rights acquired under the 1997 law; and b) negotiations between communities as rights holders over the land which investors and the State might want to use for their investment projects.

The CFJJ programme has also extended to DNPDR where the Centre provides training with a similar focus for public sector officers and local governments in areas where land is in high demand and there is a need to use all of the available legal instruments to ensure equitable and sustainable development. the central theme is negotiation and participation in commonly agreed plans and projects, developed through a process were local governments, communities, investors and the State construct a territorial development plan which accounts for the needs of all and which should also bring benefits to all. The bedrock of this is the recognition of land rights acquired by occupation, duly identified and registered, which then create a platform upon which a negotiated vision of local development – the District Land Use Plan and District Development Plan, to follow the directives of the Territorial Planning and Local Government Laws.
1.5 Gender

Both the 2004 Constitution and the 2004 Family Law assert the equality of men and women, and prohibit discrimination on the basis of sex. The latter law also provides that both women and men have rights to administer marital property and have equal rights to devolve and inherit property. The 1997 Land Law awards women the right to participate in all land-related decisions and the right to register DUATs individually.

Despite these positive legislative pieces both the primary formal law governing inheritance (the 1966 Portuguese Civil Code) and customary practices can be problematic for women’s right to land. Under customary law, women generally do not inherit land and the Succession Chapter of the 1966 Portuguese Civil Code continues to be used in court cases, but contains principles favoring men over women for inheritance and management of marital property. Widows married under the “community of property” regime should inherit half of the property acquired during marriage, but in practice few women exercise this right partly due to a lack of information\(^1\).

Securing equal treatment and respect for the rights of women requires also normative change at the level of customary authorities, alongside the need to pay specific attention to the inclusion of women in processes and forms, that are developed at the more formal end of the land administration system.

1.6 Foreign direct investment

Foreign persons and entities with local residences may obtain DUATs in connection with approved investment projects (GOM Land Law 1997; UN-Habitat 2009; UN-Habitat 2008; World Bank 2006; Negrão 2004). Foreign investment is linked amongst other to prospective biofuels projects (Nhamentumbo and Salomão, 2010), to forestry, farming and also mining and nature conservation. Large-scale investments is promoted as a strategy by government and it is reported that close to 100 deals have been signed with local and international investors (or joint ventures) involving more than 2 million hectares. Several of these projects have drawn much criticism, such as a proposed sugar cane plantation in Gaza (procana), forestry plantations but also the offer of 6 million ha of lands to Brazil (pro savanah).

Challenges are strategic natural resource planning, timely recordation of community land rights and meaningful and well-informed negotiations with investors, transparency issues and control of contract conditions, including land use restrictions. Various programs are ongoing to tests community-investor partnerships. The community land fund (ITC) also plays an important role in assisting communities to record their rights and negotiations.

2 INTEGRATED WATER RESOURCE MANAGEMENT

2.1 Regulatory framework around Integrated Water Resource Management

Mozambique is endowed with forest, woodland resources and other vegetation covering 70% of its territory. The annual loss of these resources amounts to 0.58% or 219,000 ha according to the inventory report of 2007. This represents more than double the deforestation reported in 1994. The sources of forest loss and degradation include smallholder and commercial agriculture, demand for biomass energy in urban areas, logging and non-implementation of management plans, mining, infrastructure development and expansion of urban areas.

\(^1\) http://genderindex.org/country/mozambique
Underlying causes include poor governance and weak enforcement of land, forests and environmental legislation.

The 1999 Forestry and Wildlife Law covers the miombo woodlands, which accounts for 2/3 of woodlands in Mozambique. These woodlands surround important water resources such as the Zambezi River Basin (Nhantumbo and Izidine, 2009). The Forestry Law authorizes the government to impose penalties for violations of the law and supporting regulations like forest burning. However, enforcement of prohibitions and restoration requirements is weak (GOM Forestry Law 1999; Nhancale et al. 2009; Norfolk 2004).

The following legislative pieces and policies determine integrated water management in Mozambique.

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<tr>
<td>2004 Constitution</td>
<td>Provides that all water resources are owned by the state</td>
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<td>1991 Water Law</td>
<td>Stipulates that all water is a state-owned public good</td>
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<td>Water management is based on a river basin approach: water in the same basin should be managed to benefit all states involved, and research, exchange of information and project development should be prepared and conducted jointly</td>
</tr>
<tr>
<td>1995 National Water Policy</td>
<td>Primary objective of the is to guarantee a sustainable water supply and proper sanitation</td>
</tr>
<tr>
<td>2002 National Irrigation Policy and its Implementation Strategy</td>
<td>Water resources, although renewable, are not inexhaustible and therefore it is necessary to manage them in a sustainable manner. Water is an economic resource that deserves an appropriate economic and social value. Water and irrigated land are public assets that may only be used by license. The government will focus on ensuring integrated water management for multiple purposes in agriculture and rural development with a special emphasis on irrigation systems for the family sector so as to transform what is primarily subsistence farming to production that is gradually integrated in the market. The government should promote decentralization and greater participation of the beneficiaries, communities and the local authorities in the integrated water resources management. The role of women in agriculture must be acknowledged and supported through their participation as beneficiaries of irrigated agriculture</td>
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2.2 Institutional framework around Integrated Water Resource Management

The National Water Directorate (DNA) within the Ministry of Public Works and Housing (MOPH) is in charge of overall planning and management of the country’s water resources and the provision of water supply and sanitation services in both rural and urban areas.

The Water Supply Investment Fund (Fundo de Investimento e Patrimonio do Abastecimento de Agua, FIPAG) is a public entity that leases out operations and management to private entities. The Water Regulatory Council (Conselho de Regulacao do Abastecimento de Aguas, CRA) is an
independent regulatory agency that sets the tariff regime to ensure a viable and sustainable water sector.

Regional Water Administrations are basin authorities responsible for water development and management. Mozambique’s five Regional Water Administrations control irrigation systems and collect water fees within their jurisdictions. The Regional Water Administrations have administrative, organizational and financial autonomy but report to the DNA (FAO 2005a). The government body charged with coordinating activities relating to irrigation and drainage is the National Directorate for Agricultural Hydraulics (DNHA) within the Ministry of Agriculture and Rural Development (MADER). The Fund for Agricultural Hydraulics Development (FDHA) has responsibility for promoting and funding agriculture-related water projects (FAO 2005a).

2.3 Redd+

Consultations at all levels and studies are ongoing with the aim of creating readiness conditions to implement REDD+ in Mozambique, since 2009, involving amongst others Ministry for Coordination of Environmental Affairs (MICOA) and the Ministry of Agriculture (MINAG) and Eduardo Mondlane University. The focus is on areas where forests are under pressure: conversion of native forests and woodlands for large scale plantations in Niassa; high competition between economic activities (such as forest harvesting, commercial agriculture including biofuels, mining, logging and forest plantations) in Nampula; mining and livestock in Tete; poor forest governance resulting in intensive and illegal logging in Zambézia; supply of biomass energy to Maputo city affecting forest areas particularly in Gaza. Studies are taking place on land use and drivers of deforestation and forest degradation as well as experiences in addressing these drivers, focusing on land information management and spatial representation of the drivers. Information gathering included interviews and discussions with land users such as timber operators, small and medium scale farmers, charcoal producers and traders as well as community, district and provincial leaders.

The policy and legal instruments contain important provisions such as devolution of resources to local communities and participatory decisions in allocation of the resources to investments (private and public) and benefit sharing mechanisms. However, rights to non tangible environmental services such as carbon are not explicitly defined. Carbon rights can potentially affect community access to land resources for their livelihoods, hence exacerbating poverty. Similarly enhancing carbon stocks through large scale plantations but which are replacing natural forests reduces biodiversity and promote large scale land acquisition causing conflicts and affecting communities. Consultations indicated that, in order to protect communities and provide incentives for changing land use practices, carbon rights should be held by the communities.

REDD+ delivery models, reference scenarios, options and interventions are to be developed between 2012 and 2014. This will include mapping land uses as well as establishing spatial, social and economic impacts on emissions will facilitate tracking changes and performance over time. Piloting will start from 2014 onwards (FCPF, 2012).
3 REALITIES ON THE GROUND

Despite the effort of NGOs and donors in building community awareness of land rights and supporting the delimitation of community land and registration of community DUATs, most have not delimited their land or registered their rights (CTC 2003; Chilundo et al. 2005; Kanji et al. 2005). Support is still needed for community land registration, including for awareness raising and information as well as actual support with the process of recordation of rights. Donors are now mostly providing the resources and managing the programme that assist communities delimit land and prepare for and conduct consultations with investors land fund / iTC) but in 2013 a new structure will have to be developed and negotiated with government.

Unfortunately many investment projects are characterized by their lack of knowledge of community rights. As some communities have not registered their rights, outsiders like government and investors often fail to recognize the extent of community land and the nature of community land uses. In rural areas where concessions have been granted within or near a community’s traditional territory land disputes are relatively common.

Most public resources allocated to land administration are devoted to urban area (land tenure regularization programme –LTR supported by MCC) and to land information systems (LIMS). Limited capacity is an issue for Mozambique’s land administration bodies in performing their statutory functions (Norfolk and Tanner 2007; CTC 2003; Dobrilovic 2011). Support programs are now under preparation.

4 RESOURCES AND OTHER INFORMATION

4.1 Related country profiles

- USAID: http://usaidlandtenure.net/usaidltprproducts/country-profiles/mozambique/

4.2 Laws, policy and regulations search engines


4.3 Maps and databases

4.4 Portals and other resources

- http://landportal.info/search/apachesolr_search/mozambique
- http://www.landesa.org/search/?q=mozambique

4.5 Donor support programs

- FAO is one of the strategic partners supporting the implementation of the Land Law.
- USAID is also involved in land initiatives. MCC is the lead agency to work on land-tenure policy reform designed to encourage investment through increased support for women’s rights to land and reduction in state control over land management.
- The African Development Bank (AfDB) has a program to assist the government in the development of the judicial and administrative systems relating to land rights (AfDB 2006; AfDB 2008).
- EKN is supporting land policy development and implementation since 1997.

4.6 Civil society organizations working on land governance

NGOs have played an important role in the development of the land policy and in implementation. One of the examples is ORAM which is a long-term partner of EKN.

No members of International Land Coalition from Mozambique.

4.7 References


