

# FOCUS ON LAND IN AFRICA BRIEF

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## Mozambique



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## Lesson 1:

*Land Laws can Provide a Fundamental Basis for Improving the Livelihoods of Those who Depend on Land*

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## INTRODUCTION

*A law can be a powerful tool for poverty alleviation and rural development. In most developing countries, a majority of the population lives in rural areas. Most rural residents – and especially the poorest people – depend on the land for their livelihoods and long-term social security. Laws that give people access and secure rights to land and encourage investment in the land can establish a foundation on which rural families can grow their incomes and assets. Good land laws can help create an environment that empowers rural communities, encourages economic growth, prevents land conflicts, and provides opportunities for people to improve their lives.*



## HISTORY OF THE LAND LAW

Recognizing the potential power in a well-conceived law, Mozambique drafted and enacted a new land law in the late 1990s. Many consider the land law to be one of the world's most progressive. For the first time in Mozambique, a formal law recognized the land rights that communities and individuals acquired through systems of customary land occupancy and use. This achievement was only possible because the government coordinated with civil society, academics, and donors to try to address Mozambique's post-conflict land issues.

Almost immediately after achieving its independence from Portugal in 1975, the socialist FRELIMO government was challenged by the RENAMO guerilla movement. In the years of violence that followed, more than six million people fled the country or were displaced from their homes and farms, settling on other land or moving to urban and peri-urban areas.

In the midst of the war, the government began a transition from the state farms established by the socialist government at Independence to limited privatization of these failing enterprises. The government also began leasing large expanses of apparently vacant or underutilized land to investors who had the capital and capacity to begin large-scale enterprises. The movement toward the privatization of productive rural land did not include comprehensive recognition of the customary rights of indigenous communities, and it was evident that the process was causing problems. As a result, near the end of the war an Ad Hoc Land Commission was set up in the Ministry of Agriculture to assess the privatization of state farms and its future implications.

With the signing of the Peace Accord in 1992 and the end of the war, people began to return to their homes. Seemingly abandoned and unused land was being allocated by government agencies to new investors keen to capitalize on the new market economy. Former colonial landholders and commercial investors were also reclaiming their rights, in most cases over land that was concurrently claimed by indigenous communities, who had been using it for many years.

The Ad Hoc Commission documented many cases of conflict between returning displaced people and the many other groups claiming rights over land. Both government and the international community recognized that these conflicts posed a threat to the continuing

peace effort, and that it was imperative to address 'the land question' as a priority within the post-war reconstruction program. Yet, while Government accepted the need to ensure secure rights to land for returnees and those who needed to produce their own food, it also realized that private investment was critical to economic recovery.

To address this difficult challenge, an Interministerial Land Commission was formed which brought together all the public sectors involved in land access and use (including land administration, agriculture, tourism, mineral resources, defense, etc), civil society, academics and the private sector. Yet, while there was strong political will, Government also recognized that its technical capacity to implement a full review of the land policy and legislation was limited. The UN-FAO was therefore asked to provide technical assistance to the new commission, including analysis of existing land management and production systems, legal reviews, and institutional support as the process evolved.

The earlier Ad Hoc Commission had found that enduring customary rules and structures governing land rights were playing a fundamental role in enabling rural communities to reoccupy their land peacefully. Customary institutions were handling competing claims to land between those who claimed ancestral ties, displaced people who had settled on land during the war, and former state farm workers claiming rights to plots granted to them as a term of employment. The new Commission also found that customary institutions were trying hard, but with less success, to resolve issues between new investors and local people. With the state presence at local levels almost non-existent, these institutions were recognized as 'the' de facto land management system of the country, working alongside a weak and poorly resourced public sector land administration.

While the Commission gained a new appreciation for the legitimacy of customary institutions to administer land and resolve conflicts, they also realized that integrating customary tenure systems into the formal state system within a single policy and legal framework would pose new challenges. In addition, they grappled with how to provide secure new rights for investors, who could contribute to sustained economic growth and stability. This raised a critical question – how would the inevitable competition over resources between



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*“While Government accepted the need to ensure secure rights to land for those returning and who needed to produce their own food, it also realized that without private investment the economy would face a difficult recovery”*

these quite different groups of land users be resolved?

The process of drafting the new land law was highly inclusive and participatory. The new Land Commission – with representatives from nine different ministries, NGOs and independent specialists – addressed the problem not simply in cadastral and land administration terms, but from the perspective that land policy is essentially a socio-economic and political question. In order to promote information sharing and debate, the FAO supported a seminar series that brought together all levels of government officials, academics, NGOs, and technical staff to discuss specific aspects of the land issue. The Ford Foundation mobilized additional funding to support a series of provincial meetings to discuss each draft of the new law as it emerged from the Commission Working Committee. Throughout the process, the focus was on providing public officials, NGOs and all other stakeholders an opportunity to contribute to the new legislation.

In June 1996, the Commission completed a final draft of the land law and a National Land conference was convened that included all ministries, civil society members, and stakeholders engaged in land issues. During the conference, participants reached consensus on the final draft of the land law. The Commission presented the law to the National Assembly, where it was approved. The Commission then turned to drafting supporting regulations and a technical annex addressing community held land rights. These were enacted in 1998 and 1999, respectively.

The inclusive and participatory process used to draft the new land law resulted in a law with a high degree of acceptance nationwide. The number of government officials and civil society members consulted in the course of the process served both to build awareness and knowledge of the law and also to enforce its legitimacy.

## WAYS TO ACQUIRE LAND RIGHTS

The resulting legal framework reaffirms state ownership of all land – a Constitutional principle which was not debatable – but made the State Land Use and Benefit Right (DUAT, its Portuguese acronym) into a right that enjoyed clear legal and constitutional

guarantees and which could serve the interests of a market economy. The law provides three avenues through which people and entities can claim a DUAT over land. First and most significantly, the law gives rural communities and individuals perpetual rights of land use and benefit based on their customary systems of land use. Second, the law gives perpetual use rights to individuals who have been occupying land in good faith for at least ten years and hold the land for residential or family use. Notably, communities and individuals do not need to survey their boundaries, register their rights, or obtain title to establish their land rights and enjoy the protections of the law. Communities and individuals can offer proof of land rights through oral testimony, thus eliminating a costly obstacle that often prevents the poor from effectively establishing their rights.

A third means to obtain land rights is available to individuals and entities upon application and authorization by the government. Authorized rights are available in periods up to 50 years, with one renewal. Every applicant for land must consult first with local communities to see if the land they want is occupied (i.e., is subject to a customarily acquired DUAT). Since most land is under a customary DUAT, the consultation then becomes a discussion on how the investor can obtain a new DUAT over the land in question. If the community is willing to cede its rights, terms and conditions for this can be agreed. When agreement is reached, the investor can proceed to request a new DUAT in his or her name. This process is designed to ensure that communities do not lose land that is essential for their livelihoods and food security. It is furthermore meant to encourage communities and investors to negotiate mutually beneficial arrangements for land use and development that are tailored to local needs and development goals.

There is no legal distinction between the DUAT obtained through any of the three ways provided for in the law. Acquired rights and authorize rights are fully equivalent. If necessary, or if desired, holders of acquired rights can identify their boundaries and land uses through delimitation and demarcation procedures and record and register their land rights, but they are not required to do so to assert and enforce those rights. Authorized rights must, however, be demarcated and registered.

## IMPLEMENTING THE LAND LAW

The law gives rural residents a high degree of formal protection of their land rights and a powerful role in controlling the development of their land. But the law alone cannot make these rights a reality if people do not have knowledge of the law or lack the skills and resources to effectively assert their rights or negotiate with outside interests. Local officials and investors are often able to take advantage of ambiguities in the law regarding the identification of community land interests and the process for community consultation and approval. Communities lacking sufficient knowledge of their rights and the capacity to negotiate equitable agreements can be manipulated and their rights compromised.

Much has been done to address these questions. Shortly after the law was approved, a national Land Campaign was launched in 1997 by the late Dr José Negrão to create widespread public awareness of the land law. The Campaign trained 15,000 volunteers from over 200 NGOs, church, associations, and cooperatives to bring the key principles of the new law to 114 of Mozambique's 128 districts. The Campaign prepared 120,000 copies of comic books showing how the law works for local people, 3,000 audio dramatizations of the comic books, 20,000 copies of a manual accompanying the land law, 15,000 copies of land dispute registration forms, and 500 posters.

The Land Commission was also instrumental in building NGO and public sector capacity to implement the law, with specific attention given to identifying and delimiting community held DUATs. Twenty-one pilot exercises were carried out to develop and test a participatory methodology in which communities would in effect indicate and delimit their own borders as well as internal features such as customary rights of way. Lessons from the pilots were used to prepare the Technical Annex for Delimiting Communities, followed by a series of training courses for NGO and public sector offices involved in land and community development issues.

The process of drafting and enacting the land legislation and the Land Campaign were significant achievements for Mozambique. Subsequent successes with implementation, however, owe much to the determination of civil society and the commitment of donors and technical





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agencies to ensure that the law has been properly implemented. In each province, the Land Campaign established Land Forums which continue to advocate for effective implementation. National NGOs like ORAM and Helvetas-Mozambique have continued to support community land rights delimitation over the last ten years, with funding from a donor-supported Community Land Initiative (iTC). The Centre for Juridical and Judicial Training of the Ministry of Justice continues the civic education process with a paralegal and public officer training program.

Political will, internal and external support and a determined civil society have been crucial elements in creating a national awareness of land issues and a growing capacity to deal with them. Yet, in the years since its enactment, Mozambique has faced many challenges implementing the 1997 Land Law.

Implementation has been plagued by inadequate institutional capacity of local government offices charged with administering, surveying, and recording rights. In many areas, land administration authorities lack awareness of the law and the acquired land rights held by communities, leading to confusion over the availability of rural land for private concessions. Despite the requirement for investors to consult with communities regarding planned land uses and development, substantial numbers of investors have received rights to large tracts of land without engaging with the communities in a manner that recognizes their land rights and supports community development. Finally, more than a decade after the enactment of the land law, most rural communities still lack the knowledge and institutional support needed to understand and enforce rights granted to them under the land law.

Effective implementation and enforcement of this progressive and innovative policy and legal framework is critical to Mozambique's ability to reach its goals for poverty alleviation and economic growth. Civil society, donors and researchers are working with the government in Mozambique to address the gaps in implementation of the land law. This process has to be inclusive by building government and community capacity to administer and enforce land rights, providing financial and technical support for community land delimitation, and facilitating investor access to land on the basis of mutually beneficial partnerships with communities. Such an approach can generate equitable and sustainable development to transform the rural economy, end poverty, and ensure that everyone benefits from the land and natural resources that are, perhaps, Mozambique's greatest physical asset.

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