

Land Reform in Mozambique

BY ROGIER J. E. VAN DEN BRINK

After the end of Mozambique's 17-year war in 1992, the government initiated a land policy review which led to a new National Land Policy in September 1995. The Policy subsequently led to a new Land Law in 1997, and implementing regulations in 1998. The 1997 Land Law aimed to achieve a balance between safeguarding the interests of communities and facilitating investors' access to land. The legislation sought, among other things, to halt speculative land grabs that were leading to increased landlessness among the poor.

RATIONALE, OBJECTIVES, AND BASIC FEATURES OF THE 1997 LAND LAW

Mozambique's 1997 Land Law established a right to use land which is inheritable and—subject to certain restrictions—transferable. This right is known by the acronym DUAT, from the Portuguese *Direito de Uso e*

Aproveitamento dos Terras—'right of use and benefit of land.' While a DUAT does not confer full ownership, it is a secure, renewable, and long-term user right that covers a period of up to 50 years. In this sense it is roughly comparable to a lease. The Law provides communities and local people with a secure title to land, while providing security to investors. It gives the state authority to allocate land concessions for commercial businesses.

The basic provision of the Land Law states that "the land is the property of the State and cannot be sold or otherwise alienated, mortgaged, or encumbered." The DUAT, however, *can* be sold or otherwise alienated or encumbered. This important distinction provides for transfers of use rights, albeit ones that are subject to serious limitations. It also allows for joint ventures between commercial enterprises and family farmers, and spells out a consultative process with existing right holders through which investors may secure access to land-use rights. A DUAT can be traded, using an irrevocable power of attorney issued by the "seller" to the "buyer." According to the Land Law, a DUAT can be acquired in three ways:

1. Local community occupation governed by customary law;
2. Good faith occupation (after using the land for at least 10 years without objection); and
3. Adjudication and allocation of a 50-year lease by the State.

ACQUIRING LAND-USE RIGHTS

The Land Law applies to both urban and rural areas, but makes a distinction between the two. In urban areas, 'provisional' DUAT's are issued for an initial two years, during which a building permit must be



Photo: Eric Miller





obtained. Once this permit is issued, the provisional DUAT can be renewed for another two years. In practice, more renewals are granted as construction progresses, or even without construction. There is, therefore, no binding time constraint on the provisional DUAT in urban areas, and the lease is effectively permanent.

Similarly, the process to acquire rural land rights starts with the issuing of a provisional DUAT, granted on the basis of a development plan. The plan is the outcome of a compulsory community hearing between the community that has the *ex ante* land right and the prospective investor. Provisional DUATs, that require the approval of

needed, with secure property rights supported by the receiving community. They argue that the process is indeed lengthy, but it is lengthy by design, to foster mutual understanding and to forge sound partnerships between the stakeholders.

Whether or not the Law itself is appropriate, three fundamental problems persist with respect to its implementation. The first is lack of clarity. Some government officials appear to interpret the law arbitrarily; undermining the principal that ‘good faith occupation of the land’ confers legal property rights—the very cornerstone of the Law. The second problem is lack of capacity. While guidelines for community consultations exist, they are poorly disseminated and understood. Neither communities nor the government have the capacity to guarantee proper community consultations prior to the granting of use rights to investors. The third problem is the result of allocating DUATs for free. This, combined with the lack of collection of the land tax, has encouraged extensive land grabbing.


OBSTACLES TO TRANSFERRING URBAN LAND-USE RIGHTS

The registration process is lengthy and complicated. There are two institutions involved in the land transfer process: the national level Deeds Registry or *Registro Predial* and the provincial and national-level Cadastre. The DUAT registration procedure is a cumbersome, highly centralized, and bureaucratic process that involves several visits to both institutions. This effectively requires users to go through a double registration process. It is, therefore, not surprising that people and elements of the government have developed their own parallel procedures for conducting transactions in the land market. The existence of this extra-legal land market makes it very difficult for anyone to ascertain the actual ownership status of a given land-use right. Simplifying the registration process and fostering ease and greater transparency can go a long way to close loopholes that currently lead to discretionary and non-transparent application of legal provisions. By establishing clear processes for formalization by local institutions or municipal councils, it could eliminate the factors that result in creation of a parallel and extra-legal land market.



the various spheres of government depending on the size of area in question, can be upgraded to full DUATs (up to 50-year leases) if the development plans agreed upon are executed as planned.

Ten years after its introduction, assessments of the Law vary substantially. Some consider the process it established to be murky, lengthy, open to ad-hoc decision-making by government officials, and an impediment to investment. Others argue that there is nothing inherently problematic with the main body of Law, or with the general process it established for outside investors to acquire land-use rights in Mozambique. Supporters of the Law argue that the process is quite clear, that communities are in effect being consulted, and that if investors simply followed the letter of the law, they would have little difficulty in acquiring the land they



Although the Land Law protects the rights of the urban poor (by conferring permanent DUATs to good-faith occupants), there seems to be considerable lack of clarity around the interpretation of the law. For instance, the 2006 New Urban Regulations seem to weaken the use rights based on good-faith occupation by stating that these rights are to be recognized only if they do not conflict with the existing urban development plan. Given that such plans are generally absent or outdated, and given the real risk that future planning may not be sufficiently flexible and participatory, this provision may condemn large numbers of low-income households to informality.

Substantial administrative bottlenecks remain. On average, courts take seven years to allow the repossession of urban property. Title remains insecure until one has built and completed construction on the land. If the building is only partially completed, the property cannot be disposed of. With only a provisional title it is, of course, very difficult to obtain a mortgage.

DUATs can be obtained for free, or at very low cost. It is, moreover, relatively easy and common to obtain provisional DUATs without satisfying what are supposed to be development conditions. The free administrative allocation of an asset as valuable as urban land poses a severe governance risk.

OBSTACLES TO TRANSFERRING RURAL LAND-USE RIGHTS

Land is being transferred or demanded for speculative uses. Between October 2001 and October 2003, the land area covered by the applications for concessions was equivalent to 90 percent of the area of cultivated land in the country. According to some observers, some 90 percent of coastal land has been allocated as provisional DUATs. Furthermore, about 10 million hectares of land have recently been requested for bio-fuel projects. These figures are far in excess of what can reasonably be used in the medium term and large portions of land are clearly under-used.

The community consultation processes are often a pro-forma exercise. Consultations rarely last more than half a day. Local communities are poorly prepared to receive the investor; and advance

knowledge of the investment proposal is often lacking. The borders of the DUAT request are indicated on maps, or in conversation, but are seldom physically verified. Consultations involve quite small, one-time costs to the investor and do not necessarily result in a good long-term relationship with the local community. Communities' awareness of their rights under the Law is very weak.

Serious issues remain regarding how the Law is interpreted. Some officials hold the view that all land is owned by the State "until further notice." In this view, communities only actually obtain substantive property rights in land after they obtain approval for the registration of their use rights. This interpretation seems to find its expression in the October 2007 amendment to the Land Law, according to which communities are now subjected to the same three-tier approval system of development plans that apply to investors. Some observers believe that this amendment has undermined the guarantee of customary rights which is a basic feature of the Land Law and of the Constitution itself.

SUGGESTED NEXT STEPS

To realize the full potential of Mozambique's path-breaking law, it will be important to develop a low-cost process that secures the rights of local communities on a systematic basis so as to enable them to negotiate effectively with outside investors. It will also be important to establish a better incentive framework and to begin introducing a land tax.

Systematically delimit community land and promote greater consensus on how the Land Law and community rights are to be interpreted and enforced

- Develop technical options (e.g., use of index maps based on satellite imagery) to systematically delimit all local community lands and, once financial viability is ensured, apply it on a large scale. In this context, it will be necessary to improve and disseminate clear and practical guidelines for participatory consultations with existing communities and to unify the land registration processes into a set of self-financing, decentralized offices which are easily accessible to the public.

- Develop a process for systematic registration of property in urban areas, with special emphasis on protecting good faith occupants in a way that incorporates affordable urban planning processes. High rates of rural-urban migration will require the government to make small housing plots near where landless urban people work.
- Allow the customary property rights system in rural areas to evolve by making them secure. Communities may elect to issue individual DUATs.
- Support communities that have been dispossessed of their traditional rights as the result of arbitrary decisions and poor procedures. Ensure the land rights of good faith occupants on high-quality or peri-urban agricultural land by systematically registering use rights
- Limit the duration of existing provisional DUATs to discourage unproductive land use and place a ceiling on concession sizes to avoid fostering speculation.
- Create a regulatory option to renew only that part of a provisional DUAT for which the consultation requirements and development conditions can be met, or that is within the land ceiling. Permit final rural DUATs to be transferred without government approval and include transfer of the land together with fixed investment.
- Formulate better public information laws to make issuing DUATS transparent.

Promote the productive use of DUATs

- Conduct a systematic review of all DUATs granted to assess how much land has already been allocated through concessions and which are in clear violation of the development conditions. Where development conditions have not been met, DUATs should be automatically revoked or sub-division allowed, so that the DUAT holder can keep the part he or she has invested in.
- The ground rent, or land tax, should be imposed to ensure more intensive land use and make more land available for medium-sized farm enterprises.
- Improving the collection rate and substantially raising the rates, and eliminating special rates for livestock, wildlife conservation, and permanent crops, will make holding excessive areas of land for speculative purposes much more costly.

Enforce the land tax

REFERENCES

Bruce, J., 2007. *Land Use Rights for Commercial Activities in Mozambique*, Paper produced by Nathan Associates Inc. for review by the United States Agency for International Development.

Conceição de Quadros, M., 2002. "Country Case Study: Mozambique," Paper presented at the Workshop on Integrating Land Issues into Poverty Reduction Strategies and the Broader Development Agenda, Kampala, April.

Durang, T. and Tanner, C., 2004. "Access to Land and Other Resources for Local Communities in Mozambique: Current Examples from Manica Province," Paper Presented to the *Green Agri Net Conference on Land Administration in Practice*, Denmark, April 1-2, 2004.

Myers, G.W., Eliseu, J. and Nhachungue, E., 1994. "Security, Conflict, and Reintegration in Mozambique: Case Studies of Land Access in the Postwar Period," *LTC Research Paper 119*, Land Tenure Center, University of Wisconsin-Madison, August.

Tanner, C., 2002. "Law-Making in an African Context: the 1997 Mozambican Land Law," *FAO Legal Paper Online 26*, March 2002. <http://www.sarpn.org.za/CountryPovertyPapers/Mozambique/Legal/tanner.php>

Tanner, C. and Baleira, S., 2006. "Mozambique's legal framework for access to natural resources: The impact of new legal rights and community consultations on local livelihoods", *FAO LSP Working Paper 28*. <ftp://ftp.fao.org/docrep/fao/009/ah249e/ah249e00.pdf>

United Nations Human Settlements Programme (UN-HABITAT), 2006. "Security of Tenure and Policy Preparation in Mozambique." Overall Project Report. Project funded by the Italian Government. Implemented in collaboration with Government of Mozambique, Ministry for Coordination of Environmental Affairs (MICOA) and the Ministry of Public Works and Housing (MOPH). Prepared by Mathias Spaliviero, Programme Officer, January 2006.

The ARD Notes series on Land Policy and Administration aims to disseminate the results of World Bank research and economic and sector work that describes innovative practices, operational issues, or that points to areas that merit further analysis. This ARD Note was written by Rogier J. E. van den Brink and edited by Gunnar Larson.

