



**IMPLEMENTING THE 1997 LAND LAW OF MOZAMBIQUE: PROGRESS ON  
SOME FRONTS**

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## 1 INTRODUCTION

This short paper will discuss where things currently stand with the implementation of the innovative and widely regarded 1997 Land Law of Mozambique<sup>1</sup>. A recent assessment begins with the upbeat conclusion that 'significant progress has been made'<sup>2</sup>. A decade after its approval by the Assembly, there are however many voices calling for change. Mozambique is apparently a very different place compared with the mid 1990s and, according to some, now requires a different kind of land law.

The country is indeed quite different. It has consolidated its transition to a market economy, built upon macro-economic reforms that have been pursued with determination by successive governments. Four successful multiparty elections have created that sense of stability which is essential to attract new investment. Economic growth from 1996-2006 - roughly the period of Land Law implementation to date - has consequently averaged 8.3%<sup>3</sup>. And while opinions differ over the real impact of this on poverty indicators<sup>4</sup>, there can be no doubt that growth has had a huge impact on the demand for land and natural resources.

This surging demand has subjected the 1997 law to a test that few have had to face. How has it fared? Has it held back growth, or promoted it? What are its achievements and failings in this period? Should the law be changed? What are the major challenges facing policy makers today?

These are some of the questions that this paper will attempt to answer, or at least put into the wider policy context of 'equitable and sustainable development' that is the ultimate objective of the 1995 National Land Policy, still in force today. To do this the paper begins with a brief outline of the most important aspects of the Land Policy and the subsequent 1997 Law<sup>5</sup>. It then discusses where it has been successful, and where it has not. The wide range of opinions that currently exist in Mozambique over what should now be done with the law are then reviewed.

Finally, the paper presents some pointers as to how things may develop, as the government responds to new pressures and opportunities, both from within Mozambican society and its growing entrepreneurial class, and from the new biofuel and other external interests.

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<sup>1</sup> Law 19/97 of 1 October

<sup>2</sup> 'Calengo, André, Oscar Monteiro and Christopher Tanner, 2007. *Land and Natural Resources Policy Assessment*. Internal and still restricted report for the Embassy of the Kingdom of the Netherlands, Maputo.

<sup>3</sup> *Africa Development Indicators*, World Bank 2007

<sup>4</sup> See for example, Joseph Hanlon, 2007. *Mozambique: The war ended 15 years ago and we are still poor*; and the response to Hanlon by Channing Arndt, 2008 (Policy Advisor, Ministry of Planning and Development, Maputo)

<sup>5</sup> For an account of how the policy and law were developed by the Interninisterial Commission for the Revision of Land Legislation (the 'Land Commission'), see Tanner, 2002. *Law Making in an African Context: The 1997 Mozambican Land Law*. FAO Legal Papers Online No 26.

## 2 LAND POLICY AND LAW

The 1995 National Land Policy provides a succinct and all embracing 'mission statement' that still stands up well against the social and economic landscape of Mozambique in 2008:

*'Secure the diverse rights of the Mozambican people over land and other natural resources, as well as promoting new investment and the sustainable and equitable use of these resources'*<sup>6</sup>

The policy contains a set of principles for achieving these objectives, all of which (perhaps with the exception of the first – and most fundamental) would meet little resistance ten years later:

- Maintain the Constitutional principle of land as the property of the State
- Guarantee access and use of land for the population as well as for investors
- Recognize customary rights of access and use, promoting social and economic justice
- Guarantee the right of access and use of land for women
- Promote national and international private investment without prejudice to the resident population and ensuring benefits for them as well as for the public treasury
- Facilitate the active participation of nationals as partners in private enterprises
- Define guidelines for transferring land use rights between citizens or national enterprises
- Sustainable use of natural resources, to guarantee the quality of life of future generations

The policy is thus both a powerful instrument for protecting and safeguarding rights (its legal dimension), *and* a concise blueprint for equitable and sustainable development. The focus on rights responds to real concerns in the mid 1990s, when shortly after the 1992 Peace Agreement, apparently abandoned or unused local land was being grabbed by investors using legal provisions regarding access to 'free land'. The rest of the statement clearly supports the need for new investment – seen then and now as the motor of national economic growth and development – conditioned by principles of equity and sustainability.

These principles were translated into the 1997 Land Law, which includes several innovative features. Firstly, while land remains the property of the State, a 'Land Use and Benefit Right (DUAT)<sup>7</sup>' is attributed by the State to both nationals and foreigners (although foreigners are subject to certain restrictions). This DUAT 'is legally a private right and is not easily revoked. It also enjoys general guarantees of property under Article

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<sup>6</sup> Serra, Carlos, 2007. *Coletânea de Legislação sobre a Terra (Second Edition)*. Mpatuo, Centre for Juridical and Judicial Training.

<sup>7</sup> *Direito de Uso e Aproveitamento de Terra*, referred to as the DUAT from this point onwards.

82 of the Constitution. Furthermore, while the Land Law confirms the principle of State ownership, it gives the State an essentially administrative and supervisory function over areas covered by DUATs and thus with limited discretionary powers'.<sup>8</sup>

The law then goes on to define three ways in which the DUAT is acquired:

- Occupation by individuals or local communities via customary norms and practices, so long as these do not contradict Constitutional principles<sup>9</sup>
- Occupation in 'good faith'(unopposed squatting for ten years)
- Formal request to the State (via its appointed land administration) for a new DUAT

The first two routes are only open to nationals. Only the third route – formal request for a new DUAT – is allowed for foreigners.

The DUAT is effectively a state leasehold, and is both inheritable and – subject to state approval – transmissible between third parties. For those acquiring it through occupation, for the purposes of subsistence or what could be termed the household economy, it has no time limit. For those using the formal route, an approved project is required (i.e. the intent is more commercial), with a limit of 50 years, renewable for a further 50 years.

The law therefore 'at a stroke' formalizes the vast majority of land rights in Mozambique, which in the mid 1990s and still today, are mainly acquired and managed through local customary systems. The law gives these rights full legal equivalence to the State DUAT. At the same time it provides investors with a strong and exclusive private right that lasts for an acceptable and renewable period, and which is also inheritable.

The land administration task is addressed through the 'local community', which has a specific and important definition:

*'A grouping of families and individuals, living in a circumscribed area at the level of a locality or below, which looks after common interests through the protection of areas of habitation, agricultural areas, be they cultivated or in fallow, forests, sites of cultural importance, pasture, sources of water, and areas for expansion'*<sup>10</sup>

This definition is based on an analysis of different local production systems and the local social and political structures that manage them. A local community can hold a DUAT in its own name, and allocate and manage rights to its members according to prevailing customary rules. By law all these acquired rights are DUATs. The community – through its leaders – therefore has powers to allocate and manage DUATs on behalf of the State.

Rights acquired by occupation do not need to be registered (legislators recognized the inability of most communities and local rights holders to respond to a set deadline, and

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<sup>8</sup> Calengo, Monteiro and Tanner 2007:3

<sup>9</sup> This qualification was inserted specifically to protect the customarily acquired rights of women

<sup>10</sup> Law 19/97, Article 1, Number 1.

the weak capacity of land services to respond in any case). Communities and local rights holders must however be able to prove their rights if necessary. Rights acquired by formal request *do* have to be registered. Rights acquired in any way can be proven by documentary evidence, *verbal testimony from community members*, and what is called *peritagem*, or expert technical means.

The principal *peritagem* mechanism is community delimitation. This is a participatory land rights adjudication and definition process that allows whole communities to a) prove their DUATs, and b) define their spatial limits. The encircling border of the community DUAT is then recorded on cadastral maps and a Certificate of Delimitation issued. This makes the community much more visible to outsiders, and gives it a relatively strong more formalized form of protection.

New investors have to follow a more rigorous surveying and registration process called demarcation. This is far more expensive than delimitation, and although legally not necessary, it is also open to communities and local rights holders. The resulting Title (*Título*) is an even stronger form of documentary proof and security, and is often referred to as 'the DUAT', implying that without this document a land user does not have a formal right. In fact all those acquiring rights by occupation already have a DUAT, and the law clearly protects those who can prove that they had the DUAT first if conflicting claims arise.

For communities the more rigorous demarcation is impractical compared with the less expensive delimitation. They are also able to register the Certificates in the legal land registry (in the Ministry of Justice) without passing through the full demarcation process, which gives them perhaps the strongest form of protection. Holders of new, formally requested DUATs also have to register in the Property Registry if they want to use their rights to facilitate access to bank credits, not as collateral (which is still not allowed by law) but as proof of having the land required for a project to be viable.

Finally in this quick overview, communities have a right and duty to participate in the management of land and natural resources. This includes conflict resolution, and the process of attributing new rights to investors and others who follow the third route above. In this case, the law demands that a 'community consultation' is carried out, to establish if the land requested is 'free of occupation' (it rarely is), and if occupied, the terms by which the community or local rights holder will cede his or her rights to the newcomer.

The legal formalization of customarily acquired rights and the consultation process together ensure and protect the 'diverse rights of the people', while the latter promotes the equity side of the policy mission statement. In principle it facilitates a negotiation that will ensure that local people get something concrete in return for giving up their rights over some of their land.

A great achievement to date is the fact that consultations *are* always carried out, and the existence of local rights *is* taken into account. Unfortunately not many are *well carried out*, with the result that few real benefits flow to local people, especially when the real

market value of their only asset – their land – and the value of many of the proposed projects are taken into account. Cadastral services are under great pressure to fast track private land claims, and are not adequately trained as mediators and as what could be called a ‘development extensionist’. The *consulta* is then seen as something of a nuisance to be got through as quickly as possible, instead of as an opportunity to really achieve the underlying social and economic objectives of the Land Policy<sup>11</sup>.

### 3 IMPLEMENTATION TO DATE: SUCCESS OR FAILURE?

The recent assessment referred to above concluded that ‘significant progress has been made’. In what way? The authors point to the following<sup>12</sup>:

- local rights acquired through customary and other local channels are at some extent recognized and respected;
- the laws have put a break on State ‘usurping’ of land and treating citizens and their rights as objects that can be moved around to suit ‘national interests’;
- in spite of increasing demand for land since the mid 1990s, Mozambique has avoided having a class of rural landless peasant;
- there has been no massive rural – urban exodus to towns and cities that cannot provide alternative livelihoods;
- where collective associations and NGOs are strong, peasants are increasingly aware of the need to record and register their rights, and are far more proactive in defending and using their rights when confronted by investors and the State;
- there is a growing number of projects that are implementing the participatory and partnership principles enshrined in the land and other laws, generating new resources for local development that are under the direct control of local people.

All these points indicate that in fact the 1997 Land Law can be called a relative success, in an area of development practice that is littered with failed experiments and empty promises. Much of this success is due to very particular interventions however, largely by the NGO community, and with not a great deal of visible public commitment to the community aspects of the law.

The Land Campaign of the late 1990s played a huge role in disseminating the basic messages of the Land Law down to local level. The campaign was mobilized and lead by the late Professor José Negrão, who succeeded in bringing together some 200 national and international organizations which then carried out hundreds of community level meetings. The Land Law has also been translated into six local languages by the FAO Land Law implementation support programme, and to date is the only law to have been fully translated in this way. Again it has been used principally by NGOs. The result of

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<sup>11</sup> See Tanner and Baleira 2007. *Mozambique’s legal framework for access to natural resources: The impact of new legal rights and community consultations on local livelihoods*. Rome, FAO Livelihoods Support Programme, Working Paper No. 28

<sup>12</sup> Calengo, Monteiro and Tanner 2007:12

these activities however is that the Land Law is perhaps the most – or only – widely disseminated law in the country, even more so than the Constitution which is in fact scarcely known at all, even by relatively senior administrators and technical officers<sup>13</sup>.

Implementation of the key messages, and most notably the delimiting of community held DUATs, has also been done largely by NGOs. After the initial 21 pilot delimitations carried out by the Land Commission to develop the delimitation methodology<sup>14</sup>, the vast majority of delimitations have been done by NGOs with donor support. Recent estimates differ on precisely how many have been carried out, and how much land area is involved. A baseline of sorts was established by the 2003 CTC study for DfID, which identified a total of 180 communities delimited, of which just 70 had succeeded in having Certificates issued and their boundaries placed on the official cadastral maps<sup>15</sup>.

This report also analysed public sector budget allocations at the time and concluded that ‘the Government of Mozambique contribution has been very marginal....this reflects the low priority placed on these activities by the public sector.’<sup>16</sup> No more recent analysis of public spending on the community aspects of the Land Law is available, but there are signs that the issue is being taken more seriously by the cadastral services, at least in terms of including delimitations as an indicator of Land Law implementation. At the 10<sup>th</sup> Anniversary Land Conference in Maputo in October 2007, the presentation by the National Directorate for Land and Forests included for the first time in this kind of forum, official data on the number of delimitations carried out<sup>17</sup>.

The public sector data differ markedly from the NGO data (they claimed that over 300 had been done so far), but at least the issue is now recognized as being a key element of the overall implementation effort. They also provide area data for the delimitations on their databases, which show how much communities can vary (small in densely occupied areas, much larger in more remote and less populated regions) (Table One – to be inserted in final draft).

## TABLE ONE

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<sup>13</sup> Serra, Carlos and Christopher Tanner (forthcoming). *Access to Legal Information and Institutions, Awareness Raising on Legal Land Rights and Procedures, and Legal Empowerment: A Mozambican Case Study*. FAO, Rome, Land Tenure Service, new collection of case studies to be published in 2008.

<sup>14</sup> This methodology is legally prescribed through the resulting Technical Annex to the Land Law Regulations, and set out in detail in the Manual for Delimiting Community Land Rights (Land Commission 2000)

<sup>15</sup> CTC 2003. *Appraisal of the Potential for a Community Land Rights Registration, Mapping and Planning Programme*. Report for DfID Maputo by CTConsulting, St Ives, Cambridge, England.

<sup>16</sup> CTC 2003:44

<sup>17</sup> DNTF 2007. *Presentation to the 10<sup>th</sup> Anniversary National Land Conference, Maputo, October 2007*. Proceedings to be available in 2008 through the Centre for Legal and Judicial Training, and FAO Decentralised Legal Support Project (cserra@cfjj.org.mz, ctanner@cfjj.org.mz)

Meanwhile the reality is that official databases are still woefully incomplete, focusing principally on private sector DUATs that have to be registered by law. This creates the illusion still that there are vast areas of Mozambique that are ‘unoccupied’ and thus free for the State to allocate to new investors. When investors arrive in such areas however they quickly find that there are in fact established communities with longstanding rights according to the law. Effective registration of these rights would avoid much misunderstanding and do much to promote a more constructive and equitable development scenario, compared with the relatively good results indicated above.

## **1.2 The Consultation Process**

The community consultation is carried out in practically every case where a new land right is being requested by an external interest. However, it is evident that the majority of consultations are poorly carried and have limited ‘equitable’ impact on the livelihoods of the rural poor who normally end up ceding their rights to the investor<sup>18</sup>.

Given the still low real awareness of their basic rights amongst most local people, and their lack of understanding of the real dimensions and impact of most new projects (especially those in more esoteric new areas like eco-tourism), it is essential that before or as part of the consultation, efforts are made to explain to local people what their rights are, and how they can exercise them,. They also need support to help them through the negotiation process, like most people do when faced with complex contractual proposals and new ideas.

Field research shows clearly however that consultations rarely dedicate time to this civic education imperative, and that even then, they are too short and do not create or allow space and time for an internal discussion between community members before any decisions are made.

Resulting agreements are unclear or ambiguous, and even when specific things are included (such as the investor providing a maize or rice mill), in fact the real value of this ‘promise’ is derisory in relation to the economic value of the resource and the loss of livelihoods use of the ceded land spread over a period of 50 years, renewable. The livelihood impact – the equitable development side of the 1995 policy vision – simply does not happen, or at best at only a very marginal level.

## **1.3 Land Transfers**

There are many calls for some easier form of land rights transfer, or in effect, a market in DUATs. The reality is the present law may allow these to happen in theory, but in practice there are several areas where administrative discretion and the need for some form of administrative approval (in the name of the State as owner) create uncertainty and are said to hold back investment.<sup>19</sup>

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<sup>18</sup> Tanner and Baleira 2007

<sup>19</sup> See Bruce, John 2007

In reality of course there is a clandestine land market or one that operates by using a series of legal loopholes or interpretations of the law. In the first instance, any investment made on land is or can be private property. *This* can be bought and sold, and mortgaged. If this is purchased, the underlying DUAT should in principle pass to the new owner of the infrastructure or investment. This process is automatic in urban areas, but not so in rural areas, where the purchaser has to in effect request a new DUAT in his or her name. And there have been anecdotal cases where for example a farm building has been purchased, assuming the land goes with it, and the subsequent DUAT transfer over the adjoining land has been refused.

This level of administrative discretion is of course entirely at odds with the needs of a financial sector that is prepared to lend against installed infrastructure or a good business plan that requires the surrounding land to be able to work.

#### **1.4 Some Insights from Specific Cases**

This section presents information drawn from several real cases that are ongoing at this moment, and which demonstrate some of the good and bad aspects of the implementation scenario presented above.

##### *Reinforcing community organization and facilitating partnerships*

There are several good examples of communities establishing working partnerships with private investors, using the underlying principles of the Land Law. Some of these have involved formal processes laid out in the law and regulations, others have used the principles but have not formally applied the mechanisms that are available.

In the first instance, perhaps the best example to date is that of Covane Community in the Massingir District of Gaza Province. In 2002, Helvetas made a proposal to a USAID programme supporting new initiatives in national park buffer zones. It was already evident that this region, on the southern shores of the lake which borders the new Limpopo National Transfrontier Park, would begin to attract new tourism investors. Helvetas proposed to use the delimitation mechanism to give greater protection to local rights, and use the participatory process to identify new economic opportunities – principally a community run tourist camp – that would be funded by the USAID programme.

The Land Commission – FAO project was asked to do a course in delimitation for the NGO and public sector staff who would do the delimitation, which was carried out as the practical part of the coursework. Now, some six years later, there is a fully operating lodge on the site, the community has been earning a reasonable level of income from the lodge, and the impact of the process on their ability to engage with the outside world and understand a wider range of development options has been remarkable.<sup>20</sup>

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<sup>20</sup> Calane, Alicia, 2006. *Covane Community Lodge, Canhane – Massingir: Avaliação da Segurança Alimentar no âmbito do uso inovativo de terra e estratégias de desenvolvimento rural*. Maputo, FAO, FAO Netherlands Partnership Programme (FNPP) case study.

To get this far, Helvetas has invested some US\$60,000 in the process, from the USAID programme and other sources. After opening in May 2004, the lodge enjoyed first semester (June – November) profits of MT 106,000 (about US\$4326), rising to some MT 129,000 (US\$5270) in the same period for 2005<sup>21</sup>. More recent financial data are not yet available, but Helvetas confirm that occupancy rates are good and that the lodge is generating a significant (by local standards) level of income without further inputs from their side.

Most significant about this case however is that over the last two years the community has been trying to secure a contract with a private operator to lift the business up several levels and place it within a professional and international marketing structure. The entry card for the community is their land, and as a result of the previous process of delimitation and local planning, the community have also gained in organizational and negotiating skills. With support from the African Safari Lodge programme<sup>22</sup>, an competitive tendering process was launched to attract an investor. The community participated actively and decisively in the choice of investor, in meetings held in Maputo, and a landmark agreement almost reached signing point with significant benefit flows and turnover shares accruing to the community.

The deal failed at the last hurdle, partly because Canhane could not agree with the neighbouring community over a border dispute over land the new operator wanted to use. However, a second operator on the original tender list, with a successful lodge in the north of the national park, is now close to concluding a new deal with the community.

The second example is where the principles have been used but not in a formal way. This is the case of Coutada Nine, a safari hunting reserve operated by a Mozambican – Zimbabwean firm with a contract with MITUR. In such conservation areas, DUATs are not allowed by law, with activities subject to special licences. Yet all these areas have significant local populations resident in them, and how to deal with these people is a major challenge for government and operator alike.

In the case of Coutada Nine, the operator quickly realized that removing the population was not an option, on both practical and ethical grounds. They carried out a *de facto* delimitation exercise to identify the communities and their traditional boundaries, and the proposed a division of the Coutada area as follows:

- core area, managed by the operator and partially fenced
- a buffer area managed by the community with young rangers trained by the operator
- a third area that has been extensively converted to agriculture and which the operator proposed to exclude from the Coutada activities

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<sup>21</sup> Calane 2006:30

<sup>22</sup> A South African based programme now with a Mozambican arm, promoting community – operator partnerships in tourism in Southern Africa.

The community would agree to cease illegal hunting and cooperate with the operator (who also trained some of their young men as rangers). In return, the community receives 25 percent of all trophy fees in the core area, and 75 percent in the buffer, community managed area. After two years of operating this scheme, the operator was able to hand over some US\$35,000 to the community as their share of the proceedings. With support from a FAO food security programme in the area, the community was then helped to establish priorities and decide how to use this money (which was deposited in a local bank account in the name of the community).

The MITUR and provincial land and forest administration services have since come round to the idea of formalizing the division of the Coutada through a zoning process. Whilst they hold back from doing a full delimitation on legal grounds, the *application* of the underlying principles of the Land and Forest and Wildlife Laws has done much to bring this remote community into a useful and constructive partnership.

### *Over-riding the law*

Unfortunately there are other cases where the attention given to local rights has been far from positive. An important case began well along the lines of Coutada Nine, this time in Niassa Province. The flagship Chipanje Chetu project started with IUCN support in an huge forest area that was not in a conservation area. The community was therefore able to do a delimitation and a Certificate was duly issued. Like Coutada Nine, a relationship was established with a safari hunting company, and revenues increased from some US\$5000 in the first year to over US\$30,000 some four years later. Recently however, powerful economic groups with an interest in developing eco-tourism in the area have managed to persuade the provincial government to declare the area a nature reserve. On this basis, the preexisting DUAT has been 'cancelled' and at the present moment the case is embroiled in conflict.

Attempts to provide legal support have met with some success, but in the meantime the community leaderships have been fragmented and weakened<sup>23</sup>. While government at the highest level has called for local rights to be respected, in practice a dynamic and successful process built upon the recognition of the community as a legitimate stakeholder has collapsed.

It is equally worrying that this mechanism of declaring 'reserves' is also threatening good private sector developments in the same and other provinces, where legally obtained DUATs may also be called into question and converted in 'special licences'. The impact on investor confidence is self-evident in such circumstances.

Case study research by the CFJJ-FAO project confirms that in many parts of the country, legitimate local rights are being over-ridden by local administrators and line ministries<sup>24</sup>. A recent example is the allocation to a biofuel enterprise of some 30,000 hectares of land earmarked for communities being resettled from inside the Limpopo Park. Other recent

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<sup>23</sup> André Calengo, personal communications.

<sup>24</sup> Baleira, S. et al, 2004

but less visible cases are documented by the CFJJ team, which has confirmed evidence of administrators arguing that local rights may be recognized by law, but because 'land belongs to the State', it is legitimate for the State to override these rights, even when they are legally delimited and certified<sup>25</sup>.

### *The Impact of Insecurity*

Finally a useful counterpoint to the Canhane community is found up the road inside the new national park itself. As in Coutada Nine, local communities have existed for generations inside the area that is now park, and where in principle, DUATs and people cannot exist. The MITUR has been involved in a long drawn out and difficult process of resettlement with local people that has had little real success to date. The lack of clarity over local rights, and the difficulty with finding new areas (that inevitably will clash with other communities already there) has meant that the population has been standing still for over five years.

They are not repairing or building new homes, or investing in their livelihoods for fear that at any moment they will be moved. They have gained a very small amount as their share of national park gate fees, but are certainly not in a position to participate directly in new commercial income linked to the development of Mozambique's huge tourist potential, like their neighbours in Canhane or in Coutada Nine are doing<sup>26</sup>.

### *The Relevance of Local Systems in 2008*

A recent study of rural households in a densely populated district of Maputo Province reaffirms the continuing relevance of local land management systems, and the importance of local knowledge and 'testimony' when it comes to making people feel secure and able to invest<sup>27</sup>. In this survey, a majority of households without formal documentation of any kind assert that they feel secure on their land because their rights were attributed to them by local leaders and local institutions. Moreover, because their neighbours know who lives on and uses what pieces of land, longstanding social control and 'proof providing' mechanism exist that reinforce this sense of security.

The same study does confirm however that some form of documentary evidence is important, and shows how this can be obtained through a collective mechanism (in this particular case, an Association that was created to bring together existing local residents using an irrigation scheme, and which has its own single DUAT. This is similar approach to the idea of the local community above, and indicates how flexible and locally-rooted mechanisms of this kind can serve as an important half way point, between having no

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<sup>25</sup> Project files and conflict database. FAO Project GCP/MOZ/081/NET, *Decentralised Legal Support and Capacity Building to Promote Sustainable Development and Good Governance at Local Level*. Maputo, Centre for Juridical and Judicial Training of the Ministry of Justice.

<sup>26</sup> This information comes directly from IRIS Imaginações, a media and publishing firm that produces material on local development issues and is filming in the national park.

<sup>27</sup> Yussuf Tankar, masters thesis for the Rural Development Masters programme, Eduardo Mondlane University. Mr Tankar is the Southern Regional Delegate for the major national 'land NGO', ORAM, which has many years of acquired experience in delimitation and other aspects of land law implementation.

formal documentary evidence of a DUAT, and having everyone with their own single title document.

This point is made also in respect of the active use of rights, with or without official documentation, but which produces agreements and other pieces of paper that together build up into an affirmation of local rights<sup>28</sup>. Coutada Nine shows well how this kind of process can result in a constructive dialogue as foreseen by the initial 1995 Land Policy mission statement.

## 1.5 Rising Demand and Globalisation

These scenarios are being played out against backdrop of sustained economic growth and rapidly rising demand for land and resources. It is evident that if local rights continue to remain invisible in public databases, and are poorly understood and exercised by local people, then they will cease to exist in practice. There are also new pressures rooted in visions of national development and putting resource to work which echo much older views of land policy. The emergence of the biofuel lobby with its need for very large areas of land is perhaps the most recent manifestation of this. This is evidently driving present government views of how to adjust and refine certain aspects of the present land legislation, most notably the spatial dimensions of the local communities that are delimited using the techniques laid out in the Land Law and its regulations.

A recent change to the Regulations, in Article 35, was quickly implemented and is clearly designed to allow stronger central government control over land being 'allocated to' communities. An announcement on the official government web site is clear about these concerns: 'the (new) measure is the result of having noted that provincial governors are attributing vast areas of land to communities, in the absence of legal instrument to regulate this process'. The communiqué goes on to say that 'a total of 185 communities possess DUATs that correspond to total of 7.5 million hectares...and of these, 85 have more than 10,000 hectares each'.

The direction of thinking is clear, especially when a final comment was made that 'communities possessing vast areas can maintain them *so long as they keep them cultivated*' (emphasis added).<sup>29</sup>

At roughly the same time, in a paralegal course in Nampula, the third city of Mozambique set in the midst of a rapidly growing regional economy, participants from the public land administration confirmed that they are being asked by the government to identify a new category of land, 'free land in State possession'. All this at a time when some 27 investment consortia are looking for land for biofuel projects in Mozambique.

To be fair to government, it also apparent in many of the field programmes and seminars conducted by the CFJJ-FAO project, that very few senior administrators and political

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<sup>28</sup> Norfolk and Tanner 2007.

<sup>29</sup> [www.portaldogoverno.gov.mz/noticias/news\\_folder\\_politica/outubro2007](http://www.portaldogoverno.gov.mz/noticias/news_folder_politica/outubro2007)

leaders really understand how their Land Law works. Incorrect use of the basic legal terms underlines this. In the first instance, provincial governors do not 'attribute land rights' - they are already acquired by customary occupation, by law. The role of the State and its agents in this context is to reaffirm and administratively give the OK to the processes that gradually prove and spatially define them (delimitation and its Certification process). There are other points in the public statements that reveal a basic misunderstanding of some of the principles of the legislation. It is important not to forget that since the law was approved in 1997, there have been three general elections, each one heralding in a new group of executive officers. While many projects build capacity at local level, a similar need at the very highest level has been overlooked.

At a very small level the cases of Canhane and Coutada Nine show what the potential of the law is if it is implemented as intended. There are also however some cases of very large investors working successfully with communities, after having first recognized and delimited local land rights. This basic model needs to be made clear to government. Biofuel can be implemented on the basis of partnerships too – taking away local rights and giving them to new companies is not the only option, and alternatives are allowed for, indeed planned for, in the 1997 legislation.

#### **4 TO CHANGE OR NOT TO CHANGE?**

Mozambique has moved ahead enormously since the early post war days of 1992 and the mid 1990s when the Land Law was conceived. It is only natural at this point, some ten years after the law was approved, to ask if it still fits the bill.

The recent assessment already cited above and in which the author also took part, is clear about the prevailing view on this question: 'While the *general* view is that the present framework is still relevant, there is *no consensus and common vision* regarding the future of land and natural resources'.

Nevertheless Government, civil society and the private sector share a surprising number of points in common. The most important is that it is premature to think of wholesale land privatization. The discussion above of delimitation and the still very small number of local rights on the public database show how exposed local people would be to a wave of land grabbing, if land were privatized and all existing rights were not visible and adequately recorded.

For this reason, many people call for the more effective implementation of the present framework, with a focus on two aspects:

- registering local rights in a more systematic way, with the delimitation mechanism as the most logical and cost effective framework
- building capacity amongst all Mozambicans to engage more actively in using, exercising and defending their rights

Government is particularly concerned that ‘Mozambicans of all kinds – local people, new entrepreneurs, investors - are still unable to use the real value of their land, and risk giving it away to foreign interests who know its real value. They will then be marginalised from the resulting development process’.

It is also evident that ‘Mozambicans do not know how to negotiate’, and that they are ‘poorly prepared to use the legal rights that they do enjoy in a way that allows them to draw maximum economic and social advantage from the current economic opportunities (including ceding rights but at a good price or in exchange for tangible benefits). This point was very clear in the 2004 research into land and resource conflicts conducted by the Centre for Juridical and Judicial Training<sup>30</sup>, and which lead onto the current CFJJ programme in paralegal training and ‘attitudinal change’ through seminars targeting district level public officers from several branches of government and the judiciary.

Everyone also agrees that government agencies simply do not have the capacity to administer land for all interests. This confirms that, as in the mid 1990s, local level management of these resources as foreseen in the Land Law is still absolutely essential. Addressing the practical aspects of facilitating this and bringing it more fully into the overall system (recording customarily acquired DUATs in the cadastre is one important step) remains a key challenge for the government today.

Across all walks of life there are concerns about the lack of transparency and corruption related to land related transactions. What is different today however in relation to the mid 1990s is that the power relations that existed then –civil society and a still relatively weak private sector evenly balanced – no longer exist. Today there is a new and far more powerful social and economic elite that has gained control of the levels of government and is using its position increasingly for its own ends.

In this context civil society is far more concerned to see changes in attitudes and real strengthening of management and administration systems, backed up by a strong and impartial judiciary, instead of any fundamental changes to the present legal and policy framework.

Notwithstanding these common points, several distinct positions were identified in the assessment. These provide an interesting framework for discussion in the context of this conference on land policy and implementation, and in the wider debate about the impact of globalization on land policy and the issue of local rights in particular:

- within the existing framework: improve implementation and complete and refine the legislation;
- land policy and legislation is marginal: Mozambique needs an integrated strategy for rural development;
- promote the flexible transfer of DUATs within the existing legal framework;

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<sup>30</sup> Baleira et al 2004

- move toward a more open structure allowing free transfer of DUAT acquired from the State;
- privatize land

It seems safe to conclude that the 1997 Land Law has been relatively successful, although implementation problems have reduced its potential impact. The five positions for change above evidently go from one extreme to the other. The best path lies somewhere in the middle, and involves a lot of careful thought if the best of the present law is not to be thrown out in a mad rush to find land for new and previously unforeseen needs.

There are big challenges ahead. But the studies cited in this paper all underline one fundamental aspect of the present law that cannot be disputed: its *legitimacy*, rooted in a strong participatory process that still sets the standard for legislative processes that are built on what real people do, and real stakeholder involvement<sup>31</sup>. The lesson to be learned here is that if changes are to be made, they should also be made on the basis of a similar process of widespread discussion and consensus building.

Some form 'land vision' is essential before this process starts however. A key aspect of the mid 1990s process was getting the policy right first, and then changing the law afterwards. The account above of the way in which Article 35 has been amended graphically illustrates the danger of a more reactive, *ad hoc* approach that reflects a narrow set of views about how to move forwards.

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<sup>31</sup> Tanner 2002 provides an overview of how the 1997 Land Law was developed with a strongly participatory process at its base.

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