



Supporting the Policy Environment for Economic Development (SPEED+)

Mozambique: Even a Progressive Land Law Needs Revision After a Generation of Experience

By Ian Rose

Mozambique has benefitted from a widely respected legal framework for land that has served its purposes well since enactment in 1997. However, Mozambican society and economy has matured in these past 21 years and it is therefore an appropriate time to update this legal framework in order to meet the needs of Mozambique in 2018. We can facilitate access to land by enacting streamlined and less restrictive procedures for acquiring and transferring land rights, in both urban and rural areas -- while still protecting legitimate customary, community and smallholder land rights. SPEED+ is supporting the government of Mozambique to draft appropriate modifications, or in some cases new legal instruments, to achieve these goals.

As demand for access to agricultural land increases—whether from national investors, international conglomerates, or just a local smallholder wishing to increase the size of his or her farm—the pressure for clarity and transparency in land administration has grown accordingly.

By facilitating transferability of DUATs we can create a market in land use rights -- not a market in land per se, because the state must remain the owner of land and this principle remains unquestioned. The result will be a more efficient allocation of land to those persons and companies with the capital and capacity to make the land more productive. We can attack the problem of “terra ociosa” of land with this market-based approach.

Full privatization of land remains politically unacceptable, but other topics once off-limits—for example, loosening the restrictions on land rights transfers in rural areas—are now openly discussed in the press and at major conferences, such as the government-led Land Consultative Forum in November 2017 and the more recent private sector sponsored 15th Conferência Anual do Sector Privado (CASP) in on March 12, 2018.

The CASP event, organized by the Confederação das Associações Económicas (CTA), was attended by President Filipe Jacinto Nyusi, Prime Minister Carlos Agostinho do Rosário, Minister of Land and Rural Development Celso Correia, and Minister of Industry and Commerce Ragendra Berta de Sousa. CTA President Agostinho Vuma expressed his support for relaxing the restrictions on DUAT transferability in rural lands and the other efforts to streamline land administration and make it more efficient and transparent. MITADER Minister Correia expressed support for gradually proceeding in the direction supported by CTA,

though cautioned about moving too quickly. The CASP event, supported by SPEED+, has helped bring the debate into the open.

The time is right to address this and other weaknesses in the legal framework and thereby catalyze investment, increase productivity, and enhance transparency in land administration.

The donor community is poised to provide technical assistance based on best practices from relevant contexts, and the Mozambican government has indicated its willingness to engage in a multi-stakeholder participatory reform process. The [Supporting the Policy Environment for Economic Development \(SPEED+\)](#) project, implemented by DAI and funded by the U.S. Agency for International Development, is in discussions with the Mozambican government on how best to support reforms, with the National Land Directorate (DINAT) signaling its preliminary agreement with several recommendations already being discussed.

Keep It Simple

Informed by extensive stakeholder discussions and economic analysis, SPEED+ is working on the premise that increasing transparency and simplifying the procedures for acquiring and transferring secure leasehold access to land via DUATs (*Direito de Uso e Aproveitamento de Terra*, or Land Use and Benefit Right) will lead to a higher volume of transactions, with more of these transactions brought into the formal registration process. A more fluid environment for transactions will eventually lead to a more market-oriented allocation of land rights, with the legal framework—engaged rather than skirted—protecting the rights of the most vulnerable. In turn, a more efficient allocation of land rights means that land will flow to those people and enterprises with the capacity and capital to put the land to more productive use. Increased investment will lead to greater productivity and economic growth, primarily in agriculture but also in sectors—such as housing or light industry—that require secure access to land.

Ironically, the government in February 2018 launched a National Land Audit Campaign to revoke DUATs from people or enterprises that were not putting their land to productive use. We believe that a more market-oriented legal framework could accomplish similar goals more efficiently and cheaply.

Technically speaking, all land in Mozambique is owned by the state, held in trust for the people to be managed for their benefit. Citizens, foreigners, and corporate entities may acquire DUAT rights in various ways. Essentially leaseholds granted or recognized by the state, DUATs run for varying periods of time (the length of a DUAT's validity depends on a number of factors and can even be of indefinite duration under certain circumstances). Technical ownership of the land by the state is *not* a constraint to secure tenure or a more fluid land market (or its functional land rental equivalent). Rather, constraints arise due to partial restrictions on DUAT transferability and to inefficiencies in land administration that lead to actual and perceived weak title or insecure tenure.

Mozambique can therefore make significant strides toward promoting increased investment in land by revising the current legal framework but leaving the fundamental premise of the 1997 Land Law—the state's unequivocal ownership of all land—untouched.

Change for the Better

In analyzing the policy environment for land-based investments, SPEED+ has organized its recommendations around four investor-driven criteria for secure access to land:

1. Certainty and Transparency
2. Protection of Investment
3. Community Consent and Participation
4. Sustainable Land Administration

If concerns in these areas can be adequately addressed, then the investor can appropriately focus on its core business: determining market demand, production, and supplying product to the market.

1. Certainty and Transparency

The investor strives to reduce unknown risk to the extent possible: the “rules of the game” should be known to all players and should be enforced in a consistent manner. Our recommendations to increase certainty and transparency can be summarized as follows:

- **Issue official technical norms for DUAT acquisition, addressing both government-sponsored mass title regularization as well as privately-initiated DUAT applications.** The most recent official norms date back to 1989 and are obsolete in many aspects. This has led inevitably to inconsistency in the way cadaster services are implemented across the country, posing risk for the investor. Proposed norms cover both urban and rural contexts and clarify such issues as accuracy requirements for surveys, eligibility for free registration under state-initiated regularization programs, appropriate use of spatial technology, and when the need for physical “marcos” (expensive concrete boundary markers) may be waived.
- **Grant the public online access to land use planning instruments and to cadastral data.** Privacy concerns have complicated the public dissemination of cadastral data online. One approach would be to authorize online secured read-only access via the digital registry of the geographic borders of *all* DUATs with the names of the holders, but without any further personal information. A more cautious approach might be to withhold names (but not the geographic information) of private individuals, but not of corporate holdings. Transparency of land rights data should reduce multiple sales (or attempted sales) of the same property.
- **Publish accurate Land Use Plans.** The current inventory should be analyzed to determine which plans are not outdated. Plans deemed useful and relevant should be geo-referenced accurately and published online. This step should presumably be non-controversial, given the absence of privacy concerns and the state’s clear interest in their widespread dissemination. Better access to the plans should reduce unwelcome surprises when a purchaser learns it cannot implement the project it had in mind.

2. *Protection of Investment*

If they are to invest in the land, potential investors need confidence about the following issues:

- Ability, if necessary, to recoup their investment by selling improvements on the land (in buildings, irrigation infrastructure, planted crops, and so on). In practical terms, their ability to sell such improvements—that is, the attractiveness of the transaction to a buyer—depends on the seller’s ability to transfer the underlying DUAT to the buyer.
- Flexibility to transfer use rights over part of their granted DUAT (that is, their ability to subdivide the DUAT).
- Flexibility to change development plans (wholly or partially), within reason and without excessive fear of DUAT revocation.
- Protection against expropriation without just compensation.
- Clarity on compensation and resettlement guidelines for occupants of land earmarked for development.
- Ability to challenge arbitrary or arguably "wrong"/"illegal" acts in a timely fashion (in court or via alternative dispute mechanisms).

The key constraint affecting all these issues is the current restriction on the transferability of land use rights in rural areas. In rural settings, transfer is possible but subject to a high degree of local government discretion. By contrast, transferability of land use rights of developed urban land is less problematic, since the legal framework provides for what amounts to a nearly automatic transfer of a DUAT—that is, with minimal government discretion—when an improvement on that land is sold.

Investors need to know that if they are running short on capital mid-way through a project, the improvements and DUATs can be sold and transferred to another interested party. There are many examples in Mozambique of “abandoned” improvements (which ultimately revert to the state if the DUAT is revoked), but it is not clear if they would have been abandoned if the DUAT transfer procedures (or DUAT partition procedures) in rural areas were automatic or at least less discretionary. SPEED+ will draft proposals to make the transfer of rural land rights more similar to urban land rights.

The state’s ability to revoke DUATs is another area that would benefit from revision. DUAT-holders are at risk of losing their leasehold rights if they are in violation of their development plan. Once again, the standards for when a DUAT-holder is in violation vary among the provinces, with opportunities for rent-seeking resulting from the discretionary power of government officials. While the state surely has a legitimate interest in how land is used, these interests can be served in many instances by greater attention to, and enforcement of, district land use plans. SPEED+ seeks to clarify the criteria for DUAT revocation as well as make development regulations more flexible.

3. *Community Consent and Participation*

One of the most critical issues for investor confidence and security, as well as for the protection of community members' land rights, remains the mechanism for community consent. The Land Law anticipated that the mechanisms of representation of local communities with respect to land rights would be defined by the enactment of future legal instruments to regulate such procedures. However, no such law has ever been enacted. There has been some guidance as to the procedures for conducting a community consultation within the context of awarding a DUAT to a third party on land that may affect or involve community land, and there is guidance on the process by which a community delimits its land. Strictly speaking, these are two different processes, though in reality they may often occur at the same time and the differing guidelines may create confusion.

The procedures for community consultation and community land delimitation should be harmonized, and procedures should also be clarified for the community to become a legal entity capable, for example, of opening a bank account and receiving funds to which it is entitled (either because of contracts with outside investors, or via the percentage of mining, forestry, and tourism-related fees it is entitled to under those corresponding laws). Banks have been known to refuse to open accounts for communities, insisting the legal framework is not sufficiently explicit.

We believe that consultations must be genuinely participatory and foster informed consent. Informed and effective consent by the local community to a proposed project is not only a protection for members of the local communities—it's also a protection for the investor who does not want to see an initial investment of time, money, and effort wasted if, at a later time, disaffected members of the community object to the project and successfully pressure community leaders or the state to cancel the contract, citing insufficient consultation. In short, hasty and incomplete community consent, as well as one-sided negotiations, may backfire later in the form of [community opposition](#). SPEED+ is reviewing the relevant legislation to ensure the protection of community rights with an approach that will not deter investors but rather attract investors who wish to conduct business in a more defined, predictable, and transparent environment.

4. *Sustainable Land Administration*

If Mozambique is to provide an attractive venue for increased land-based investment, then it must perform its land administration functions in a sustainable fashion. This includes maintaining its digital cadaster database, as well as staffing district, provincial, and national positions with sufficient numbers of well-trained staff. Unfortunately, these government offices have not been given sufficient human and physical resources to run the land administration services at the optimum level, and the demands will only increase—for example, as greater numbers of parcels enter the formal system via the government's massive "Terra Segura" titling program, and as foreign investors continue to look to Mozambique for opportunities.

However, increased formalization of land rights does hold out the promise of greater revenue opportunities. Increased land-based taxes and fees are a natural source of funds to help sustain

Mozambique's land administration services while also discouraging idle land. We recommend efforts to: (a) increase collection rates; and (b) increase tax rates, with an assessment base tailored more proportionately to "real" or market-oriented values.

The Mozambique legal framework already exempts the great majority of parcels from the DUAT tax because they fall under the category of "family use" or because the DUAT-holders are local communities or members of local communities. As a first step, Mozambique would benefit from more clearly defining the exemption categories with an eye toward limiting the exemption to subsistence farming households and the urban poor. Although the philosophy of generous tax exemptions may originally have been conceived to guarantee universal access to land for productive use, the impact of the generous exemptions appears to have the contrary result—namely, the lack of a disincentive to leave the land unproductive. Of course, due attention must be given to avoiding the other extreme, in which overly burdensome taxes push transactions back into the informal sphere and pose undue hardships on vulnerable households and populations.

When is the Right Time?

The current administration, soon after the 2014 general elections, emphasized secure land tenure as one of its priorities. In April 2015, President Nyusi himself launched the Terra Segura program, which promised to issue 5 million DUAT titles in five years. Although it does not demonstrate political will for legal reform per se, the program provides a window of opportunity to push forward a land sector reform agenda that can assist in streamlining the legal framework to facilitate more fluid acquisitions and transfers of rural land DUATs.

In addition, the goals of Terra Segura lend critical weight to the argument that a stable and reliable digital cadaster must be maintained. The registration of 5 million DUATs will mean little unless the cadaster is maintained with up-to-date information, such as changes in DUAT titleholders due to death, marriage, divorce, transfers, expiration, revocation, and other modifications. The advent of Terra Segura underscores the need to adopt measures to maintain the integrity of the digital cadaster database, as well as the recommendations related to reforming the land tax revenue base, given that the enormous influx of formal titles into the cadaster system will require a much higher volume and level of services.

A more explicit expression of the political will for reform was made by the Land and Rural Development Minister Celso Correia at the national land forum in November 2017, which closed with a formal commitment to make a targeted revision of the Land Law (albeit one that leaves some issues—such as full privatization of real property—unequivocally off the table for the time being).

At the level of DINAT, the openness to reform is a mix of outward cautiousness regarding donors while, at the same time, internal preparations are underway to consider a vast range of reforms, including not only changes to regulatory instruments but also amendments to the 1997 Land Law itself. In fact, DINAT has prepared a list of approximately 40 legal instruments in need of revision (or in some cases creation). Although the list may be ambitious, it certainly reflects the realization within DINAT of the need for reform.

At the lower levels of bureaucracy, there is a predictable mix of openness and resistance to change. In project visits to local cadaster offices, we encountered some directors committed to the integrity of the new digital database and others who retain paper-based procedures, perhaps intentionally opting for opacity over transparency. However, previously taboo subjects—such as the sale (not just “transfer”) of DUATs—are now openly advocated by some university faculty. The existence of an informal rural land market is now widely acknowledged, and there is a growing understanding that bringing these informal transactions into the formal sector can increase tax and fee revenues to the state, as well as provide more security to smallholders wishing to consolidate and grow their businesses. The demand for formal title among communities and smallholders is also growing as external investors insist on formal title (or at least some assurance of land rights) in out-grower schemes.

Despite what appears to be a gathering consensus for reform, some pockets of resistance should be expected. For example, the reduction of procedural discretion (and corresponding process simplification) will reduce rent-seeking opportunities enjoyed by some cadastral officials. In addition, it is still widely mentioned that an element of the political elite prefers a lack of transparency in land transactions such that deals favorable to these elites, that might not survive public scrutiny, can be cut in relative secrecy. Nevertheless, the bulk of investors, and particularly foreign investors, welcome more transparency as a precondition for expanding opportunities throughout the provinces.

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