



MASTER
ECONOMICS AND PUBLIC POLICY

MASTER'S FINAL WORK
DISSERTATION

**LAND PROPERTY RIGHTS REFORM AS A PATH
FOR DEVELOPMENT IN MOZAMBIQUE**

RUI MILTON BARBOSA FERNANDES

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SUPERVISION:

PAULO TRIGO CORTEZ PEREIRA
JOÃO ANTÓNIO RAMOS ESTÊVÃO

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Resumo

Existe um amplo consenso de que o pluralismo democrático, boas instituições, Estado de direito e um regime forte de direitos de propriedade são essenciais para a criação de um Estado Desenvolvimentista em África, que por sua vez, colocaria o desenvolvimento económico na vanguarda da formulação de políticas públicas. Esta dissertação procura compreender melhor se o atual regime de direitos de propriedade da terra, e a sua governação em Moçambique, está à altura da tarefa de criar um Estado desenvolvimentista no país.

A presente dissertação inicia com uma revisão da literatura sobre a natureza do Estado desenvolvimentista e a importância de um regime robusto de direitos de propriedade para o desenvolvimento económico. Após analisar o enquadramento legal do regime de direitos de propriedade moçambicano, nomeadamente a Lei de Terras de 1997 e os regulamentos relativos ao Direito de Uso e Aproveitamento da Terra, é dada especial atenção ao impacto do regime de direitos de propriedade sobre as comunidades locais. Argumentamos que o fraco desempenho do processo de titulação de terras deve-se a deficiências da legislação moçambicana, juntamente com deficiências institucionais e administrativas. Os conflitos relativos aos limites das propriedades, direitos do usuário e entre as regras consuetudinárias e as instituições formais, são frequentes levando à insegurança da posse da terra e inibindo o desenvolvimento rural.

Relativamente ao que poderá desencadear uma mudança na gestão dos direitos de propriedade da terra, identificamos o papel importante que as organizações multilaterais e internacionais desempenham no desenvolvimento do sistema de informação e gestão da terra. Porém, a falta de transparência dos dados e a fraca capacitação são obstáculos para a reforma. As frequentes alterações institucionais na estrutura do governo nos ministérios da agricultura também dificultam as reformas. Sugerimos que Moçambique aprenda com as experiências africanas de sucesso, como o caso do Botsuana. Em conclusão, algumas mudanças menores e maiores na estrutura dos direitos de propriedade e correção das desigualdades de género nos direitos à terra são sugeridas com o objetivo de promover o desenvolvimento económico e o bem-estar social de Moçambique.

Palavras-chave: Desenvolvimento, Direito de Propriedade, Posse da Terra, Comunidades Locais, Direito de Uso e Aproveitamento da Terra

Abstract

There is wide consensus that democratic pluralism, good institutions, rule of law and a strong property rights regime are essential building blocks for the creation of a Developmental State in Africa, which in turn would place economic development at the forefront of policy making. This dissertation seeks to better understand whether the current regime for land property rights and land tenure governance in Mozambique is up to the task of bringing about a developmental State in the country.

The present dissertation starts with a literature review on the nature of the Developmental State and the importance of a robust property rights regime for economic development. After analysing the legal framework of the Mozambican property rights regime, namely the 1997 Land Law and regulations concerning the *Direito de Uso e Aproveitamento da Terra* (Right to Use and Benefit from Land), special attention is given to the impact of the property rights regime on local communities. We argue that the weak performance of the land titling process is due to shortcomings of the Mozambican legislation, along with institutional and administrative weaknesses. Conflicts regarding the boundaries of properties, user rights, and between customary rules and formal institutions are thus frequently leading to land tenure insecurity and inhibiting rural development.

In relation to what can trigger a change in the management of the land property rights we identify the important role that multilateral and international organizations have on developing land management system's information. However, the lack of transparency of data and the weak educational and training capacity are obstacles to reform. Frequent institutional changes of the structure of government in agriculture departments also hampers desired reforms. We suggest that Mozambique could learn from successful African experiences such as the case of Botswana. In conclusion, some minor and major changes in the structure of property rights and correcting inequalities in gender land rights are suggested, with the aim of fostering Mozambican economic development and social welfare.

Keywords: Development, Property-Rights, Land-Tenure, Local Communities, *Direito de Uso e Aproveitamento da Terra*

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LIST OF ABBREVIATIONS AND ANACRONYMS

ABP - <i>Stichting Pensioenfonds ABP</i> / National Civil Pension Fund (Netherlands)
CRM – Constitution of the Republic of Mozambique
CRPNT – <i>Comissão de Revisão da Política Nacional de Terras</i>
DINAT – <i>Direcção Nacional de Administração de Terras</i>
DNTF – <i>Direcção Nacional de Terras e Florestas</i>
DUAT – <i>Direito de Uso e Aproveitamento da Terra</i>
EPB – Economic Planning Board (Republic of Korea)
EGIF4M – e-Government Interoperability Framework for Mozambique
FCT – <i>Forúm de Consultas sobre Terras</i>
FCG – Finnish Consulting Group
FNDS – <i>Fundo Nacional de Desenvolvimento Sustentável</i>
FPSG – Fixed Period State Grant
FRELIMO – Frente de Libertação de Moçambique
GESTERRA – Land Management and Administration / <i>Gestão e Administração da Terra</i>
GSFF – Global Solidarity Forest Fund
GM – Governed Market
GoM – Government of Mozambique
HDI – Human Development Index
ICT – Information Communication Technology
IFI – International Financial Institution

LIMS / SiGIT – Land Information Management Systems / *Sistema de Gestão e Informação da Terra*

MA – *Ministério da Agricultura*

MAE – *Ministério da Administração Estatal*

MASA – *Ministério da Agricultura e Segurança Alimentar*

MITADER – *Ministério da Terra e Desenvolvimento Rural*

MITI – Ministry of International Trade and Industry (Japan)

MTA – *Ministério da Terra e Ambiente*

MRM – Montepuez Ruby Mining

NGO – Non-Governmental Organization

NIE – New Industrialized Economy

NSDI – National Spatial Data Infrastructure

PQG – *Programa Quinquenal do Governo*

RDUAT – *Registo e Regularização do Direito de Uso e Aproveitamento da Terra*

SAP – Structural Adjustment Programmes

SIDA – Swedish International Development Cooperation Agency

SPGC – *Serviços Provinciais de Geografia e Cadastro*

UNAC – *União Nacional de Camponeses*

UNDP – United Nations Development Programme

1 INTRODUCTION

The Republic of Mozambique is a young nation situated on the Southeast coast of Africa. Its inhabitants are some of the poorest in the world. The abundance of natural resources such as coal, natural gas, rubies, and graphite has thus far done little to improve the lives of average Mozambicans. On the contrary, resource abundance has raised fears over the country falling under the natural resources trap. There are also concerns that the drive to exploit the country's resources could result in the dispossession of rural communities from their land.

The question of what is necessary to improve the economic prospects and wellbeing of the people of Mozambique is an important one. I argue that one path forward which can trigger fundamental change is the adoption of elements of the developmental state model and respect for the rule of law, specifically, safeguarding property rights over land and that the current land tenure regime is not up to this task. The overall methodology applied was a literature review on the relevance of property rights, and an analysis of the Mozambican legal framework and the thwarted search for primary data on land property rights, specifically information regarding the number of registered holders of the DUAT.

This dissertation is structured in four additional chapters. The second chapter will provide an overview of the Developmental State model and provide preliminary arguments for Mozambique's need to adopt this approach. This chapter also provides an outline for the importance of property rights for economic development. The third chapter will focus on a deeper analysis of the system of land tenure governance in Mozambique as well as its implications for the rural population, while the fourth chapter will analyse the shortcomings of the country's property rights regime and explore the topic of reform. Lastly, the fifth and final chapter concludes with a summary of the topics previously discussed and reflects on the two different reforms to the Mozambican property rights regime being considered. These include minor and major proposals for structural change.

2 DEVELOPMENTAL STATE AND LAND PROPERTY RIGHTS

2.1 Mozambique's need for the Developmental State

There is growing consensus amongst scholars and international organizations that the establishment of a “Developmental State” is crucial in order to accelerate economic growth and improve social conditions in the least developed nations, in which Mozambique includes itself (ECA, 2011). The concept of a “Developmental State” began to materialize from analysis of the impressive performance of the NIEs of East Asia (i.e. South Korea, Japan and Taiwan) (UNCTAD, 2007). The advent of such states was the result of the need to address economic challenges, and to “catch up” with the industrialized world (ECA, 2011; Edigheji et al, 2010). The Economic Commission for Africa puts forward the following brief definition of the “developmental state”:

«a state that puts economic development as the top priority of government policy, and is able to design effective instruments to promote such a goal. The instruments should include the forging of new formal institutions, the weaving of formal and informal networks of collaboration amongst citizens and officials and the utilization of new opportunities for trade and profitable production.»

In Economic Commission for Africa (2011), p. 95

According to Mkandawire (2001; 290), the “Developmental State” model is defined by two main components: one ideological and one structural. Regarding the ideological component, the “Developmental State” is «one whose ideological underpinning is “developmentalist”», meaning the state derives its legitimacy by delivering sustainable development, high rates of accumulation, industrialization, and lastly, by being able to establish a new relationship with the international economy. National coalition building, between elites and other actors, is a key component in this effort. The structural component concerns the capacity of the state to be effective in policy implementation, which is dependent on the “embedded autonomy” of the state, meaning the policy agenda is shielded from capture by special interest groups. This does not mean that the state is decoupled from society, on the contrary, it is desirable that the state be conditioned by «social anchoring» to prevent it from using its capacity in a predatory fashion (Mkandawire, 2001; UNCTAD, 2007).

“Developmental States” are usually characterized by: 1) competent leadership, with the capacity to build national coalitions and mobilize popular support; 2) robust institutional capacity, aided by a strong bureaucracy; 3) effective national development planning strategies and monitoring mechanisms, capable of promoting collaboration and coordination amongst national players; 4) market friendly policies that support entrepreneurs, encourage industrialization and domestic capital accumulation; 5) commitment to investment in human capacity by promoting education, health care, and in certain situations, land reform can also improve human capacity; 6) the provision of a stable environment for investors through securing, political stability and the rule of law; 7) well defined technology acquisition policy that can promote industrial modernization (i.e. technical assistance programs, foreign licensing, etc); 8) lastly, strict fiscal discipline, favouring long term infrastructure and human capital investments at the expense of social welfare functions (ECA, 2011; Öniş et al, 1991).

The benchmark for developmental states is the experience of the previously mentioned NIEs of East Asia. To describe the impressive performance of the East Asian economies Robert Wade (1990) proposed a “governed market” (GM) theory. The main postulates of this theory that explain the success of the NIEs are: 1) high levels of productive investment, which allowed for the adoption of new techniques in the productive process; 2) investment in key industries with government aid; lastly, 3) industry exposure to competition in international markets, while insulating domestic markets. According to Wade (1990), these policies allowed the East Asian States to guide markets to bring about different productive outcomes and resource allocations than one would expect in a setting solely governed by a free market. These economic policies have taken the form of limitations to the number of companies allowed to operate in key industries, price controls and measures designed to curtail capital flight, coupled with a willingness to allow underperforming and inefficient and wasteful ventures in profitable industries to fail. This framework incentivised industry concentration and the advent of large business groups like the Chaebols of South Korea (Mkandawire, 2001).

It is important to recognise the role of the bureaucracy in the experience of East Asian NIEs. The recruitment system was engineered to attract personnel who were aligned with leadership goals, with a high degree of competence and managerial skills

to the bureaucratic rank and file. Bureaucrats would also retire early and begin new careers in business or politics, which would enhance their status, power and legitimacy in society. This ensured bureaucratic autonomy and fostered more cooperation because the political, economic and bureaucratic elites would have similar backgrounds (Öniş et al, 1991). The question of how to maintain the equilibrium between bureaucratic autonomy and accountability was resolved by the introduction of limits to the overall size of the bureaucracy. Thus, consolidating the elite role bureaucrats played in society and mitigating problems traditionally associated with large, bloated bureaucracies, along with the attribution of considerable powers and responsibilities to pilot agencies such as MITI in Japan and EPB in South Korea. Lastly, another important mechanism was the «unusual division of labour within the state, among the executive, bureaucrats and military» (Öniş et al, 1991; 115).

The lessons drawn from the East Asian experience highlight the importance of adopting unorthodox solutions to development, as opposed to the orthodox neoliberal approach that saw the state as merely a hindrance to the transformative power of the free market. According to Thandika Mkandawire (2001), the role the state has played in the rise of the "Four Asian Tigers" has been underappreciated by scholars. There has also been an active debate whether the "Developmental State model" can be replicated in an African context. Some have argued that while it was possible to replicate some aspects of the East Asian experience, the depth and scope of economic governance interventions, characteristic of the NIEs, were beyond the administrative capabilities of most African states. Edigheji (2001) reasoned that the whole debate around the "Developmental State" was inappropriately framed by a "one-size-fits-all" approach and this misinterpretation of the experiences of the developmental states in East Asia and Scandinavia.

The main postulates of the "African impossibility argument" are: 1) the lack of a "developmentalist" ideology amongst African leadership, which undermined their commitment to development and their ability to marshal support around national goals; 2) dependence syndrome, which implied that the configuration of the global economy would not be accommodating to the developmental needs of African societies; 3) lack of autonomy, as a result of the state's capture by special interests; 4) public-choice and rent seeking, similar to neo-patrimonialism; 5) neopatrimonialism, which is perceived

as a general malaise in African societies that can be observed in the private and public sector and that ultimately prevents the advent of a Weberian bureaucracy, as well as a stable market environment for investors; lastly, 6) an unhealthy economic dependency on natural resource wealth (Edigheji et al, 2010; Mkandawire, 2001).

The impossibility thesis put forward by analysts sceptical of the African state's capacity to promote development has resulted in serious implications. The core arguments have created an unfair understanding of the continent which in turn conditions the policy framework adopted by policymakers and IFIs. This has led to a weak “maladjusted state”, unable to meet its basic obligations, let alone kick start industrialization. SAPs have fiscally undermined the African state and demoralized the bureaucracy, fostering corruption amongst the civil service. This is because SAPs have a self-fulfilling nature which feeds the notion that it is necessary to further undermine the power of national policy makers and bureaucrats. This, in turn, leads to a further erosion of state capacity to become developmentalist in its approach (Mkandawire, 2001). Besides the effects of SAPs and the reasons put forward by the impossibility arguments, we must also acknowledge the negative impact of the prevalence of authoritarian regimes along with the continent’s colonial legacy, poor agricultural performance and low technological investment (ECA, 2011).

The economic failures of the 1970s and 80s led to the implementation of SAPs sponsored by IFIs that offered a neoliberal approach to restructuring the economy. The main contradiction of the SAPs is that it expected a weakened state, devoid of any meaningful capacity, to lead the way in transforming society. Pertaining to Mozambique, it is possible to observe three processes that undermined the state, specifically the imposition of fiscal constraints, increased competition for access to public funding and the stripping of state-owned assets through privatization (ECA, 2011; Mkandawire, 2001).

We are thus confronted with a very tenuous starting point from which to transform African states into developmental states in the 21st century. According to Peter Evans the developmental state of the 21st century ought to address previous failures by essentially enhancing the state’s capacity, stating that «Expanding the

capabilities of the citizenry is not just a ‘welfare’ goal. It is the inescapable foundation of sustained growth in overall GDP» (Edigheji et al, 2010: 38).

Moreover, according to the ECA (2011), in order to consolidate such a model in any country, the following five crucial elements are necessary: 1) competent purposeful leadership and a developmentalist coalition, which is democratic in nature; 2) presence of transformative institutions, supported by a Weberian bureaucracy, recruited on the basis of merit and planning agencies akin to the EPB of South Korea or the MITI of Japan; 3) focused industrial policy designed to “catch up” with the rest of the world by utilizing competitive advantages (i.e. low wage costs and resource abundance) and nurturing a national entrepreneurial class; 4) investments in research and development; lastly, 5) the adoption of an enhanced social policy based on considerable investments in healthcare, education and public infrastructure.

With the right strategies, Mozambique’s firms could become what Alice Amsden (1989) dubbed “learners”. The term describes how firms in developing markets are not producers of innovations, but rather assimilate foreign knowledge and develop their technological sophistication. During the “catch up” process, firms in developing markets can become competitive by capitalizing on lower wage costs, by taking advantage of a range of state support (i.e. subsidies, fiscal incentives), and by making incremental improvements to the quality and production rate of their goods and/or services.

While the state plays an essential role in building the developmental state, private firms are main generators of wealth in any market economy. Thus, it is paramount that the Mozambican State establish a nurturing environment, where firms can assimilate know-how and take advantage of the competitive features that the country offers, namely, access to Indian Ocean ports, a young population woefully in need of employment and abundant natural resources. When contemplating how the Mozambican State can create a nurturing environment for the country’s firms, it is useful to consider what Johnson (1982; 17-18) wrote about the Japanese experience: «The issue is not one of state intervention in the economy. All states intervene in their economies for various reasons (...) The question is how the government intervenes and for what purposes».

Efforts to put in place the 5 elements mentioned above would surely be welcome, along with reforms aimed at addressing the country's highly centralized political-administrative framework (decentralization), which is inadequate for Mozambique's territorial scope and demographic diversity. However, the next section will argue that strong protections for property rights, resulting in increased land tenure security, are a fundamental building block for economic development, and thus essential for the advent of a developmental state.

2.2 The importance of Property Rights for Economic Development

Chicago school economist, Thomas Sowell (2016), reasoned that mankind began in poverty, thus, the task for scholars concerned with economic development is not to find explanations for the root causes of poverty and underdevelopment, but rather to find the answers to what are the necessary conditions that allowed some societies to develop and prosper while others stagnated. This dissertation argues that one of the most important of these conditions is the right of individuals or collectives to own property and to have their claims legally enforced. Institutions also play a key role. A State with strong institutions, and which respects the individual and collective rights of its citizens can nurture an environment where all economic agents are able to maximize their full productive potential and thus have more resources available to improve society.

American economist Douglass North defined institutions as «the rules of the game in a society or, more formally, are the humanly devised constraints that shape human interaction» (North, 1990; 3). Institutions can be formal or informal. Examples of formal institutions include legal codes, courts, legal contracts, and naturally, a property rights regime. On the other hand, informal institutions can include traditional codes of conduct amongst members of the same community, spiritual or religious beliefs and even a system of moral values. One of the first economists to argue for the importance of institutions, including property rights, was Ronald Coase (1960). Through his analysis of several legal cases, he reasoned that institutions play a key role whenever there are externalities present and transaction costs are high. If transaction costs are low (or null) the allocation of resources is unaffected, therefore, there is no need to introduce regulatory institutions, like for example, a robust property rights system.

Based on the principle of self-ownership of one's own labour, the 17th century philosopher John Locke (2006), argued that property rights were part of Natural Law. The right to own property is also enshrined in important milestone documents such as the Declaration of the Rights of Man and of the Citizen (1791) and in Article 17 of the Universal Declaration of Human Rights (UDHR) as follows:

“Everyone has the right to own property alone as well as in association with others. (...) No one shall be arbitrarily deprived of his property.”

In Universal Declaration of Human Rights (1948)

The idea that property rights are human rights is a firmly held belief which enjoys wide consensus, but how do we conceive property as an economic institution? Harold Demsetz (1967) defined property rights as a mechanism that allows for the internalization of externalities. Therefore, property rights develop when the gains of internalization surpass the costs of internalization of the externalities. For instance, if we consider the case of land containing oil reserves, which was a resource with little value prior to the 20th century, a firm would acquire few benefits in incurring the transaction costs associated with owning that resource, but with increased market value for oil, the incentive to own the resource increased.

Scarcity is another factor which incentivizes the creation of property rights institutions. In the past, there were few economic constraints that conditioned human access to land for it was abundant. This was true for much of the world and for Africa prior to European colonization. As demographic pressures increase, so too does land become scarcer and more valued as an asset. This leads to an incentive to introduce institutions that can enforce ownership (World Bank, 2002).

In an attempt to understand how property rights institutions can have a positive or negative impact on human behaviour, Edella Schlager and Elinor Ostrom (1992: 250) defined property rights as «the authority to undertake particular actions relative to a specific domain». Such rights are predicated on the fulfilment of a set of rules and duties. If one individual has a right, the other has a corresponding duty to respect this right. The two scholars identify a bundle of rights relevant for the exploitation of common pool resources that are nevertheless essential for an understanding of what the

full exercise of property rights entails. These rights include: access, which is the right to enter a specific territory and derive non extractive benefits (i.e. hiking, canoeing); withdrawal, which establishes the right to extract resources from a property; management, which grants the holder right to regulate internal use of the property and its resources as well as invest in improvements and transform the property; exclusion, which determines the right to stipulate who can have access and withdrawal rights; and lastly, alienation, which is the right to sell or lease management and exclusion rights (Schlager & Ostrom, 1992).

IFIs have recognized the importance of property rights institutions as a vehicle to promote social and economic development. According to the World Bank, more robust protection of property rights can nurture a land and credit market capable of boosting production by allocating land and financial resources to more efficient farmers. Strong property rights increase expected returns from investment and alleviate credit constraints, since land can be used as collateral. Lastly, another aspect enhanced by good property rights regimes is access to information regarding the value of property. Property rights exchanges within the same community generally have low transaction costs because knowledge of a property's value is shared amongst the community. But outsiders to any given community who wish to purchase land in the community's environment will have little means of ascertaining the identity of the owners and its boundaries. More formal (statutory) property rights institutions can play a key role in reducing transaction costs and reducing insecurity by thwarting arbitrary seizures (World Bank, 2002).

In Southern Africa both customary and statutory systems can be found in some shape or form. Customary land rights systems are governed by unwritten traditional rules and managed by traditional leaders. On the other hand, statutory systems are based on legal documentation, like for example, a title deed or an authorization certificate issued by a governmental agency (ECA, 2003).

With regards to the main issues undermining property rights in the region, a study by the Economic Commission for Africa highlights the following points of concern: 1) land tenure insecurity experienced by minority groups; 2) high population to land ratio experienced in countries such as Malawi and in parts of South Africa and Lesotho; 3)

ambiguous or overlapping land rights; land expropriation without adequate compensation; 4) corrupt or predatory administrative practices; the existence of farm tenant systems whereby tenant-labourers compensate their landlord with labour; 5) land encroachment and illegal occupation; 6) and lastly, inadequate protections for women's rights (ECA, 2003).

When considering the importance of a strong property rights regime for economic development we should acknowledge the institution's relationship with the concept of "land tenure"¹ and "land tenure security"². These two concepts are key when analysing the topics discussed in the next section of this dissertation, which will focus on the country's property rights regime, specifically its legislation, and assess the implications for local communities and smallholders who rely on access to land to secure their livelihoods. During the late 1990s the government of Mozambique (GoM) introduced crucial reforms, however serious areas of concern remain.

3 MOZAMBIQUE'S PROPERTY RIGHTS REGIME

3.1 Brief characterization and historical context

According to the most recent census data for 2017, the country's total population is approximately 27,9 million people, which is divided amongst the country's 11 provinces (INE, 2019). The country's population pyramid is expansive, showcasing very high fertility rates, meaning competition for land, resources and public services could intensify as the population increases (CIA, 2020). Mozambique ranks extremely low in the UNDP's Human Development Index (HDI) and is placed at rank 181 out of 189 countries, with a HDI score of 0,456. The country's Gross national income (GNI) per capita (constant 2017 PPP\$) sits at around 1,250\$, with a very high percentage of the population living in multidimensional poverty³ at around 72.5%. Adult literacy rates

¹ According to the United Nations agency FAO (2021) land tenure is defined as: «the relationship, whether legally or customarily defined, among people, as individuals or groups, with respect to land (...) Land tenure is an institution (...) invented by societies to regulate behaviour. Rules of tenure define how property rights to land are to be allocated within societies».

² According to the United Nations agency FAO (2021) security of tenure is defined as: «the certainty that a person's rights to land will be recognized by others and protected in cases of specific challenges».

³ The concept of multidimensional poverty refers to the multiple deprivations that poor people face daily, such as poor health, a lack of education, insufficient living standards, disempowerment, low

are also low at 60,7% and only 16,9% of the population have had access to at least some secondary education (UNDP, 2020).

Over 70,3% of the population is employed in agriculture, which underlines the importance the sector has for the country's development and for the economic and social security of the population (UNDP, 2020). According to a recent rural survey undertaken by the Agricultural Ministry in 2020, there are a total of 4.261.758 agricultural productive units in the country, the overwhelming majority of which (97,79%) are small scale, 2,19% are medium scale and only 0,02% are large scale (MADER, 2020).

Farmers who work the smaller and medium sized production units have on average 4.3 years of schooling and only 2,2% of household heads have had formal training in the agrarian sector. This translates into low use of basic technologies in agricultural production, only 9,1% of small and medium agricultural units utilize irrigation, 7,8% utilize chemical fertilizers, 5,5% utilize pesticides, and 1,8% utilize herbicides, lastly, only 8,8 % of agricultural units utilize animal manure as fertilizer. The lack of education also manifests itself in a crucial area of this study, specifically the population's awareness of their land tenure rights. Only 13,7% of men in rural households are aware of the legislation governing land tenure in Mozambique compared to only 11,2% of women in households (MADER, 2020).

employment quality, the fear of violence, and living in environmentally hazardous places, to name a few (OPHI, 2021).

Table I - Characteristics of Small and Medium Family-owned agricultural units

Province	Percentage of male-headed households	Average age of the head of the household	Average education level in years completed	Percentage of households whose head has agricultural training
Niassa	64,7	39,9	4	1,4
Cabo Delgado	59,4	39,4	4,1	2,6
Nampula	70,8	40,3	3,7	3
Zambézia	60,5	39	3,9	1,6
Tete	71,7	41,1	4,8	2,2
Manica	73,1	44,9	4,5	2,3
Sofala	66,5	43	4,9	3,7
Inhambane	64,5	49,8	3,6	1,8
Gaza	57,8	48,3	3,7	1
Maputo Province	61,9	46,6	6,2	1,1
National	65,6	42,1	4,3	2,2

Source: Adapted from MADER, Inquérito Agrário Integrado, 2020

Table II - Land tenure of smallholders and their knowledge of the Land Law

Province	Smallholders with cultivated fields, orchards/plantations (%)	at least one male member of the household has knowledge of the Land Law (%)	at least one female member of the household has knowledge of the Land Law (%)
Niassa	98,2	11,2	9,2
Cabo Delgado	97,5	21,3	15,9
Nampula	97,1	11,1	8
Zambézia	94,9	8,8	6,8
Tete	97,8	9,1	6,9
Manica	96,4	12,5	8,3
Sofala	96,9	21,9	15,9
Inhambane	91,6	11,5	13,2
Gaza	93	13,8	15,3
Maputo Province	77,1	31,5	31,3
National	95	13,7	11,2

Source: Adapted from MADER, Inquérito Agrário Integrado, 2020

Over the course of Mozambique's history, the system of land governance has served as a source of alienation for most of the population, to the benefit of the colonial elite and of the new national elites that would emerge post-independence. Before the arrival of the Portuguese, land in what would become Mozambique was administered by

the population mainly through customary land rights. In the 17th and 18th centuries the Portuguese established the *Prazos* system⁴ which in the 19th century would subsequently be followed by the chartered companies that had State sanctioned authority to exploit vast swathes of territory, including the peoples who inhabited these lands through various forms of taxation and labour conscription (Mondlane, 1975).

During the 20th century the Portuguese colonial administration made use of indirect mechanisms of rule with the aid of local chiefs and introduced legal instruments throughout their African colonies such as: the *Código do Trabalho dos Indígenas da África Portuguesa* (1928) and the *Regulamento de Ocupação e Concessão de Terrenos nas Províncias Ultramarinas* (1961). The latter introduced a two-tiered system for land use governance, with one tier administered by formal institutions and the other governed by traditional laws and customs. After independence the Marxist character of the first post-colonial government rejected the old system and sought to centralize land tenure governance through the first *Lei de Terras* (1979) (Mondlane; 1975; OMR, 2020).

This period was marked by the decision to nationalize all land and the creation of the “communal villages” (*aldeias comunais*), which served the purpose of concentrating the rural population, breaking traditional bonds, and placing the rural population directly under the revolutionary power structure of the FRELIMO government. It was through the communal villages that FRELIMO sought to modernize the country, bringing about its own conception of the developmental state in Mozambique, which would in turn eliminate traditional and tribal practices, perceived as backwards. The failures of the experiment in collectivized agriculture, coupled with the destruction from the civil war prompted the government to introduce crucial political and economic reforms, which would lead to the approval of the current land tenure administration framework in the 1997 Land Law (De Brito, 2019).

⁴ The *Prazos* system was based on Portuguese and Goan colonization of parts of Mozambique. The term “*prazo*” describes the fact that these settlers would be granted a concession of 3 generations (inherited through the maternal line) over land officially owned by the Portuguese crown (Mondlane, 1975).

3.2 Mozambique's Property Rights and Major Shortcomings

3.3 Property rights: the legal framework

Property rights and access to land in Mozambique are regulated by the Mozambican Constitution, along with other legal instruments adopted in the late 1990s, namely the 1997 *Lei de Terras* (Land Law) and the *Regulamento da Lei de Terras* of 1998. The 2004 Constitution of the Republic of Mozambique (CRM) stipulates in article 109 that all land is property of the State and therefore, it cannot be sold, alienated, or mortgaged. However, in the same article the constitution recognizes that the people of Mozambique have a right to use land as a vehicle to create wealth and promote social wellbeing. Furthermore, article 110 states that the State defines the condition from which land can be utilized by individuals or collective persons.

The drive to move away from the hyper centralized system of previous decades came from the need to learn lessons from past mistakes, coupled with the need to rebuild the country's economy after its brutal civil war. This led to the adoption of the 1995 *Política Nacional de Terras* (National Land Policy) which sought to «safeguard the diverse rights of the Mozambican people over land and natural resources, while promoting investment and the sustainable and equitable use of these resources» (Decreto CM 10/95 de 17 de Outubro). This new policy allowed for the transfer of land use rights amongst citizens or businesses while at the same time recognizing customary rights for land access and use (Felipe & Norfolk, 2017). The National Land Policy would subsequently give way to the 1997 *Lei de Terras* which is the main legal instrument responsible for establishing a framework for land governance in Mozambique. The 1997 Land Law's aim was to provide a legal recognition of the customary land tenure rights enjoyed by rural communities, whilst promoting commercial investment via the granting of 50-year leaseholds (Schreiber, 2017).

The core governing principles underlined in the 1997 *Lei de Terras* are: a) State ownership of all land, whereby all land belong to the State Land Fund and therefore cannot be sold, alienated or mortgaged; b) the right of persons of Mozambican nationality, individual or collective, as well as local communities, to use and exploit land, provided all legal requirements are met; c) the right to use and exploit land can be

acquired by individuals or local communities according to customary norms, provided such norms are compatible with the constitution, or by individuals who simply occupy land for a period of 10 years; d) foreign individual and collective entities can acquire the right to use land, contingent on the approval of an investment plan and the fulfilment of other legal requirements (Lei 19/97 de 1 de Outubro).

Although the law stipulates that land ownership belongs to the state, and that land can never be alienated, sold, or mortgaged, the *Direito de Uso e Aproveitamento da Terra* (DUAT) - a license that grants the right to use land - can be inherited, sold or transferred with the approval of the State, along with ownership over any infrastructure and improvements made to the land (Schreiber, 2017). The Land Law defines the DUAT as the «right that individuals or collectives and local communities acquire on the land, with the requirements and limitations of this Law» (cit, Lei 19/97 de 1 de Outubro). Article 17 of the Law establishes the maximum duration of the DUATs at 50 years for land utilized for economic activities (renewable at the request of the DUAT holder) and stipulates no expiration for DUATs over land utilized by local communities and smallholders who use land for subsistence agriculture as well as land utilized for housing purposes, meaning that in theory, they hold their rights for perpetuity. The DUAT is a key document which in effect serves as a lease. Therefore, all investors must have this, and although communities automatically have an “informal” DUAT based on good faith principles, they are still encouraged to obtain a formal title⁵ (Oakland Institute, 2011).

The 1997 Land Law is complimented by the 1998 *Regulamento da Lei de Terras* which defines the requirements and procedures for investors to acquire a DUAT, the rights and duties of applicants, and the mechanisms for communities and smallholders to formalize their land rights and the process of the community consultations (Decreto CM 66/98 de 8 de Dezembro).

One innovative aspect of the 1997 Land Law is its definition of the concept of a “local community” as a «grouping of families and individuals, living in a territorial circumscription at the level of locality or lower, which aims to safeguard common

⁵ The process of formalizing a good faith DUAT is referred to as a RDUAT. More detailed information on this process, as well as the process for community delimitations is available at: <https://www.fnds.gov.mz/index.php/en/documents/publications/metodologia-delcom-rduat>

interests through the protection of housing areas, agricultural land, whether fallow or cultivated, forests, sites of cultural importance, pastures, water sources and expansion areas» (cit, Lei 19/97 de 1 de Outubro). The term is also frequently used to refer to rural populations, which generally rely on few social services from the state and are perceived as having a pre-industrial way of life. In this case, the community stands in contrast with the organizational structure of the population that lives in urban settlements and is engaged in the modern economy. The asymmetries between the two populations are undeniable. Whereas Mozambican city dwellers can appeal to the formal civil courts to resolve their disputes, their rural counterparts rely on traditional courts. The inequality between the two groups highlights the fact that not all citizens enjoy the same rights and protections under the State (Feijó, 2020).

Under article 12 of the 1997 Land Law, local communities acquire a DUAT based on customary norms (as long as they are compatible with the CRM), and small holders acquire a DUAT based on good faith principles and if they can verify their occupation of the land for over 10 years. While the law opens avenues for communities and small holders to formalize their holdings and acquire a formal title (written DUAT), article 13 of the 1997 Land Law stipulates that the absence of such does not invalidate the right of communities and smallholders over land acquired based on the good faith principles outlined by article 12. Meaning that, in theory, it is not necessary to formalize a DUAT in order for land rights to be recognized by law, provided that occupation of land for over 10 years can be verified by local witnesses.

In 2011, the Government of Mozambique issued a cabinet decree (DM 158/2011 de 15 de Junho) that outlined the procedures for community consultations for the purposes of third parties acquiring rights over community lands. The first phase is «a public meeting with the purpose of providing information to the local community about the request for acquisition of the right to use and benefit of land and identification of the parcel boundaries», while the second phase «to take place within thirty days after the first meeting, has the purpose of allow the local community to make pronouncements regarding the availability of areas to carry out the project or plan of exploration» (cit. DM 158/2011 de 15 de Junho). The decree also stipulates that more meetings can be held whenever the need to provide additional information to the community arises. According to the decree, the community consultation meetings are attended by: 1) the

district administrator (or his/her representative); 2) the representative of the Registry Services; 3) members of the Consultative Councils; 4) community members and the title holders or occupants of boundary lands; 5) the applicant or his/her representative. Once the process is completed the minutes are signed by the community members and Consultative Councils and a copy of the Consultation Minute is delivered to the community after being approved by the District Administrator.

3.4 Present shortcomings in the allocation of property rights

Despite the progressive nature of the legislation, along with the best efforts of the national government and NGOs, the results of the land titling process have been disappointing, and the law's overall implementation has been wanting. This raises concerns over usurpation of land rights, as well as underperformance of productive activities associated with land. Some of the factors that have led to the weak performance of the land titling process are due to shortcomings of the Mozambican legislation along with institutional and administrative weaknesses. For instance, the titling authorities, such as the provincial governors, district administrators and mayors, are under no legal obligation to fulfil any deadlines to grant the DUATs. Therefore, the application process tends to take a long time and can result in the titling requests being rejected due to technicalities. Furthermore, there are instances of opportunist behaviour on the part of bureaucrats involved in the titling process. Local administrative authorities generally provide inadequate support for the public during the titling process leaving many applicants frustrated. There are also many instances reported of bureaucrats failing to detect anomalies in the applications or even outright failing to notify applicants of detected anomalies. The process is also plagued by individual insiders and intermediaries who, in exchange for compensation, follow the entire land rights acquisition process closely, and can facilitate and expedite the administrative procedures (Capaina, 2021).

According to article 13 and 24 of the 1997 Land Law, applicants intending to acquire a DUAT in rural areas must consult the local communities in order to ensure that there are no other claimants with customary rights over the land (Lei 19/97 de 1 de Outubro). Regrettably this process is also mired in several issues, specifically with regards to the role of traditional community leaders and the degree of participation of

the community members in the consultation processes. With respect to the role played by traditional chiefs, many of these individuals are members of the ruling party, thus are constrained by party loyalty. Moreover, the traditional leaders tend to be co-opted by private commercial interests in exchange for gifts, personal favours and offers of employment for themselves or members of their family. Consequently, many leaders do not act in the best interests of their respective communities, whereas the leaders who do challenge the special interests suffer political and economic marginalization along with intimidation and harassment from agents acting on behalf of these special interests (Nhampossa, 2020).

An additional explanation for the unsatisfactory level of participation on the part of community members in the consultation process put forward by a local source is the fact that there is no legal provision determining the nature of the composition of the community consultations. Therefore, these bodies can even be filled with direct family members of local chiefs that in turn have the power to undermine or safeguard the future of their communities. Furthermore, adversely affected parties have little means to reach institutions that can resolve disputes, either because they are unaware of their existence or because the associated transaction costs are too high for these individuals, who are usually impoverished.⁶

Additionally, many community members have reported instances of fraud carried out during the consultation process, where even signatures of community members who do not know how to read and write have been forged. Signatures of individuals who do not belong to the community have also been found in the consultation process (Nhampossa, 2020). The issue of corruption is indeed the proverbial elephant in the room. Mozambique scores very low in the Corruption Perception Index, with a score of 25, the country sits at rank 149 out of 180 countries. Many of the conflicts that arise between communities and commercial interests are exacerbated by the interests and behaviour of those in position of authority to grant utilization rights and enforce the law. A study by the organizations GRAIN & UNAC highlighted 10 cases in the Nacala corridor where public officials and members of Frelimo were stakeholders in large

⁶ Pointed out in an interview by Carlos Mate, programme officer at the Royal Norwegian Embassy (Maputo).

agricultural commercial ventures, thus undermining the efforts of local officials to enforce the law and provide the appropriate oversight over commercial activities (UNAC & GRAIN, 2015).

Article 22 of the 1997 Land Law grants the authority to grant land concessions to the provincial governors, the Minister of Agriculture, and the Council of Ministers. According to this article provincial governors are responsible for granting concessions of up to 1000 hectares, the Minister of Agriculture is responsible for concessions between 1000 to 10 000 hectares and finally, the Council of Ministers is responsible for granting authorization for concessions that go beyond 10 000 hectares (Lei 19/97 de 1 de Outubro). The abusive and opportunistic nature in which many of these powers are exercised is an important factor that drives conflict between investors, local communities, and rural populations.

There is also a lack of mechanisms incorporated in the legislation designed to promote transparency in the National Land Registry, nor are there any channels from which the general public can submit requests to access data or relevant information. The approval of the Right to Access of Information Law (Lei n° 34/2014) in 2014 produced little change in the behaviour of public institutions and how they share relevant information with the public. There are a few possible explanations as to why transparency in the land registry has been wanting. In the past the lack of transparency was justified by the absence of robust information systems in the bureaucracy, at present, the main issue is the limited scope of information provided. Regrettably it is the belief of many in civil society that the reason for the omissions is because more transparency would reveal the identity of high-profile individuals who retain large swathes of idle land and possibly expose cases of corruption (Fórum Mulher, 2018).

3.5 The introduction of Land Management Systems (SiGIT)

Article 5 of the 1997 Land Law foresees the creation of a National Land Cadastre which would compile all the necessary data in order to assess the legal status of plots, socio-economic information (i.e. type of occupation and uses of land) and resources (i.e. mineral wealth, fertility of the soil) (Lei de Terras 1997). In order to implement the law, the GoM has relied on donor support to build institutional capacity through the use of information technology.

One such development project is the GESTERRA programme, which was implemented with the aid of the Swedish and Dutch governments. Its goal is to «establish a well-designed and regulated, transparent and implemented land governance system as the basis for inclusive social and economic development». A core component of the programme is building the National Land Cadastre through a focus on «institutional capacity building, system development and decentralised roll-out of the land administration system» (SIDA, 2019; 6). The bureau responsible for managing the programme has been the *Direcção Nacional de Administração de Terras* (DINAT) which was placed under MITADER.

Under the scope of GESTERRA programme DINAT was imbued with new departments aimed at conflict resolution, communication and on strengthening the various *Serviços Provinciais de Geografia e Cadastro* (SPGC) in performing their oversight role over land. Additionally, support was given for the development of Land Information Management Systems (LIMS / SiGIT) which is one of the core elements of GESTERRA (SIDA, 2019).

The implementation of SiGIT is a great undertaking for the GoM and the donors, the system is custom designed by a local company, EXI. Its main focus is technical and institutional capacity building at the national and provincial level, therefore large financial investments in planning, pilot testing the system in all provinces, data management and the establishment of a service desk at DINAT have been made⁷. The SiGIT system can store data relevant to the DUAT or RDUAT application process (i.e personal information, fees, geographical data, etc). Through the application of SiGIT it is possible to manage property rights over any given plot of land, allowing for the execution of: registry of titles and issuance of DUATs; detachments; transmissions; expansions; revocations; demarcations; inspections; the issuance of titles; and lastly, the delimitation of community lands (MITADER, 2015).

By constituting a data repository (including alphanumeric data, maps, satellite images) the system can be used as an analytical tool and aid to better understand land tenure as well as a planning or zoning tool. The main goals of the SiGIT

⁷ As of October 2021, the World Bank has disbursed just under 10% of the 100 million USD committed to aid the *Terra Segura* project. To support GESTERRA and DINAT, Sweden contributed SEK 59 million, while the Netherlands contributed USD 13.87 million. (World Bank, 2021; SIDA; 2019)

implementation are: 1) ensure that the general public and institutional actors have secure and easy access to registry services; 2) ensure the availability on the use and benefits extracted from land in order to aid the decision making process in the various administrative levels; 3) promote transparency and accountability along with providing information which can be an aid to citizens, public institutions and the private sector (MITADER, 2015).

Overall, the SiGIT maintains and provides information on the following elements:

- Formalization of the DUAT, including regularization of good faith occupations;
- Acquisition of the DUAT by executive authorization;
- Registration of Community Land;
- Demarcation of land;
- Issuance of the provisional DUAT;
- Issuance of a construction licence;
- Issuance and survey for the definitive DUAT;
- Calculation of processing fees and annual fees for DUAT and IPRA Municipal Property Tax;
- Legalization of DUAT after transmission by inheritance;
- Legalization of DUAT after transmission by commercial transaction;
- Registration and modification of concession plans;
- General oversight;
- Extinction of DUAT;
- Resizing and/or expansion of the area under the DUAT.

An audit conducted by the FCG (2019) found some encouraging results. For instance, a data centre was established in DINAT and SiGIT was implemented in all 11 SPGCs as well as some Municipalities. As of 2019, the system has maintained a record of approximately 500.000 DUATs. Despite these positive results, some notable issues remain, namely:

- **System performance and operational efficiency is moderate to low:** this is due to unsatisfactory completion rates, only 69% of the applications introduced in the system have resulted in a printed DUAT. The process is prone to system

bugs and error, additionally the manual input of data into SiGIT in field offices is also prone to error resulting in faulty data;

- **Incomplete data in SiGIT:** at the moment the data repository does not contain the information necessary in order to be in compliance with Mozambican law. The missing information includes data on the quality of soil, hydro resources, mineral resources, forestry, presence of wildlife, tourism potential, cadastre data from the municipalities, and alarmingly, there are several instances of parcel overlaps and positional inaccuracy, which could potentially instigate conflicts. Furthermore, data from older parcels has yet to be included in the SiGIT database which can cause the above mentioned overlaps. The audit noted a lack of National Spatial Data Infrastructure (NSDI) strategy;
- **Cybersecurity concerns:** in terms of SiGIT Information Technology General and Application Controls, there are shortcomings in system security. Inadequate network security and the lack of end-to-end session encryptions between client devices and servers are examples of such flaws;
- **Inadequate data sharing with other institutions:** at the moment of the audit SiGIT was not in compliance with the EGIF4M mandate and does not share data with other public institutions such the National ID registration offices, the municipalities, etc. The software design needs to be revised in order to accurately reflect the operational needs of the National Cadastre System, specifically interoperability;
- **Issues regarding sustainability:** the current annual maintenance cost for the system sits at around 1.4 million USD. In terms of human capacity to sustain the system, DINAT's ICT staffs' level of competences were considered inadequate. The audit also pointed out that it is also noted that DINAT does not have a training environment for users and technical professionals.

At present the government of Mozambique is implementing the *Terra Segura* project with the aid of donors, such as the World Bank, which has committed 100 million USD to aid the initiative. The aim of the project is to modernize land administration practices and register 5 million DUATs along with 4000 community

delimitations, however it is unclear if the project goals have since changed (OMR, 2016; FCG, 2019). The current objectives stated by the FNDS, which is the local institution designated to manage the project, states that the scope of the project is to register 2 million DUATs and carry out 1000 community demarcations by 2024⁸. The effective implementation of SiGIT is a crucial element in order to achieve these goals. Therefore, FNDS launched in 2020 a tendering process for consulting services for the redesign of SiGIT. This is a World Bank funded project.⁹

In terms of the general public's access to data regarding the registration of DUATs in the country, the availability is unsatisfactory.¹⁰ Therefore, it is safe to assume that the institutions that have analysed the issue of land titling in Mozambique have had privileged access to data unavailable to the general public. For example, the NGO *Forúm Mulher* (2018), which was provided with data from the National Land Cadastre taken from 2015. The data provided to this NGO reveals that there were at the time 62,262 land titles, of which 96,6% belonged to individual persons while 3,3% of the titles belonged to collective entities and just 0,16% were claimed by local communities, which corresponds to 102 title deeds. According to FCG (2019), as of 2019 there were approximately 500.000 registered DUATs in the SiGIT system.

Another issue that has adversely impacted the implementation of GESTERRA and SiGIT are the frequent institutional rearrangements carried out by the GoM over the Ministries with tutelage over agriculture and land tenure. In January 2020, Mozambican President, Filipe Nyusi, used the powers attributed to the President by article 160 of the CRM (2004) to extinguish, by presidential decree¹¹, the *Ministério da Terra, Ambiente e Desenvolvimento Rural* (MITADER) and the *Ministério da Agricultura e Segurança Alimentar* (MASA). This gave way to the creation of the *Ministério da Terra e Ambiente* (MTA) and the *Ministério da Agricultura e Desenvolvimento Rural*

⁸ <https://www.fnds.gov.mz/index.php/en/our-projects/project-list/terra-segura>

⁹ <https://www.fnds.gov.mz/index.php/pt/documentos/publicacoes?task=document.viewdoc&id=190>

¹⁰ For the purposes of this dissertation an attempt was made to contact DINAT to request this data, via email as well as telephone contact to no avail. As of October 2021, the official website for this agency is under construction, and contains no information other than contact details, which has thus far proven ineffective.

¹¹ Decreto Presidencial n.º 1/2020 de 17 de Janeiro: <https://gazettes.africa/archive/mz/2020/mz-government-gazette-series-i-dated-2020-01-17-no-11.pdf>

(MADER)¹². The final evaluation of GESTERRA carried out by SIDA stated that «transition from one ministry to another, the re-structuring of DINAT with reduced administrative powers and the national economic crisis have provided a contextual setting for the programme and efficiency has been challenged» (SIDA, 2020; 56). At the time of SIDA's assessment this latest institutional rearrangement had yet to be announced, however it is important to note that in 2015 President Nyusi had abolished the *Ministério da Agricultura* (MA) and the *Ministério da Administração Estatal* (MAE) and divided their competencies with new ministries, namely, MITADER and MASA (Nhachote, 2015).

4 PROBLEMS WITH THE CURRENT STRUCTURE OF LAND PROPERTY RIGHTS

4.1 Gender inequality in land rights

Although the 1997 Land Law provides a special status for the local communities, the legislation lacks the same positive discrimination with regards to women. Furthermore, it is important that we bear in mind that the «*powers granted to the local communities, in a patriarchal society, are overwhelmingly exercised by men*». Regrettably the existing Mozambican legal system does little to address gender inequality and strengthen the rights of women (Fórum Mulher, 2018; 13).

The standing of most women in Mozambican society is regrettably weak compared to their male counterparts. Women in the country are at a disadvantage when it comes to access to education and opportunities for waged labour, they are additionally burdened by traditional customs that grant men exclusive inheritance rights over various forms of property, namely, arable land, livestock and dwellings contained within the land. Under the governance of most traditional institutions, women's access to the resources mentioned above depend on their relationship with the men in their community, which means that women gain access through their parents, brothers, or husbands. This places Mozambican women at a great disadvantage when it comes to seeking legal counsel and other mechanisms from which they can try to enforce their claims over land rights (Fórum Mulher, 2018).

¹²<https://www.dw.com/pt-002/presidente-mo%C3%A7ambicano-nomeia-novo-governo/a-52047001>

In spite of the tenuous position women in the countryside find themselves in, women carry out an important role in the day-to-day management of land due to the fact that they are the ones who spend more time working the soil to provide for their family, thereby fulfilling a crucial role in sustaining and growing the family unit. However, many women face discrimination and exclusion even from members of their own family and are unable to have a say in the key management decisions over land. Although article 10 of the 1997 Land Law grants men and women the equal right to obtain a DUAT, in practice, men are generally the owners of land, and according to traditional social norms, men are typically the only ones with the right to take key management decisions over land (Lei 19/97 de 1 de Outubro; Nhampossa, 2020).

Gender inequities also persist in the formal land titling system. With regards to the number of individuals who hold DUATs, according to data from 2016, provided to the NGO *Forúm Mulher*, men hold 80% of land titles whereas women only hold 20% of all individual DUATs. The same trends can be observed in the bureaucracy responsible for land governance, where only 25,8 % members of the civil service are women and 74,2 % are men. These inequities are more striking in some provinces compared to others, namely, Cabo Delgado and Tete provinces, where for every woman employed in the civil service there are more than 15 men. Furthermore, it is important to note that the higher prevalence of men in the civil service can be observed in rural areas where women face more discrimination and more effective policies are needed to address the tenuous position women find themselves in (Fórum Mulher, 2018).

4.2 Nature of conflicts over land tenure and notable disputes

The many shortcomings of the system of land governance in Mozambique create an environment where conflicts of various natures amongst economic agents who intend to use land for economic gain can flourish, thus eroding Rule of Law in the country and undermining much needed stability and the capability of the most vulnerable elements in Mozambican society to increase their productivity and have an opportunity to escape poverty. Most conflicts regarding land tenure in Southern African, including Mozambique, typically fall under the following categories: 1) conflicts regarding boundaries, where the dividing lines are not respected, generally occurring in regions with increased land scarcity; 2) conflicts regarding rights, related to disputes on what

rights users have over the land (i.e. access rights, management rights, ownership rights and alienation); lastly, 3) conflicts regarding rules, which in Mozambique tend to manifest in the contradictions between customary rules and the governance of modern formal institutions (Mandamule, 2020).

According to Mandamule (2020), in Mozambique these disputes typically play out over three main dimensions:

- *Intrafamily Dimension:* conflicts that play out in this dimension generally have an outcome that disfavours women. According to article 16 of the 1997 Land Law states that land can be inherited, regardless of gender, however in practice this principle is frequently disrespected and a source of intrafamily conflict. Women are also at a disadvantage when confronted with divorce or when making management decisions regarding land. Conflicts regarding boundaries are also part of this dimension;
- *Community Dimension:* within local communities' conflicts typically arise between neighbours and community members generally over the most productive or valuable land, thus disputes over boundaries, management and decisions regarding the type of use of the land (agriculture, grazing, etc) or alienation are a frequent occurrence.
- *Institutional Dimension:* this dimension refers to the conflicts that arise between rural populations with public or private institutions driven by the desire to control access and utilization rights. Depending on the status of the institutional claimant, the rural population is usually at a disadvantage due to their tenuous socio-economic position.

In the first decade of the 21st century Mozambique presented an attractive investment climate to foreign investors due to a wide combination of factors, such as: the commodities boom; natural resource abundance; basic infrastructure upgrades; favourable fiscal regime and land tenure legislation (Germana et al, 2016). Thus, the demand for land and natural resources in Mozambique has increased in recent years due to the interest of foreign investors hoping to create ventures known in Mozambique as “*mega-projectos*” (megaprojects). The government of Mozambique has celebrated more than 50 contracts with large multinational corporations that entail the appropriation of

community land and resources. Most of the foreign investment is directed towards the mineral and energy sector, along with commercial agriculture and construction (Forum Mulher, 2018). This environment saw significant foreign investment fuelling large scale acquisitions, resulting in millions of hectares granted to multinational corporations, raising concerns over land grabbing and displacement of rural populations (Germana et al, 2016).

Many of these concessions resulted in notable land disputes that pitted smallholders and local communities against multinationals who have been granted large concessions, many of whom have established partnerships with high profile individuals in Frelimo or local and national government. The Oakland Institute (2011), along with journalists and researchers, Joseph Hanlon (2020) and Estácio Valoi (2016), have compiled many examples of such disputes, some, but not all, of the most noteworthy are listed and described in Annex II. The underlying details of these conflicts reveal that the legislative framework and mediation institutions offer little protection to communities and smallholders whenever they are faced with attempts by political elites and multinationals to seize their assets. Furthermore, it can also be said that the property rights system in Mozambique functions as a deposit for rents for the political elite, who are rarely incumbered by the same requirements and scrutiny that small investors face whenever they seek to acquire a concession of land.

4.3 The current reform process and lessons from Botswana

4.3.1 The current reform and debate in Mozambique

Just over two decades have passed since Mozambique introduced its last major reforms in the land tenure system, giving enough time for the public and civil society to generate enough feedback regarding the strengths and weaknesses of the 1997 Land Law. In 2010 the Council of Ministers approved the creation of the *Forúm de Consultas sobre Terras* (FCT), which has served as a platform for debate between state actors and civil society, including advocates for local communities and institutions that govern land tenure. The main issues discussed within the scope of the FCT are the management of land and natural resources.

In 2017, during the 9th session of the FCT, Mozambican President, Filipe Nyusi, formally announced the beginning of a process to review the legal framework governing land tenure, officially titled *Revisão da Política Nacional de Terras*. In the subsequent year the then *Ministério da Terra, Ambiente e Desenvolvimento Rural* (MITADER) approved the creation of the *Comissão de Revisão da Política Nacional de Terras* (CRPNT). The commission was tasked with promoting diagnostic studies as well as, managing the complex process of community consultations, and more importantly, guide and supervise the review process of the National Land Policy. Its members are nominated by the land minister, and they include civil servants along with representatives from civil society, the private sector and academia (CRPNT, 2020).

According to a document published in August of 2020 by the CRPNT outlining the background of the reform process, the GoM wishes to have broad involvement from civil society and the public at large in order to enhance the legitimacy of the reform. Therefore, all relevant actors should be engaged in an auscultation process, including other political parties. Notwithstanding, the issue of State ownership over all land in the country as well as, the guarantee that all citizens have access to land, the protection of the rights acquired by local communities and the protections of rights over women over land and natural resources, are all considered immutable (CRPNT, 2020). Thus, the main goals of the revision process drafted by the CRPNT (2020) are as follows:

1. Responding to the challenges brought on by the consolidation of the structures of a market economy along with, increased pressure over land due to population growth in the cities and rural areas, climate change, the emergence of *mega-projectos*;
2. Produce policy and legislation aligned with the present *Programa Quinquenal do Governo* (PQG) for 2020-2024, which envisions modernization of the agricultural sector through greater involvement of the private sector to boost productivity, create employment and boost income for families, guarantee food security and lastly, integrate national producers in local and international markets;
3. Attribute greater consistency and practical meaning to the DUAT, within the context of a market economy, debating the issue of transferability as a way to strengthen the finances of families, local communities and the State itself;

4. Further define the concept of local community and strengthen these entities as safeguards for the effective tenure over land by the rural population;
5. Widening and strengthening the rights of women over land, including the control over economic benefits that arise from the exploitation of land;
6. Lastly, to establish a legal framework capable of addressing the issues of land hoarding, speculation and corruption, conflicts over land, the existence of fallow land and, reinforcing the rights of local communities, women, and youth in rural areas.

With regards to the crucial issue of transmission of land rights, the revision process recognizes the need to reform this element and that in order to achieve this constitutional reform will be necessary, specifically section 2 of article 109 of the CRM which states that «Land must not be sold, or otherwise alienated, mortgaged or pawned». The current framework only allows for a very limited scope of transmission and alienation of land rights, therefore section 2 of article 109 would need to be repealed. Simply reforming article 16 of the 1997 Land Law, which covers transmission of land rights would be a half measure. The reform package should also include measures to avoid speculation and hoarding of land, along with safeguards that would serve to avoid the formation of large social groups of landless citizens in the country (CRPNT, 2020).

Other elements that could possibly be addressed by a new National Land Policy of Land Law include: 1) clarifying the role of the State in providing access to land for Mozambican citizens; 2) providing a better definition of the local community, determining who belongs to the community, its scope and its relationship with other public institutions; 3) determining the scope of community land and the role of the State in managing the access rights to the land and resources contained within said land; 4) strengthening community consultations by defining expected results, procedures and participants; 5) assessing the implications for public investment that result from the attribution of land rights acquired by “good faith” occupation in or around protected areas as well as peri urban areas; 6) the need to further define the rights and obligations of holders of land titles namely, minors, foreign individuals, foreign and national enterprises as well as foreign and national public institutions; 7) the inclusion of a chapter exclusively dedicated to protecting the rights of women; 8) clarifying the role of

traditional institutions, the scope and limits of their authority and their relationship with formal institutions; 9) establishing a formal role of community representative who can act as a liaison with the State; 10) elaborate and define the concepts of land under public domain of the State, the municipalities, of the communities and the rights of families who live under these domains; 11) determining the conditions in which a DUAT can be revoked, defining the procedure but at the same time, addressing the issue of compensation; 12) clarify the implication for DUATs associated with economic activities; 13) introduction of a system of fees that can disincentivize the hoarding of land and the existence of fallow land; 14) improving and modernizing the National Land Registry; lastly and crucially 15) the creation of new Land Courts that can serve as a medium to resolve conflicts over land¹³.

Muianga (2018) points out that during the 9th session of the FCT, some participants questioned the constitutional merits of having all land under the legal ownership of the Mozambican State, arguing that the current framework places control of land in the hands of bureaucrats, since they are the ones who manage allocation. However, in his view, this is a simplistic argument which does not consider the fundamental dynamics which determine the distribution of land. Thus, the question is not a matter of design but rather implementation, especially with regards to community delimitations, which if carried out successfully, can imbue local communities with more secure land tenure and strengthen their position for negotiations.

On the other hand, João Mosca (2020), within the context of the discussion surrounding the revision process, describes how the issue of privatization is considered a taboo subject amongst political actors. Arguing that the crux of the matter is the pursuit of power and the fear that the state or political elites might incur an opportunity cost if they relinquish control over land. It is within land that Mozambique's natural resources and mineral wealth is contained. Additionally, the political culture in Mozambique considers that State ownership over land is a question of defending the country's sovereignty.

¹³ The preceding list of items was elaborated from various proposals highlighted by the FCT and the CRPNT.

Those who defend privatization argue that a private property rights regime would provide: 1) greater land tenure security, reducing risk incurred during investments and allowing for intergenerational accumulation of wealth through inheritance; 2) lead to a more efficient distribution of land to the economic agents who place higher value on the asset, allowing for more profitability of the economic activities associated with the exploitation of land; 3) the possibility to use land as a transactional asset in the market; 4) the possession of private deed would allow for access to credit which could aid in development, however there is scepticism with regards to the willingness of credit institutions in providing lines of credit to develop farms; lastly, 5) the possession of a private land deed could serve as a shield against an erratic policy environment, where frequent reforms are implemented. Notwithstanding, a counterargument is that the current concession period of 50 years (renewable for the same period) is enough time to acquire adequate return on investments, including improvement made to infrastructure (Mosca, 2020).

4.3.2 Some lessons from Botswana

One possible path forward for Mozambique is to emulate the experiences of other countries in the region who have successfully implemented a land tenure system that has yielded positive results. One such country is Botswana, a nation that like Mozambique inherited a dual system of land tenure (formal and customary) from its former colonial master but managed to develop a strong system which has aided the country's development (AFDB, 2016).

In Botswana there are three categories of land tenure, namely, tribal land, state land and freehold land. The legal instruments that govern these systems are as follows: the Constitution of Botswana (1966); the State Land Act (1966); the Tribal Land Act (1968); Tribal Grazing Land Policy (1975); and the Town and Country Planning Act (1977). Since independence it has been the policy of the Botswana government to increase the share of tribal land at the expense of freehold land and especially State land (Adams, 2003). According to data from the African Development Bank (2016) in 1966, the year Botswana became independent, 48.8 % of all land in the country was tribal land while 47.4 % was State land and just 3,7 % was freehold land. By 2013, the share of

tribal land increased to 71% while the share of state land decreased to 26%. Freehold land, which had increased to 5,7% in 1979, decreased to 3% by 2013.

State land, including land in urban areas, is administered by the central government and local governments. The state grants citizens a 99-year lease for residential purposes, and like Mozambique, a 50-year concession for commercial and industrial purposes. On the other hand, tribal land is administered by decentralised land boards under the Tribal Land Act. In this instance, land can be held by the boards or by holders of customary rights (Adams, 2003).

The land boards mentioned above are an innovation for the region. Their purpose is to exert the authority over land that was previously held by the local chiefs and are legally considered corporate bodies which can sue or be sued. When they were initially created there was the need to prepare and educate board members to better exercise their duties. They are composed of 12 members for the main boards and 10 for the subordinate boards. Tribal chiefs and elected officials are disqualified from holding positions in the land boards; thus, their composition is determined by elections in the Kgotla¹⁴ and by the appointments made by the Ministries of Agriculture, Commerce, and Industry (Adams, 2003).

The allocation of tribal land can be carried out under two regimes, customary grants, which are only available to citizens, and common law leases. The law allows for customary grants to be converted to common law leases, which are generally granted for commercial, industrial, agricultural, and residential purposes. Foreign individuals and companies can also acquire a common law lease in tribal land for a period of 15 to 99 years, provided they also have the approval of the minister responsible for land. These grants can also be mortgaged in order to secure credit for development.

With regards to freehold land, owners can hold their land for perpetuity and are free to sell, lease and mortgage the land to nationals and foreigners, as well as bequeath land to their heirs. This tenure system offers the most security because owners are free

¹⁴ This term refers to the communal assemblies held in Botswana's villages, which also serve as traditional courts. These assemblies are generally led by the village chief and all decisions are made with the agreement of the community.

to sell their land, without government consent, to any willing buyer at any agreed upon price, without the need to have first developed the land. (AfDB, 2016).

Lastly, State land is owned and administered by the government of Botswana which in turn allocates land under deeds of state grants, fixed period state grants (FPSGs) and certificates of rights. Holder of state grants become the de facto owners of the property in perpetuity and can sell, lease or mortgage their grant to nationals and foreigners, however the attribution of these grants has been discontinued. FPSGs are generally allocated in surveyed urban plots for a renewable period between 50 to 99 years (the former for commercial and the later for residential purposes), however the holders of these grants must comply with a development covenant present in the deed (AfDB, 2016).

The country's legislation also allows for the existence of the following rights over land that can be exercised in the tribal, State, or freehold land: 1) right to avail, which is the right to receive land by virtue of one's citizenship or tribal membership; 2) the right for housing; 3) the right to exploit land for grazing, agriculture, to make investments and to be buried in ancestral lands; 4) access rights to gather wild fruits and hunt, as well as to use land for commercial purposes; 5) right to receive compensation after compulsory acquisition; 6) the right to exclude others from enjoying the previously mentioned rights; 7) lastly, the right to sell, bequeath, lease or rent and mortgage land (Adams, 2003).

It is beyond this research to analyse in depth what Mozambique could learn from the Botswana experience, but some lessons can be identified. The main elements present in the land governance regime of Botswana that are worth emulating in Mozambique are the right to transfer and mortgage land amongst the holders' leases or state grants and the framework established to govern tribal land centred on the land boards. However, to replicate the effectiveness of the land boards in Mozambique great effort would need to be undertaken in order to enhance the capacity, independence and integrity of these bodies. Therefore, large investments in education and capacity building in rural areas are needed to develop human capabilities.

5 CONCLUSION

Mozambique still has a long path forward towards establishing a “Developmental State”. Regrettably the implementation of the legislation and economic policies regarding property rights and land use are undermined by endemic corruption in the bureaucracy and the political elites who, as outlined by the section on land disputes, often collude with multinational corporations in the predatory practices that undermine land tenure security for local communities and smallholders. Corruption also undermines the capacity building and fruition of embedded autonomy, which is crucial to the advent of a developmental state. It erodes the legitimacy of the Mozambican state and thwarts the creation of an environment where capital can begin to flourish.

The precarious socio-economic conditions in which the country’s population finds itself represents a bleak starting point. Notwithstanding, a capable government could in theory capitalize on the country’s competitive advantages to “catch up” with the rest of the industrialized world, namely, a large labour pool and abundant natural resources. It is clear that one issue that needs to be addressed is the question of how to acquire technology, both in the technical sense and in the institutional sense. In the information age of the early 21st century, Mozambique’s policy makers can learn from the experiences of other countries like the East Asian NIEs, or in particular, to emulate the experience of its Southern African neighbour, Botswana, which was able to achieve impressive results via the institutional capacity building of its tribal Land Boards.

In theory, there are two types of reform that could trigger economic development. A major Constitutional reform that would allow for different types of property rights over land, including the possibility of public, private, and communal property. On the other hand, a less ambitious reform that would reinforce the rights of DUAT holders within the current Constitutional framework. The constitutional provision which places ownership of all land under the Mozambican state is not necessarily an impediment to rural development. While the DUAT does attribute some rights to their holders, there are still some limitations. The issue of transmissibility is one area which should be addressed, along with protections for the rights of more vulnerable groups, specifically women. Additionally, there is the need for more safeguards for the rights of local communities, which could be addressed by a more robust and transparent process of

community consultations. Lastly, it is clear the government should invest in narrowing asymmetries of information regarding who claims what, but regrettably the frequent institutional rearrangements undermine the effective implementation of LIMS.

Bearing in mind that the current inefficient structure of property rights functions to the benefit of rent-seeking political and economic elites, at the expense of the general population, it is reasonable to ask what can trigger change and steer the country towards a Developmental State model. In this regard, the relevant stakeholders in Mozambique, namely, international donors, civil society organizations, local entrepreneurs and academia all have an important role in pressing for urgent debate and reform. In particular, international donors, who are funding important projects for the implementation of information systems on DUATs should be more demanding with regards to transparency and the availability of information, as well as an increased focus on more training and the capacity building of human resources on land management institutions.

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ANNEX

ANNEX I

Table III - Dimensions and nature of intra-family conflicts

Dimension	Subdimension	Nature of the conflicts
Familiar	Inheritance	– Conflicts between members of the same family
		– Conflicts over the expulsion of the woman following the death of spouse
	Exercise of power in the family	– Conflicts over access and control right between men and women
		– Conflicts over wife's expulsion after divorce

Source: Translated and adapted from Mandamule (2020)

Table IV - Community dimension of conflicts and their nature

Dimension	Subdimension	Type of land conflicts
Community	Actors	– Conflicts between farmers and poachers
		– Conflicts between farmers and informal miners
		– Conflicts between local producers and nomads
		– Conflicts between local farmers and medicinal plant gatherers
		– Conflicts related to boundaries between families
		– Conflicts between peasants and private companies
	Power over territory	– Conflicts related to power transmission over the territory between Ethnic groups
		– Conflicts between community leaders
		– Conflicts between local families and nomadic families
		– Challenges to local authorities from the local population
	Location of the area	– Land conflicts in irrigated areas
		– Land conflicts in dryland areas
		– Conflicts due to invasion of places of worship
		– Degradation of family/community cemeteries
	Registration / titling of rights	– Conflicts due to lack of registration of individual rights
		– Conflicts due to dual assignment of land rights
		– Land conflicts in undelimited communities vs. conflicts in delimited communities
		– Conflicts of norms (customary law vs positive law)
		– Conflicts over the double sale of land

Source: Translated and adapted from Mandamule (2020)

Table V - Institutional dimension and nature of land conflicts

Dimension	Subdimension	Nature of the conflicts
Institutional	Social (Conservation)	– Conflicts in buffer zones for National Parks and Reserves
		– Conflicts within conservation areas
		– Conflicts between biodiversity conservation and shifting agriculture (deforestation)
		– Conflicts between conservation and poaching
		– Disputes over the conversion of forests into residential areas
		– Conflicts between humans and wildlife
	Economic	– Conflicts over the expropriation for public utility purposes without fair compensation
		– Conflicts in agricultural investment zones
		– Conflicts in logging areas
		– Conflicts in mining areas
		– Conflicts between local populations and tour operators
		– Conflicts in urbanized areas
		– Conflicts due to resettlement or displacement
	Political	– Conflicts between returning refugees from armed conflicts and new occupants of the plots
		– Conflicts between local communities and smallholders with the military over occupation of their lands without authorization
– Conflicts due to the allocation, by the State, of lands that belong to refugees to private companies		

Source: Translated and adapted from Mandamule (2020)

ANNEX II - Examples of Notable Land Conflicts in Mozambique

Conflict between the local community of Quewene and the operators of the *Santuário Bravio de Vilanculos* and the Dugong Beach Lodge: In 2001 investors in the São Sebastião Peninsula in Inhambane promised the local community of Quewene new housing, access to water, schools and economic assistance in exchange for land rights over a large area to be developed into a wildlife sanctuary and a high-end tourist resort (reportedly between 25 000 to 40 000 hectares, including an additional 8 000 hectares of marine habitat). Even though 2500 people were removed from the reserve, the promises were not kept resulting in around 120 families still living in the concession and refusing to move. When the provincial governor visited the area, he blamed the local leaders of the communities for the dispute, stating that they received personal favours in exchange for not attempting to enforce the promises. This concession is also controversial because 25 percent of the Wildlife Sanctuary is owned by John Kachamila (former Mining Minister between 2000 to 2005), and 75 percent by the South African company, East African Wildlife Prop Ltd, registered in Mauritius, it is also said that Kachamila owns 5 percent of this company. Because this concession goes beyond 10 000 hectares the Council of Ministers granted the concession in the decisions 4/2000 and 2/2003).

Conflicts in Niassa between Chikweti Forests and local communities: this example serves as a warning that even institutions with strong ethical commitments can involve themselves in disputes with local communities and smallholders. An inquiry report commissioned by the government of Mozambique found that the local population had various complaints against the timber companies operating in the area, namely, Chikweti Forests of Niassa, «owned by the Global Solidarity Forest Fund (GSFF), a Sweden-based “ethical investment fund” which also aims to produce high profits. It was established by the Swedish and Norwegian churches but now the main investor is a large pension fund for Dutch civil servants and teachers, Stichting Pensioenfonds ABP, and plans to invest USD 100 million» (Oakland Institute, 2011; 32). Chikweti Forests was granted a concession of 30.000 hectares, however according to the National Directorate of Lands and Forests (DNTF), the company has occupied 32.000 hectares illegally and as failed to keep its promise to adequately compensate the displaced population. According to local reports Chikweti Forests was able to corrupt community leaders with promises of financial compensation or employment for their families, additionally community consultations are also plagued with fraud. The local population has responded by chopping down newly planted trees or sending cattle to destroy the plants.

Conflicts in Cabo Delgado between farmers, artisanal miner and Montepuez Ruby

Mining: This conflict is especially concerning due to its connection with the jihadist insurgency in Cabo Delgado province. In 2009, Suleimane Hassane, a local illiterate farmer discovered what is considered to be the most important ruby discovery of the 21st century. It is alleged that Raimundo Pachinuapa, a Frelimo war commander, usurped the land that belonged to the farmer and through his company, Mwiriti, obtained a concession of over 30.000 hectares in 2009. To develop the concession Pachinuapa would establish a partnership with the London based multinational, Gemfields Group Ltd, and form the mining company MRM (Valoi, 2016). According to Hanlon, «Montepuez Ruby Mining (MRM) is 75% owned by Gemfields and 25% by Mwiriti, which is controlled by Raimundo Pachinuapa (...) MRM is chaired by Samora Machel Jr. Pachinuapa's son Raime is MRM's director of corporate affairs. The mine area is 340 square kilometres. Hundreds of artisanal miners and farmers were displaced when MRM won the licence» (Hanlon, 2020; 1). In order to take control of their claim MRM employed violent tactics, in 2019 Gemfields settled a London High Court action against them and would subsequently agree to pay 8.3 million USD in damages for claims of destruction of property, torture and murder. It was also determined that Gemfields would set up compensation funds to resettle those displaced and compensate individuals or communities who would suffer future damages. Regrettably Mozambican authorities barred British lawyers from setting up the compensation funds (Hanlon, 2020).

Source: The Oakland Institute (2011), Valoi (2016), Hanlon (2020)