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Options for Securing Tenure and Documenting Land Rights in Mozambique: A Land Policy & Practice Paper



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Acronyms & Abbreviations

| | |
|----------|--|
| CaVaTeCo | Cadeia de Valor de Terra Comunitária |
| CGRN | Comité de Gestão de Recursos Naturais |
| CGT | Comité Comunitário de Gestão da Terra e Recursos Naturais |
| CRPNT | Comité de Revisão da Política Nacional de Terras |
| CBO | Community-Based Organisation |
| CLA | Community Land Association |
| CLN | Corredor Logística de Nacala |
| CSO | Civil Society organisation |
| DFID | Department for International Development |
| DINAT | National Directorate of Lands |
| DNDR | Direção Nacional de Desenvolvimento Rural |
| DUAT | Direito de Uso e Aproveitamento da Terra |
| FCT | Fórum de Consulta sobre Terras |
| ILRG | Integrated Land and Resources Governance (USAID programme) |
| ITC | Iniciativa para Terras Comunitárias (Community Land Initiative) |
| ITC-F | Community Land Initiative Foundation |
| LEGEND | Land: Enhancing Governance for Economic Development (DFID programme 2015 – 2021) |
| MITADER | Ministry of Land, Environment & Rural Development |
| MozLand | Mozambique Land Administration Project |
| NGO | Non-Governmental Organisation |
| NUIT | Unique Tax Identification Number (Portuguese acronym) |
| ORAM | Associação Rural de Ajuda Mútua |
| PEDSA | Strategic Plan for the Development of the Agrarian Sector |
| PNG | Gorongosa National Park |
| SDAE | District Services for Economic Activities |
| SDIP | District Services for Infrastructure and Planning |
| SIGIT | Sistema Integrada de Gestão de Informação Sobre Terra |
| SPGC | Provincial Services for Geography and Cadastre |
| USAID | United States Agency for International Development |

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Executive Summary

Mozambique's Land Policy and Land Administration System

One of the key aspects of the Mozambican legal framework for land is that Mozambican nationals can acquire tenure rights through inheritance, via peaceful occupation or through customary channels. These usufruct tenure rights, known by the Portuguese acronym 'DUAT' (*Direito de Uso e Aproveitamento da Terra*), can be held individually or jointly.

The government emphasizes its central role in issuing titles to rights holders that document their rights; most formal land administration functions are carried out at provincial level by the Provincial Services for Geography and Cadastre (SPGC). However, it is extremely difficult and prohibitively expensive for rural Mozambicans to engage with bureaucracies in distant provincial capitals. Multiple trips and significant costs can be involved in requesting a title. The combined financial, bureaucratic and logistical barriers make the process of formal titling a very difficult process.

The launch of the 5-year Terra Segura campaign in 2015 may have been partly in recognition of these challenges. Until this time, the national cadastre held data only on those DUAT rights that were required to be registered and titled; that is, those of private investors granted concessions by government, and other bodies or private individuals making formal title applications. The new campaign aimed to issue 5 million land titles, but progress towards this ambitious target has been slow, with fewer than 375,000 titles delivered to rights holders. In this context, alternative methods to deliver effective tenure security at household merit consideration.

The Terra Segura programme has not addressed the challenges in the ongoing maintenance of these titles. Any functional cadastral system must not only hold the initial data from systematic first-time registration processes; it must be continually updated. If landholders are unable to access the land administration system easily and cheaply, changes after initial registration are not captured and the cadastral system rapidly becomes out-of-date, meaning land rights data collected at vast expense will become increasingly outdated and of diminishing practical, legal or economic value, representing a mere snapshot in time.

In practice, the most important day-to-day land administration activities for rural citizens are undertaken by local communities themselves and customary leaders, according to customary norms and practices that have evolved and adapted over centuries. The vast majority of rural citizens acquire their land rights through customary and good faith occupation and depend on their leaders when they need conflicts or disputes to be resolved and to legitimise transactions that they make.

These customary channels for acquiring DUAT rights are recognised and protected by the Land Law, whether or not they are documented or registered with government, and they can be legally proven through oral evidence provided by local community members. But despite the obvious strengths and advantages of community management of land administration, the central government still conceives of land administration as services *to be provided to* local communities by government authorities, rather than as public goods which communities can manage and deliver themselves.

This Policy and Practice Paper captures the lessons from recent initiatives that have attempted to turn this situation on its head and leverage the capacities of local institutions to provide land administration services. These include the local mapping and certification of acquired DUAT rights, resulting in the issuance of locally registered certificates, rather than the formal titles.

Piloting New Approaches to Documenting Tenure Rights

Several projects have tested or are testing this ‘local documentation’ approach and the ‘local land register’ model in diverse situations, across nearly 100 communities covering more than 125,000 hectares. Some 50,000 locally issued certificates, confirming individual or household DUAT rights have been issued by these communities, represented by legally registered associations. All use an approach that is almost identical in terms of data requirements, accuracy and safeguard processes to that of the formal titling approach of the Terra Segura programme, but with digital data collection tools, and maps based on satellite imagery, largely used by the community members themselves. The key innovation of this new approach is that, for each legitimated claim, the community association and relevant customary leaders issue a “Declaration of Acquisition of DUAT” that proves the existence of the rights and clearly and legally identifies the rights holder, witnesses and the location and extent of the land.

Locally issued ‘DUAT Declarations’ have the equivalent force and legal content of a state-issued title to the land but require *no intervention from the state*; they can be generated by the people themselves, acting through their own local institutions. Experience shows that if a community is given access to the technologies that make this process accessible, consistent, transparent, accurate and efficient, then it is quite capable of undertaking the task of mapping and legitimising the various land rights within its jurisdiction. Once issued, the documents and the maps form a local land register, through which the community association can continue to administer, monitor and reflect changes to the land rights holdings of its members.

The two-step process of delimiting the community’s collective rights, and then delimiting family rights within the community, provides tenure security for families with some key advantages over the formal titling process. First, the process maintains the integrity of the territorial unit of the local community, since family parcels are not excised from the community DUAT. Second, if communities negotiate and agree on land use changes with investors, changes in rights can be confirmed without the onerous and expensive steps of the formal system. Third, when community members want to subdivide a holding between their children, the community association and customary leaders can legitimise these changes, reflect them in the local land register and amend the relevant documentation. This enables rights holder to avoid all the financial, bureaucratic and logistical barriers associated with requesting a title. And there is abundant information from interviews with many traditional leaders and community members confirming that this transparent process immediately results in dramatic reductions in land conflicts between neighbours.

Recognition of community land rights is also important for agricultural and other investors. Recently, several large companies have begun to pivot away from large-scale commercial plantation developments towards business models that are more grounded in contract farming and outgrower or in-grower schemes with communities. Land administration arrangements need to respond to these changing needs. The large companies operating in some of these pilot areas have expressed their appreciation for the clarity and transparency that the process provides.

These documents also replace the need for the expensive and time-consuming formal surveying of the family parcels and their subsequent titling and registration via the cadastral authorities. They enable families to identify and document the full extent of their rights to land, including areas left fallow or earmarked for expansion. This is based on a crucial combination of clauses from the Land Law and Regulations stating that the acquired land rights exist in law (that is, their existence requires no administrative or political intervention), that they are not prejudiced by their lack of formal registration or titling; and that they may be proved by the members of a local community.

There is an already significant and growing body of practical experience with this local documentation process:

- The DFID LEGEND Zambézia project: ORAM mapped and certified over 66,000 hectares of community land; within the areas that are the focus of a large-scale investment, as well as over 10,000 family and individual land rights covering more than 42,000 hectares.
- USAID in Maputo province: The Hluvukani Cooperative and Illovo Sugar Company, with support from USAID, mapped and documented 3,500 parcels of land occupied by smallholder producers around the Maragra Sugar Estate.
- USAID in Zambézia: ORAM supported an internal community land readjustment process; the systematic mapping of 3,000 family land parcels enabled identification of land that would be affected by construction of small-scale community dams.
- The Tenure Facility in Nampula and Zambézia: A new project is delimiting 60 communities and 45,000 family parcels in 3 districts of Nampula Province and 2 districts in Zambézia Province.

Systematic regularisation of land rights down to household level is not always necessary in all contexts. In areas subject to and shifting land use patterns, where communities rely on more extensive communal resources such as pasture and woodlands, and demand for tenure regularisation at household level is likely to be absent or uncertain, securing the collective rights and building management capacity through the community land delimitation process may be the principle requirement.

The Micaia Foundation used funds from the DFID LEGEND programme to document community rights to land and natural resources in Manica province, focussing on women's groups in harvesting and marketing baobab fruit. The region is not densely populated, and communities are largely dependent on shifting agriculture, natural resource trade and seasonal migration in regional labour markets. They did not need to delimit family land parcels but focussed instead at community level.

The experiences of local land documentation to strengthen and regularise household land rights provide alternatives to the top down planning of mass titling programmes. These approaches entrust local land and resource stewardship and land administration services largely to rural communities and provide them with appropriate support. In summary, the systematic formalising of land rights in this way can not only secure land rights of rural citizens, but also help establish a basis for private land-based investments, public investments, and for natural resource conservation.

Lessons from Local Land Documentation Pilots

The lessons highlight the viability and effectiveness of the local documentation approach, whilst also identifying some challenges and outstanding issues.

The Community Land Delimitation Process

A community land delimitation process is a vital precursor to securing and documenting of rights to individual family and household parcels. The delimitation of community boundaries, leading to government registration and issue of a formal DUAT certificate in the name of the local community, allows the community to assert a collective role in allocating and managing those rights.

Community land delimitation needs to be rooted in traditional organisation of social authority, settlement and land use, and the interpretation of 'local community' in that context. The boundaries should mirror the local, customary land administration and

land management powers and responsibilities, preferably at the third level of the customary leadership hierarchy, in which the leaders have been delegated powers and responsibilities for allocating land and resolving conflicts.

The delimitation process is an opportunity for institutional capacity-building. It can help community members to understand their rights and responsibilities vis-à-vis a range of external actors, including the state, private sector investors and neighbouring communities.

Entities with independent legal personality can represent the community in negotiation of land access with outsiders. A community land association endowed with legal personality represents the community as a *private* entity holding a collective land use right in its dealings with the outside world. It can engage in negotiations with government or investors who want to access land.

Local Mapping and Documentation of Household Land Rights

Rural people understand the value of mapping and documenting their family land rights. In the LEGEND Zambézia project, 12,648 community members from 20 communities participated in a series of 429 sensitisation and planning meetings and validation events. As a result, a further 20 neighbouring communities requested similar assistance.

There is little ‘unused’ land available for allocation. Most rural land is legally occupied, either allocated to families or for community purposes (sacred forests, schools, roads, etc.). There is little ‘unused’ community land freely available for land-based investments. Such investments would most likely require transfers of land rights from many individual families to investors. Delimitation provides a crucial basis for identifying legitimate rights holders before negotiations.

Delimitation leads to immediate reduction in conflict over land. The most frequent conflicts over land involve disputes between neighbours over boundaries; leaders uniformly note the delimitation of family parcels has led to a reduction of 80% or more of such cases.

Local documentation of existing family land rights supports recognition of women’s rights to land. The LEGEND Zambézia project was implemented in a matrilineal and matrilocal area; women were registered as titleholders on nearly 71% of all land. Even in the patrilineal area of Maragra in southern Mozambique, where women are not traditionally treated as landowners, it was noted that local land rights documentation had strengthened women’s tenure security.

Data management and role of technology

Local land records and ‘community cadastres’ can be managed by communities but need support. The initiatives are generating tens of thousands of spatial and textual data records of existing land rights; this data constitutes local community cadastres which can provide rural land tenure security at scale. However, there is a need for a system to support the process, maintain the data centrally, and make it available for use.

Community members can implement the mapping themselves given the right tools and training. In all projects, young community members were hired to register the details of land holders and witnesses, and to identify parcel boundaries. This provides short-term employment while building skills. Community members easily learn to interpret imagery and maps, building a strong sense of ownership over the process and the results.

Implications for Policy and Practice

Local documentation of rights offers significant advantages over titling and should be considered as part of the government's approach. There are clear implications for policy and practice.

A 'local community cadastre' approach to tenure regularisation and rights administration is practical and feasible. The identification of legitimate DUAT rights is clearly within the legal purview and technical grasp of local communities, if they are provided with the appropriate tools and support.

The 'local community cadastre' approach has significant advantages over formal titling. Local documentation of land rights is as effective as formal titling in increasing people's security of tenure and reducing local land disputes. It is more inclusive and much less expensive; the costs in the LEGEND Zambézia project were approximately USD\$15 per parcel, compared to costs estimated at USD \$50 per parcel by the World Bank MozLand project, designed to support and extend the issue of titles under Terra Segura.

Local documentation of tenure rights has advantages for public or private investment: When land holding arrangements need to be changed, the local land rights approach has advantages. People may reconfigure land holdings to release land for agricultural or infrastructure investment, or other purposes. This is easier using local documentation than the extended bureaucratic processes required when dealing with titles.

Land-based investments can be successful without requiring the loss of community and farmer land rights. Government and investors should respect community rights to refuse to negotiate, to accept a company's offer, to decline an offer, and to make counteroffers. A range of options, not requiring the permanent transfer of land rights, would gain more acceptance amongst communities.

Summary of Recommendations

Recommendations for Systematic Tenure Regularisation

Systematic formalisation of land tenure must recognise the DUAT rights acquired by legitimate occupation, especially where investments are likely to transform land access and use. This requires community level land delimitation, the establishment of formally registered entities to represent communities, and in many cases the subsequent systematic mapping of all DUATs acquired through occupation.

Recommendation 1: The SPEED+ programme is drafting new regulations for community consultation processes. As stipulated in the current draft of these, we agree that community land delimitation should be a legal pre-requisite to the allocation of a DUAT title for investment purposes, but would argue in addition that this should be extended to include the identification and mapping of all the

DUAT rights within a community that might be affected directly by a proposed investment, and the establishment of a legal body to represent the community.

Recommendation 2: The systematic regularisation of acquired DUAT rights at household level should culminate in the local documentation and certification of those rights via community land associations, rather than via formal titling and registration processes.

Recommendation 3: DINAT should develop and publish national data standards and requirements and promote tools and technologies that allow communities to undertake their own mapping and encourage tenure regularisation activities by a range of different stakeholders.

A Legal Framework for Community Land Entities

Communities should be represented by ‘community land associations’ (CLAs) endowed with legal powers and safeguards to ensure that the community benefits from its rights. Other forms of representation like the Natural Resource Management Committees (Comités de Gestão de Recursos Naturais) do not have legal personality and are defective in their capacity to represent members.

Recommendation 4: Regulations are needed to guide communities on the types of bodies that they can form for the purpose of managing their land and natural resources in accountable ways, questions on which the Land Law and Technical Annex are silent. The regulatory framework should distinguish between the association as a delegated manager of communal resources and rights held by individuals and families.

Recommendation 5: The government’s policy and legal revision process should include a comparative analysis of existing legal options for the incorporation of local community entities as land rights-holding bodies. A separate decree should be drafted to establish an appropriate legal framework for the incorporation of such entities.

Ensuring Sustainability: Local Community Cadastres

The current cadastral and registration system for land is not ‘fit-for-purpose’: it is neither accessible nor affordable enough for users to engage with, either for first time registration or for updating records. Mozambique’s cadastral system, located in the far-off provincial capitals, is inaccessible to 95% of the rural population. The average rural farmer finds just the travel costs prohibitively expensive, without considering the difficulties of negotiating the land bureaucracy and the new requirement to record titles in the Real Property Register.

In contrast, customary systems are accessible, as well as being legitimate and effective. These systems should be incorporated into, or aligned with, the public land administration architecture. The LEGEND Zambézia project demonstrated that community-level cadastral systems can register and update local DUAT rights in culturally appropriate and legally secure ways. Decentralised cadastres can be supported with a centralised platform of hardware and software tools to support the provision of key services. Data can be consolidated to give a national picture of land rights, at no cost to the state, without having to convert locally recognized Declarations of DUAT into formal government-issued titles.

Recommendation 6: Leverage the capacity of the communities themselves, within the progressive approach and vision of the current Land Policy and Law, so that they can be made responsible for ensuring the provision of these first-time registrations and maintenance services to their members.

The tools used to capture data and build local cadastres in the LEGEND Zambézia project have been tested and proven, but the principles of the approach are more important. It is vital to have a set of

standards including basic ground rules and data requirements for such systems without prescribing specific software solutions or technologies for initial data collection. Communities, NGOs, companies, and service providers can develop their own solutions in line with these standards.

Recommendation 7: The Ministry of Land, Environment and Natural Resources should facilitate the process of defining and disseminating a set of national data and procedural requirements and standards that can be used to build and maintain independent community land registers.

Conclusion

Systematic mapping and documentation of family rights provide an important foundation for investments, whether by small farmers themselves, large companies, or public sector programmes. The current approach in Mozambique could unintentionally stymie rural investment and growth. The mass delivery of DUAT titles by the state is costly and cumbersome.

Local documentation and maintenance of customarily acquired land rights, based on central roles for communities, could increase tenure security for millions of people. This could be done based on current law, without the need for formal titling or immediate registration in official land registries. Experience shows it can be done effectively and sustainably deliver tenure security at scale.

A national platform serving community cadastres can increase tenure security and decrease conflicts, maintain land rights records, and enable the certification of land rights as evidence of legal and legitimate tenure, all at scale. Further, a gradual integration of data from the local cadastres into the National Cadastral system could provide a pathway for formal DUAT titles to those who want them.

In the long run, there are opportunities for an independent national community cadastral system to become self-sustaining. Opportunities for this will take time to develop. In the meantime, there is a need not only for funding, through grants or potentially through loans or equity finance, but for development of a coherent policy approach that promotes stakeholder engagement and learning in the development of fit-for-purpose land administration services to facilitate rural economic development in Mozambique.

Recommendation 8: Government should reactivate the Land Consultative Forum (FCT) process to consider these proposals, amongst others.

Recommendation 9: Government, donors and international development partners should be encouraged to adopt a blended, pluralistic approach to land programming that includes tenure regularisation at community and household levels, establishment of legalised land and resource management associations alongside incremental development of state land administration capacity and a structured approach to stakeholder learning.

Recommendation 10: Civil society organisations (such as ORAM, iTC-F, and CTV) should seek to adopt a coordinated approach in rolling out local documentation and better integrated community delimitation and parcel level LTR, and in working with communities, private business and government stakeholders in land investment sites and corridors and in areas of natural resource development and conservation potential.

1 Introduction

This document addresses the policy options and practical approaches available for achieving the principle objective of the National Land Policy¹; that is, assuring the rights of the Mozambican people over land and other natural resources, as well as promoting land-based investment and the sustainable and equitable use of these resources.² It focuses specifically on the options for the regularising of existing land rights, a key focus of current government efforts in the land administration sector. It suggests areas for future policy development and proposes changes to the approaches and methodologies currently used for documenting, registering and administering rights.

The 1997 Land Law and constitutional approach to land rights has been appropriately recognised, both nationally and internationally, as providing a progressive and flexible framework for achieving the policy goals set out in 1995, many of which remain pertinent today. One of the principal innovations was the introduction of a legislated methodology that provided for local communities to map and secure their collective rights over lands that they occupy, known as the community land delimitation process.³ As a tool for achieving the overarching goal of the Land Policy, the recognition and delimitation of rights at community level was recognised as offering a solid foundation for establishing equitable and responsible land-based investments, and for forging sustainable relationships between local communities and external investors, as well as providing a gateway to delivering security of tenure to individual households and land users.

Effective government support for implementing community land delimitation has been consistently lacking however, progress has been slow and, accordingly, the State has generally failed to harness its potential, despite donor support. The failure rate of large-scale land-based investments in the country has been very high, with several high-profile examples⁴ creating a widespread and deeply negative impression regarding the country's capacity to facilitate and secure responsible and sustainable investment. The paper argues that a renewed and strategic focus on the delimitation of community land might help to address the problems that have arisen with such investments.

The current focus and approach of the government, as implemented by the National Directorate of Land (DINAT) under several donor-supported projects, is to instead systematically and formally title and register acquired DUAT rights⁵ *at household level*, across the entire national territory. The "Terra Segura" programme of the government, launched in 2015, set a target for the issuance and registration of 5 million of these titles within a 5-year period. The paper looks at progress in achieving this target and sets out some of the problems and challenges inherent in this approach.; it suggests that there are alternative strategies available for documenting, mapping and regularising

¹ *Política Nacional de Terras*, Resolution 1/95, of 17 de November.

² "Assegurar os direitos do povo moçambicano sobre a terra e outros recursos naturais, assim como promover o investimento e o uso sustentável e equitativo destes recursos", Article 18, National Land Policy.

³ For details, see [Tanner, De Wit, Norfolk, Mathieu, & Groppo, 2009](#).

⁴ The best-known are probably the 30,000 ha Procana sugar and ethanol project in Gaza, the 10,000 ha Quifel soya plantation in Zambézia, and the Pro-Savana project along the Nacala corridor, but large agricultural investments that have collapsed due to land-based conflicts include many initiatives supported by SA, US and European based investors, including *inter alia* the Aslam Group (US), Infraco (UK), Sun Biofuels (UK), SAPPI (SA), Aviam (Italy), Green Resources (Norway), SEKAB (Sweden) and the Bela Vista Rice Project (Libya).

⁵ DUAT is the Portuguese acronym of '*Direito de Uso e Aproveitamento de Terra*', the single form of usufruct property right that can be held by individuals and groups. It is subsidiary to the right of ownership, which resides in the State. The reference to 'acquired DUAT rights' is used here to distinguish between rights acquired by certain categories of occupants by operation of law from those rights that are awarded by the State on a discretionary basis for investment purposes.

land tenure by working through community based organisations and utilising available low cost technology tools, based on successful pilot experiences in the context of land-based investments and value chain development initiatives.

A national policy, institutional and regulatory reform process in the land sector,⁶ as well as a large-scale land administration project,⁷ are already underway, and are likely to pick up momentum over the coming months and years. The policy reform is being led by the Ministry of Land, Environment & Rural Development (MITADER), through its National Fund for Sustainable Development (FNDS), and with significant funding from the World Bank. There are also land-related policy initiatives being led by the DINAT and supported by USAID through the SPEED+ project. We hope that the lessons and proposals presented here will therefore promote discussion and debate in this reform context, and provide decision makers, as well as donor representatives and the national NGO community, with some insights into current challenges, obstacles and opportunities.

In addition to referencing some lessons promulgated over several years by organisations such as the *Iniciativa de Terras Comunitárias* (iTC)⁸, the paper is largely based on more recent findings from a pilot project supported under the LEGEND Challenge Fund of the United Kingdom's Department for International Development (DFID).⁹ The 'LEGEND Zambézia project', implemented over a 30-month period in Ile District, Zambézia, was specifically designed to develop and test new ways of securing and documenting land rights, specifically within the context of a large-scale land-based investment; it brought together a private sector operator, the forestry company Portucel, and a national land rights NGO, ORAM, in an effort to provide greater transparency and visibility to existing community land rights. A key focus was on the mapping and regularisation of these rights in order to create greater tenure security for land occupants in the investment area, and to establish a solid platform for potential negotiations regarding land access by the company. The activities undertaken in the LEGEND Zambézia project covered community land delimitations, the establishment of legal entities to represent the communities and the mapping and documentation of family and individual land holdings as part of a process to establish local level land registers.¹⁰

Drawing on lessons from the work of the iTC, the LEGEND Zambézia project, and on other recent pilots that have further tested the relevant methodologies in different contexts, the paper suggests

⁶ See Resolutions of the IX Session of the *Fórum de Consulta sobre Terras* in 2017 and *Diploma Ministerial* 56/2018, of 12 June, creating the *Comité de Revisão da Política Nacional de Terras* (CRPNT)

⁷ Mozambique Land Administration Project (Terra Segura), to be implemented by the National Fund for Sustainable Development of the Ministry of Land, Environment & Rural Development (MITADER) with \$100m concessional financing from the International Development Association.

⁸ The iTC Foundation channels donor-provided finance to independent (NGO and small scale private) land service providers to assist communities to secure their land and includes support for capacity building and legal empowerment.

⁹ The LEGEND (Land: Enhancing Governance for Economic Development) programme of DFID is a global programme designed to improve land governance as an essential and inclusive basis for economic development and strengthen land and property rights at scale. A LEGEND challenge fund, now closed, supported development and testing of innovative approaches and partnerships to promote better land governance and responsible approaches to land by private business partners. Grants in Mozambique supported the 'Zambézia project' described in detail in this paper, implemented by ORAM and Terra Firma with Portucel; a partnership between the MICAIA Foundation and Baobab Products Mozambique Ltd to protect women's access to the baobab resource and integration into the value chain; and work by Landesa to help Illovo Sugar align operations at Maragra with the VGGT principles for responsible agricultural investments as, set out in the Analytical Framework for Land-Based Investments in African Agriculture (New Alliance for Food Security & Nutrition, (2015), available at https://www.growafrica.com/sites/default/files/Analytical-framework-for-land-based-investments-in-African-agriculture_0.pdf).

¹⁰ This integrated approach to the implementation of the law in respect to regularising land rights (known as the Community Land Value Chain, or CaVaTeCo) is explained in detail in Annex 1.

some responses to the implementation challenges that are currently confronting Mozambique in the land sector. These include, *inter alia*:

- identifying the most effective ways to support communities to manage their land and natural resources and to participate in land administration;
- establishing an equitable and sustainable basis for responsible agricultural investments on community land and for community enterprises and inclusive business partnerships; and,
- establishing durable, legitimate and transparent mechanisms for identifying, securing, and maintaining, at scale, the land rights acquired by legitimate occupation.

The paper identifies several areas in which current legal and implementation approaches fall short of the requirements established by existing policy and may prove unsustainable from an economic and social perspective. It proposes the adoption of a new approach, in which local communities are placed at the centre of the solution and provided with the data and tools to document and administer their own land rights at local level.

2 The Land Policy Context

2.1 Principles of Land Rights & Land Administration

The foundational principles of Mozambique's land policy context were established in the 1990 Constitution and built upon in the National Land Policy of 1995¹¹ and the Land law of 1997.¹² These instruments, and the process to develop them, have been described in detail elsewhere (see, for example, Tanner, 2002), and are well-known: land belongs to the State and cannot be sold, alienated or mortgaged; Mozambican nationals can acquire rights through inheritance, via peaceful occupation and through application to the state, whilst foreign entities can acquire rights to implement land-based projects; the state is obliged to consult all interested parties, including local communities, in the process of land rights allocations and there are mechanisms available in the law that allow the simple delimitation of acquired rights by local communities and individuals. The use rights, known by the Portuguese acronym 'DUAT' (*Direito de Uso e Aproveitamento da Terra*), can be held individually or jointly.

The DUATs acquired through customary and good faith occupation are recognised and protected by law, notwithstanding their lack of titling or registration;¹³ these customary and good faith forms of occupation are still the main ways in which the rural poor get land rights, including through a range of legitimate customary and informal transactions, and they can be proved through oral evidence provided by local community members. A Technical Annex¹⁴ to the Rural Land Law Regulations¹⁵ provides a simple and flexible methodology for identifying and recording these rights, which can be

¹¹ Resolution 10/95 of 17th October, 1995 (Land Policy) [Boletim da República No. 9 - Supp., Series I – 28th February 1996]

¹² Law 19/97 of 7th October (Land Law) [Boletim da República No. 40 - 3rd Supp., Series I – 7th October 1997]

¹³ Although this principle is explicitly stated in very clear terms in the Land Law, there has been persistent bureaucratic resistance to the logical and legal implications that arise; that is, the holders of such DUATs have rights that are equal in nature and content to other title holders, should not be expected to have to title or register them in any way and have a legitimate expectation that these rights will be respected and protected by state and government authorities.

¹⁴ Ministry of Agriculture and Fishing, Ministerial Diploma no. 29-A/2000 signed 7th December 1999 (Land Law Regulations -Technical Annex for the Demarcation of Land Use and Benefit Areas) [Boletim da República No. 11 - Series I – 17th March 2000]

¹⁵ Decree 66/98 of 8th December (Rural Land Law Regulations) [Boletim da República No. 48 - Supp., Series I – 8th December 1998]

applied to the ‘group right’ of a local community, or to individual ‘good faith’ or customary occupants.

The Land Policy and the 1997 Land Law also assign roles to local communities in the recognition and administration of land rights. The Constitution enshrines the principle of legal pluralism and recognises a category of real property that falls within the ‘Community Public Domain’; these are lands and natural resources that satisfy collective interests, which are therefore excluded from individual appropriation, and which fall under the control of local communities as collective entities. The content of the management powers over these assets is extensive, with all of the laws relating to land and natural resources building upon and extending the basic recognition provided in the National Land Policy that the role of local communities and their leaders includes “conflict prevention and resolution and in *legitimizing and legalising the occupation of a particular area*” (Point 20, emphasis added). Accordingly, there are provisions in the Land Law & Regulations, the Environmental Framework Law, the Forestry and Wildlife Law, the Water Law and the Territorial Planning Law which all endow local communities with both management and administration powers.

2.2 Current Policy Reform Processes

The land policy reform process being led by MITADER has been in abeyance for the last 18 months, due to sensitivities regarding the discussion of such a key policy issue during the election campaigns of 2018 and 2019. With these completed, it is likely that there will be more intensive policy discussions from the beginning of 2020, but with several institutions and actors performing similar roles, this could become a complex and confusing process.

Ostensibly, it was the *Fórum de Consulta sobre Terras* (FCT)¹⁶ that was the initial ‘instigator’ of the reform process; behind the scenes, however, there are signs that the government, and specifically the new MITADER, are supportive of reforms to the land policy and have been a key driving force. Most significantly, the FCT’s recommendation in 2017 indicated that a policy review process should aim “to enable the transferability of DUAT rights through the assignment of sub-lease contracts”.¹⁷ This issue has been a focus of debate between donors and the government for at least the last 10 years; its inclusion in the recommendations from the FCT is a sign that the government are now more willing to seriously consider the limited liberalisation of a market in land rights.¹⁸

Given that article 4 of the founding statutes of the FCT provide it with a strong mandate to conduct the necessary research and consultations into potential policy reforms, it was assumed in 2017 that this body would advance the policy reform process. However, at the time of writing, the FCT has not met further since 2017. In the meantime, in a sign that the MITADER perhaps want to keep closer control over the process, it established another statutory body in July 2018; the *Comité de Revisão da Política Nacional de Terras* (CRPNT),¹⁹ was given the task to “coordinate, prepare and conduct the consultation process” on the National Land Policy Review, Implementation Strategy and the Regulatory and Institutional framework. This CRPNT is a much more restricted body in terms of membership and is subordinate to the MITADER; as far as is known, it has yet to commence work.

¹⁶ The FCT is a multi-sectoral advisory platform created by statute (Decree 42/2010, of October 20th) for discussion of issues related to land administration and management.

¹⁷ Declaração da IX Sessão do FCT, 09/11/2017

¹⁸ In addition, the FCT proposed that a new policy should aim to improve and develop the institutional framework for land and address spatial planning, new procedures for approval for the allocation of DUAT titles, and the strengthening of community consultation mechanisms for land administration (Declaração da IX Sessão do FCT, 09/11/2017).

¹⁹ Established through Ministerial Diploma No. 56/2018 of 12 June

Two further project-based policy reform processes are also on-going: the SPEED+ Programme funded by USAID, has been drafting new regulations for community consultation and community representation; and, the FNDS, using resources allocated under the World Bank's current MozLand project (see 2.4 below for further details), has procured legal assistance from a legal firm to "provide technical and methodological assistance in updating the National Land Policy and expert advice on the Land Law revision process". In addition, the FCT has also considered options and proposals to strengthen the legal and regulatory framework for rural communities to contribute to and benefit from natural resource management as a result of community land delimitations and associated capacity building efforts.²⁰

Thus, there are several parallel reform activities currently underway. The processes leading to the adoption of the Land Policy of 1995, and the subsequent development of the Land Law through 1997, were broadly praised by observers for being managed in an inclusive and transparent manner. At that time, the process was led by a government that had internal cohesion, was supported by an extremely active and engaged civil society and enjoyed a broad range of support from a variety of donors, providing expertise and technical assistance for conducting research and building an evidence base for reform. In the contemporary context, where there are conflicting views within government, in which civil society is weaker and more marginal to policy-making processes, and where the predominant drivers of reform appear to be more ideological than pragmatic, it will be a significant challenge for Mozambique to emulate the successful reform process of the 1990s.

That said, any eventual reforms are unlikely to fundamentally impact the existing principles of acquired tenure rights and the role of customary rules, institutions and actors, given the wide-ranging support and recognition for these, both nationally and internationally. Whilst the donor community generally, led by USAID and the World Bank, would be supportive of a more liberalised environment for the transferability of land rights, they are mindful of the importance of the policy recognition and support for community rights, for acquired rights, and for engagement. So, while there may be a focus on reducing administrative and political discretion in the DUAT transfer process, the rights of communities to be consulted, and as key actors within the land administration sector generally, are unlikely to be negatively impacted. The challenge has been, and will remain, how best to translate these policy principles into implementation activities that are practical, strategic, sustainable and effective.

2.3 Land Administration Institutions

In 2015 the government took a significant step to strengthen institutional coherence by bringing together responsibilities for land administration, land and natural resource management, and environmental management in a single Ministry, MITADER; land, therefore, as a cross-sectoral issue, was removed from the more narrowly-focused Ministry of Agriculture and placed in a more appropriate institutional home.²¹

Developing and implementing a coherent and integrated national strategy for land administration has, however, continued to be an unmet challenge, and the national cadastral system and records remain disorganised and incomplete. They are underpinned by a proprietary software system solution for managing land rights data (the *Sistema Integrada de Gestão de Informação Sobre Terra* -

²⁰ Notably but not only through the iTC programme, the Community Lands Initiative supported by bilateral donors until 2019. For further information see sections 2.4 and 3.3 of this paper.

²¹ MITADER now oversees national land policy and supervises the DINAT, which has day-to-day responsibility for land administration and is charged with maintenance and management of the national cadastral system. Other MITADER directorates are charged with environmental due diligence and territorial planning.

SiGIT) that has consistently fallen short of being ‘fit-for-purpose’.²² Despite tens of millions of dollars of donor investments into the land administration system, in recognition of its status as a public good, Mozambique has been slow to grasp the opportunities presented by available technology to enable the capture of land rights information at scale, the integration and sharing of data sets, interoperability between systems, and the potential contribution of open data tools. The national land cadastre has instead remained stubbornly analogue, opaque and disconnected. Whilst many problems lay with the SiGIT system itself, the underlying causes are, however, related to more fundamental issues. To name a few: there are no mandated national standards for cadastral operations and data; a lot of important and required data is missing from existing records; there are numerous instances of conflicting and overlapping land rights; the legal status of community boundaries is not recognised within the cadastral system; there is a high level of political and elite interference in the land administration system; and, human and technical resources are woefully weak at all levels of the administration. The complete lack of transparency in relation to the national land cadastre is therefore probably as much due to a bureaucratic desire to conceal the extent of this dysfunctionality as it is due to the need of the political elite to shield the current highly skewed patterns of land allocation from public scrutiny.

Most of the formal land administration functions are carried out at provincial level by the Provincial Services for Geography and Cadastre (SPGC). Cadastral maps and records of DUAT authorisations and titles are maintained at this level. In some cases, district-based land services are provided by the District Services for Economic Activities (SDAE), or for Infrastructure and Planning (SDIP). This, however, is generally limited to technical and surveying activities, and district-based institutions are rarely able to play a direct role in the administration of land or the provision of data and information to land users, often for the simple reason that this data resides at provincial level, and they have no access to it.

In practice, therefore, the most important day-to-day land administration activities, from the point of view of land users across the vast expanse of rural Mozambique, are undertaken by local communities themselves and customary leaders, according to customary norms and practices that have evolved and adapted over centuries. Since the introduction of the 1997 Land Law, this has also been their legal obligation and right.

In playing this role, these communities and their leaders have been more successful than the formal cadastral authorities. Customary institutions were able to avert the potentially devastating social and cultural disruption that could have accompanied the return of millions of refugees and displaced people at the end of the civil war, and they continue to do so in the current context by helping to manage displacement resulting from severe natural disasters and isolated but continuing insurgencies. And despite political attempts to control ‘traditional’ community authority, and constraints introduced by decentralisation policies, customary practices have continued to perform important roles of social legitimation and arbitration of land rights and claims; simply put, it is the customary institutions (in the broadest sense of the word) that principally guarantee tenure security in land allocation to both community members and outsiders, and that oversee the mediation and resolution of land disputes.

²² A recent assessment report framed this as follows: “amid political (including geopolitical), economic, social, technological, legal and environmental forces, and in the absence of [a] clear strategy, operational plan and implementation processes for [the] development of a national cadastre system...the operations and assets at DINATs’ disposal are at risk of not delivering required results efficiently and effectively in a continued manner” (FCG Swedish Development AB, 2019).

Leveraging this institutional capacity at community level and integrating local communities into the formal land administration system (in accordance with the standing constitutional and policy imperatives) should have, but has not, been a practical focus for the central government, despite widespread recognition by government officials at multiple levels of the need to do so. Rather, land administration and the provision of tenure security are still conceived as services *to be provided to* local communities by governmental authorities, rather than public goods to which they can contribute directly.

2.4 Progress and Outcomes from Tenure Security Initiatives

It is, in fact, only in the last four years that the government has begun, belatedly, to address the implementation of the Land Law from the perspective of the millions of rural Mozambican land users; from the passing of the Land Law until very recently, the predominant focus of the cadastral authorities has been on the provision of services to support transactions in developing urban housing markets, to the benefit of the middle class, and land allocation for external and private investment in agriculture, forestry, mining and natural resources exploitation (Tanner, 2010, Norfolk & Tanner, 2007). To illustrate this, the Mozambican State did not finance one of the several hundred community land delimitation processes completed up until 2015; piloting and implementing the progressive elements of the Land Law were activities that were almost exclusively the purview of NGOs, operating with financial support from a grouping of bilateral donors.

The change in the government's focus came in March 2015, when the President of the Republic launched the high-profile 5-year Terra Segura campaign, directed at providing security of tenure to national citizens and rural communities through the issuing of 5 million land titles, including certificates for 4,000 community land delimitations. Whilst some earlier pilots had been completed under the Millennium Challenge Corporation (MCC) Compact and the Gesterra Programme, this campaign marked the first clear commitment from the government in respect to mapping and regularising acquired DUAT rights.

Prior the introduction of Terra Segura, from early 2000s onwards the main focus of tenure security initiatives was community land delimitation, promoted by civil society, supported by NGOs and bilateral donors and welcomed by government as the principle means of implementing the 1997 Land Law in rural areas. Securing customary rights on a collective basis offered a legal and cost effective basis to protect the de facto rights of communities to shared resources and thus to their members and individual households to the land where they live and farm, although these rights were not generally registered except in a few cases where individuals applied to the provincial cadastral services to register DUAT title.

For over a decade following a pilot phase the principle rural tenure programme was iTC the Community Lands Initiative, funded by a group of donors led by DFID and later by the Netherlands which organised and built capacity of a wide range of local NGOs and private service providers to map and register community land rights and build capacity of community based organisations. Other civil society organisations, notably ORAM continued to raise funds to do likewise. Since 2015 iTC alone delivered 1049 community land delimitations and 784 collective DUAT titles to small scale village-based producer associations²³.

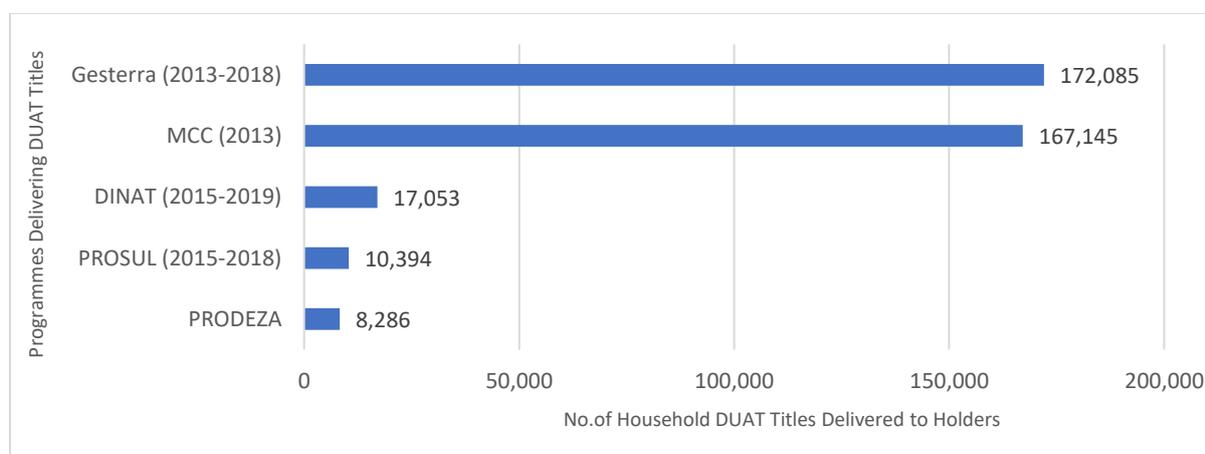
So far, however, Terra Segura has done little in respect to community rights focussing overwhelmingly on the titling of household and family level rights to land areas *currently under*

²³ Project completion report for MOLA (Mozambique Land Action), 2019, DFID.

production. In practice it has largely ignored both the acquired rights over shared land resources that local communities hold in law, as well as the acquired DUAT rights that households and families hold over land that is not currently under cultivation.²⁴

Very few community land delimitation processes have been sponsored under the programme. As a result, the emphasis has also remained on the *direct government provision of land rights registration and administration services*, rather than one more rooted in the Land Policy's aim to integrate and harness the agency of local communities (and traditional authorities). Implementation has been through a series of land sector and agricultural sector programmes supported by bilateral donors, IFAD and World Bank projects that have provided the resources for DINAT to contract teams of private sector service providers to go out into the countryside and 'secure' and title land rights 'on behalf of' the rural communities.

Figure 1: DUAT Titles Delivered to Land Rights Holders since 2011, by programme



Source: Adapted from FCG Swedish Development AB, 2019

As Figure 1 shows, progress towards the ambitious target set in 2015 has been slow, notwithstanding the considerable resources made available; in addition to the MCC and Gesterra programmes mentioned above, the MozFIP and Sustenta Projects of the World Bank also included funds for systematic titling activities, as did the ProSul project financed by the International Fund for Agricultural Development (IFAD).²⁵ As of July 2019, less than 375,000 titles, from the 5 million target, have been delivered to rights holders.²⁶ The new World Bank MozLand project, which specifically targets improvements to land administration, also has a USD\$60m component for systematic titling, with a target of 2 million new DUAT titles at household level. Although community land delimitation processes are included in the implementation plans, and an integrated approach that starts with

²⁴ This restrictive application of the titling programme has no basis in law; the Land Law clearly states that the rights are acquired through the occupation of land 'in terms of customary norms and practices that do not contradict the Constitution' (article 12(a)) or by those that have been using the land in good faith for at least 10 years (article 12(b)). In the first instance, customary norms and practices accept that exclusive rights to even uncleared bushland may be legitimately held by a family or clan and, in the second instance, the term 'using land' is at no point qualified to apply only to the actual cultivation of an area.

²⁵ The MCC Compact with Mozambique included the 'Land Tenure Services Project' (USD 40 million) and assisted DINAT to pilot the formalisation and titling of acquired DUATs in Northern Mozambique from 2009 to 2013; 'Gesterra' refers to the Capacity Building Programme on Land Management and Administration (USD 16 million), financed by the Embassies of Sweden and the Netherlands from 2013 to 2018; the current 'Sustenta' and MozFIP programmes of the National Fund for Sustainable Development also include land formalisation components (USD 10 million) financed with World Bank funds.

²⁶ From January to December 2018, there were a total of 98,672 requests for the issuance of DUAT titles in respect to acquired rights. Only 67,995 (69%) were printed and less than half of this number (33,077, or 34% of the total) were delivered to the titleholders (FCG Swedish Development AB, 2019).

identifying and preparing communities for land tenure regularisation has been agreed by Government's land policy forum, the focus of planning and initial piloting of titling methodologies for MozLand has been almost exclusively on demarcating and titling land parcels at household/individual level without creating any sort of locally accessible land registry or governance arrangements. Due to start in early 2020, recent analysis estimates that it will require a 17-fold increase in the performance of the cadastral authorities and their private sector partners in order to reach the 2 million DUATs target (FCG Swedish Development AB, 2019). In this context, alternative methods to deliver effective tenure security at household merit consideration.

The other 'traditional' land sector donors have also recently shifted their priorities, cutting funding to the land sector, and in particular to the civil society led programmes. Donors have largely discontinued their support to ITC, and land sector NGOs have lost long-standing donor partnerships. Aside from the World Bank institutional support to DINAT, donor assistance to land administration also appears to be winding down, including the Netherlands/Sweden financed Gesterra Programme. At the time of writing, there is a sense that funding and support for the land administration sector is currently at a crossroads, and new ways forward will need to be found.

2.5 Land and Rural Investment

2.5.1 The Rush to Acquire Land in the mid-2000s

Between 2005 and 2014, an estimated 21.73 million hectares were acquired across sub-Saharan Africa and, on the basis of medium to large scale land acquisitions that can be verified through reliable data, the largest area acquired falls in Mozambique; by 2014, 63 investment projects were identified as having been allocated a total of 2,102,527 hectares (Schoneveld, 2014).

Although the biofuel sector was widely considered to be a main driver of land acquisition in Mozambique (Nhantumbo, Salomão, & Cotula, 2010), this accounts for a small proportion of total investment approvals, and biofuel investments subsequently experienced very high failure rates.²⁷ The majority of investors have focused on food end-markets for grains or horticulture crops (Di Matteo & Schoneveld, 2016), and on the plantation forestry sector, which has been estimated to occupy over 1 million hectares in land concessions,²⁸ largely in areas under long term customary occupation and use.

New public-private spatial development initiatives have further encouraged large-scale acquisition of farmland, together with land allocation for infrastructure development.²⁹ In this context, several high-profile investments have been implicated in accusations of land grabbing and speculation (German, Cavane, Siteo, & Braga, 2016, Norfolk & Hanlon, 2012), with many of these subsequently failing amidst widespread conflict and resentment from local people. High-profile investment schemes and initiatives that have failed include the PROCANA Sugar Project, Sun Biofuels, various large-scale investments anticipated under PROSAVANA, the Wambao Rice Scheme, the Quifel/Hoyo Hoyo Soybean project and the Envalor Sugar Project³⁰ The impact of this wave of land-based

²⁷ 85.0% of biofuel investments were found to have ceased operations in a study from 2014; in contrast, only 13.5% of investors that targeted the food sector had ceased their operations (Di Matteo F. & Schoneveld G.C., 2016).

²⁸ Estimated at 1,130,725 hectares, with the most widely cultivated tree species being, in descending order, eucalyptus, pine and teak (Di Matteo F. & Schoneveld G.C., 2016).

²⁹ The Beira Agricultural Growth Corridor (BAGC) and the Nacala Corridor.

³⁰ Growing concern within government that large-scale agricultural land concessions might not be compatible with national poverty alleviation objectives led to the introduction of a moratorium on land allocations over 1,000 ha from late 2009 to October 2011 so that government could re-evaluate its approach (Di Matteo F. & Schoneveld G.C., 2016). An

investments was highlighted in a survey conducted amongst private sector investors in 2014 (Di Matteo & Schoneveld, 2016), in which 52% of respondents conceded that subsistence and smallholder farms and/or settlements had been displaced as a direct result.

In the context of rapid growth of foreign investment projects in rural areas, community land delimitation and provision of collective title was viewed by government and donors as the basis for rural communities farmers and NR user groups to enter into business partnerships with public and private investments participate in agricultural markets and value chains. In addition, government has promoted community access to shares of revenues generated by commercial operators in forestry, wildlife, conservation, tourism and mining sectors through community participation in natural resource management committees (CGRNs) established under 1999 Forestry and Wildlife legislation.

Promotion of community- business partnerships has had mixed results, however. In practice government directed the certification of community land rights away from large scale investment sites, and iTC as the principle delivery and support programme lacked effective mechanisms for follow up to sustain emergent partnerships with agribusiness investments. There has been some progress in linking community land rights to access to natural resource revenues derived from private DUAT concessions, but in practice CGRNs are still largely organised by the private sector on a concession basis and insufficiently representative of rural communities.³¹

As a result of these constraints the community-private sector partnerships that have emerged following registration of community land rights, although numerous, have largely been small- scale, dispersed throughout the country, and without systematic documentation, while the policy and regulatory framework for such partnerships in agriculture and land based natural resources stands in need of reform. So far, links between community land rights registration and economic development outcomes for the communities and localities concerned have been mixed, and less successful than envisaged by the donors, particularly in cases of large-scale investment projects.³²

2.5.2 A Shift in Approach

Since 2011, there has been a shift in approach to agricultural investment, with greater emphasis on contract farming, support to smallholders and on the role of Mozambican producers reflected in a Strategic Plan for the Development of the Agrarian Sector (PEDSA). This plan targeted a core group of up to 800,000 more dynamic small/medium farmers with larger than average land holdings secured mainly on a customary basis. The PEDSA emphasised value chain development and focused particularly on new development zones and corridors. This strategy has also been reflected in projects such as the World Bank's Sustenta project, and programming by IFAD, which have marked a scale-up of external donor support for systematic regularisation of smallholder and 'emerging farmer' land rights as part of Terra Segura.³³

Evaluations of iTC's programmes have identified numerous examples of successful partnerships between communities and businesses being established to share benefits from agricultural production with commercial offtakers (e.g. rice, dairying and horticulture), tree crops, and charcoal, which have assisted local communities to access credit and inputs to upgrade their production, as

agroecological zoning exercise, commissioned in 2009 as part of this re-evaluation, showed only 7 million hectares of land as potentially available for investment, a figure which the GoM had previously presumed to be much higher.

³¹ See a study undertaken by iTC on community participation in natural resource management and progress in revenue sharing following community land delimitations, with recommendations on policy reform and next steps, submitted to and accepted by FCT. Siteo et al

³² Project completion report for MOLA (Mozambique Land Action), 2019, DFID.

³³ Piloting of LTR had been conducted previously with support from the MCC and the Gesterra Programme.

well as securing markets for their produce. In public agricultural investment projects, such as the World Bank's PROIRRI, the clarification of land rights by titling irrigation land to community-based producer associations was an important pre-condition.

Several large companies have now begun to pivot away from large-scale commercial plantation developments towards business models that are more grounded in contract farming and outgrower or in-grower schemes. These include Portucel (a partner in the LEGEND Zambézia project), Illovo (which has piloted new approaches to secure smallholder sugar growers' land rights), Novo Madal (currently planning to use a similar approach to define smallholder use rights for ingrower schemes), and lesser known companies such as DADTCO and Matharia Empreendimentos.³⁴ These developments underline a need to review the current land administration arrangements, to ensure they can respond to changing needs, including those of small-scale and emerging farmers and the private sector operators that are increasingly less interested in acquiring land, more engaged in contract farming arrangements and more willing to deal with local communities as partners. As some companies and donor countries are now showing more willingness to support smallholders, alternatives to the currently onerous and expensive titling process are likely to be needed to strengthen tenure security and enable farmers to access small scale loan finance and business services.

3 Piloting New Approaches to Documenting Tenure Rights

3.1 The LEGEND Zambézia Project

3.1.1 Context

The DFID LEGEND Challenge Fund³⁵ supported two grant proposals from Mozambique: the 'LEGEND Zambézia project' (the main focus of this paper) and a project by the Micaia Foundation in Manica province to ensure sustainable development of the Baobab value chain, discussed in section 3.3. The LEGEND Zambézia project was designed to strengthen the tenure rights of local communities and households living within and near the extensive land concessions granted to the large forestry plantation company, Portucel.³⁶ The Mozambican government authorised this USD \$2.3 billion investment in 2009, and subsequently provide Portucel with several long-term state leaseholds (DUATs) over extensive parcels of land, totalling 356,000 hectares, across several districts in Zambézia and Manica provinces. Much of this area was already settled and used intensively by small scale subsistence farmers and the terms of the investment authorisation stated that the company would be expected to 'strictly follow the Land Law'.

As part of subsequent consultation processes with civil society, Portucel committed to a negotiated process of identifying land that might be available for plantation development and adopted a formal 'Land Access Protocol' that recognised the right of all existing rights holders to decline to negotiate the ceding of any land to the company. On this basis, the Mozambican NGO ORAM³⁷ partnered with Portucel under the LEGEND Zambézia project to roll out a project that would identify and map the

³⁴ These are welcome shifts: the average contract farming scheme provides opportunities to more than four times the number of smallholders than employment posts created by plantations, without incurring any of the costs associated with smallholder displacement (Di Matteo F. & Schoneveld G.C., 2016).

³⁵ See footnote 9 above for more details on the DFID LEGEND Programme in Mozambique.

³⁶ Portucel Mozambique is a subsidiary of the Navigator Company Group.

³⁷ ORAM is the acronym used by the Associação Rural de Ajuda Mútua.

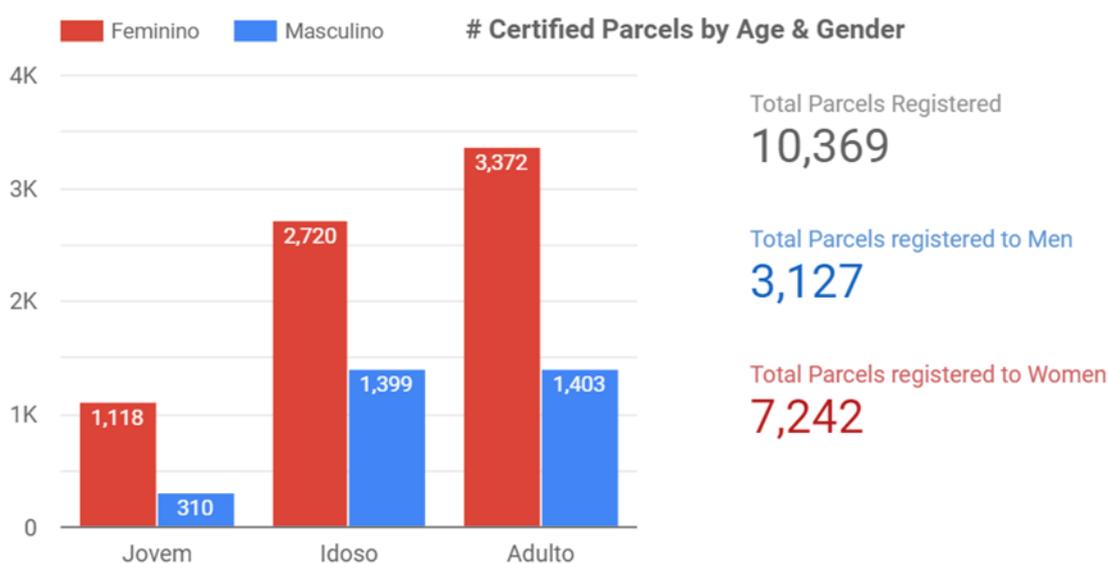
extent of community and family land rights within the affected communities. The aim was to assist the legitimate rights holders of specific land areas to formalise and secure their rights, and to establish exactly with whom the company could negotiate if there was a mutual willingness to do so.

3.1.2 Outcomes

By the end of the project, implemented over 30 months, over 60,000 hectares of community land had been formally delimited and registered to 20 community land associations.³⁸ Within these community areas, over 10,000 family and individual land rights (covering more than 42,000 hectares) had then been mapped and documented, following an approach that was almost identical (in terms of data requirements, accuracy & safeguard processes) to that of the titling approach under the Terra Segura programme, but using digital data collection tools largely used by the community members themselves.³⁹ At the end, for each legitimated claim, the community association themselves then issued a “Declaration of Acquisition of DUAT”, a document proving the existence of the rights and clearly and legally identifying the rights holder, the witnesses and the location and extent of the land.⁴⁰

These overall results from the LEGEND Zambézia project, in terms of parcel numbers disaggregated by age and gender, are shown in Figure 2 below.

Figure 2: Land Holdings Certified under the LEGEND Zambézia project, by Gender & Age



³⁸ These were established as legal, registered entities, with statutes published in the Government Gazette.

³⁹ For a fuller description of the methodologies, safeguards and standards applied in the pilot, please refer to the annexures.

⁴⁰ Each declaration comprises a map that clearly indicates the location and the boundaries of each parcel, as well as identifying the title holders and those persons from the community that can provide testimony in respect to the existence of the rights. This is based upon Article 15 of the Land Law 19/97, which stipulates that the testimony of community members is sufficient proof of the land rights acquired through occupation in good faith or based on traditional norms and practices.

3.1.3 Main Innovations

A full description of the innovative methodologies and tools deployed in the LEGEND Zambézia Project is provided in the annex. As a package, they represent a more strategic, systematic and inclusive application of the legislated methodology for carrying out community land delimitation, situating this as a foundational element for the subsequent mapping and documentation of household level rights, and focusing throughout on the creation of institutional capacity at community level.

The single key innovation, however, was the issuance of the ‘Declaration of Acquisition of DUAT’ documents, signed off and issued by the community associations and the relevant customary leaders. These locally issued documents replaced the need for the expensive and time-consuming formal surveying of the family parcels and their subsequent titling and registration via the cadastral authorities. It also meant that families were able to identify and document the full extent of their rights, including over currently fallow land and over areas earmarked for expansion.

This locally driven documentation process is an innovation made possible through a crucial combination of clauses from the Land Law and Regulations: essentially these clauses state that:

- the land rights exist in law (that is, their existence requires no administrative or political intervention);
- they are not prejudiced by their lack of formal registration or titling; and,
- they may be proved by the members of a local community.⁴¹

Thus, if a ‘local community’, as defined in the Land Law, establishes a legal entity (for defined business or governance purposes in relation to its members), and then maps out its rights over a defined jurisdiction (via the statutory community land delimitation process), that entity can then also map, register and issue documentation that proves the existence of the land rights of all its individual members.

These locally issued ‘DUAT Declarations’ have the equivalent force and legal content of a state-issued title to the land but require *no intervention from the state*; they can be generated by the people themselves, acting through their own local institutions. The LEGEND Zambézia Project proved that if a community is given access to the technologies that make this process accessible, consistent, transparent, accurate and efficient, then it is quite capable of undertaking the task of mapping and legitimising the various land rights within its jurisdiction. Once issued, the documents and the maps form a local land register, through which the community association can continue to administer, monitor and reflect changes to the land rights holdings of its members.

Importantly, in implementing this process, the community is first mapping out the collective right that it holds over an area and agreeing the boundaries of this right with its neighbours. Equally importantly, in the subsequent documentation of family and household level land rights, the community members are not legally dismembering their individual DUAT rights from this collective DUAT held by the community. But the community is recognising and legitimising the existence of these rights. This leads to an outcome that provides the same level of tenure security for individual families and community members over their own land holdings, but which provides some key advantages over the formal titling process:

⁴¹ Articles 12 - 15 of the Land Law (1997), and article 21(b) of the Regulations to the Land Law (1998).

- firstly, it maintains the integrity of the territorial unit of the local community, meaning that individual members remain bound by community-wide customary rules and formal safeguards regarding land rights disposal or assignment to third parties;
- secondly, the land tenure relations within the community, and between a community and external investors/parties, can be adjusted if necessary, to accommodate changes initiated by public/private investments, but without the need to undertake onerous and expensive legal and bureaucratic steps; and,
- thirdly, when community members wish to change things by, for example, subdividing a holding between their children, they can approach the local community association and customary leaders to legitimise these changes, reflect them in the local land register and amend the relevant documentation.

In the LEGEND Zambézia project, this outcome means that the communities and Portucel can now commence negotiations, if they wish to, based on a comprehensive picture of who holds the legitimate rights to specific parcels of land. And should these negotiations result in the ceding of land for the investment, the redrawing of the map and any amendments to how land rights are configured will be a much simpler affair than if all these lands had been titled and registered.⁴² By ensuring the identification, documentation and protection of household level land rights in this way, the approach creates a more sustainable and flexible environment for accommodating investment; it removes uncertainties and ambiguities about whose rights may be affected, and helps to instil an atmosphere of trust and confidence, but does so in a way that allows for local decisions and actions to be taken in order to adjust to changed circumstances and negotiated outcomes.

3.2 Further Pilots of the ‘Local Documentation’ Approach

The approaches piloted in the LEGEND Zambézia project have subsequently been tested, or are soon to be deployed, in other contexts, demonstrating the capacity of the ‘local documentation’ approach and the ‘local land register’ model to respond to different challenges:

- At the Maragra Sugar Estate in Maputo province, the Illovo Sugar Company and a local cooperative, Hluvukani, established a partnership to map and document over 3,500 parcels of land, occupied by smallholder producers in the areas surrounding the core estate. Using similar tools and participatory approaches, the aim was to secure the rights of smallholders over land that had been improved through the establishment of flood management infrastructure.⁴³ Whilst Illovo were keen to establish the legitimacy of their outgrowers’ land holdings, as part of ensuring the integrity and ethics of their value chain, the tenure formalisation process was also extended to subsistence farmers in the affected areas, as a means of protecting their rights in the face of increasing land values and local elite interests.
- In Zambézia, ORAM conducted a further trial of the local land documentation approach and tools as part of an internal community land readjustment process. Funded by USAID,⁴⁴ this involved the delimitation of five community land areas where Portucel was interested in building small scale dams and micro-irrigation schemes for use by local farmers as part of its

⁴² The extent to which this process is simplified is explained further in Section **Error! Reference source not found.** and highlighted in Table 2 below.

⁴³ Funding for this was provided via the Responsible Land Project and the Integrated Land and Resource Governance Program, both funded by the United States Agency for International Development (USAID).

⁴⁴ Funding for this project was provided by the Integrated Land and Resource Governance (ILRG) Program. Support for the construction of the dams was provided by Portucel and the Catalytic Fund of the World Bank Growth Poles Project.

corporate social responsibility effort. This systematic mapping and regularisation of family land rights was essential to enable identification of those whose land would be negatively affected by construction of the proposed dams, and those positively impacted because their land holdings fell within the newly irrigable areas. District government then led consultations to identify and value land and crop assets that could be lost and determine whether and how affected people could be provided with financial compensation and/or alternative land to accommodate the schemes. Two of the delimited communities have accepted the proposals for this readjustment of land rights to accommodate a 'public' investment and construction of the dams is due to start in 2020.

- The largest corporate land holder in Zambézia province, Novo Madal,⁴⁵ is also adopting the tools and methodology used under the LEGEND Zambézia project to document and map the land occupations of local community members that are occupying and farming on company land. In recognition of the fact that the most sustainable growth path for the company is to integrate these long-term occupants into inclusive business models, Novo Madal has agreed to map out these land occupations with a view to formalising long-term agreements offering secure tenure and integrating these farmers into commercial crop value chains currently under development. In this use case, the scope of the 'local land register' is defined more by the company's land holdings than by a delimited community area, but it is constructed using the same participatory and transparent methodologies.
- In the buffer zones of the Niassa and Chimanimani National Reserves, the Micaia Foundation and the Wildlife Conservation Society, responsible respectively for the management of each of these areas, are currently planning to deploy the locally-driven DUAT documentation and mapping processes, at community and family level, to help establish more secure and transparent tenure relations between and amongst communities, reserve and concession operators, as part of their efforts to improve the effectiveness of conservation management.
- Finally, a large forestry plantation operator that intends to divest over 200,000 hectares of land as part of a rationalisation and restructuring programme, is looking to promote the formal delimitation of community lands and the local documentation approach for securing family land rights as part of the handover process, thereby ensuring that local communities can benefit from the return of the land assets, and where applicable, the standing trees already planted on these lands. Here the approach and tools guarantee an inclusive and transparent method for identifying the legitimate beneficiaries, both at community and sub-community level.

In summary, the systematic formalising of land rights is not just a desirable precursor to establish the conditions and a basis for private land-based investments but can also assist in cases related to public investments, or where the attainment of conservation and biodiversity objectives is a central concern.

3.3 Other initiatives

This is not to suggest that the systematic regularisation of household land rights is always necessary in all contexts. In areas subject to and shifting land use patterns, where communities rely on more extensive communal resources such as pasture and woodlands, and demand for tenure regularisation at household level is likely to be absent or uncertain securing the collective rights and

⁴⁵ The company owns many thousands of hectares of titled land throughout the province, much of which comprises former coconut plantations that it has earmarked for the development of mixed agroforestry activities.

building management capacity through the community land delimitation process may be the principle requirement. This section describes some relevant outcomes and lessons from other ongoing initiatives that have continued to adopt this approach, including work by the Micaia Foundation to map, and secure rights and strengthen management, supported by a separate grant from the LEGEND programme (described below), and an overview of findings and outcomes from the iTC programme up to 2018, when donor funding priorities shifted.

Box 1: The LEGEND Micaia Project

From 2017 to 2019, the Micaia Foundation worked to successfully secure and document community rights to land and natural resources in Guro and Tambara districts in the north of Manica province, focussing on utilisation and management practices and promoting the active engagement by women's groups at village level in harvesting and marketing baobab fruit. This was done in partnership with Baobab Products Mozambique (BPM) Ltd which develops baobab and other natural product value chains for domestic and export markets. The region has undergone extensive deforestation by licensed and unlicensed timber operators and until BPM organised the baobab trade locally, women relied on subsistence farming to feed their families with little or no cash income of any kind, while men have relied largely on providing casual labour. As the region concerned is not densely populated, communities were largely dependent on a combination of shifting agriculture, natural resource trade and seasonal migration in regional labour markets.

The project took care to ensure accurate mapping and documentation of 20 village land areas; participatory land and forest resource use plans and access rules were discussed and agreed with community members and with customary leaders and retained at village level. It engaged the full hierarchy of customary leadership at the different levels but focussed on developing practical management arrangements from the bottom up starting at the lowest level (*3a escalao*) of social organisation, at which the women's harvester groups were established. For the time being, the communities and project partners held back from registering local management bodies but concentrated on agreement of local access and management rules with the women's groups and the customary leaders, including the two *regulos* (top level/*1a escalao* chiefs). Micaia and BPM took the opportunity to discuss the form of community based associations or other legal entities that may be needed for further development and regulation of trade in baobab and other natural products and for community land management to protect the integrity of remaining woodland resources, controlling deforestation and bush fires and for other purposes (for instance, should small scale irrigated commercial vegetable farms established on the south bank of the Zambezi expand, regularisation and reconciliation with community land user rules would be needed).

The project did facilitate establishment of a representative legally registered Baobab Harvesters' Association operational across the two districts, which has the potential to engage in land and resource management at the wider regional landscape level, by engaging with other commercial operators and resource management committees. While there will be a need to look at what type of institutions are needed to strengthening land and resource management at this wider landscape scale, as pressures on land resources grow, there will also be a need to identify what form of legally registered community organisations are most appropriate to take responsibility for land and resource management responsibilities at the village level.

For further insights from this project see Micaia's paper on Implications of baobab value chain development for land and natural resource rights and governance (<https://landportal.org/fr/node/88622>)

The experience of this project illustrates a context in which a cautious and gradual approach to household level tenure regularisation and community organisational development is needed. Nevertheless, securing community rights and clarifying resource management arrangements through the community land limitation process, and associated local mapping and documentation of rights, rules and responsibilities is critical to success in putting natural resource management, the baobab value chain and women's economic empowerment on to a sustainable footing. The iTC programme, discussed below, also registered collective community land rights in many similar

contexts, as well as others in which reliance on extensive natural resources, increasing engagement in agricultural markets and pressures on land and natural resources, including commercial development promoted by government are all combined.

3.3.1 The iTC Programme

The approach to community land delimitation developed by iTC over ten years from 2008 onwards has multiple features in common with those piloted under LEGEND although falling short of local documentation of household land rights. Features and outcomes of the iTC programme of continuing relevance in the national land policy context, include:

- The general practice of working with communities at the “3a *escalo*”, i.e. the lowest level of traditional authority, generally corresponding with individual village communities, the same level that the LEGEND projects and local documentation pilots adopted.
- In addition, a steadily increasing focus on production of DUAT titles for producer associations (that allocate members’ use rights to land and resources according to internal rules) in collaboration with agricultural and other public investment programmes and private sector companies. In some cases, communities opted to register associations to obtain formal DUAT titles to specific land areas and enter business partnerships.
- In 2017 – 18, the iTC piloted successfully the integrated delivery of community land delimitations and household DUAT titles in coordination with DINAT. Although DINAT’s service providers focused almost entirely on the technicalities of title registration, and not on social preparation, community development and land use planning, there was broad acceptance by government agencies that these approaches are needed to document community development aspirations, understand the nature and origin of community rights to land and the evolving pressures on it, and to promote community organisation for land management before embarking on household rights registration. iTC trained service providers in eight provinces in methods similar to those adopted by LEGEND and other local land documentation pilots, although less far reaching in building local capacity and clarifying household rights.
- Generally, iTC promoted formation of local governance bodies. As many communities sought to access shares of government revenues from commercial use of natural resources, as the law allows, the creation of village level natural resource management committees (CGRNs) was encouraged; these are not registered as associations with management powers, however, and were found to have been only moderately successful. iTC undertook a preliminary review of options for revising of CGRN legislation and for finance and support for community governance and management bodies, and MITADER accepted iTC proposals for legislative review and a differentiated approach that takes into account potential investments, socio-economic and environmental vulnerabilities, and territorial planning and organisation by government and communities themselves.
- iTC facilitated a National Programme for Community Management of Natural Resources, in collaboration with the National Directorate of Rural Development (DNDR). In this context community land delimitation and participatory planning processes are a key entry point to strengthening community capacity, although systematic parcel level regularisation is not necessarily required.
- Delimited community land areas have not been systematically and accurately incorporated into the national cadastral system by provincial cadastral services, leading to data overlaps with private DUATs and concessions, and uncertainties about customary boundaries. iTC established

an independent database of community land holdings but lacked capacity and funding to develop it and existing data remains incomplete and in need of correction.

- In 2019 iTC established itself as an independent national foundation, designated ITC-F, intended to manage and deliver the registration of community land rights in the longer term, but lost the funding to work at national scale. It continues to deliver collective land registration for community groups in specific locations funded by bodies such as the Nacala Logistical Corridor (CLN) and Gorongosa National Park (PNPG) and to negotiate funding from the private sector. This work is quite likely to generate demand for household level land registration and there may be scope to utilise the iTC-F organisational structures to deliver broader civil society initiatives or donor funded programmes for local land documentation in future.

Together with the experiences of local land documentation to strengthen and regularise household land rights, discussed in detail in the next section, the experiences of the iTC programme and of landscape based natural resource management initiatives such as Micaia's LEGEND project, provide tried and tested elements for diversified and context specific approaches to securing tenure rights. As an alternative to the top down planning of mass titling programmes, a key ingredient of these approaches is to entrust the frontline of local land and resource stewardship and land administration services largely to rural communities, and provide them with appropriate support

4 Key Lessons from Local Land Documentation Pilots

This section provides a summary of the key lessons learned from the LEGEND Zambézia project and others in piloting the new approach to mapping and documenting existing land rights, both at community and at household/family level. The lessons are intended to highlight the viability and effectiveness of this approach, whilst also identifying some of key challenges and outstanding issues that remain to be addressed.

4.1 The Community Land Delimitation Process

The lessons here apply to community-level land delimitation exercises, irrespective of whether these involve the subsequent mapping and documentation of family and household land holdings.

Where the securing and documenting of rights to individual family and household parcels is at issue, including the titling of such rights, the community land delimitation process is a vital precursor.

The delimitation of the boundaries to community land areas, leading to state registration and issue of a formal DUAT certificate in the name of the local community is necessary to clarify the land area over which members of a 'local community' claim land rights and assert a collective role or that of customary authorities in allocating and managing those rights. The delimitation process is also the key entry point in building capacity at community level for local level for exercising those rights and responsibilities, and to discuss and clarify the options for establishing recognised community level institutions for land governance and management.

Where there is demand for mapping and documentation of individual, household and family level rights over land parcels these processes can then be carried out transparently with the full knowledge and awareness of community members and leaders. In the LEGEND Zambézia project, this can be done under the auspices of a legitimate and representative community level institution.

Community land delimitation needs to be rooted in traditional organisation of social authority, settlement and land use, and the interpretation of ‘local community’ in that context.

The most effective community land delimitation processes are those that define the boundaries of an area which mirrors the situation on the ground in terms of local, customary land administration and land management powers and responsibilities. That is, at the third level of the customary leadership hierarchy, in which the leaders have been delegated powers and responsibilities for allocating land and resolving conflicts.⁴⁶ A community land delimitation further up the hierarchy represents the delimitation of a customary/political jurisdiction, rather than a functional administrative/territorial unit, and has the effect of locating local decision making over land further from the users.

In general, the land delimitations conducted at this 3rd level coincide with the boundaries of one or two villages (*povoados*), and on average cover an area of between 1,500 to 3,000 hectares, although this may vary from place to place and region to region, according to prevalent social practices and organisation of kin-based tenure.

The delimitation process is an opportunity for institutional capacity-building, across a range of issues.

The community land delimitation process presents an opportunity to help community members to better understand their rights and responsibilities and vis-à-vis a range of external actors, including the state, private sector investors and neighbouring communities, and to consider their available development options. This has been demonstrated throughout Mozambique by ITC’s approach to its land delimitation programme over ten years, fronts from 2008 – 2018 as well as by the LEGEND projects in Mozambique, and ORAM’s work in the northern region.

With access to the right tools (large-scale maps based on imagery, for example), communities can become more actively engaged in identifying those areas that fall within the public dominion of the state (or indeed of the community), and which are not subject to the acquisition of a DUAT. There are a range of opportunities that arise through the formalisation of collective tenure security at community level, which are not restricted to the mere protection of those rights from encroachment; the transfer of power and control to communities opens up chances to improve management practices,⁴⁷ to benefit from statutory incentives for natural resource management and conservation and to more effectively contribute to broader land use planning processes.

Entities with independent legal personality can be established, and are necessary, to represent the local community as a private land rights-holding body, including for negotiation of land access with outsiders, or release to investment projects.

Representative and inclusive community land associations, endowed with legal personality and established under private law, can relatively easily be established as a direct follow-on to the community delimitation process. The appropriate form that this body should take will depend on what sort of dealings it needs to have with outsiders, but the important aspect is that it represents the community as a *private* entity, holding a collective and private land use right, in its dealings with

⁴⁶ It is at this level that traditional leaders routinely hold weekly conflict resolution meetings. Numerous leaders in the LEGEND Zambézia project area noted that, before implementation of the mapping and documentation processes, conflicts over land represented 50% of their caseload; after the project, they reported that these cases virtually disappeared.

⁴⁷ There is anecdotal evidence from the local authorities in Ile District that the incidence of uncontrolled fires has reduced significantly in the community areas where the LEGEND Zambézia project was implemented, despite this not being a particular focus of any of the activities (Pers Comm, Arlindo Macuva, 29/10/19).

the outside world.⁴⁸ Establishing this institutional capacity at community level is particularly important in those cases where the formal titling of household/family rights is being considered.

Under the LEGEND Zambézia project, these entities were created using the 2006 Law of Agricultural Associations, approved at district level, with elected members supported and trained to manage and oversee the mapping and definition of land rights as household level process, and to apply the necessary safeguards in defence of all community members with legitimate claims to rights. The Law of Agricultural Associations establishes a less onerous and more decentralised process for their legal registration than previously.

4.2 Local Mapping and Documentation Processes for Household Land Rights

This next group of lessons applies to the locally led mapping and documentation of land rights at family and household level.

Rural people understand the value of mapping and documenting their family land rights and freely give time and attention to it.

There is a capacity and willingness within the communities to fully engage and participate in these activities. In the LEGEND Zambézia project the members of 20 different local communities freely gave of their time and attention, notwithstanding the opportunity costs involved, to participate in meetings and events related to clarification and security of land rights. A cumulative total of 12,648 community members participated in a series of 429 separate sensitisation and planning meetings and validation events.

As a result, more than 20 neighbouring communities in the area requested similar assistance from ORAM. The demand is especially notable in areas with higher population densities, targeted for investment, prone to conflict, and/or where resettlement/displacement is taking place. The subsequent flow of requests and initiatives for implementing the local documentation approach, elsewhere in Mozambique reveals significant and increasing demand for the clarification and certification of land rights at individual parcel level within community areas, based on recognition of the effectiveness and promise of the approach.

⁴⁸ This is not to say that the Certificate of Land Delimitation should be issued in the name of this body, however; rather it must be issued in the name of the local community, with its sui generis legal personality, with the land association acting as an agent.

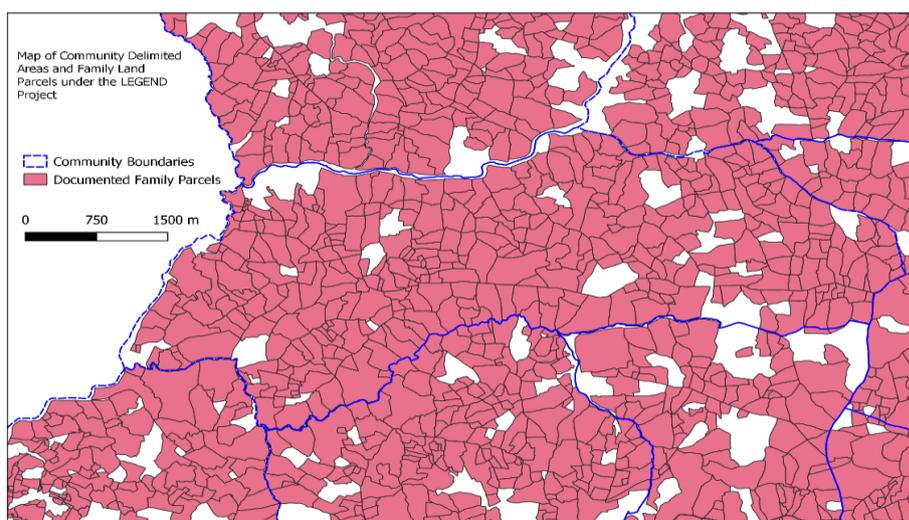
Figure 3: Mrs Fatima Muanlela Mussa in Malalo community, showing the location of one of her two parcels.



In Zambézia, and in many other parts of Mozambique, there is relatively little land that falls within the ‘Public Community Domain’, and very little ‘unused’ land that is freely available for allocation.

Most rural land is already legally occupied, with the bulk of the land allocated to families and much of the rest used for community purposes (sacred forests, schools, roads, etc.). There is very little ‘unused’ community land that could be made available, through community-level decisions, for land-based investments; rather, these investments would most likely require transfers of land rights from individual families to investors (see Figure 4). This has important implications for how the formal consultation processes under the land legislation are conducted, and with whom. The households and individuals directly affected by investment projects and the land transfers and land use changes and their relevant community leaders need to be properly engaged and provided with full information on company and government proposals.

Figure 4: Family land holdings in Ile District, showing little ‘unused’ land



A positive and immediate impact has been a reduction in conflict both within communities and between communities and external investors.

Household parcel level mapping has helped to avoid, reduce or resolve conflicts both within communities and with external land users in a land investment context. Within communities across the various local documentation pilot projects, customary leaders and community members reported that where disputes arose during the mapping processes, they were often sorted out on the spot, directly by the disputants, or resolved by the institutional structures at community level. Traditional leaders uniformly note that the transparent, public process of delimiting family parcels has led to a significant reduction in cases brought to weekly community dispute resolution meetings.

By recognising that land rights are held by individual households and not just by ‘the community’, and that these rights are likely to be affected in different ways, investment initiatives are able to negotiate more equitable outcomes that have broader legitimacy within the community. Outcomes that involve compensation or resettlement are informed by more accurate data on which rights holders will be affected, and how, and introduce greater transparency and fairness into the discussions.

In some cases, the systematic and transparent mapping of actual occupation, short of rights recognition, can also help to solve long-standing conflicts. In another example of how the tools and methodologies can be deployed, an initiative implemented by ORAM is using the approach, in Ribaué district in Nampula, to map the current areas occupied by smallholders who have encroached on a private DUAT for commercial agriculture, with a view to resettling them on equivalent lands outside of the area already ceded for investment. The process is being supported by the company involved, and the methodology has been adopted to ensure that the occupants are resettled on land that reflects their current use of areas within the DUAT.

The experience of local documentation of existing family or individual land use rights has had a positive effect in clarification and recognition of women’s rights to land

The LEGEND Zambézia project was implemented in an area characterised by matrilineal and matrilocal practices, features of large population groups in northern Mozambique through which women can be expected to have somewhat greater control over land than in patrilineal and patrilocal contexts. Nevertheless, the extent to which women registered land rights was an unexpectedly positive outcome and surpassed land registration by men. Widows and female divorcees also registered significantly more land than their male counterparts, as shown in Figure 5 below.

Figure 5: Treemap of Land Areas Formalised in the LEGEND Zambézia project by Gender and Civil Status



There was a surprisingly low level of co-titling by husbands and wives. Although some women co-registered land with their daughters to ensure inheritance right, and some sisters co-titled land, relatively few married couples did so. This might be explained by matrilineal marriage practice, where the main moves to the woman's families land, but around 40% of title holders are in informal relationships or common law marriages. Informants in several community discussions noted that women may be reluctant to register land rights jointly with men if there is any risk they may not continue together in future, leaving the woman's family land exposed to counterclaims from the men.

In the different context of Maragra in southern Mozambique, where women are not traditionally treated as landowners, local land rights documentation has served to strengthen women's perceived tenure security, as identified by the evaluation of USAID's support to the process:

"I am a widow and there are people that tried to take my land. So, when the project gave me the certificate, it helped me to now stand against future land disputes." (Participant in Group Discussion in the South Zone, August 27, 2018, quoted in Persha & Patterson-Stein, 2018.)

4.3 Data management and role of technology

Local land records and the 'community cadastres' that they comprise, can be owned and managed by responsible community level institutions but need to be linked to and supported by a centralised database and platform for service and tool delivery.

Taken together, the initiatives described above, which have already piloted or are planning to deploy these new approaches, will generate many tens of thousands of spatial and textual data records

relating to existing land rights which constitute local community cadastres. The pilots have established that having thousands of decentralised community authorities, providing services to many millions of land rights holders, is both a feasible and necessary development to meet the challenge of providing rural land tenure security at scale. However, project experience points to a clear need for a system or platform that can house and maintain the data on behalf of community-based organisations, and make it readily available for use

An important next step for the local documentation approach will therefore be to establish a centralised database and platform for delivering the tools and services needed to underpin the land administration services that they will provide. Such a system would need to feed data into the formal national cadastral system through an appropriate technical interface, to guarantee the formal recognition and protection of the rights and potentially facilitate eventual titling of land parcels and issue of an additional formal DUAT title by the state in cases where this is requested by the users, or as may be required by some credit providers.

There are also opportunities to link such a system with other public service providers (for example to facilitate issue of NUIT tax numbers, payments to communities under statutory natural resource revenue sharing schemes for concessions and investments, and service delivery to households, etc.) and those in the private sector that are developing digital solutions to enable farmer's to access mobile payments systems, crop insurance and other services.

Community members can largely implement the mapping process themselves given the right tools and training, and local land documentation offers a skills development opportunity for rural women and youth.

In each of the projects that have implemented the local mapping and documentation approach, young members of the community were hired to register the personal details of the land holders, using digital forms on tablets, and for the identification of the parcel boundaries, using the same tools attached to a simple GPS unit. In addition to providing some short-term employment, this ensures that community members develop skills and a strong sense of ownership over the process and the results. The field teams encountered a widespread and generalised ability to interpret imagery and maps amongst community members, especially women. The wider use of low-cost digital technology tools in these ways in communities also offers a potential means of involving rural people in delivering land administration and other public services across rural areas.

4.4 Implications for Policy and Practice

Based on this discussion of the lessons of the LEGEND projects and other pilots, there are four key overall considerations for policy and practice that clearly emerge. These are examined here, as a basis for the policy proposals put forward in the following section, and for the recommendations for future programming and support to the land sector contained in the concluding section.

I. An integrated approach to community land delimitation and individual tenure regularisation is practical and feasible, as government has recognised, and has been successfully tested.

Based on the experiences from the LEGEND Zambézia project and the various other pilots, the self-identification of legitimate DUAT rights is clearly within the legal purview and technical grasp of local communities, if they are provided with the appropriate tools and support. Not only are the community members capable of conducting these processes, implementation in this manner helps to build and/or re-establish social capital amongst community members (they get to solve long-

standing disputes between them) and between themselves and their leadership (they become necessarily involved in inclusive discussions and decision-making regarding the administration of land and natural resource rights).

II. Capturing, documenting and maintaining data in respect to household DUAT rights through the 'local community cadastre' approach has significant advantages over a formal titling process:

The local documentation of individual family and household DUAT rights, through the process piloted by the LEGEND Zambézia project, is as effective as formal titling in terms of increasing the perception of people regarding their security of tenure; although largely anecdotal at this stage,⁴⁹ an independent impact assessment of the Maragra project concluded that local 'Declarations of DUAT Acquisition' *"have positively affected land users' perceptions of tenure security, vulnerability to land conflict or disputes, and risk of land expropriation"* and *"improved perceptions of economic opportunity, gender equity and dispute mitigation"* (Persha & Patterson-Stein, 2018).

A community-led process is also a more inclusive alternative to the formal titling process. Whereas the local documentation process can be conducted at a pace set by the community, formal titling is conducted by service providers to the cadastral authorities, driven by external imperatives. In contrast to the formal surveying process, the participatory mapping of general boundaries using satellite imagery base maps, which are subsequently left with the community, is a self-evidently more inclusive and allows community members to understand and validate the results.

In the national context, a key advantage is that local documentation processes are much less expensive. The best estimate for per parcel cost under the LEGEND Zambézia project is approximately USD \$15.00, compared to the unit price budgeted under the MozLand project of USD 50.00 per parcel titled. In the long run, the savings to the rights holders would be even greater, as they will not be faced with the huge opportunity costs inherent in requesting changes to their documentation.

Table 1 below sets out a comparison between the formal titling system and a system based on local documentation and the establishment of a 'local community cadastre' system. With the 2018 changes to the Code for the Real Property Register, DUAT title holders (or their successors) that make any material changes to their holdings will henceforth be obliged to deal with the provincial Registry services in addition to the provincial cadastral services, and at significant added cost.⁵⁰ Lastly, the high costs of engaging with the formal titling and registration systems are likely to dissuade people from registration of changes and transactions, threaten the sustainability of these systems themselves, as land records slip back into the realm of informality.

⁴⁹ Tools for more systematically measuring these changes in perception, to be deployed as an integral part of the local documentation process, are currently under development.

⁵⁰ Further barriers to engaging with the formal land rights registration system are likely to include the fact that the Real Property Registry requires the presentation of a tax identification number (NUIT), something which less than 2% of the rural population currently possess and which itself can only be obtained in the provincial capitals.

Table 1: Comparisons between State Titling and the 'Local Land Register' Approach

| Comparison Criteria | Formal titling through the National Cadastral Services/Real Property Register | Independent documentation of land rights through a Local Land Register System |
|--|--|--|
| Legal validity of documentation | Impaired Provides documentation that identifies Use & Occupation rights, but only possible to defend against third parties if the cadastral title is subsequently registered in the Real Property Register. | Fully protected in law Provides documentation that identifies Use & Occupation rights, and that can be presented in court as proof of acquisition of the rights, legally 'trumping' all other claims. |
| Maintenance & Updateability | Highly Unlikely Only possible through formal applications and fee payment to the cadastral authorities based in provincial capitals. Only possible in person. Real Property Registration of DUATs mandatory since 2008, further increasing costs. Latter requires presentation of NUIT. | Highly Likely Through request and nominal payment to Local Community Association, usually to be found within walking distance. Communication links to a national platform established through tablets, feature phones and/or SMS services, and local mobile agents. |
| Sustainability | Highly Unlikely Costs of system architecture very high through use of proprietary systems. Cadastral authorities located too far from users and direct/opportunity costs too high for people to maintain their documentation up to date. | High Potential Costs of system architecture minimised through use of FOSS and centralised architecture. Local Community Associations accessible to people, so greater chance of requesting updates. Opportunities for additional revenue streams from training, equipment hire, monetisation of user and spatial data sets. |
| Costs | > \$45/parcel Needs to be subsidised by government/donor budgets for first-time registration. Subsequent changes require fee payments by applicant to government. | < \$15/parcel Can be supported by donors and /or private funding through NGOs, including from interested companies to facilitate first-time registration, with subsequent changes supported by nominal payments to cover costs of local Community Associations, traditional authorities or their agents. |
| Availability | Restricted and Random Rural occupants in areas chosen by government authorities and/or donors for implementation of Terra Segura. | Open & Strategic Any rural occupant in any part of the country that is part of a community that establishes a local Community Association to manage its land. Alternatives include corporate-led processes re in-grower or outgrower land rights/occupation |
| Implementation | Restricted Only via government authorities and small number of selected service providers on contract to the state | Open Available to any Community Association or partner, from NGO and/or private sector. |

III. In a public or private investment context adopting a local documentation approach to determine tenure rights has important additional advantages:

When adjustment to current land holding arrangements is deemed necessary or desirable, for instance where groups and individuals agree to cede land to a private company or the state requires the land to develop public infrastructure, this can be done relatively easily if a local land rights documentation approach is adopted. In the LEGEND Zambézia project context negotiations between

Portucel, the community associations and community members may result in future reconfigurations of land rights in order to accommodate plantation development. In the follow-on project implemented by ORAM to document rights and prepare communities in the targeted area for development of small-scale dams and irrigation projects, people affected by the infrastructure development were required to relinquish land rights and reconfigure land holdings to accommodate it.

The choice between registering and certifying land rights through local documentation and through formal titling has a huge impact on how easily rights can be reconfigured.

Table 2: Alternative Scenarios for Reconfiguring Land Rights to Accommodate Development: Portucel Investment

| Formal titling through the National Cadastral Services/Real Property Register | Independent documentation of land rights through a Local Community Cadastre System |
|---|--|
| An externally driven and largely extractive process results in the issuance of cadastral titles, registered in the Real Property Register, to each of the 10,000 occupants. | 20 community land associations issue 10,000 printed declarations to their members, confirming their legitimate acquisition of the DUATs, whose boundaries had been clearly identified and mapped by the community themselves. |
| The titles have a parcel diagram attached, but the boundaries are represented by a series of points joined by straight lines, which bear little resemblance to the configuration of the holders' land and no landmarks or image-based background to help with localisation. | The declarations show the position, extent and boundaries of the land parcel overlaid on a recent satellite image showing features such as pathways, trees and buildings, making it easy to identify and locate. The declarations also contain the personal details of the rights holders, community witnesses, traditional leaders and leaders of the community land association. |
| Portucel can invite title holders to negotiate, and the DUAT titleholders know that they can freely decline such negotiations. It is a difficult process to identify who holds title to specific land areas, because the cadastre is not publicly available, and boundaries are not accurate; but it is possible. | Portucel can invite rights holders to negotiate; the company knows with whom it should negotiate in respect to each area of land, and the current rights holders are comfortable in the knowledge that their right is secure and that they can freely decline such negotiations. |
| There is only one expensive, time-consuming and heavily bureaucratic option open to the parties if they reach agreement: the DUAT title will have to be transferred to Portucel, via a duly notarised public deed that contracts the transfer (of some asset or another on the land and not the DUAT right itself, which is unlawful) and that transfer must then subsequently be authorised by the Provincial Governor and, finally, registered in the Real Property Register. | If any subsequent negotiation leads to an agreement to cede rights to the company, the attribution of a DUAT title to the company can be achieved through a simple renunciation by the holder of the existing (unregistered) right, witnessed by the association and submitted to the cadastral authorities as part of a documented consultation process. |
| If the relinquishment involves just a portion of an existing title, a further survey by the cadastral authorities is required to effect a formal subdivision, requiring associated amendments to the registration. | If the relinquishment involves just a portion of an existing rights holding, the association can easily and cheaply re-issue an amended declaration showing the new boundaries. |
| The reconfiguration process would have to be repeated, including each of the separate legal, technical and bureaucratic steps above, for each individual negotiated area of land. | The reconfiguration process could be done simultaneously for several separate parcels, as part of a consolidated process of land readjustment to accommodate the investment. |

Thus, whilst this paper argues that the systematic and transparent identification of rights to land is fundamental in creating enabling environments for development, a key point is that this should not necessarily be done through the formal titling process. See Table 2 above for a simple comparison of some of the key areas in which the local documentation approach is advantageous.

To clarify and regularise rural people's legitimate customary and informally acquired land rights through a formal *titling* process is:

- firstly, more costly, slower and in practice less accurate, than through certified local documentation;
- secondly, formal titling is unnecessary, because the more practical alternative of local documentation provides the same level of legal protection; and,
- thirdly formal titling creates a costly legal and bureaucratic obstacle to the future readjustment of land rights to accommodate private or public investment on community land.

The local documentation approach thus offers significant advantages to the state and should be considered as part of the government's strategic approach to formalising rights.

IV. With the right enabling environment, the objectives of land-based investments can be achieved through alternatives to the loss of community and farmer land rights.

Government and investors should respect community rights to refuse to negotiate, to accept a company's offer, to refuse an offer, and to make counteroffers. A range of options, not requiring the permanent transfer of land rights, would gain more acceptance amongst communities; outgrower schemes, contract farming and long-term partnerships in which the community or family retains land rights and provides this as their part of the investment, while the company engages in production, would produce more sustainable outcomes.

All these kinds of arrangements require the formalising of existing patterns of land rights through legitimate and transparent processes, but, again, there is no imperative reason why this must be done through the state titling of those rights; indeed, the same outcomes could be achieved, more quickly and more cheaply, by a company or NGO and a community working independently and in partnership to undertake the process.

That said, rural people in Mozambique need to be able to participate in both tenure regularisation processes and negotiations with investors on a free, prior and informed basis, with the understanding that their land rights are in no way prejudiced even if they remain completely undocumented; the legal framework is clear that the DUAT rights acquired through good faith or customary occupation exist independently of their registration and titling. The voluntary nature of the process must be integral to the approach and decisions not to participate must be respected.

It is clear, however, that official messaging to people regarding land rights is still rooted in a paradigm that emphasises the control and ownership of the state. In the evaluation of the Responsible Land Project (RLP) in Maragra, respondents in three separate group discussions stated that the government could still take their land even if they had a local issued document proving their DUAT. One participant explained:

“The government has taught us the land belongs to the government and the farm to the farmer. If you're not farming where you're supposed to, the government can take it and give it to someone that can.” (Participant in Group Discussion in the Central Zone, August 21, 2018, quoted in [Lauren Persha & Jacob Patterson-Stein, 2018](#)).

Another pointed out that the government expects land to be farmed:

“Even when you have the [document], the government does not allow you to leave it unfarmed. So, the lands could be taken away.” (Participant in Group Discussion in the South Zone, August 27, 2018, [ibid](#)).

These statements are at odds with the legal position of these land holders, whose rights are recognised in perpetuity and are not subject to being confiscated through the exercise of administrative or political discretion.

5 Policy Proposals

The projects that have implemented the CaVaTeCo approach to local land rights documentation across a variety of contexts, together with wider national experience of work in the land sector, have served to highlight a series of specific areas in which change is needed: to policy, to law, to the regulatory norms and procedures and, indeed, to the strategic priorities and implementing arrangements and practices of the state and its partners. Some of the regulatory issues have been under discussion for several years, without definitive solution. In the face of significant investments in the land administration sector, it is also becoming increasingly urgent that the strategic priorities of the state be considered and discussed by stakeholder more widely, with a view to ensuring the most sustainable and cost-effective outcomes.

This section sets out proposals for reform that we believe could lead to better support for communities to manage their land and natural resources and to participate in land administration, alleviating the demands and costs to government for the establishment of equitable and sustainable foundations for private and public investments to be carried out on community land.

5.1 Systematic Tenure Regularisation

Few would now argue that the systematic formalisation of land tenure, recognising the DUAT rights acquired by legitimate occupation, is not needed, or is not a priority, especially in rural or peri-urban areas where agricultural investments or land development by the urban middle class are likely to transform patterns of land access and use. Some would argue that this can be achieved through the recognition of land rights held communally (within the legal regime of co-ownership) at local community level using the existing delimitation processes set out in the law. Others, including the implementers and funders of the Terra Segura programme within MITADER, are supportive of the systematic state titling and registration of household land rights over land used for residential or production purposes, and prioritise this over the mapping and regularisation of community land rights.

This paper suggests that what is needed instead is an approach that combines elements of the two: in investment contexts, or where there are clear advantages to be obtained from better defining the land tenure status of families and households within an area, there should be a targeted and systematic approach to the identification and mapping of all DUATs acquired through occupation, preceded by a community level land delimitation and the establishment of a formally registered entity to represent that community. In some other areas, depending on levels of land pressure and the nature of community land and natural resource use, community level land delimitation process on its own may be sufficient.

With regard to how the systematic land tenure regularisation at household level is carried out, however, the lessons from the LEGEND Zambézia project suggest that this could be achieved more quickly, at greater scale and in a more strategic and targeted manner than is being currently undertaken. The approaches available for achieving this regularisation are not restricted to formal titling; they could be based on local community agency implemented independently of formal state

involvement and need not necessarily culminate in the formal titling and registration of these rights in the official cadastre.

One entry point for a more strategic and targeted formalisation of acquired DUAT rights could be through the drafting of new regulations for community consultation processes, which is currently being undertaken by the SPEED+ programme. As stipulated in the current draft, we propose that *community land delimitation should be a legal pre-requisite to the allocation of a DUAT title for investment purposes, and in addition that this should be extended to the identification and mapping of all the DUAT rights within a community that might be affected directly by a proposed investment, and establishment of a legal body to represent it.* This would help to move on from the treatment of local communities as if they were homogenous groupings of people and land holders, each with equal claims to land held exclusively on a communal basis across a community territory. As all the communities under the various pilot projects have shown, where rural areas are increasingly densely populated and largely reliant on agriculture, their relationships to the land involve a patchwork of largely contiguous rights to discrete land parcels, which are accepted as being legitimately held, on an exclusive basis, by one family or another.

As the pilots have shown, local community agency can readily be harnessed to systematically document and map the household and family DUAT rights within local community areas. The use of appropriate methodologies and tools, which maximise the involvement of the members and institutions of a local community, has been shown to have positive social impacts and to be more cost effective than formal and externally led approaches. This has been amply demonstrated through the LEGEND Zambézia project, through ORAM's other applications of the CaVaTeCo approach and by iTC's implementation of social preparation methodologies. This type of methodology has been accepted by the FCT as a necessary first step in undertaking parcel and household level tenure regularisation.

Finally, as discussed in section 4.4 above, it is recommended that the systematic regularisation of acquired DUAT rights at household level should culminate in the local documentation and certification of those rights via community land associations, rather than via formal titling and registration processes.

We propose, therefore, that rather than spending resources on harnessing the massive logistical and administrative firepower of international consulting companies, the government could seek to promote the availability and use of tools and technologies that would allow local communities to undertake their own mapping processes. By developing and publishing national data standards and requirements, the DINAT could encourage the broader application of tenure regularisation activities by a range of different stakeholders from civil society and not be solely dependent on their own capacities and funds.

Summary of Recommendations

Recommendation 1: New regulations for community consultation processes should include the legal obligation to identify and map all the DUAT rights within a community that might be affected directly by a proposed investment, and to sponsor the establishment of a legal body to represent the community.

Recommendation 2: The systematic regularisation of acquired DUAT rights at household level should culminate in the local documentation and certification of those rights via community land associations, rather than via formal titling and registration processes.

Recommendation 3: DINAT should develop and publish national data standards and requirements and promote tools and technologies that allow communities to undertake their own mapping and encourage tenure regularisation activities by a range of different stakeholders.

5.2 A Legal Framework for Community Land Entities

Local communities, as private rights-holding entities, cannot be properly represented by any of the existing statutory forms of representation, such as the *Comités de Gestão de Recursos Naturais* (CGRN), which are not endowed with legal personality and suffer from regulatory defects in terms of their capacity to represent their members. On the other hand, ‘community land associations’ (CLAs) would and can be endowed, via their articles of incorporation, with sufficient powers and associated safeguards to ensure that the local community can truly control and benefit from its rights; this is a further important aspect of the institutional capacity pillar of the local land documentation approach as piloted by the LEGEND Zambézia project.

While CLAs have been shown to be appropriate in this and similar demographic and predominantly agricultural land use contexts in central and northern Mozambique, other forms of organisation may be appropriate elsewhere if there is not urgent need to document and regularise individual households or extended families’ land holdings. In these contexts, for instance in northern Manica where Micaia’s LEGEND project operated, CLAs could be enabled to emerge more gradually according to need, based on existing community level organisations, whether these are already formalised or not.

A simple but appropriate regulatory framework needs to be developed through which ‘local communities’, as defined under the Land Law, can more formally discuss, adopt and codify their internal land management arrangements. This is not restricted to those communities which intend to register household level land rights, but should be made a required and integral part of the delimitation process for those that do so. These regulations should provide guidance on the types of bodies that communities can form for purposes of managing their land and natural resources, questions on which the Land Law and Technical Annex are currently silent but for which provision is needed.⁵¹ It should establish the mechanisms through which communities can decide on issues such as the inclusion and representation of traditional authorities, the regularity of elections to management bodies, their responsibilities and powers, eligibility for membership, and rules for acquisition of rights by incoming members to the group, etc.

⁵¹ See Article 30 of the 1997 Land Law.

Many countries in the region have laws that allow for specific partnerships and trusts for precisely this purpose and there is evidence that they have improved land management practices and increased the participation of (and reduced discriminatory practices against) women at a local level. The difference between the association as a delegated manager of the community communal resources, and those rights held by individuals and families, is a key distinction to be made in the regulatory framework.

It is important to bear in mind that where new legal instruments have been designed (e.g. equity sharing schemes and Communal Property Associations in South Africa), considerable planning and outreach efforts are still required to determine membership, assess resources, evaluate land use potential, build skills, extend knowledge, design governance structures and generally adapt and apply legal instruments to localised conditions and amongst populations with meagre resources. This points to the need for support to civil society groups that are working with local communities on land and natural resource management issues. As communities are delimited, their DUATs are being vested in an entity that is presumed to represent them. It is important that the methodologies used as part of the land delimitation process should assist communities in establishing a legally viable local institution that can hold these rights on their behalf, which current methodologies generally do not do. Moreover, the bodies established need to be governed by rules that community members understand, to enable them to exercise governance over their land and resources in a way that is accountable to the community group in question.

It is recommended therefore that the policy and legal revision process which the government is preparing to undertake should include a comparative analysis of existing legal mechanisms and instruments that could be used for the incorporation of local community entities as land rights-holding bodies established under private law, and that a separate decree is drafted to establish an appropriate legal framework for the incorporation of such entities.

Summary of Recommendations

Recommendation 4: Regulations are needed to guide communities on the types of bodies that they can form for the purpose of managing their land and natural resources in accountable ways, questions on which the Land Law and Technical Annex are silent. The regulatory framework should distinguish between the association as a delegated manager of communal resources and rights held by individuals and families.

Recommendation 5: The government's policy and legal revision process should a separate stand-alone decree to establish an appropriate legal framework for the incorporation of community land-holding entities.

5.3 Ensuring Sustainability: Local Community Cadastres

The generally accepted Theory of Change behind land tenure regularisation assumes that secure and documented land rights will encourage local farmers to invest more in their land (having access to credit and other services); and take better care of it (knowing it to be secure over the longer term). The needs to recognise and protect legitimate land use rights, and to provide land users with basic documentation that they can use as evidence of the rights, mean that land records need to be kept up to date.

A cadastral system designed with users in mind must therefore not only hold the data generated from systematic first-time registration processes, but also be accessible and affordable enough for

those users to be able to interact with it on an ongoing basis. Only under these conditions will the state be able to maintain an up-to-date record of information regarding the land rights context of the country. As supported by the evidence from tenure regularisation programmes elsewhere in Africa (English et al 2019), the future maintenance of land records needs to have much greater prominence in land policy than it currently has.

The status quo of Mozambique's cadastral system is this: located in the far-off provincial capitals, the cadastral services are, quite simply, completely inaccessible to 95% of the rural population. The average rural farmer would find even just the travel costs prohibitively expensive, without considering the additional fee payments required in negotiating the land bureaucracy. To this hurdle of dealing with the cadastral authorities must now be added the additional legal requirement such that all changes to the title must also be reflected in the Real Property Register, which adds a further layer of potentially dysfunctional, rent-seeking bureaucracy to be negotiated by users, and of costs to be met.

The reasonable conclusion is that the current cadastral and registration system for land is neither accessible nor affordable enough for users to engage with. Even more importantly, the decentralisation of these services to district and municipal levels will not in itself improve user accessibility and affordability significantly, in the absence of an effective community outreach service. In the short to medium term establishing district land registries is likely to prove financially unsustainable for the state. In the phrase that originated in consumer protection law and has now permeated practitioners and policymakers from all walks of life, the current system cannot be characterised as 'fit-for-purpose'.

A logical response, therefore, is to leverage the capacity of the communities themselves, within the progressive approach and vision of the current Land Policy and Law, so that they can be made responsible for ensuring the provision of these maintenance services to their members. If state structures are failing to respond to local needs and protect local rights, and customary systems exist that are both legitimate and effective, it makes sense to think about how these systems can be incorporated into, or aligned with, the public land administration architecture. One way to do this that has clear benefits, as demonstrated by the LEGEND Zambézia project is the establishment of community-level cadastral systems, for registration and updating of the local DUAT rights, with culturally appropriate authorisation procedures to maintain the integrity and fidelity of the system. Matched with a centralised architecture of hardware and software tools to support the provision of these services, as posited in section 4.4, these decentralised cadastres can be brought together to provide a national-level picture of land rights, compiled and maintained at no cost to the state.

The tools used to capture data and build local cadastres in the LEGEND Zambézia project have been tested and proven, but the principles of the approach are more important. It is vital to have a set of standards including basic ground rules and data requirements for such systems without prescribing specific software solutions or technologies for initial data collection. Communities, NGOs, companies, and service providers can develop their own solutions in line with these standards.

Summary of Recommendations

Recommendation 6: Leverage the capacity of the communities themselves, within the progressive approach and vision of the current Land Policy and Law, so that they can be made responsible for ensuring the provision of first-time land rights registrations and maintenance services to their members.

Recommendation 7: The Ministry of Land, Environment and Natural Resources should facilitate the process of defining and disseminating a set of national data and procedural requirements and standards that can be used to build and maintain independent community land registers.

6 CONCLUSION

This paper argues that systematic mapping and documentation of household level rights is an important component of an enabling environment for investment at all levels, whether by small farmers themselves, large scale private investments, agricultural development and public sector programmes or through natural resources management and value chain development initiatives. Much rests, however, on the ease and effectiveness of the way that mapping is carried out and the systems of documentation that are used, and on the type of formalised tenure rights that result.

The paper suggests that the current approach in Mozambique could unintentionally lead to a more inflexible environment for rural investment and growth, because the mass delivery of DUAT titles by the state is costly and cumbersome, there are severe limitations in government capacity to establish and maintain inclusive land registers, and legislation is not in place to enable small scale farmers and rural communities to transfer DUAT titles to private or public investment projects without giving up the land rights on a permanent basis. As a result, the paper proposes that increased tenure security for current occupants of land could be achieved through the adoption of mechanisms and approaches for documentation of customarily acquired land rights that do not require either formal titling or immediate registration in official land registries. Further, an efficient and effective land administration system for rural areas could be better constructed by harnessing and supporting institutional capacities at local (community) level.

Based on recent statements, the Mozambican authorities are aware of the problems that have beset other countries that have undertaken mass titling processes and there are indications of real concern for the sustainability of the national cadastral system and the maintenance of land registers over time. A Mozambican paper presented to the FIG Congress in 2018⁵² concluded with the following warning:

“The biggest challenge of any registration process is the ability to keep the land cadastre up to date. The investments [required] to register land and create a national cadastre are huge. It makes no sense to let it become obsolete requiring repeating exercises to register the land. Therefore, we propose that this issue is brought into (sic) attention right from the beginning of the registration process and not when it ends” (Balas, Joaquim, Almeirim, Carrilho, & Murta, 2018, p. 9)

⁵² The current National Director of Lands was a co-author of this paper

So far, however, this concern has not been addressed in planning for the World Bank's MozLand programme and for continuing implementation of Terra Segura. The risks and implications of not addressing it are considerable. Everything that happens after the initial land registration and issue of title must also be reflected in the cadastral system if it is to remain useful; people transact in land, passing it to relatives or third parties, they marry, and they die. If landholders are unable to access the land administration system easily and cheaply, the ensuing changes will not be captured and the risk is that people will ignore or avoid it and lapse into informality once again. The result is that the cadastral system falls into disuse and rapidly becomes out-of-date. Land rights records and data collected at vast expense will become increasingly outdated and of diminishing practical, legal or economic value, representing a mere snapshot in time.

The formal land administration system in Mozambique is not easily and cheaply accessible. This paper has outlined and proposed the wider adoption of an alternative approach for land tenure regularisation and land rights administration which harnesses the capacities of local communities, allowing them to use the formal community land delimitation process as a stepping stone towards managing their own regularisation processes, issuing their own documentation and servicing their own members. In the context of the Constitution and the Land Policy, such an approach represents a lawful and logical progression, and we have argued here that it has the potential to provide a more effective and sustainable route to delivering tenure security at scale.

Government has recognised the potential of rural communities to contribute to a decentralised land administration system, although DINAT takes the view that the benefits can only be realised if this was linked to the national cadastral system. As the FIG Congress paper also stated:

"From previous work and tests performed (Balas et al, 2016a, 2017a,b; Norfolk, 2017; Groenendijk et al, 2017), there seems to be a common understanding that communities can be made responsible for this task. However, in our point of view, this would only be beneficial if these changes are part of the National Cadastre and not only part of the community cadastre." (Balas et al., 2018, p. 9.).

There are potential advantages to a gradual and eventual integration of the data into the National Cadastral system, providing a route to the issuance of formal DUAT titles to those DUAT holders that perceive a real advantage in this. There is no real technical obstacle to establishing a data flow between the systems. This paper concludes, however, that the establishment of an independently managed national community cadastral platform would have immediate and positive social impacts at local level that do not depend necessarily on the issue of title recorded in the formal national cadastral system. Such a platform provides a basis for increasing tenure security and decreasing conflicts, addresses the need for the maintenance of land rights records, and enables the generation of forms of certification of land rights that are accessible to all as evidence of legal and legitimate tenure.

Included in Annex 1 are technical details on the CaVaTeCo approach, the specific tools that ORAM and its partners employed to assist communities to capture data and build their local cadastres in the LEGEND Zambézia project. But it is the principles of the approach that are more important than the particular tools or software that was used, and there is need for a set of basic ground rules, data requirements and standards for systems like this to operate. Once these are in place, appropriate solutions could be developed by participating communities, NGOs, companies, and service providers without prescribing specific software solutions or technologies for initial data collection. We suggest that the DINAT and the newly reshaped Ministry of Land, Environment and Natural Resources should facilitate exactly this process, perhaps through the auspices of the FCT, and sponsor the adoption of

a set of national data and procedural requirements and standards that can be used to build and maintain independent community land registers.

Such a process will potentially generate large amounts of data on community and household land rights that would need to be carefully managed and maintained as a community cadastral system. This would provide a much more functional and accessible system for maintaining and updating data than the formal system offers. Assuming the consent of the community groups and registered bodies that own this data, it could be fed into the national system, making locally identified and certified rights and subsequent changes to them visible within it.

We believe that the potential of this approach as a basis for future programming for Mozambique's land sector should be included in discussions between donors and government and considered carefully in the implementation of the World Bank's MozLand programme and the design of complementary programmes. There is also scope to include the development of community-based land registers and governance arrangements in a renewed phase of integrated and coordinated support to civil society organisations working on land, natural resources and rural development, building on what they have achieved so far.

In the long run, there are opportunities for an independent national community cadastral system to become self-sustaining, through the leveraging of nominal user fees and through the responsible and innovative monetising of access to the rich data sets on rural land users. These opportunities will take time to develop. In the meantime, there is a need not only for funding, through grants or potentially through loans or equity finance, but for development of a coherent policy approach that promotes stakeholder engagement and learning in the development of fit-for-purpose land administration services to facilitate rural economic development in Mozambique.

Summary of Recommendations

Recommendation 8: Government should reactivate the Land Consultative Forum (FCT) process to consider these proposals, amongst others.

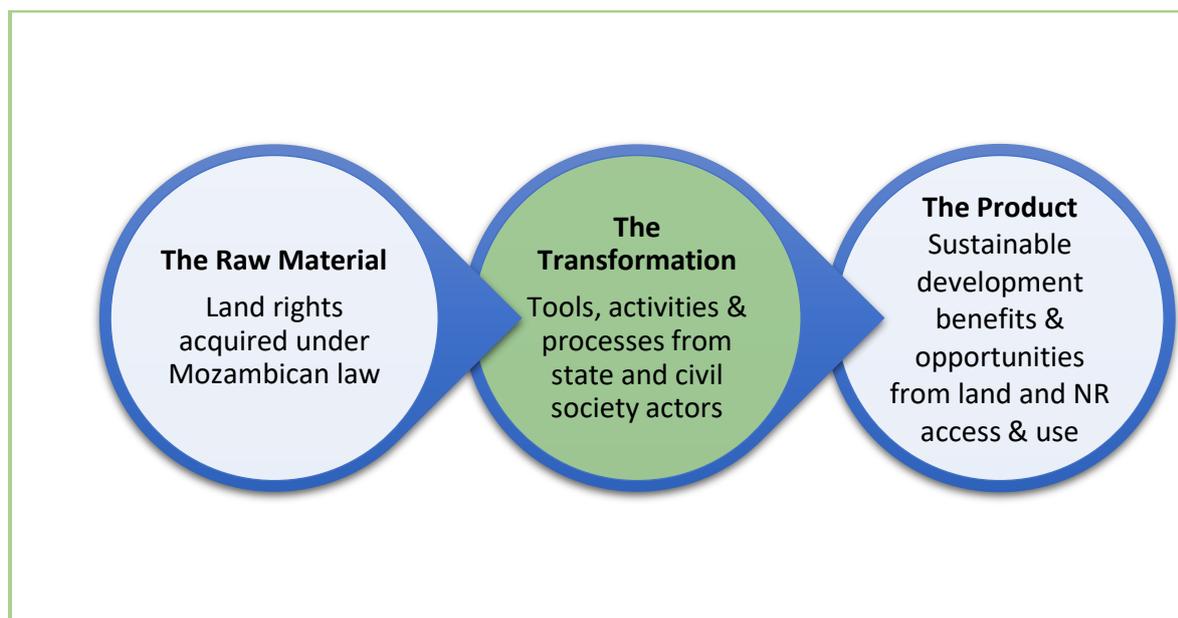
Recommendation 9: Government, donors and international development partners should be encouraged to adopt a blended, pluralistic approach to land programming that includes tenure regularisation at community and household levels, establishment of legalised land and resource management associations alongside incremental development of state land administration capacity and a structured approach to stakeholder learning.

Recommendation 10: Civil society organisations (such as ORAM, iTC-F, and CTV) should seek to adopt a coordinated approach in rolling out local documentation and better integrated community delimitation and parcel level LTR, and in working with communities, private business and government stakeholders in land investment sites and corridors and in areas of natural resource development and conservation potential .

Appendix 1: The Community Land Value Chain Conceptual Approach

The CaVaTeCo is based on the conceptualisation of the legally acquired rights of local communities to land and natural resources⁵³ as being the ‘raw material’ of a value chain, or rather several different potential value chains. The desired products from these value chain processes are those concrete benefits that can accrue to local communities, or their individual members, because of the transformation of their “invisible” statutory rights into certified and/or registered and visible real property rights. This transformation can include the community registering and leveraging the land rights that it holds as an entity or can also include the recognition and documentation of individual and family rights over discrete parcels of land.

Figure 6: The Conceptual Model of the Community Land Value Chain



The CaVaTeCo is geared towards assisting local communities and their members to use and exercise their rights. The starting point is therefore a rights-based one, leveraging the statutory land rights already acquired by most rural land occupants under the Mozambican Land Law. The end points, none of which are mutually exclusive, are all about the communities and their members being better able to **exercise those rights in practice**, and may include:

- increasing the effectiveness of local community participation in land allocation processes conducted by the state;
- leveraging local community statutory rights to receive a percentage of local resource use license fees;
- taking up opportunities to establish partnerships with commercial operators;
- developing conservation approaches that enable a community to benefit from programmes related to enhancing carbon sequestration or protecting ecosystem services;

⁵³As accorded in the 1997 Land Law.

- and/or enabling individuals and families to demarcate their own lands within the collective holding, including addressing tenure issues for women and other vulnerable members of the community.

There are **three components** to the transformation process, summarised as:

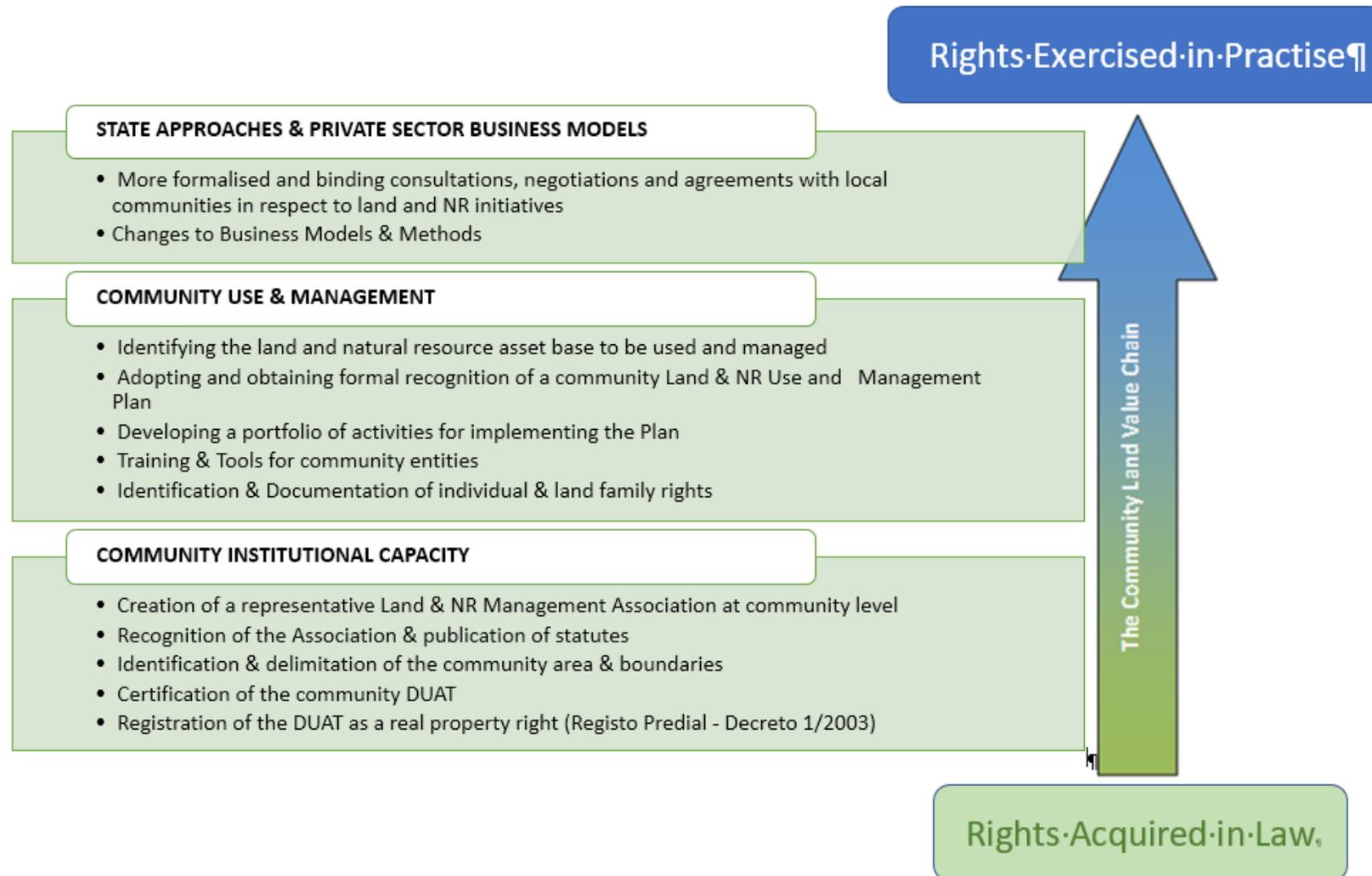
- Helping to create the institutional capacity at ‘local community’ level, including the formal delimitation of community land rights and establishing and developing the capacity of an entity with legal personality for the community that enables it to hold the land right and deal with the outside world;
- Facilitating the participatory mapping and planning of current and future land and resource uses within the community and identifying local threats and opportunities related to their acquired rights to own and manage the land and natural resource assets; and
- Deepening state engagement and consultation/negotiation processes with local communities and, where relevant, working with private sector actors to make changes to business models and methods.

Development of the CaVaTeCo approach has also involved the introduction of new tools and technologies to assist with these tasks and ensuring a more standardised set of practices and methodologies. These include digitally based data collection tools, the use of freely available georeferenced satellite imagery, and a spatially enabled and centralised database that can be used as a platform for receiving, holding and managing data generated in the field.

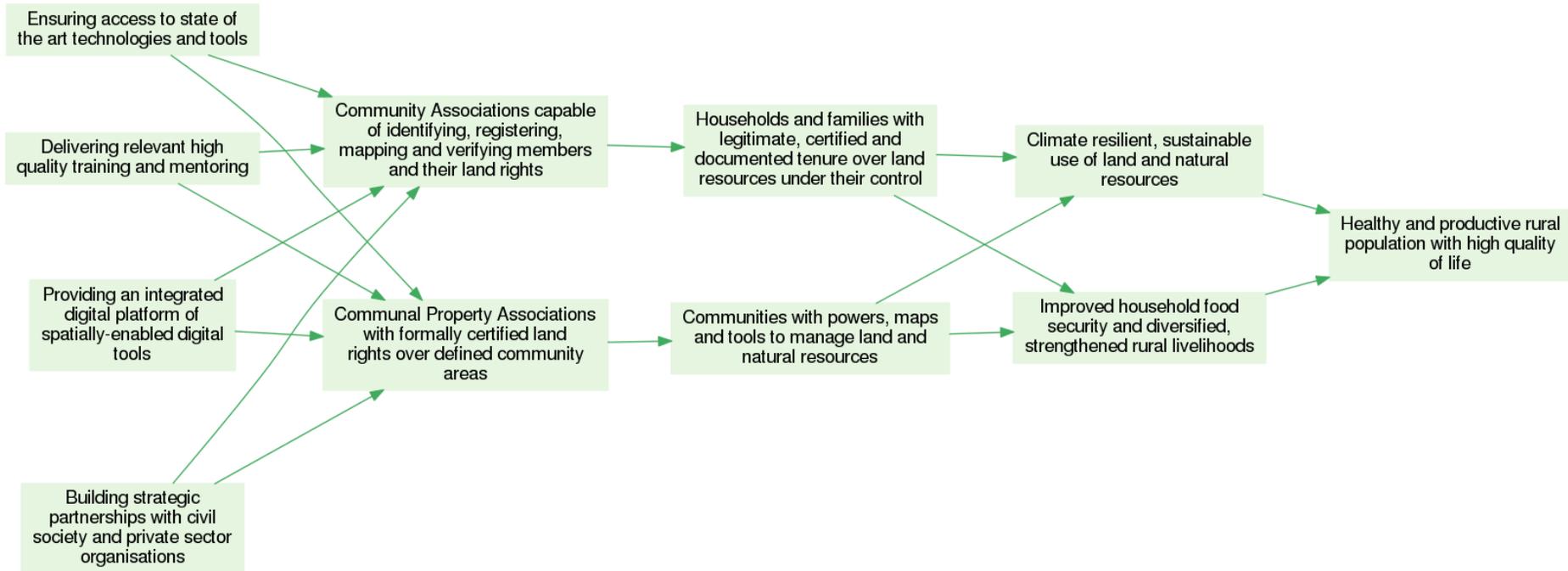
The CaVaTeCo is therefore also an operational platform that leverages both legal and innovative technical tools and options for undertaking activities and addressing issues and challenges. The CaVaTeCo’s addition of value to the existing legal framework on community and household land delimitation can be summarised as follows:

- It establishes registered associations as legal entities to represent the community, providing them with an institutional capacity to deal with the outside world;
- It provides tools that help to clearly identify and map important areas within the community lands over which they will exercise management control (conservation areas, sacred areas, firebreaks, etc.), as well as tools for the creation of formal land and natural resource use plans to guide decision making over time;
- It clearly identifies and proves the tenure rights acquired over family land holdings, through a legitimate process that allows the broader community to confirm these rights and the legal entity that represents them to issue proof of their acquisition;
- It does all this more efficiently and at a lower cost per community delimited and per parcel demarcated, compared to existing standard approaches, through tools and processes that can be implemented by the community themselves.

Figure 7: The Three Components of the CaVaTeCo Approach



Appendix 2: A Theory of Change for A People's Cadastre



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