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ROAD MAP : IS THERE A SPACE TO REVIEW THE LAND LAW?

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ROAD MAP: IS THERE A SPACE TO REVIEW THE LAND LAW?

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ABBREVIATIONS

DUAT	Direito de Uso e Aproveitamento da Terra ¹
LL	Land Law
NLP	National land Policy
FCT ²	Land Consultation Forum
VGGT	Voluntary Guidelines on the Responsible Governance of Tenure of land, fisheries and forests in the context of national food security

¹ land use and tenure right

² *Forum de Consulta de Terras*

INTRODUCTION

The objective of this Road Map is to propose the main aspects to consider and steps to take to initiate, monitor and contribute to the review of the current Land Law (LL – Law 19/97, of October 1). The review of this law entails the subsequent review of its implementing instruments, namely the associated Decrees and Ministerial Diplomas approved since 1997.

The experience of the Interministerial Land Legislation Review Committee (the 'Land Committee') in the mid-90s clearly showed that a legislative process should be guided by the objective of materialising a 'vision', i.e. a land policy attuned to the national reality. As such, the function of the legislator – advised by lawyers and other technicians – is to prepare a legislative package that facilitates the practical implementation of that policy. At the same time, the revised legal instrument should be clear, accessible and consistent to the various land stakeholders.

Thus, the expected path should be conceived in two main stages:

- A broad, open and participatory discussion involving all stakeholders, including government, civil society, private sector, and representatives of the various land user groups, experts and academics, with the purpose of reaching political consensus over the main lines of legislative reform;
- Land law review, with the objective of implementing the political consensus achieved in the first stage.

International context

In addition to the Mozambican legislation and experience – largely perceived as pioneering in terms of safeguarding land rights – there are new international agreements and instruments used to guide countries all over the world. We would highlight the following:

- Framework and Guidelines on Land Policy in Africa (2010);
- Voluntary Guidelines on the Responsible Governance of Tenure of land, fisheries and forests in the context of national food security (VGGT), approved by the Committee on World Food Security in Rome, on May 11, 2012
- Principles for Responsible Investment in Agriculture and Food Systems (endorsed by the CFS in Rome on October 15, 2014).

The AU document comprises the following main points:

- The development of any land policy, and its implementation and evaluation, should be inclusive and participatory;

- National ownership is crucial to ensure both broad acceptance at the grassroots level and effective implementation;
- The local, innovative indigenous principles and practices may inform the process;
- Participation of women should be full and informed (they are the main land users);
- Successful policies contribute to improved governance, environment and peace.

Similarly, the VGGT highlight that the leaders of land reform or review should:

- Work with persons and groups with legitimate land tenure rights potentially affected by decisions before any decision is made, and respond to their inputs;
- Ensure the active, unhindered, effective and substantive participation of groups and individuals in decision-making processes, including both men and women;
- Take the implementation capacity into account at the time of preparing land policy, laws and procedures

Lastly, PRAI include ten guiding principles:

1. Contribute to food security and nutrition
2. Contribute to sustainable and inclusive economic development and the eradication of poverty
3. Foster gender equality and women's empowerment
4. Engage and empower youth
5. Respect tenure [rights] of land, fisheries, and forests and access to water
6. Conserve and sustainably manage natural resources, increase resilience, and reduce disaster risks
7. Respect cultural heritage and traditional knowledge, and support diversity and innovation
8. Promote safe and healthy agriculture and food systems
9. Incorporate inclusive and transparent governance structures, processes, and grievance mechanisms
10. Assess and address [investment] impacts and promote accountability

AN OPPORTUNITY TO CONSOLIDATE AND TAKE ADVANTAGE OF THE MOZAMBIKAN EXPERIENCE

The Mozambican experience in the 90s and the resulting legal/policy framework significantly contributed to the global discussions that produced the three documents mentioned above. Therefore, and anticipating a new review of the land legislation, Mozambique should maintain its leader profile in the development of progressive and equitable policy and legal processes. This means that an in-depth review entails the integration of the principles listed above and an assurance of participation at various levels.

The 1997 LL was broadly and democratically discussed and prepared under the leadership of the Land Committee. One of the outcomes of this process was a new law, strongly legitimate, confirmed by the 1996 National Conference. Maintaining a similar level of legislation legitimacy will be crucial in this new process. Thus, the facilitations of a broad discussion of the land policy and its objectives is key to achieve that goal. Building a consensus on how to move forward is a crucial step for the rigorous and complete implementation of the law.

Similarly, we should underline the importance of setting up a public governance and administration system with capacity to implement the legal and policy framework produced by the review, even if such framework brings along new challenges and changes to the technical approach within the sector.

‘Capacity’ in this context should encompass the willingness of land governance and administration institutions to modify or adopt new, appropriate technical procedures for the legal framework’s social and economic objectives. It is not a matter merely of allocating adequate equipment and staff to services for technical and administrative activities.

Reviewing the land legal framework could be a unique opportunity to study the effectiveness of innovative instruments within the current socioeconomic environment. In this regard, it is necessary to integrate rights acquired – culturally, historically, and informally – by occupation into a unique legal/policy framework that also addresses the needs of a modern private sector and the requirements of formal administration. This provides an opportunity to consolidate progress achieved in the 90s and to suggest more radical modifications and/or changes, so that the new framework may respond better to the challenges of the present.

KEY ELEMENTS OF A ROAD MAP

Bearing in mind the principles and guidance discussed above, the Land Law review process should cover the following themes:

- Identification of problems and new opportunities
- Analysis of the social and economic context and of the socioeconomic and political objectives of the government/lobby groups/other stakeholders
- Policy discussion: does the current NLP still respond to the current reality? If not, what should a new NLP be like?
- Review of the law and update of related regulations
- Institutional analysis

- Reform and/or capacity-building proposal for all levels in order to ensure effective implementation of the new policy/legal framework

Each stage must be comprehensive and take into account every factor (economic, agro-ecological, legal, and institutional) before proceeding to the next step. ***The outcome of the first three stages should point out the way forward.*** E.g. problem identification could show that, indeed, the underlying cause is institutional capacity, rather than the legal framework *per se*. The analysis of the social and economic context may show that the conceptual and philosophical paradigm still addresses the country's needs and point to the need of clarifying or detailing some problem areas, i.e. how to strengthen land management institutions and simultaneously enhancing specific aspects of the legal framework in order to improve alignment with the current context, without going into fundamental or even constitutional issues.

Conversely, if the outcome of the themes would indicate a totally different strategy, then a more in-depth review process would be required, one that is more demanding in terms of time and resources.

The Annex advances summarised proposals for these two possible outcomes.

Within the current socioeconomic context, opinions differ about the relevance and adequacy of Law 19/97 and of the land policy framework. This points to the need of undertaking a more in-depth discussion around the possibility of reviewing such framework. Therefore, it would be important to start by promoting discussion around this issue.

As an innovative policy option, we believe that the concept of acquired rights of tenure should be kept as one of the main features of land legislation. This is the basis for both respecting tenure rights of the majority of Mozambicans and effecting a participatory and negotiated process in the implementation of investment projects. Discussions around the Local Community, its status of an integral party to land management and holder of a collective land title (DUAT), and around the local community's representation mechanisms, should be enhanced. Due acknowledgment is given herein to the big challenge of integrating the interests of all different groups with a stake in the use of land in Mozambique.

In addition to these matters of a 'political-strategic' or even philosophical nature, it is possible to identify a number of legal and practical issues that need to be addressed in order to improve the current legal framework and to make a better instrument of Law 19/97 by aligning it with the current socioeconomic context.

Mozambique has a debate and discussion forum that could facilitate this process: the Land Consultation Forum. This entity has a multi-sector character and integrates all groups of interest dealing with the 'land issue'. Nevertheless, it will be important to think in terms of the technical and organisational capacity required to take up this new, big task.

THE PROCESS CONTENTS

THE POLICY DISCUSSION

The policy discussion should take a number of factors into account:

- The current reality of land use and tenure in terms of rights acquired by either occupation or authorised request, pursuant to article 12 of the LL
- The various problems and issues surrounding the access to land by other social and economic groups for both personal and investment project purposes
- What Mozambicans want from land in terms of use and territorial planning (production, conservation, housing, etc.)
- The social and economic objectives of the government
- Alternative stances of other political and civil society groups favouring the social and economic objectives of land and its natural resources
- Regional and global circumstances that could condition or be taken into account to update the NLP
- The current and the desirable institutional arrangements and capacity to ensure an effective and efficient implementation of the land management policy/legal framework within the context of national development

Although the possibility of a radical change to the NLP should not be put aside, everything points to the fact that, in sociological and structural terms, the situation of acquired land rights land has not changed a lot comparing to the context in the 90s. However, it is equally obvious that the socioeconomic context of the country has changed substantially over the last 20 years and that there are new governance and land and natural resources management challenges.

There is a strong and growing demand for land for economic investment purposes that foster growth and wealth production for the general well-being of the population. On the one hand, local rights are increasingly vulnerable to 'being captured' by more powerful interests. On the other hand, investors and entrepreneurs require transparent, direct, efficient and legally secure access to land. In addition, it should be noted that in spite of the progress achieved by the 1995 NLP and Law 19/97 in terms of acknowledging acquired rights and of mechanisms to facilitate access to previously occupied land, vast unused or underused areas remain. There is a great deal of discussion about the existing *real but illegal* land market in the country, particularly in larger urban areas.

However, in all likelihood, the outcome of the review will not be that different in terms of the existing rights, underlining one of the key points of the 1995 NLP, but rather an adaptation of the policy/legal framework to the current context, keeping its basic principles.

THE CURRENT LEGAL FRAMEWORK

Not trying to anticipate the expected policy discussions, presenting some preliminary indication of some aspects included in the current land legal framework that should be considered by the review and/or reformulation is nevertheless relevant, as a way of ensuring increased land management security, profitability, transparency and development.

Following nearly two decades after the approval of the current Land Law and additional legislation, bearing in mind the evolution and dynamics of the national political and socioeconomic circumstances and the experience of small, medium and large enterprises with the several issues around the access to and security of land, we believe that now is the right opportunity to think about an in-depth reform of such legislation.

In order to better appraise the current situation we should to reflect on the evolution of the land legal framework in Mozambique. Box 1 describes such evolution in historical terms, including the colonial period and the two post-independence phases, i.e. the period before the approval of Law 19/97 and the period after that, when the market economy was effectively established and grew in the country.

In addition to the social and economic concerns, this evolution was fed by (socialist) ideological concerns. In every discussion around Law 19/97, the need of maintaining land as 'state property' has always been a key feature, to ensure access to land by Mozambicans and avoid the concentration of land on just a few owners, particularly foreign groups and interests.

Presently, with free market economy consolidated in the national conscience and landscape there are issues about whether or not to keep this fundamental principal, which conditions all possible options of any review of the land policy/legal framework.

BOX 1 – Brief summary of the country’s land framework evolution

Colonial period

Before the National Independence, access to land was based on colonial legislation. The Regulations on Land Occupation and Concession in Overseas Provinces (Decree no. 43 894, of 6th of September 1961) stratified land and included one category allowing access by means of private property, right of usufruct or lease, and one category of ‘indigenous’ land with a certain level of protection against alien demand (thereby creating an interesting precedent for the current acknowledgement of customary management for acquiring a DUAT).

Post-independence period – 1975 to 1995

After Independence, the new socialist regime nationalised land and made it the exclusive property of the state. Access by individuals was possible mostly by means of a land title, the DUAT (*direito de uso e aproveitamento da terra* or land use and tenure right). A Land Law was approved in 1979 (Law 6/79, of 3rd of July) and the regulations in 1987 (Decree 16/87, of 15th of July).

In 1990, the new Constitution of the Republic of Mozambique established the market economy system, thereby initiating a process of (re)privatisation and economy liberalisation. With the end of the civil war in 1992, the demand for land for investment was strong, and despite jeopardising the rights of the population it also provided the opportunity for a more dynamic economic growth.

Pressure was felt at the time to reform the land policy/legal framework to address these issues. In 1995, the National Land Policy (NLP) was approved (Resolution 10/95, of 17th of October), which provided increased security to land access and made the system more flexible. One of the main focus was the protection and acknowledgement of acquired rights, including the acknowledgement of the Local Community as the holder of a collective DUAT and as capable of participating in contracts with third parties. The NLP also made the equality of men and women explicit in terms of rights of access to land, and required private investments to bring about benefits for resident populations.

Post-independence period – 1997 to present

The NLP was materialised with the approval of the current Land Law – Law 19/97, 1st of October – and its regulatory framework – Decree 66/98, 8th of December (“LLR”) – and Technical Annex – Ministerial Diploma 29-A/2000, of 17th of March – which guides the identification and registration of rights acquired by customary occupation and good faith. Since then, the NLP has been changed occasionally, the last time in 2010. Complementary legislation has been approved, as well, noticeably the diploma on the community consultation process (Ministerial Diploma 158/2011, of 15th of June).

The new Constitution, currently in force, was approved in 2004. It basically maintains the land system in place; however, the concept of ‘public community domain’ was introduced for areas of common and public use considering local and cultural use of resources in areas under a collective DUAT of local communities.

This is not merely a question of using the land as collateral for banking loans and creating a capital base in the country. There are important social issues at play, e.g. thousands of farms acquired through customary norms and practices or informal systems – i.e. acquired rights – that remain extremely vulnerable in a context of aggressive demand for land.

What is the best way of securing the effective protection of such rights and simultaneously promote private investment by either the household or the ‘private’ sector? In fact, this challenge is not much different from the challenge faced by Land Committee in 1995/96.

Nevertheless, some of the main land legislation problems encountered pertain to institutional organisation and functioning:

- Lack of clarity about representation and action of local communities, compounding the issue of their practical function in land management (Article 24 of LL), and about their representation in public consultations and other decisions made in favour of the rights of collective DUAT co-holders (Article 30 of LL, which addresses this matter, was never fully met
- Scattered legal provisions on land
- Excessive de-concentration of responsibilities, partly due to the law and partly due to the internal organisation of relevant services
- Poor command of the full land legislative package by the officials that deal with the issue on a day-to-day basis, and particularly so when land provisions need to be articulated with specific provisions in sector legislation, like mining, petroleum, energy, etc.
- Some discretion in the use of de-concentrated powers and lengthy administrative procedures
- Inconsistency when addressing issues
- Uncertainty and little progress in gender equity regarding DUAT holders and their access to and use of land
- Little clarity about some procedures relevant to economic transactions, such as the transmissibility of DUATs, assignment of DUATs, the surrender of DUATs to a third party, etc.
- Lack of effective mechanisms to manage the issue of customary occupation – *de facto* rights to be protected – and instances of abuse or bad faith that increase the cost and difficulty of implementing economic development projects

- Lack of clarity about some mechanisms to protect legitimate land rights and interests
- Difficulties in obtaining bank loans due to legal limitations on the transmission of DUATs
- Since 2006 – USR approval – the economic and social context keeps evolving, including the illegal urban land market, thus making an adequate and effective solution for urban soils even more urgent
- Very active informal land market, with loss of revenue for the state, a lot of speculation involving DUATs, corruption and little security for investors.

However, two contextual elements of Law 19/97 and its implementation are noteworthy, and these are of a practical nature. Firstly, the institutional reform expected as part of the LL implementation strategy was never significantly introduced. Today, the implementing capacity of public institutions (DINAT, SPGCs and Districts) is one of the main constraints to the effective enforcement of the legal framework. As such, any review, regardless of its appropriateness to the current reality of the country, can be but partially implemented if it is not accompanied by enhanced institutional capacity.

Another aspect of the LL, in this case positive aspect (pointed out during the World Bank’s Land Conference), is the ‘size’ of the legislative package. There is an issue of scattered instruments and laws, but compared to other countries the Mozambican legal package is small and accessible to many stakeholders. Legal support is always advisable at critical moments, but the relative simplicity of the current framework promotes a rather democratic and practical use. This aspect should be taken into account by every review in order to avoid creating something too detailed that might be less accessible without professional legal support, thus requiring material resources unavailable to common Mozambicans.

SPECIFIC ELEMENTS THAT DESERVE SPECIAL ATTENTION

Assuming that the current constitutional base – the land is property of the state – and the ways of obtaining a DUAT as provided by Article 12 of Law 19/97 will continue, the expected reform should, *inter alia*, seek to:

- Provide increased legal strength to DUATs and special licences, namely by reforming and effectively operationalise relations between Cadastre and Land Registry
- Harmonise concepts and definitions across the whole land legal system
- Improve criteria to determine when can a land title be transferred, taking the distinction between rural and urban property and the territorial

- planning/zoning into account, thereby dramatically reducing discretion and corruption
- Make the DUAT transfer system compatible for both rural and urban properties
 - Articulate the transfer of rural DUATs with the territorial planning laws, minimising the legal uncertainty of transfer procedures
 - Clarify the concept of ‘improvements’
 - Provide increased security of and interest on land title holding, namely by clarifying national and foreign investors about the security of the legal system governing DUATs
 - Make access to bank loans easier for DUAT holders
 - Increase revenue collection for the state by enforcing the fees/taxes due in connection with such transactions, clarifying the powers of legal entities to actually collect taxes and/or fees (e.g. avoid the illegal collection of occupation fees by municipalities, which are unconstitutional)
 - Better articulation between land legislation and the legislation on human resettlement, environment and territorial planning, as well as with the relevant general and sectoral legislation
 - Clarify the mechanisms of partnerships between local communities and investors, and establish more effective mechanism for a proper, transparent and informed participation of communities in negotiations with investors
 - Clarify the dynamics of the various transactions that might take place involving the holding of a DUAT
 - Improve, encourage and secure the land market in the country without neglecting legal assurances for social issues related to the use of land in the country
 - Ensure higher profitability of land
 - Improve the institutional relations and coordination between the various bodies involved in issues related to land rights and registration

THE COMMUNITY ISSUE AND RIGHTS ACQUIRED BY CUSTOMARY OCCUPATION

The treatment of rights acquired by customary occupation – which comprises cultural, historical and ‘indigenous public administration’ issues – is one of the most innovative elements of Law 19/97.

The approach of both the NLP and the policy implementation law was designed to address the persistent ‘dualism’ that characterised, and still characterises, land policies and strategies across the African continent – the division of national landscapes into ‘communal or traditional areas’, administered by customary systems, and commercial areas, administered in line with modern cadastre standards.

The solution of Law 19/97 has been praised by many observers and experts in the field and, in principle, should be kept by any review of the legal framework. It

should be stressed that the list above is applicable to local communities and community members that are co-holders of collective DUATs. The key point in this context is that DUATs acquired in this way are legally equal to those acquired by request to the state. Aspects like 'legal strengthening of DUATs' and 'using DUATs to access bank loans' are equally important within this context.

There were, however, significant difficulties with the implementation and interpretation of concepts and instruments in the law to operationalise the acknowledgement and the integration of customary rights. A number of specific problems may be identified:

- Representation and mandate of the Local Community concerning land and natural resources management and administration (LL, article 24 and, in this context, also the Forestry and Wildlife Law) (it should be noted that this matter has been already acknowledged in article 30 of Law 19/97 but requirements in this article have never been adequately or fully met)
- The prevailing perception by other interest groups that communities (and community members) don't have a land title 'for real' since they don't have a DUAT (meaning here the *DUAT Title*, rather than right *per se* under Law 19/97)
- The difficulties of many – including politicians, technicians and investors alike – to understand that a DUAT acquired by request may exist within a 'community area' (thinking about such area as something exclusive, a point of view rooted in the dualist vision of African agricultural economy)
- Marginalisation of this large group of holders – maybe even the larger group – when it comes to negotiate and enter into contracts with third parties, or to use their DUATs to contract loans or other benefits (thus totally diluting the impact of Law 19/97 as a 'sustainable and equitable' socioeconomic development instrument, to quote the NLP)
- The lack of integration of local and cultural structures responsible for land and natural resources management at the base of the pyramid of Mozambican institutions in charge of the governance and management of these resources

INSTITUTIONAL ASPECTS – ENSURING EFFECTIVE IMPLEMENTATION

It is crucial to keep the factor of implementation capacity in mind (see also VGGT to understand the frequency of this issue worldwide). There are two aspects to take into account:

- It wouldn't be right to blame the policy/legal framework for the problems we face today and consequently initiate reforms if, indeed, these

problems stem from the weak implementation capacity of the public institutions in charge

- Reforming the policy/legal framework is pointless if the same lack of capacity and/or institutional inadequacy persist, rendering institutions unable to take up basic land management and administration tasks in addition to new functions that might be defined by a new framework (as it happened from 1997 onward)

THE POLICY/LEGAL FRAMEWORK AND THE PLANNING AND GOVERNANCE SYSTEM

Many of the current compounding elements could be resolved if some comprehensive territorial planning/zoning work was carried out. This would clarify economic activities that could be undertaken within a specific area. In addition, such work should clarify the role of Provincial/District Governments and Municipalities in territorial planning.

In this way, acquiring a DUAT would be made easier by the development and zoning plan in force for each area. This draws on the concept of 'change of use' – if there is no change to the actual planning and zoning, then there wouldn't be a need to analyse and approve the proposed project, thus simplifying the administrative process.

This rule is applicable to both new DUAT requests and cases of purchase and sale of investments, where the DUAT has to be transferred along to the new land user.

It goes without saying that if the legal review anticipates the full territorial zoning and planning of the country in line with the Territorial Planning Law, the preparation and implementation of a programme to undertake such activity should be an integral part of the Implementation Plan of the new legal framework. The same applies to the 'once-and-for-all' clarification of mandate and powers of Provincial/District Governments and Municipalities in what concerns land management and planning.

ANNEX – TWO ROAD MAPS TO REVIEW THE LAND POLICY-LEGAL FRAMEWORK AND A SUMMARY OF PRIORITIES

1) NLP without major changes – detailed review of specific aspects

THEME	MAIN LEGAL DEVICES TO BE REVIEWED	OBSERVATIONS	PRIORITY / IMPLEMENTATION PERIOD
Strengthen and clarify the legal nature of the DUAT	Land Law LLR USR	<ul style="list-style-type: none"> Debate and clarification (public official document) of the nature of the DUAT as a private and exclusive instrument protected by law and based on the Constitution [1] 	Priority: High Short term

	Transfer procedures (of DUAT)	Land Law LLR USR	<ul style="list-style-type: none"> • List of required documents; • Definition (expansion?) of the concept of ‘improvements’; • Definition of clear and objective criteria for transferring infrastructures, improvements and constructions, along with a clear definition of concepts, including the possibility of acquiring a relinquished DUAT title; • Clarification of the way to make proof of ownership of a DUAT or infrastructure, improvements or constructions; • Establishment of a deadline to make and notify a decision to the interested parties, and introduction of the concept of tacit approval once such deadline has expired; • Definition of documents to present for transfer and public deed; • Definition of clear criteria for transfers by communities, taking into due account the relevant social issues and the protection of community members against abuse, to avoid instances of communities without land for housing and production. 	Priority: High Implementation : Short term
	Partnerships between communities /DUAT holders and investors and others	Land Law LLR USR	<ul style="list-style-type: none"> • Clarify the process and requirements to facilitate the establishment of partnerships between communities and other DUAT holders and investors, determining the basic mechanisms to ensure security for all stakeholders • In this regard, the Assignment system is crucial and, in this context, the concept of Community Usage Plan introduced by the new Decree is key, forming the basis of a Business Plan for purposes of entering into an Assignment contract between a community and an investor • This issue is closely linked to the issue of community consultation, which should also be the focus of the negotiation process between the parties • There is also some fear of the idea of clarifying the forms of partnerships, since indeed it is the parties who should decide what is to be done with the local land resource (I.e. this would fall more under the contract law than under the land law). 	Priority: High Implementation : already ongoing (Assignment); medium term for the other elements

	Representation and participation of local communities		<ul style="list-style-type: none"> Given that the requirements in article 30 of LL have never been met, draft a specific law or regulations to define the representation and mandate of local communities in terms of land and natural resources governance and management Clearer mechanisms for the appropriate identification of community members to avoid illegal abuse and increased costs of investment projects. 	Priority: High Implementation : Short term.
	Real gender equity concerning DUATs and land governance	LLR Sectoral plans and strategies	<ul style="list-style-type: none"> The Constitution, the LL, and other instruments create a sound base to ensure equity of women in terms of accessing DUATs. In practice, there is still a lot to be done A more detailed drafting of regulations could help in this regard 	Priority: High Implementation : Medium term
	Institutional reform of the land management and administration institution	LL LOLE TPL Sectoral plans and strategies	<ul style="list-style-type: none"> An adequate governance and administration institution is crucial to implement the policy-legal framework Reviewing the framework is pointless if such capacity does not exist; this has been a key factor for the partial and <i>ad hoc</i> implementation of the current policy-legal framework 	Priority: High Implementation : Medium term

	Cadastre /Property Registry		<ul style="list-style-type: none"> • Clarify, reform and legislate for better and more functional relations between the cadastre and the property registry • Clarify the rules for and the role of the cadastre • Clarify the articulation between the central and the local cadastres • Clarify the articulation between sector cadastres (e.g. mining cadastre) and the land cadastre • Clarify priorities/correction of discrepancies/overlaps • Clarify instruments used as a basis for property registry and their execution, to facilitate identification • Clarify the possibility of registering promissory contracts of future assets and mortgages to be established 	<p>Priority: High</p> <p>Implementation : Short to medium term</p>
	Mechanisms to establish the economic value of the land	Land Law LLR USR	<ul style="list-style-type: none"> • Establishment of bases to enable the formalisation of the land valuation activity – which is something that has been done already; this would promote such activity on the legitimate market and would benefit the state through tax collection. 	<p>Priority: High</p> <p>Implementation : Short to medium term</p>

9.	Other aspects		<ul style="list-style-type: none"> • Strengthen citizens' right to information on land available/occupied, mandatory publication, and means to be used • Strengthen measures against corruption • Clarification of deadlines to be respected when granting land rights • Clarification/improvement of some concepts/definitions used in the legislation, taking the Civil Code and other instruments into account • Introduction of clear provisions on the change of business plans and land use • Review of the Urban Soil Regulations • Review of the Territorial Planning Regulations • Legal provisions covering frequent issues such as the assignment/transfer of a DUAT request initiated by one entity to other company subsequently incorporated where the former has a share (frequently once agreements have been entered into with investors/capital to develop the project), without having to wait for the DUAT to be issued and then proceed with the assignment or the waiver procedure • Clarification of procedures to obtain special licences for accessing land in protected areas, and clarification of when may such licences be assigned • Review of the <i>mortis causa</i> land transfer, taking better protection for women into account 	<p>Priority: High</p> <p>Implementation : Short to medium term</p>
	Access to loans	Land Law LLR USR	<ul style="list-style-type: none"> • Clarification of the possibility of obtaining loans by submitting the temporary DUAT authorisation • Introduction of the possibility of credit institutions assessing land using specific mechanisms • Clarification of the possibility of contracting loans by submitting the temporary DUAT authorisation or the DUAT title, with similar assessment criteria 	<p>Priority: High</p> <p>Implementation : Short term</p>

	Land taxation	Land Law Tax legislation	<ul style="list-style-type: none"> • Clarify the issue of taxation and tax base for DUAT transactions considering both the annual fees and the surface tax, mining tax, inheritance and donation tax, conservation areas, etc. • It is impossible to think about sustainable and corruption-free land governance and management without having a sound tax base 	Priority: High Implementation : Short term
	Community consultation	LLR Technical Annex	<ul style="list-style-type: none"> • There are already enough standards and rules to build on the accumulated experience • Definite and detailed regulations governing and clarifying all aspects related to community consultation are crucial for the assignment of a DUAT acquired by occupation to a third-party investor • Better clarification of procedures and ways of recording consultations made and consensuses achieved/information to make available beforehand, among other aspects that may contribute to ensure a transparent and informed negotiation 	Priority: Medium Implementation : Medium term
	Land Ownership	Constitution Land Law	<ul style="list-style-type: none"> • Initiate the debate of the pros and cons of land privatisation, even if partial, particularly if the concerns that led to the state-owned system still persist; possibly consider alternatives to state-owned land to protect the rights of the financially disadvantaged population [2]; • Consider the possibility of accepting private ownership of land in some areas with greater activity and particularly dedicated to construction, simultaneously trying to make the land system compatible with the acknowledgment and protection of private ownership of buildings, enshrined in the Constitution 	Priority: Low Implementation : Long term

[1] This does not require a debate at the constitutional level, at least not so on the short to medium term. The objective would be to investigate how to turn the current system into something more 'private' and secure in relation to rights already granted – the DUAT – which is not necessarily that different, functionally speaking, from any other 'private property right' – it already incorporates some aspects of private land ownership. What is needed is to make it stronger and clarify the contents of DUATs, assignment, etc.

[2] This is a critical point, rather than a merely ideological or political one. Today, the majority of instances of land occupation are not registered, although they have DUATs by means of customary norms and practices and of good faith. We might say that whereas the current regime was established on the ideological bases of the 70s and 80s, the justification today to maintain such system is rooted on strong and very different sociological factors, from the perspective of social equity and equitable and fair development.

2) NLP with significant changes – In-depth and comprehensive review

To ensure the required legitimacy based on the construction of a *political consensus* over the governance and use of land (and natural resources) it will be important to provide a long enough period of time for broad and active participation. Technical discussions could also be guided by the list of topics in the previous table.

It is also crucial to initiate the regulatory review as soon as possible following the approval of a new Land Law, as well as the institutional assessment and proposal. The process should encompass the following stages:

- **Identification of new problems and opportunities**

9 months

- **Assessment of the social and economic context and of the socioeconomic and political objectives of the government / interest groups / other stakeholders**
- **Policy discussion: does the current NLP still address the current issues? If not, what should the new NLP be like?**

- **Review of the law**

12 months

- **Dissemination of drafts (at least twice, incorporating comments)**
- **National Conference to consolidate and confirm the political and social consensus and address other final issues before the draft law**
- **Submission of the draft law to the Parliament for approval**

- **Institutional assessment**

3 months

- **Proposal of reform and/or institutional capacity-building at all levels to ensure effective implementation of the new policy-legal framework**

- **Update of regulations and annexes to implement the framework**

12 months