

**CHALLENGES IN IMPLEMENTATION OF
MOZAMBIQUE'S PROGRESSIVE LAND LAW**

Mozambique



➔ Defining and recording community land rights can potentially help protect those rights for local people. *Photo © Andre Calengo*

By Anna Knox and Christopher Tanner

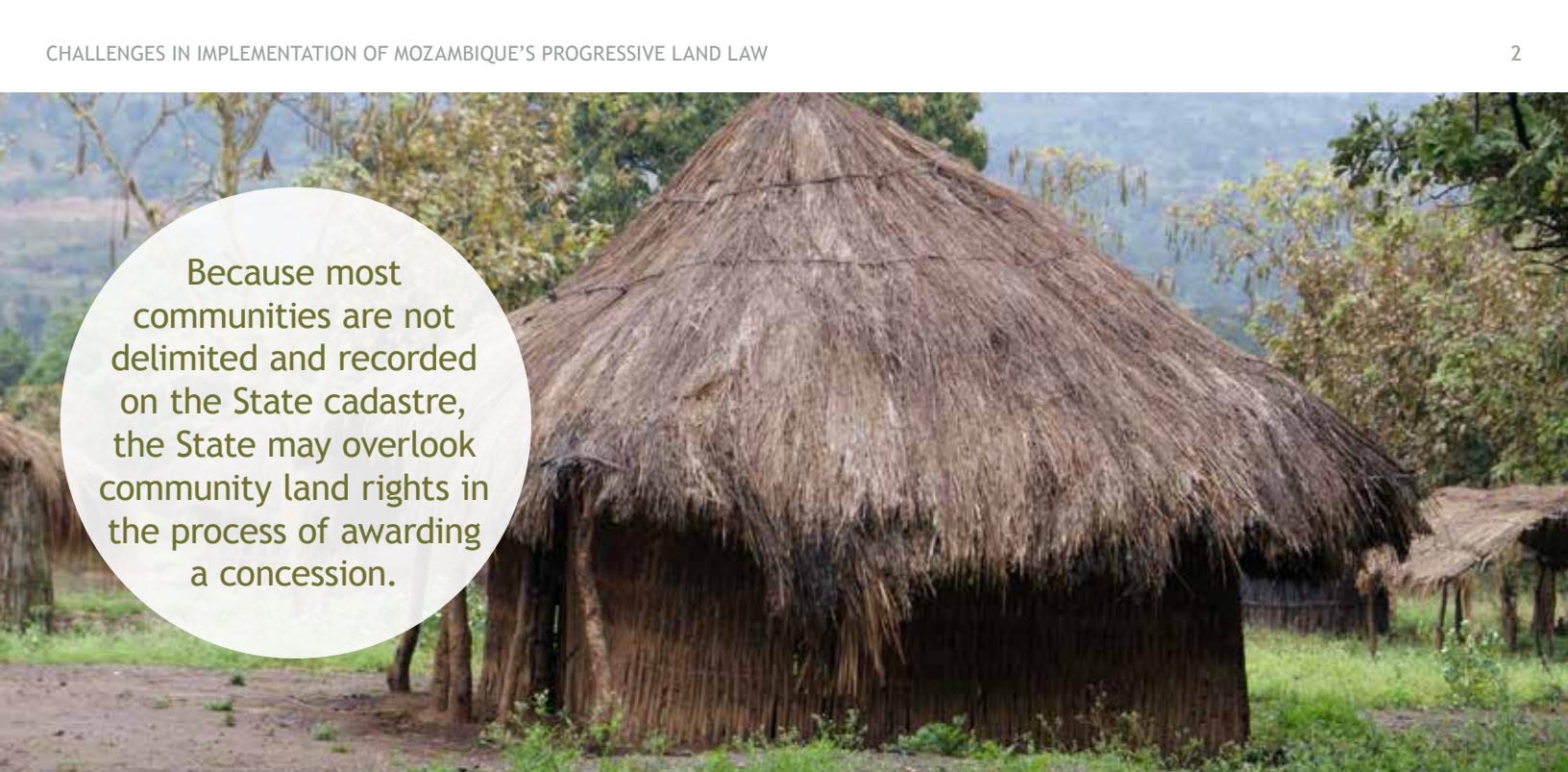
INTRODUCTION

This series of briefs has focused on the importance of a legal framework for land that fosters tenure security for rural citizens and provides a foundation for equitable and vigorous rural development. However, good laws alone do not assure genuine reform. The effectiveness of a law depends on adequate capacity and the will to implement the law. In the case of land legislation, this applies to both those who claim rights—typically individuals, communities or firms—and those who administer land rights, namely the government and legitimate non-state authorities (e.g., customary leaders).



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Where communities occupy desirable land, there may be pressure on public officials to identify “empty land” for investors, even though such land is actually held under customary tenure and rarely unused. *Photo © Andre Calengo*

IMPLEMENTATION CAPACITY OF THE GOVERNMENT AND RURAL COMMUNITIES

In 1997, Mozambique passed a progressive land law that sought to safeguard rural land rights acquired through customary norms and practices. The law enables rural communities to assert rights to their collective territory while continuing to apply customary rules to govern land tenure within those territories.

Many facets of the law promise relatively low-cost implementation. First, there is no legal obligation to register rights acquired by customary or good faith occupation, unless circumstances necessitate it (e.g., when land is sought out by investors). Second, whole communities can have their boundaries delimited or their rights registered as one unit, thus avoiding the need to have hundreds of individual plots titled or registered. Third, rights acquired by customary or good faith occupation can be held in perpetuity and without cost. Only those seeking new rights to land—typically for commercial investment—need to have their land demarcated and registered and to pay rents to

the government for their use. With these provisions in place, Mozambique’s law promises to make state-backed, formal land rights accessible to those least able to pay.

Through the 1997 law, all rural citizens occupying land in effect already have state-sanctioned rights to that land. However, their capacity to have those rights recorded and registered is often very weak. Local land administration units and governments offices lack the capacity to respond to the specific needs of communities and the growing number of private investors.

In 1992, Mozambique emerged from a 16-year civil war with weak local governance and poor rural infrastructure. Most professional training opportunities could only be had overseas or through a single surveying and topography school in Maputo. While the situation has markedly improved, there are still very few degree-level professionals in the land administration, and resources are stretched thin over this vast country.

Under the new law, responsibility for rural land administration in Mozambique lies with provincial units known as *Serviços Provinciais de Geografia e*

Cadastro (SPGCs). These units are sorely understaffed and lack trained surveyors, cartographers, IT and GPS equipment, vehicles, and communications systems. Mozambique has also lacked a unified land administration strategy and a land information management system (LIMS) appropriate for the country’s needs and capacities. Most SPGC staff members have not been trained in participatory rural appraisal and community-based work and, as such, are poorly prepared to implement the community aspects of the Land Law. Public sector implementation of the law has therefore been severely handicapped.

Many rural citizens are unaware of their land rights under the law, or of the processes for having those rights recorded in the cadastre and registry. For most, the cost of cadastral services is prohibitive. The SPGCs tend to focus on responding to private sector and individual needs, while the majority of community land processes are supported by NGOs with donor funding. By September 2009, only 322 rural communities of those with DUATs acquired by occupation had delimited their land. By contrast, 35,357 authorized DUAT titles have been issued to individuals and corporations.

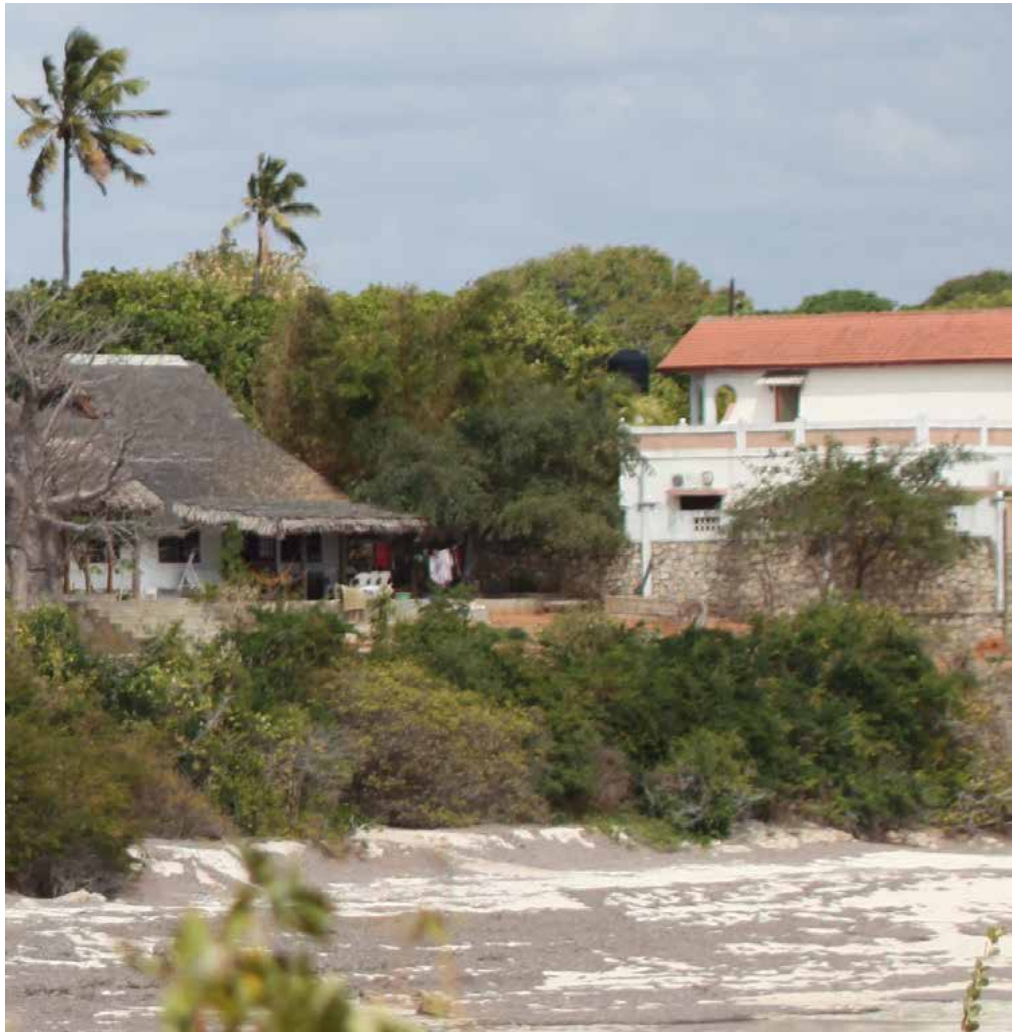
THE CONSEQUENCES OF WEAK CAPACITY

Commercial concessions of land are an important source of income to the State and bring the promise of rural investment, jobs, and growth. However, the recent surge in demand for large concessions dedicated to biofuel, plantation forestry, and export food production threatens to deprive rural populations of the asset that is most fundamental for their livelihoods, social security, and sense of identity. Continuation of this trend could pave the way for greater inequality and poverty.

Because most communities are not delimited and recorded on the state cadastre, the State may overlook community land rights in the process of awarding a concession. Even if the State is aware of community rights, they are prone to not being recognized by public officials or investors if they are not visible on the cadastre. If investors are averse to negotiating with communities or if the government is keen to promote new investment, there may be pressure to identify “empty land,” even though most such land is actually under customary DUAT that has not been delimited. Or, they may do the minimum necessary to obtain a ‘no objection’ from a few community members to transfer land rights without engaging the broader community.

INCENTIVES FOR IMPLEMENTING THE LAW

In 2009, the Millennium Challenge Account Mozambique invested nearly US\$40 million in a five-year program largely dedicated to strengthening land administration capacity in Niassa, Nampula, Cabo Delgado, and Zambezia provinces. This program includes training human resources and building technical capacity in the SPGCs in these provinces, as well as the development and implementation of a nationwide land administration strategy and LIMS. The program also manages a fund to which communities can apply to cover the costs of having their land delimited and recorded in the cadastre. However, even if the capacity of government and communities to undertake delimitations is significantly improved, further



A 2007 Land Law Regulation requiring approval from the Council of Ministers for delimitation has virtually halted the issuance of community DUAT certificates. *Photo © Andre Calengo*

challenges are likely to hinder effective implementation of the law.

Investors can be politically connected, making it difficult for local officials to argue in favor of communities who might hold acquired rights in areas desirable to investors. There are also many opportunities for corruption in a landscape where land regulations still include significant administrative discretion. Hence, it is typically in the best interests of communities and individuals with acquired rights to have their land delimited and boundaries recorded in the cadastre. This clarifies the location of existing rights and helps to identify the rightholders with whom outsiders must engage and negotiate.

Nevertheless, delimitation of rights acquired by customary or good faith occupation may run counter to

the interests of public officials and investors. This is especially true where communities claim large areas based on customary occupation in regions that are attractive to investors. While the law prioritizes delimitation of existing rights in areas where new projects are proposed, these often never take place. Instead, recognition of community rights via delimitation may be seen as discouraging investment opportunities.

An amendment to the Land Law Regulations enacted in October 2007 seems to reflect this concern. Under the amendment, rural communities are required to prepare a land use plan if they wish to have their land formally titled. It also subjects all community processes for areas over 10,000 hectares to approval by the Council of Ministers. While this amendment initially applied to communities seeking title to their

land—as opposed to a certificate of delimitation—it was subsequently extended to include community delimitations. This has virtually halted the issuance of community DUAT certificates. Before enactment of the amendment, 225 communities had received certificates of delimitation; three have received them since the amendment was enacted.

Mozambique's land policy and law were designed to implement a rural investment model in which communities with land would be able to negotiate fair deals with investors who sought land for their enterprises. Adherence to this model allows communities to decide whether or not to cede their land rights to investors, as well as derive significant benefits if they do so. Such power may be seen as a challenge to the government's authority over land, especially in a country where land belongs to the State. This might explain why some government officials are keen to award 'unoccupied' land to investors, rather than support investor negotiations with communities on their land, and why government officials can exhibit reluctance when it comes to delimiting community land.

While some investors and government officials will be attracted to a sustainable rural investment model that equitably shares benefits with local communities, others will seek ways to extract short-term profits at minimal costs. And they will succeed if the incentives and resources are not there to adequately enforce the law, and if local people

themselves are not aware of their rights and able to exercise and defend them.

MAKING THE LAND LAW WORK

Mozambique's land law has already enabled many rural communities to obtain secure land rights and is now beginning to create opportunities for a small but growing number of community-investor partnerships. However, fulfilling its promise of tenure security and inclusive economic growth that benefits all rural citizens will require:

- Government leaders who are committed to the model for rural investment prescribed by the land law and to seeing the provisions of the land law enforced.
- Greater awareness of how implementation of the land law can contribute to more robust and equitable rural growth that benefits communities, individuals, and commercial investors.
- Continued commitment to building the capacity of public officials to implement the law, including the land administration capacity of SPGCs throughout the country.
- Development of a unified national land administration strategy and LIMS that is consistent with the realities and needs of the country without overstressing its infrastructure and technical capacity.
- Strengthening select provisions in the land law to require that public officials and investors engage in broad consultations and negotiations with local community members and obtain the consent of their legitimate representatives before concessions are allocated.
- Public investments aimed at ensuring that the provisions of the land law are enforced at the local level.
- A judicial system that is able to guarantee the rule of law, including a respect for existing rights and the security of contracts and other key instruments.
- Measures to inform citizens and investors of their rights and how to use the instruments provided in the law to achieve their objectives in an equitable and sustainable manner.
- Creation of independent oversight bodies, an informed and vibrant civil society, and media—all dedicated to holding public officials accountable for proper implementation of the law.
- Realigning incentives for public officials and investors to support recognition of community land rights and rural investment models that yield meaningful benefits for all sides—government, local communities, and investors.
- An international community—including donors, fellow African governments, NGOs, legal professionals, and the press—that backs genuine government efforts to implement the land law and is outwardly critical of actions that undermine its intent.

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The views presented in this brief do not necessarily represent those of any FOLA partners, but rather reflect the views of individual authors.