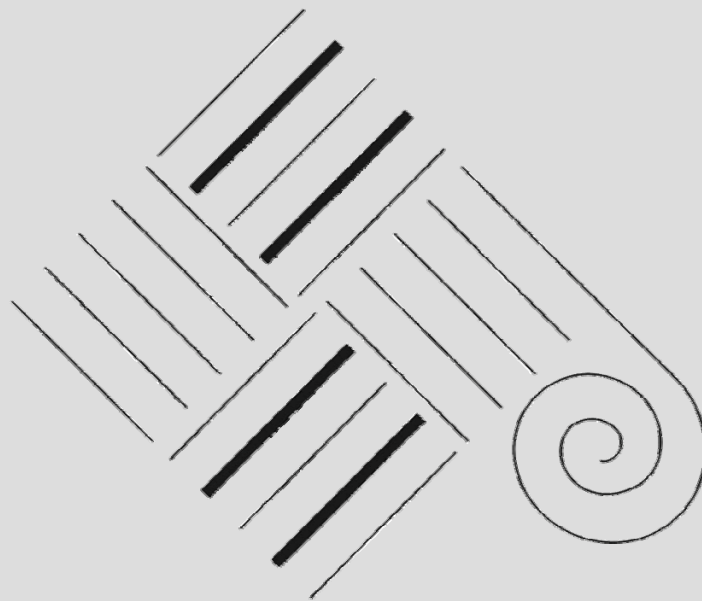




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THE MYTH OF PRIVATE OWNERSHIP AND LAND RIGHTS DEVELOPMENT IN MOZAMBIQUE:

A CONCEPTS NOTE ON THE PERILS OF UNEVEN LAND
POLICY IMPLEMENTATION AND FAILED AGRARIAN
RELATIONS FOR ECONOMIC GROWTH



Lessons Learned: Property Rights and Natural Resource Management
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The Myth of Private Ownership and Land Rights Development in Mozambique: A Concepts Note on the Perils of Uneven Land Policy Implementation and Failed Agrarian Relations for Economic Growth

A Concepts Note

by

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1.0 Evolution of Land Policy

1. At the time of its passage in 1997, the land law of Mozambique was widely heralded as innovative and “smart” in its recognition and protection of community rights, in formalizing rights and implementation mechanisms for concession agriculture, and in enabling partnerships between community and investors.
2. Subsequent to the 1997 law, the GoM with donor support (mainly from FAO) proceeded with developing Land Regulations that culminated in the 1999 passage of the Technical Annex for demarcating community lands.
3. Principles of community registration embodied in Mozambique’s legislation has inspired development of similar legal frameworks in other African countries, including, inter alia, the Communal Land Rights Bill in South Africa, community level registration in Ivory Coast, and the Communal Land Titling Project funded by USAID in Sudan.
4. However, while these other countries found the political will and wherewithal to move forward with legal development and implementation, work on implementing the land law in Mozambique effectively stagnated after 2000.
5. As of 2005, less than 200 communities out of a vast (but unknown) number in Mozambique achieved the status of having their lands demarcated, and even fewer obtained registration status. The GoM has continued to give priority to supporting concession agriculture, but investor turnover and disillusionment is high in face of a disabling environment that is crippling agricultural profitability and sustainability of these farms.

6. Unlike many areas of Africa, it is labor and capital in Mozambique, not land, that are the binding constraints to agricultural productivity. Large areas of land in Mozambique are unutilized or operated with long periods of land fallow. However, while most rural residents have access to land, few have sufficient resources to invest in the water, electricity, and transport delivery that enable the land to be put to use, let alone procure draught power, equipment or seasonal inputs.

Box A: Private or Social Ownerships of Land and Natural Resources in Mozambique

1. Obtaining Land Rights Through Concession? Foreign investors may obtain a provisional title to land on the basis of a land use plan. Full title is awarded after five-years upon demonstration that the plan has been implemented. The ability of Government to monitor and enforce these plans is limited, and lack of transparency and public oversight gives the state too much latitude or freedom to revoke land use rights without adequate compensation or legal recourse.

2. Linking Land Rights to Fulfillment of the Land Use Plan? Once permanent title is issued, the land cannot be sold but any investments on the land can be. However, government maintains the right to authorize the transfer. What happens then, for example, if the land use plan stipulated investment in orchards, but due to saturation of the fruit market, decisions were subsequently made by the investor to diversify into dairy or cashews? Would the transfer be automatic?

3. Community – Investor Partnerships? The land law encourages partnerships between outside investors and the rural community. Investors at present pay an annual rent, but in the future could pay a land price determined by the “auction” of community land. If land rights were fully invested in the community, communities would receive the rent or land price paid, not government. The state would argue that communities do benefit through state provision of public works, but due to lack of participatory and local governance, there are too few guarantees at present that benefits to the community are commensurate with the revenue they forego.

4. Community Ownership? What happens in the event that the concession formed out of community land goes belly up and the investor abandons the concession. Does the land revert to the community or to the state; under private ownership the land would typically revert back to the community which does not appear to be the case at present.

2.0 Private or Social Ownership of Land and Natural Resources?

1. Land according to Mozambique’s Legal Framework belongs to the State. This in itself is not a serious or binding constraint to private ownership as most countries maintain some state control over land resources through eminent domain, imposing restrictions on land use through zoning, or forcing the sale of property in the event of the owner not complying with obligations (e.g. payment of taxes).
2. The form of ownership – “freehold” or “leasehold” – is also not particularly relevant in and of itself as either mechanism can be structured to provide broad investor incentives; for example

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making leases automatically renewable for any foreseeable length of time into the future substantially captures the essence of fee simple title. Conversely, the principles of individual ownership, ease of transferability, mortgagability, and unambiguous state enforcement typically associated with freehold title in Mozambique has been subjected to numerous encumbrances that undermine the utility of ownership. The issue is not the instrument or form of land ownership *per se* but the encumbrances imposed on land ownership by the state that affect the contents of legal rights afforded to the land holder.

3. While the GoM has taken steps to assign or allocate rights in land to communities and investors, the rights conferred DO NOT represent “full” or “sufficient” rights in land. As indicated in Box A, land rights in Mozambique are excessively encumbered by state discretions and latitudes in approving land transfers and enforcing “best” land use management that impose excessively high transactions costs on transfers, and undermines tenure security and the certainty of investment returns.
4. If governance systems were fully transparent and democratic, the issue of encumbrances need not be a concern. However, it cannot be argued at present that government fully represents the interests of society and administers the land democratically on their behalf. Rather, there is still the tendency of the state to administratively allocate land, which in absence of democratic controls, risks corruption and consolidation of resources and power by the politically well connected, or even civil servants themselves.
5. Even if the state is well-intentioned and motivated to protect the interests of society, it is very doubtful that government in the foreseeable future will have the wherewithal to implement the land policy in ways that will be seen by the public as fair, fully transparent, and evenly balanced in terms of protection of both investor and community rights.

3.0 Commercial Agricultural Development

1. What does the current state of land policy mean for the commercial development and management of land and natural resources in Mozambique? In short, it is hard to find anyone outside of government that is happy with the current state of affairs. And, even within government, the reactions are mixed.
 - Examples are reported in urban areas of land rights being revoked to make way for new and more profitable investment without fair or adequate compensation being paid.

- Private foreign investment in agriculture is discouraged because of weak institutions that underpin markets, and consequently weak or highly risky profit and disincentives for investment in capital and labor. Availability of land in Mozambique is not the binding constraint. Rather (or in addition) it is investment in rural infrastructure, water supply, and movable and immovable property. If this capital is to be provided only through reinvested savings from farm operations, then commercial agriculture and rural infrastructure development will be grueling and gradual. Given the high transactions costs observed by banks and investors in transferring land and property, land is not seen as viable collateral under existing conditions.
 - It is difficult to assess the state of formal lenders in the agricultural arena. Banks by their nature must provide due diligence on investing the savings mobilized from depositors and to secure an adequate return on investment. Under the current state of affairs in Mozambique, land has no present or future value as collateral because of the current encumbrances imposed on land by the state. This scenario is derived from lack of land scarcity in Mozambique that constrains growth in land value; government allocation of land free of charge (thus) disabling land value from emerging; and high transactions costs in the land market.
2. There are ways that transaction costs could be reduce and the value of title improved for purposes of enhancing tenure security and investment:
- Eliminate or minimize government powers of discretion in authorizing transfers;
 - Decouple or minimize the linkage between property rights associated with title and state controls aimed at determining how land is used for agricultural use;
 - Strengthen individual rights in title and make them automatically renewable in perpetuity;
 - Eliminate the exercise of government allocating land free of charge or fixing the supply of land under government's allocative discretion.
 - Discourage land concentration by imposing a progressive tax on land ownership, not by fixing limits on farm size;²

² Limits on farm size are very difficult to set and sustain because land ownership is interconnected with the economics of land use. Land sizes for extensive grazing and eco-tourism ventures require more land than for

- Enable or facilitate land subdivision to increase land liquidity in commercial areas.
- Increase the cost of holding land. All citizens large and small, wealthy or not, should be responsible for paying taxes commensurate with their means. Whether or not the decision is made to collect these taxes should be made on the basis of whether the costs of tax collection outweigh revenue collection. Otherwise, both communities and investors have the incentive to claim land areas beyond their means to manage it, or beyond reasonable claims of future generations.

However, until land in Mozambique is economically scarce (this may be the case in certain areas), no amount of easing transaction costs involved in the transfer of titles will have a measurable impact on credit expansion.

3. There is a profound tendency in Mozambique to equate commercial agriculture with leasehold concessions, whether by large holders or smallholders. For sake of comparison, the small scale commercial sector in Zimbabwe prior to the late 1990s built on principles of “master farmers”, and farms up to 100 hectares in size, were noteworthy for their absence as an engine of agricultural growth and innovation. Rather, it was the “smallholder” in communities in Zimbabwe that stood out first and foremost in Zimbabwe’s “maize revolution”. Furthermore, pushing aside the issue of large scale white ownership of land that precipitated Zimbabwe’s second land reform in 2000, there are also plenty of experiences of positive synergy between large commercial farmers and smallholders in outgrowing schemes, particularly in export sectors. The current bifurcation of “investors” as commercial farmers and “communities” as lacking in innovation is both self-destructive and constraining in development of the commercial agricultural sector.
4. Beyond development of concession agriculture in Mozambique, there is need to formalize the land rights of people living in communities in ways that promote agricultural development and strengthen partnerships with outside investors. Unfortunately, as of 2005, implementation of the land law in Mozambique had demarcated fewer than 200 communities nationwide.

4.0 Way Forward

1. The urge of the investment community (including investors and formal financial intermediaries) in Mozambique is to develop law, ease regulations, and increase incentives for commercial

tobacco, cotton or vegetable cultivation. The problem with land size constraints is that if set incorrectly they impede

agricultural development. There is also the urge to jump out of the starting gate with creating an enabling environment for investors without first implementing the institutions that law has provided.

2. Had serious efforts been made to implement the land law after 2000 in the balanced way that was intended, this forward thrust with creating an enabling environment would be well advised. However, what has happened instead is either no implementation of the land law or implementation that serves one group at the expense or the absence of the other.
3. It is hard to argue that commercially oriented investors are well served by the current state of affairs. And it's impossible to argue that people living in communities have benefited much at all. Rather, to the extent, that government has failed to adjudicate claims of concessions in rural areas, it is more easily argued that community rights have been disenfranchised as reported by a large number of researchers within civil society.
4. Government despite its best efforts will never be positioned to adequately or sufficiently adjudicate claims of investors and communities in rural areas for reasons of lack of capacity, resources, will or commitment. Others have argued in the literature that it is to government's advantage not to do so for it undermines state authority and control over land resources and maintains the status quo of "rent seeking" behavior that benefits political elites and the state.
5. What then should be done?
 - USAID and the GoM lost an important opportunity to seriously implement the Land Code after 2000. The problems arising in agricultural development today are the consequence of decisions made then to jump start commercial agriculture without seeing through the establishment of land institutions.
 - USAID and other donors should refrain from moving forward with new land policy or legal development at this stage. Opening this door runs the risk of land policy regressing for it will be easy to argue (however incorrect the grounds) that land equity concerns have undermined agricultural growth justifying even further state intervention.
 - The current land law, despite its current weaknesses, is very progressive and contains much to be applauded. There is much more to be gained from balanced implementation of the

easy substitution of alternative land use changes.

existing law rather than proceeding with another round of legislation that risks regression on the positive elements of the law already achieved.

- Current debates on concessions versus communities in land rights implementation are unnecessarily fractious and destructive. Commercial agriculture will only take off once trust is built and the intellectual divide between the two sides is narrowed. This will be impossible to achieve as long as commercial interests (with economic means) and the state appear to implement the land law uni-dimensionally or at the expense of communities and the poor.
- As quickly as possible and feasible, the government should bring sporadic registration of investor lands to an end.
- As quickly as possible, the government with donor supports should embrace selective and systematic registration. Selected registration means that adjudication programs will be targeted to those areas of Mozambique where land is scarce and commercial opportunity exists – the development corridors, land where land scarcity is emerging, and land where there is access to secure markets (e.g. tobacco and cotton). Systematic registration means that land rights of all landholders are demarcated and registered within these areas. At present, the cadastre in rural areas shows areas of concessions with open spaces in between – a situation ripe for handing out large concessions by government to outsiders and the well connected in non-transparent ways. The goal should be the development of a cadastre that shows the rights of all land holders including communities, private investors and the state on maps linked to electronic and paper documentation. MCC is considering supporting the work of the GoM in this area.
- This process will require that a partnership be formed between government and civil society to facilitate implementation. The costs of first registrations should be free to communities and investors and should thus be supported by grant or loan financing. The alternative – sporadic registration based on ability to pay – has failed in Mozambique and elsewhere to fully adjudicate the land rights of neighbors to the claim, whether they be individuals or the community. The consequence has been, and will continuing to be, overlapping registrations unless a more systematic and comprehensive approach to registration is undertaken.
- Implementing the land law as it was intended will help build bridges between state, private investors and the community, and between the disparate voices that obstruct land policy

development and land law implementation in Mozambique today. At present, it's very difficult to focus on dealing with investor needs without community needs having been given sufficient attention as well. Balanced implementation of systematic registration in selective areas will help overcome this divide.

- Many parties lament the demise of the Land Commission that enabled passage of the 1997 Land Law and subsequent regulations. There is need for a new Commission or Reference Group to harmonize opinion, develop consensus, and provide the empirical and intellectual foundations for developing the implementing regulations for the existing land law. USAID in collaboration with other donors (most notably Dfid and FAO) should consider supporting the establishment of this Commission within the Ministry of Planning and Development or other Ministry TBD. There is the sense that enactment of legal reforms can be done through projects, consultancies or working groups. Without a Commission or Reference Group that links these mechanisms with the political machinery of decision making within government, the probability is that the efforts undertaken will be undesirably piecemeal, or that the legislative dust raising that results tires the political machinery in ways that disables the chance for more coherent and meaningful reform.
 - For the next 3 years, this Commission should focus on developing regulations that encourage balanced implementation of the 1997 Land Law in ways that benefit both investor and community demarcation and titling of land. Once, sufficient headway has been made with this implementation, and on capturing lessons learned, efforts should be resumed in 3-5 years time to amending the land law based on informed judgment and development of political consensus.
 - Piecemeal implementation of the Land Code that serves to promote the interest of one interest group versus another will only risk further delays in implementation and deepen the divide. From the perspective of commercial investors in Mozambique, the greatest opportunity for advancement will come from balanced and full scale implementation of the Land Code in ways that benefit both investors and communities. The going will no doubt be slow and arduous, but there is no alternative path.
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