



**The land debate in Mozambique:
will foreign investors,
the urban elite,
advanced peasants or
family farmers
drive rural development?**

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Research paper commissioned by
Oxfam GB - Regional Management
Center for Southern Africa
(www.oxfam.org.uk)

12 July 2002

Key points

Land is again the subject of debate in Mozambique, five years after the passage of a land law following wide-spread consultation in one of the most democratic processes in Mozambique in the 1990s. The law has won praise for protecting peasant rights while creating space for outside investment. The new debate is about two issues:

- Should land, or at least land 'titles' (effectively, leases), be able to be sold and mortgaged?
- Should more emphasis be put on improving conditions for would-be investors (particularly large foreign investors) or should the stress be on delimiting and protecting peasant land, and capacitating communities to deal with investors.

This paper argues that the debate on land is actually a proxy for a debate about rural development. Four groups are cited as possible vehicles for rural development – foreign investors, the urban elite, advanced peasants and family farmers – with different groups being prioritised by different Mozambican and foreign actors. Debate over which groups are prioritised helps to shape the debate over land. It is noted that there are sharp divisions within government, within the World Bank, within donor agencies, and within Mozambican civil society. The land debate is also linked to one over rural credit and support for farmers.

The paper then looks at what land is available for investors and at the difference between free or vacant land (of which there is very little) and underused land (of which there is a lot). Individuals and companies can use land which is 'free and has no occupants', if the local community is consulted and agrees. Many consultations have been badly done; the quality seems to be improving, but the government also wants to speed up the consultation process.

The law gives communities the right to delimit and register their land, including not just immediate farms but fallow and reserve land. Once registered, potential investors need to negotiate with communities rather than merely consult them. About 100 communities have had land delimitations approved, but so far there have been no negotiations with investors. Delimitation gives communities power, but the process can cause problems, raising expectations and sometimes disinterring old disputes. Although the process is expensive and time-consuming, it may be the only way to protect peasant rights.

So far, communities do not understand the value and potential of their land. Few are looking to be partners with investors or looking for long-term income or other gains from investors.

The paper is not intended to make recommendations. Instead, it cites proposals already made by Mozambicans and foreigners working on the land issue:

- Continuing the work of the land commission
- Improving consultation
- Continuing delimitation
- Creating a kind of community organiser, facilitator or barefoot planner
- Enforcement of regulations and agreements
- Pilot partnerships
- Credit guarantee funds
- Increased transparency

Finally, the paper stresses the central role of Mozambican NGOs, but raises a number of questions about their increased role as service agencies and their ability to do what may be asked of them.

There is a need to shift the balance toward peasants and the poorest, to guarantee in practice land rights contained in the law, and to increase the ability of communities to invest and to become genuine partners with outside investors. The key question is how to encourage both small and large investment without also aiding land grabs.

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12 July 2002

Land has become the subject of an intense, diffuse and confused debate in Mozambique. The debate first surfaced in public last year (2001) when Agriculture & Rural Development Minister Hélder Muteia unexpectedly proposed a debate on land privatisation. Shortly after, the World Bank and USAID strongly back land privatisation. Since then, privatisation has dropped off the agenda, as many of its advocates realised it was unnecessary. But the land debate continues to bubble and to raise important issues. The debate can be quite intense, with the Ministry of Agriculture & Rural Development (MADER), the World Bank, donor agencies and Mozambican non-government organisation (NGOs) and pressure groups internally divided. Many people have surprising views. Particularly interesting is that some senior Mozambicans working within the donor agencies are strongly opposed to their own agencies' policies on land and rural development, and are also critical of their compatriots for not more forcefully challenging the Mozambican government acceptance of the received wisdom of the World Bank. Also important is the strong demand of the Mozambican private sector for more state involvement, which is being resisted both by donors and by MADER.

The debate over land is actually a proxy for a debate over development policy – people's views of land use are directly related to how they see Mozambique developing. And there is little agreement either within Mozambique or within the international community. Is the stress to be on foreign or domestic investment? Is the priority to be bigger projects or peasant farmers? The debate over land is also directly linked to credit and investment, to questions about the government's role in development, and to issues relating to peasant protection and power.

The debate over the land is also important because the 1997 land law was approved after what was surely the most democratic process in Mozambique in the 1990s. The law has been praised for the way it protects peasant rights and for the innovative way it deals with collective and community tenure. USAID argues that 'after nearly five years of design and five years of implementation, there is little to indicate that this law can achieve its objectives' (Rozell 2002). Does that mean the law, and perhaps even the constitution, need to be changed, as USAID argues? Or does it mean that more should be done to implement the law?

Finally, I must express three caveats. First, several people talked to me on the understanding that they would not be quoted or identified, and I keep this promise. Second, this is not a policy paper, and it makes no recommendations; rather it is an attempt to summarise and comment on the present discussion. Third, I interviewed numerous people and in this short study I am unable to verify all the claims made; indeed, some were contradictory; all I can say is that I hope this represents the state of the debate on land in Mozambique.

1. Who will develop Mozambique?

No one denies that Mozambique needs substantial agricultural development which will require investment, and that there is a real demand by peasants for wage labour. The debate is about who invests and where, and about the balance between jobs and family farming. The people I interviewed tended to suggest four different groups as vehicles for agricultural development; most people promoted two of the four groups below, and tended to oppose or dismiss as unimportant the other two. The four, from largest to smallest, are:

λ Foreign investors

'To develop we have to attract foreign investment. We don't have strong national capital,' said José Elias Mucombe, National Director of Mapping and Land Registry¹ (DINAGECA – Direcção Nacional de Geografia e Cadastro). That means the priority must be to speed up investment approvals. For Agriculture & Rural Development Minister Hélder Muteia, foreign direct investment (FDI) is clearly the main engine of rural development. In an interview with me, he said: 'Our grand objective is to facilitate investment. We have to be able to respond to an investor who arrives and says: "I want 10,000 ha to grow soya and my plane leaves in two days." We want to be able to meet in an office and have him able to leave 90% sure that he will have the land he needs.' More than \$100 mn has been invested by foreign companies in sugar plantations; similar investment is needed in other sectors, he argued.

This is, perhaps, the most controversial strategy. One senior donor official complained: 'the government's only strategy seems to be to wait for foreign investors.' One senior MADER official told me: 'The idea of foreign investors flying in is total nonsense'. With the exception of sugar, which is highly protected by the government, the traditional plantation companies such as Madal, Lonrho, and JFS are in trouble or out of business. Muteia says it is because they are inefficient and new investors will be more efficient and profitable with lower fixed costs. But big new investors have not yet appeared. Although the experts accept that the old companies are inefficient and are using old colonial systems, they also note that there is now a shift away from plantation agriculture into outgrower schemes, even in sugar. In these schemes for tobacco, cashew, cotton, sugar and other crops, a big company provides inputs and modern technology, but the peasants rather than the big company carries the risk. Foreign or domestic investors promoting outgrower schemes don't need big tracts of land, but do need peasants to have security of tenure.

λ The urban elite

Investors can also be domestic and most urban Mozambicans still feel some rural link. The new urban elite, usually senior government and army officials with good political connections, are obtaining land concessions of several thousand hectares. Indeed, in some circles it seemed not simply acceptable, but assumed, that governors, district administrators and others will take large blocs of land for themselves and their families. Cattle raising is proving particularly fashionable. At the other end of the scale, urban people are sometimes setting up small farms in their home areas.

The biggest problem is that these are hobby or weekend farms, which are rarely successful. One expert commented: 'the elite feels that their political strength and influence means they don't need good management of their farms.' I was told repeatedly that farms, big or small, are only successful when the farmer actually lives there.

Where land has been allocated because the 'farmer' has political connections, there have been some highly public conflicts with local people. Even where there are no conflicts, the urban elite does not have the money to make major investments; relatively few jobs are created, often just as guards. Arlindo Chilundo, head of the Land Studies Unit (NET – Núcleo de Estudos da Terra e Desenvolvimento) at Universidade Eduardo Mondlane (UEM), notes that 'high up people have land but no money to make it productive.' Some observers accuse Muteia of fronting for politically well connected urban people with big tracts of land. And he told me that he supports 'triangular' relationships, in which people with local knowledge obtain the land and then go out

¹ Technically, land must be registered twice, once with DINGECA or its provincial SPGCs, which fall under the Ministry of Agricultural and Rural Development, and again with the Buildings Registry (Conservatório de Registo Predial) of the Ministry of Justice. The latter is not active in the land debate, however.

and look for investors. Although potentially useful, it seems more like a justification of elite land grabs.

One important donor official talks of the 'governmentalised private sector' – the nomenklatura which has given themselves land – and argues that this group should be supported to develop into a real private sector.

Urban people making serious investments, even if small, in their traditional family area could be quite an important development vehicle, and its importance should not be underestimated. But weekend farming and elite cattle ranches do not seem the way forward.

λ Advanced peasants

'After the war, everyone started out equally. Now, you can see some peasant farmers doing better than others,' commented a World Bank official. A number of people within the donor community and MADER feel that efforts should be concentrated on this 'peasant vanguard'. This is an old concept – these are the 'master farmers' of colonial Rhodesia, 'yeoman farmers' of colonial Kenya, and the kulaks of the early USSR. The idea is that they are brighter, better educated, often younger, and more receptive to new ideas and new technologies than other peasants, and they are already moving more rapidly from family to commercial farming. The hope is that if they are supported, that they can increase production faster while serving as models for their neighbours.

λ Family farmers

The fourth development vision is to try to raise the production and productivity of the mass of peasant farmers through secure land tenure, better marketing, extension services, etc. As well as doing more to bring the poor majority out of poverty, it requires a smaller jump in productivity for 3 million peasant families in contrast to the huge jump needed by a few thousand advanced peasants to make the overall production leap needed.

There are substantial overlaps between these categories. For example, an advanced peasant might be partly capitalised by a relative with a job in the city. Many development experts argue for the formation of associations – but these can be associations of all farmers in a community with advanced peasants playing a leading role, or can be associations of advanced peasants only, but drawn from a wider area.

Commercial farmers

Cutting across all four of the above groups are another group often called by government 'commercial farmers'. These are individuals with 100-5000 ha who often seem like the big farmers in neighbouring Zimbabwe. They are professional farmers who live on their own farms and have substantial marketed output. Some are foreign investors from South Africa or Zimbabwe, others are Portuguese who stayed after independence. A few are families of the urban elite. Some are farmers who expanded their land in the 1990s, particularly on the former state farms (which themselves were often former colonial settlement areas) and others are 'advanced peasants' made good; Mozambican commercial farmers are now important in cotton production, for example. Many commercial farmers have land in peasant areas, and there is substantial potential for both conflict and cooperation.

At MADER's annual coordinating council meeting in late April, it was agreed that although peasants were important, 'the priority is promoting the growth of commercial farmers who can be oriented toward greater productivity, use of inputs, and better access to markets' (*Demos* 1 May 2002).

How important are jobs?

In reality, there is no such thing as 'subsistence' agriculture. Peasants are involved in the market, and peasant families try to have at least one member doing wage labour to bring in a cash income. In part because of the migrant labour tradition, and in part because Mozambican hoe farming is so back-breaking and so unproductive, there is real pressure for the creation of jobs which pay a wage. The various development strategies put different emphases on jobs. In general, the big farm, heavy investment strategy is about creating jobs, while the peasant farming strategies are about improving the lives of farmers.

The big project approach recreates the socialist, central-planning, modernization model embodied in the 10- year-plan of 1981. Indeed, the projects are often the same ones, which in turn were inherited from the colonial era planners. And the big project advocates have kept the same goal – to turn the peasants into a working class. The 10-year-plan called for defeating underdevelopment in a decade. The big project approach again argues that accelerating accumulation and development means that there is no time to modernise the peasantry, and instead peasants must be moved off the land into jobs created by investors with money and modern technology. Is the intent to provide peasants with jobs that are better than hoe farming, or is it to ensure a supply of cheap labour for the investors?

'This is the arrogance of socialism being recreated,' commented one MADER official. 'We plan big projects without any base in reality and then wait for investors – this time big private companies from the West instead of state companies from the East.'

Marc Wuyts of the Institute of Social Studies in the Hague and a well-known expert on Mozambican development issues warns that present policy is forcing poor peasants to search for wage labour. He stresses that 'under the impulse of economic reforms the patterns of social and rural differentiation have become more accentuated. Access to land, equipment and credit is slanted – by design or by default – in favour of large-scale enterprises, on the one hand, and a rapidly developing strata of medium and small scale capitalist farmers on the other. ... the poorer peasantry and the marginalized regions were left out of the picture.' The abandoned poor peasants 'need cash to pay for (part of) their food needs and for cheap imported consumer goods', so they search for jobs. Wuyts concludes: 'although the process can undoubtedly lead to the recovery and growth of agricultural production, it is unlikely to provide a basis for broad-based development due to the persistent and continued exclusion of the poorer peasantry from the benefits of economic growth' (Wuyts 2001).

'There has been an emphasis on the part of the state and Frelimo towards the privatisation of land and a bias against the family sector. This bias ... continues to prevail in the implementation of the [land] law. There is a perception that the family sector does not have the resources to expand production potential and to significantly contribute to the economy. There is also a perception that the strengthening of security of tenure of rural communities will "scare off" investors,' explain Simon Norfolk and Harold Liversage, of the Zambézia Agricultural Development Project (Norfolk 2002).

Investment in what?

No one doubts that Mozambican agriculture is hugely undercapitalised and that substantial investment is needed to increase productivity. There is also a view that peasants need to move away from shifting agriculture to fixed farming, with more investment in raising the fertility of the soil, developing irrigation, etc. One expert commented: 'Politicians say Mozambique is rich, but this is not true. Mozambican soils are fragile and lack fertility, and can support only a low level of exploitation. Intensifying use will require organic methods over time to build up the soil structure.' Investing in land requires security of tenure, and this issue enters the land law debate.

But does this investment in the land come from inside or outside? Deputy Minister of Agriculture & Rural Development João Carrilho feels that farmers can generate much of their own investment. What is needed is investment in agro-processing and marketing. 'We don't need investors to grow tomatoes for Maputo – our farmers already do that. What we need in investment in packing and processing.' These intermediate sectors create rural jobs and markets (and thus income) for farmers.

'Anyone who claims to want to "invest" gets land. We are being too easy on investors because we want jobs. But we give 5000 ha for "eco-tourism" with little infrastructure, and it is really just a campsite that creates two or three jobs if we're lucky,' said Arlindo Chilundo, head of the UEM Land Studies Unit (NET).

On the other hand, the level of poverty is so great the rural people are prepared to accept very little. Many of these 'investments' are city people building a second home, often with a small hobby farm. But even this creates a few jobs as guards and gardeners, and it provides a link to the city which may mean family members can get a job at the city house and thus get access to education. Also, eco-tourism sometimes uses land that is unsuitable for food production, and can provide a more profitable alternative use.

2. Credit, marketing, subsidy and government

Across the political spectrum, there is agreement that the lack of credit and capital in rural areas is a major impediment to rural development. In part this reflects World Bank policy in the 1990s that credit and investment must be left to the private sector, and the state should not intervene. The People's Development Bank (BPD) was set up in the socialist era to provide rural credit, and it still had branches in all district capitals at the end of the war in 1992. It proved effective and efficient in paying out demobilisation money to 90,000 soldiers and was one reason why so many returned to their rural homes. But BPD was privatised, its rural branches closed, and agricultural lending stopped. The private banking system in Mozambique is urban and is happy to lend for consumption, such as cars, or for urban house building, but has absolutely no interest in rural lending for farming or marketing. Banco Internacional de Moçambique (BIM), which dominates the market, gives only 8% of its credit to agriculture (*Savana* 22 Mar 2002).

Numerous foreign NGOs and aid agencies have set up micro-credit schemes, mainly for traders but also a few for farmers. But this is not a banking system. And there is no rural banking system because the private sector is not interested. Agricultural lending is fundamentally more risky than other kinds, because farming is affected by weather and pests. The general demand is that donors or government create some sort of insurance or guarantee system, to reduce the risk to borrower and lender.

Also, interest rates remain very high. The interbank interest rate in April 2002 for two months or longer was 36%, which means commercial borrowers paid nearly 50%. The rate is being kept high by the government in order to meet IMF demands for low inflation rates. But farmers and traders doing agricultural marketing cannot make a profit at those interest rates.

The credit problem is not just in agriculture. A World Bank survey in 1999 showed that 70% of industrial firms lacked access to credit, mainly due to high interest rates.

A state role in rural credit?

In 2001 MADER set up two working groups on 'land law and other obstacles'. One was made up of representatives of two peasant unions (ORAM and UNAC) and the National Directorate of Mapping and Land Registry (DINAGECA), which is strongly biased toward private investors; the second was private and commercial sector associations but with representatives of two

peasant groups (UNAC and UGC). In its report, the second group said simply 'banks today give no credit to agriculture in Mozambique and very little to agricultural commercialisation.'

The second group made two concrete proposals. One is for a guarantee fund. The other is to set up a medium size farmers fund (Fundo Para Financiar o Pequeno e Médio Agricultor – FADA) with up to \$150,000 per farmer. It proposed that the fund be run by a private company on which farmers' associations would be represented. A private bank would put up half the money and take half the risk, while the state put up the other half the money interest free and take the other half the risk; the overall interest rate would be half the interbank rate (which would be 18% at the moment). The state share would probably come from donors, the group suggested.

The demand that the government take an active role in rural credit is still being resisted both by government and by conservative donors and the IFIs. But it does seem that USAID and the World Bank, which hold a veto over any such project, partly accept the private sector diagnosis of the problem and are prepared to be more flexible than before on credit.

Cynthia Rozell, USAID Mission Director in Mozambique until early 2002, said that 'provision of rural financial services is not an area that government should enter into directly' but that 'funding should and could be made available through the commercial banking system to these small commercial traders. This would probably require some incentives either at the level of the commercial banks (eg exemption from reserve requirements, risk reduction, etc) or the borrower (eg mixing donor resources with commercial resources to reduce interest rates to the borrower)' (Rozell 2002).

A World Bank official commented mischievously that 'government policy is exactly what the World Bank said it should be five years ago. But government hasn't noticed that we have accepted that those policies did not work. Five years ago we said no subsidies and no government involvement in rural credit, but that has changed. The Bank has changed since its very arrogant times of imposing things.' Now the World Bank would accept some government involvement in setting up a rural credit system and in providing insurance, although it would still not allow subsidised interest rates for agriculture of the sort that are common in industrialised countries.

With the really broad recognition of the rural banking problem and a slightly more benign attitude of the World Bank, it should be possible for the donors and the government to set up a non-profit but privately run rural development bank in place of the multiplicity of competing micro-credit schemes. Government might provide the insurance, while donors could fund the inevitable higher overheads and ensure lower interest rates.

Agriculture & Rural Development Deputy Minister João Carrilho argues that the first basis of rural capital should be local money. He points out that 90,000 family farmers in northern Mozambique sold \$20 million of tobacco in the past season; some of that money could have been saved and lent out as investment for the next season, but there is no banking system to accept the deposits.

Land expert José Negrão also points out that the credit debate is confused, because people tend to be quite vague as to who needs the credit – big farmers or small, rich or poor, farming or trade or processing?

Private sector demands state support

Credit and banking are the most frequently cited problems for agriculture (and, as I note below, are directly linked to the land privatisation issue). But support in Europe and the US for agriculture involves massive subsidies. There is a widespread complaint that in Mozambique inputs are too expensive, that small farmers cannot afford the full cost of water but there are no

subsidies for irrigation schemes, and that leaving marketing entirely to the private sector means that crops often cannot be sold.

All the factors of agricultural production – seeds, fertiliser, pesticides, equipment, spare parts, electricity – are more expensive in Mozambique than in the neighbouring countries, claims the second MADER working group. ‘In an environment of high production costs, agricultural production and agro-industry cease to be viable. ... It is false to say that agriculture must function in terms of the market’ (Sintese 2001).

‘Agriculture in Mozambique is not viable, except perhaps for tobacco,’ comments Sérgio Chitará, Executive Director of the Confederation of Business Associations of Mozambique (CTA), who was also a member of the second working group. ‘The World Bank is dreaming if it thinks the private sector will invest in agriculture here. The World Bank must think people are irrational, because no rational person will invest. Even foreigners don’t invest, except in sugar which has government protection. When the government wanted Mozal, it organised cheap electricity. If the government expects agricultural investment, it will have to provide support.’

But Muteia rejects the demand for state support. ‘I met farmers in Chókwè who wanted to relaunch rice production. They said if the government wants us to produce rice, then it has to guarantee to buy it. But I said no.’

To one of the donor experts I met, the whole land debate misses the point. ‘The new bourgeoisie talks of land, and when they enter into farming they fail. The serious medium-size farmers don’t talk about land but about the difficult obtaining inputs – tractors and fertiliser – and about problems with roads and markets.’ And the government must intervene in agriculture. ‘The public sector must invest in the creation of the private sector in Mozambique.’

A senior Mozambican working for a donor commented: ‘Who will resolve the problems of this country – foreign investors or the people who are here? Big investors are not the answer. We have to analyse our own history. The reality of the past 10 years is that foreign investment is not protecting and creating jobs. But how do we create small investors when there is no access to banks and credit, to cheap inputs and water, to roads, etc? Peasants don’t produce because there is no market.’ And it is worth underlining that peasants and family farmers are very much part of the ‘private sector’ and suffer many of the same constraints as larger private farmers.

Perhaps the most striking thing in all of my interviews was Mozambicans working for donors and international agencies criticising their compatriots in government for not challenging the donor and World Bank obsession with no government role in agriculture. ‘I get frustrated that the government never presents strongly argued alternatives,’ said one. ‘The current generation has lost the ability of the Marxist Frelimo generation to debate and analyse. This group just automatically accepts what the World Bank tells it. Ministers need to be proactive. Hélder Muteia does not demand that his directors analyse policies and give him alternatives based on experiences in other countries.’ Another said ‘the headquarters of my agency says we must follow World Bank policies. We need local economists to challenge the World Bank line and show that it is not working here.’

Mozambique’s Poverty Reduction Strategy Paper (PRSP, PARPA) stresses that both ‘family sector’ and ‘commercial sector’ agriculture must play a key role in economic growth. And it stresses that expansion of markets ‘is vital’ and that it is ‘essential that there be an adequate rural financial system’ (PARPA ¶ 155, 157). But it also makes clear the state has no intention of directly supporting credit or marketing. Its development strategy is to ‘privilege private enterprise and market incentives as levers of economic and social progress’ (PARPA ¶ 214). Its ‘food and nutritional strategy’ is based on ‘liberalising markets’ and increasing ‘the capacity to import products’ (¶ 161). In terms of increasing credit to rural areas, all the state intends to do is to improve banking supervision (¶ 199.2). The government is explicitly not going to be involved in marketing, but instead intends to ‘disseminate information on markets’, ‘promote

private investment in marketing', encourage farmers to form associations, and help farmers improve their storage techniques (¶ 168.2).

The PARPA notes that better roads are central to improved agricultural marketing, and its claimed goal is 'granting the necessary priority to the most highly populated provinces and those with the highest concentrations of the poor' but the actual programme is to concentrate on those 'districts with the greatest economic potential' (¶ 147). In effect, peasants in poor areas are to be left to their own devices. The PARPA notes 'the fact that Mozambique has one of the lowest urbanisation rates in the world. This means that there is an inevitable tendency for migration to urban areas' (¶ 82). Just as Marc Wuyts notes, the poorer peasantry and the marginalized regions are left out of the picture (Wuyts 2001). Taken together, this suggests that peasants from districts of lower economic potential will not be helped, and will be allowed to migrate to cities.

Perhaps given Mozambique's lack of resources, this is inevitable. Vice Minister João Carrilho, who tends to support a more interventionist policy and prioritises the advanced peasants, also argues that it is necessary to promote the farmers who are already near markets – say within 15 km of a road, shop and telephone. 'You can only start close to roads', he says.

So far, interest in investment is small. According to José Mucombo, director of DINAGECA, in the first four months of the new simplified application process, there were only 238 applications for titles (effectively leases, see next section). Of these, 195 were approved, 5 were rejected, and 38 did not meet the 90-day deadline. There were 11 applications in Sofala averaging 10,000 ha each and 16 in Zambézia averaging 1,500 ha each, but the remaining applications averaged only 200 ha each. For a country the size of Mozambique, 80 applications a month for tiny plots to invest in agriculture is insignificant. Perhaps Sérgio Chitará is right.

3. The 1997 land law

Under the constitution (art 46) 'land is the property of the state' and it cannot be sold or mortgaged. The 1997 Land Law (Lei de Terras 19/97) was approved after a two-year national debate and a last-minute struggle between parliament and the council of ministers, in what is probably the most broadly democratic process in Mozambique in the 1990s.² The law defines three ways in which people can gain land use rights:

- individuals and communities have the right to land they have traditionally occupied,
- Mozambicans have a right to land which they have occupied 'in good faith' for at least 10 years, and
- people and companies can be authorised by the government to use land.

Under the law individuals, companies and communities are granted 'títulos de uso e aproveitamento da terra', a 'title for use and improvement of the land' – effectively a lease, and known in local shorthand as a 'title'. DINAGECA uses the acronym DUAT (direito de uso e aproveitamento da terra), although land expert Chris Tanner points out that DINAGECA seems to apply to term only to applications for land which people or companies do not already occupy. In fact, all titles are the same, independent of whether they are granted to occupants or to new investors, because they are all DUATs and all grant an exclusive control over the land. The only difference is that an occupant's rights are permanent (even without a formal title document), whereas an outside investor is only granted a title valid for 50 years, which can be renewed once for another 50 years.

Perhaps the most innovative aspect of the law is the definition of a 'local community' as 'a group of families and individuals living in a defined area, smaller than a locality, that wants to safeguard its common interests by protecting its living area, farming areas whether cultivated or

² The best summary of the process of development of the law is a UN Food & Agriculture Organisation (FAO) paper by Chris Tanner (2002) on <http://www.fao.org/legal/prs-OL/lpo26.pdf>. FAO provided much of the technical support for the process and helped to facilitate the debate.

fallow, forests, sites of socio-cultural importance, pasture, water sources and areas of expansion'. This is both broad and vague – communities are self-defined and can be traditional clans with chiefs, or can be extended families, or can simply be communities or a group of neighbours. Communities and good faith occupants have automatic and overriding rights to the land they occupy. If they wish, they can take one or two steps to formally register their land rights (see section 9 for more detail). First, they can have their land delimited and have resulting sketch map registered in the land registry, after which a certificate (certidão) is issued. Next they can apply for a formal title document, which requires a more precise and more costly mapping exercise called a demarcation, and includes the placing of cement markers at reference points around the perimeter. Within a community, individuals can apply for a personal title, but this must be agreed by the community as a whole. Local communities manage the land within their area and can use 'customary' procedures. The technical annex (Diploma Ministerial no 29-A/2000 art 3) makes clear that communities are free to enter into contracts for economic activities on their land. Local communities also must participate in managing natural resources in their area.

An individual or company which does not occupy the land and is applying for permission to use land must present a development plan, and there must be a 'consultation' with the local community to 'confirm that the land is free and has no occupants'; titles cannot be issued for land which is already occupied.³ A provisional authorisation is granted, for five years for Mozambican companies and individuals, and for two years for foreigners. The development plan must be carried out within that period. If it is, the applicant then receives a title. Provincial governors can approve applications for up to 1000 ha, the Minister of Agriculture & Rural Development 1000-10,000 ha, and the Council of Ministers above that, but only as part of an agreed land use plan. Elected municipalities control the issue of titles within their area.

In the case of disputes and in establishing community rights and good faith occupancy, courts must accept verbal evidence.⁴ Women are given specific rights (which should not have been necessary since the constitution guarantees women's rights); in particular titles can be inherited and inheritance procedures cannot discriminate by sex. Nevertheless, there is a concern that this definition of 'community' increases conservative and normally male 'traditional' authority, and that this may work against the interests of women (Waterhouse 2000)

Detailed regulations to the law for rural areas were approved in 1998, and a technical annex on delimiting community land was approved in 2000. So far, regulations for urban land have not been agreed.

With wide publicity including full page newspaper advertisements, DINAGECA introduced a new simplified application procedure for land use titles on 22 October 2001. There is a shorter form and a promise of a decision within 90 days. Meanwhile, most of the backlog of applications made before 1997 under the old 1987 regulations, some dating back a decade, has been dealt with. Applicants were forced to renew their application if they were still interested. By the end of 2001, of the live applications, 4336 were approved, 225 rejected, and 322 remained (including 188 applications lost in the floods).

Land is taxed, although family farms and local communities are exempt. On other titled land, the annual tax ranges from 15,000 mt/ha (currently \$.65/ha) in special cases to 60,000 mt/ha (\$2.60/ha) for holdings of more than 1000 ha. Of the tax, 24% goes to DINAGECA, 24% to the provincial cadastral services (SPGC), 40% to the state, and 12% to district administration or municipality, which encourages them to try to collect the tax. Where investors and members of

³ The cheaper and simpler 'delimitation' is only available to occupants; new investors must do a full 'demarcation'.

⁴ This was a problem under the old regulations, which gave precedence to paper titles even if they had been incorrectly issued when the land was already occupied by someone else; now evidence of occupation takes precedence.

the elite have obtained land and are simply holding it undeveloped, the land tax can be quite an expense; Muteia told me he sees the land tax as a way of controlling speculation, and he noted that some lists of unpaid taxes have been published in advertisements in *Notícias*. DINAGECA collects the tax, and its collection rate has risen from 9% of taxes due in 1999 to 48% in 2001, when 3.8 bn mt (\$190,000) was collected (DINAGECA 2002).

4. Privatisation and titles

The previous three sections provide a base for a sensible discussion of the debate on implementation of, and possible changes to, the 1997 land law.

As I note above, land belongs to the state and cannot be sold or mortgaged. Attempts to change this in the 1990 constitution and the 1997 land law were both rejected. In general, proponents of privatisation argue that people need to own their land if they are to invest in it, that land mortgages are the only way farmers can obtain credit, and that a land market is needed to transfer land to more productive users. Opponents say it leads to landlessness, as in Brazil, when people lose their land after one or two bad seasons; that there are other forms of credit; and that Mozambican banks have no interest in land mortgages in any case. Six years ago, privatisation was pushed by the World Bank and the US, as well as by Mozambican elites who had obtained land concessions which they now hoped to be able to sell. Peasant organisations concerned about landlessness were opposed, and won the argument.

The issue seemed dead until Minister Hélder Muteia raised it unexpectedly in an interview in *Domingo* on 8 July 2001. The interview is more nuanced than is widely reported, so it is worth quoting at length: 'I think the time has come to begin the discussion about a land market compatible with our reality. Our land law protects the peasants [and in the debate on that law] there was a consensus of all farmers and of civil society that it was best to protect the peasants, but I think we have arrived at a time to start selling land.'

'If we open a land market, we would very quickly have some landless people, because peasants are pauperised and vulnerable and will be forced to sell their own land. ... But those who are asking for privatisation are a group of commercial farmers. The majority of farmers in our country are peasants, and all of the family farmers associations say this is not the time to privatise. But is it possible to create areas with different treatment. And there is also the issue of urban land.'

'We need a dialogue to see if we can find a way to protect that majority – because through privatisation you will develop the bourgeoisie but will not resolve the problems of the country, and of the peasant who will sell their piece of land for one or two million meticaís' [\$50-100].

Two weeks later Janet Assulai, a lawyer from ORAM, responded by saying there was no need to privatise land, because under the present law it is possible to sell improvements and the land title (*título de uso e aproveitamento*) normally goes with the building. 'What is happening is that many people don't actually know the law, and it is not being applied' (*Domingo* 22 Jul 2001).

But the debate rumbled on with a series of newspaper articles. The issue was raised again at the donor Consultative Group (CG) meeting in Maputo 25-26 October 2001. Darius Mans, the newly appointed World Bank Country Director for Mozambique, took the hardest line, demanding that the government 'facilitate the use of land as collateral' and saying that 'land use rights need to be clarified and monetized, so that land can be used as collateral and so that, in time, a given stretch of land will be used by the most productive users' (Mans 2001). He seemed to be saying that less productive peasants should be pushed off their land, and he seemed to be demanding a change in the constitution to make this possible.

James Smith, USAID Acting Deputy Assistance Administrator for Africa, told the CG that 'insecure land tenure arrangements are inhibiting investment by commercial as well as peasant farmers' (Smith 2001). In a follow-up statement in response to questions from me, the then USAID Mission Director in Maputo, Cynthia Rozell, said that 'after nearly five years of design and five years of implementation, there is little indication that [the 1997 Land] Law can achieve its objectives. ... Mozambique may be quickly reaching the point ... where privatization of some portion of rural lands is important. .. We do not believe that all rural land should be privatised. ... We believe that different tenure arrangements are appropriate for different land uses and all should be fully legalized.' She goes on to argue that community land should be owned by the community, not the state, while land 'appropriate for commercial agricultural exploitation by companies and individuals' could be fully privatised. She may have been pushing hard on this issue, but she also made clear that 'our recommendation to the GRM [government of the Republic of Mozambique] is to consider the possibility of privatizing arable agricultural land – we do not make it a condition or a requirement of our assistance' (Rozell 2002).

Privatisation rejected

The issue of urban land is discussed in section 10. But privatisation of rural land has been firmly rejected. Hélder Muteia, then a would-be presidential candidate, may have felt his suggestion of privatisation would gain him support from the new elite in Frelimo, but in practice his stand triggered a backlash and he was harshly criticised within the party. The theses for the June 2002 8th Party Congress reflect this, declaring in a bold heading that 'The party reaffirms the principle that land remains the property of the state.' It then stresses that 'Frelimo party policy over land is to guarantee that the Mozambican people do not lose their most valuable resource – land, which, as well as its economic value, also has a fundamental cultural dimension.'

It goes on to say that 'the Frelimo party struggles to guarantee the respect and application of the Land Law – by reducing the bureaucracy of issuing of titles for use and improvement of land, adopting mechanisms to encourage and aid peasants to obtain titles, and prioritising legitimate traditional occupants of the land – as a way of preserving the right to use this valuable resource.'

At the same time, staff within USAID and the World Bank both say that their leaders' pressure for privatisation is misplaced and unnecessary. One official said 'privatisation was put on the table because it was confused with the issue of transferability. Transferability is already in the Land Law – we just need to implement it. The political and economic costs of going for a full freehold system are very high, and I do not think it is worth the effort.' Another said 'privatisation was stressed because it was Washington applying a general formula. But it is not relevant here. I accept that the state has to hold land to defend the poor, and leasing and transfer of titles is already permitted.'

A mark of the split within the World Bank was the visit in April 2002 to Mozambique of the World Bank land expert Hans Binswanger (sector director for environmental, rural and social development, Africa), who sharply contradicted Mans' line. In meetings with local experts, Binswanger is said to have praised Mozambique's land law as one of the best in Africa, and to have rejected calls for freehold and privatisation of land. Mans seemed to be quoting Binswanger's 1975 paper arguing the need to transfer land to more productive users. But in a 1999 paper, Binswanger recanted. He argued that World Bank land policy had changed radically in the previous 25 years. 'The 1975 World Bank land reform policy recommended that communal systems be abandoned in favor of freehold titles and the subdivision of the commons. Today it is recognised that some communal tenure arrangements can increase tenure security and provide a (limited) basis for land transactions in a way that is more cost-effective than freehold titles' (Deininger & Binswanger 1999). The paper goes on to argue that 'removing the restrictions on markets for land sales may not be the most urgent requirement for increasing efficiency – and may have a negative effect on equity.' In areas of low population

density an 'alternative is to award property rights to communities, which then decide on the most suitable tenure arrangements.'

All of this sounds like an acceptance of the Mozambican system, which Binswanger underlined during his visit – in contrast to Darius Mans. In his paper, Binswanger points out that the World Bank's own research shows that 'small farmers are more productive than large farmers' and 'owner-operated farms have an advantage over large operations' where the problems of management tend to overcome any economies of scale (Deiningner & Binswanger 1999). All of this points away from the big project line of Minister Muteia and away from the privatisation demands of senior World Bank and USAID officials.

Titles and buildings

The Land Law and regulations permit urban buildings to be mortgaged and sold and the land title goes with the building; banks already offer mortgages on houses. Infrastructures, buildings and other improvements in rural areas (known as 'prédios rústicos') can also be sold and mortgaged, but the transfer of the land is not automatic and requires government approval. Criteria for approval are not stated, except that the regulations say that the provincial 'serviços de cadastro' (land registry) must confirm that taxes have been paid and that the development plan linked to the provisional title has been carried out (Lei 19/97 art 16, Decreto 66/98 art 15,16). Improvements are quite broadly defined, and even include works done to prevent the deterioration of the land and anything that increases the value of the land, including walls and canals (Decreto 66/98 art 1). Although never actually tested, it seems clear that improvements include irrigation and anti-erosion works, orchards and other trees, and almost any longer term work. I was told that a few irrigation systems and other improvements have been mortgaged.

CTA head Sérgio Chitará says that the government has intervened to block the transfer of titles in 'many cases'. Deputy Minister João Carrilho says there have only been a few transfers of titles, but none has been refused. Chitará claims this is an area of corruption because officials can block a transfer in order to force the sale at low price. I cannot confirm the truth of these allegations. But the regulations are vague and do provide an opening for corruption. The MADER study group 2, which was mostly commercial sector, argued for the elimination of the requirement that the government approve land transfers if buildings and improvements are sold. At the very least, the rules should be made clearer and the reasons for possible refusal should be outlined (such as failure to carry out the development plan); this could be done by the Counsel of Ministers as a regulation, and would not need a new law.

There are two other ways in which commercial farms can be transferred. Land can be in the name of a company, and the company can be sold. Once the title becomes permanent, it appears that land can be leased to others without government approval, and there seems no reason why a lease could not be sold and mortgaged. This is common in many countries, including Britain.

Market in titles

All of this has come together in the form of pressure to permit the sale and mortgaging of titles, rather than the land itself. This is a repeat of a debate which took place at the National Land Conference at the Hotel Polana in Maputo 5-7 June 1996. José Negrão argued then that there already was a market in land which needed to be regularised. Mário Machungo, president of Banco Internacional de Moçambique (BIM) argued that titles, rather than the land itself, could be sold and mortgaged. Prominent lawyer Teodato Hunguana responded that the constitution (art 46) says 'land cannot be sold or in any other way transferred' ('alienada') and that the phrase 'any other way' is not redundant but applies to all other transfers of rights, including titles.

Six years on, the same debate continues. Allowing the sale of titles but not the underlying land would be like Britain where there can be freeholds and long leaseholds with respect to the same land, and the leases can be sold and mortgaged. Both MADER study groups called for a change in the law to permit this. At the same time, MADER group 1 (ORAM, UNAC, DINAGECA) totally opposed privatisation of land. Chitará of CTA, a member of group 2 and one of the strongest private sector advocates, comments: 'No one wants the privatisation of land. What they really want is trade in titles.'

A market in titles would immediately create the dual property regime discussed by Minister Muteia and Cynthia Rozell. Community titles would not be tradable because of restrictions already in the law. That means that only individual and company titles would be marketed, which effectively means just the commercial sector.

Former agriculture minister Carlos Agostinho do Rosário in a May 2001 study suggested the consideration of private property in just limited areas – urban and peri-urban housing and some agro-industrial and tourist zones (Rosário 2001; *Domingo* 27 Jan 2002). A trade in titles would have the same effect.

At first glance, it is hard to see the importance of allowing a trade in titles, since buildings can already be sold and the title should follow the building. If the regulations were modified with respect to *prédios rústicos* to allow the title to follow, then a formalised trade in titles should not be needed. There are two arguments in favour. First, it simplifies and clarifies transfers if the title and the building are sold together in one simple transaction. Second, it makes the process more honest, because humble buildings are sold for high prices if the land is valuable – for example if a modest one-storey house can be replaced by a 20-storey block of flats. Although technically the small house can be sold for this high price, it is useful to be honest and say that it is the land which has the high value.

But the real interest is in trying to create a market in vacant land, which at the moment is difficult. A provisional title to land is granted in respect to a development plan, and the law makes clear that the land cannot be transferred until that plan has been carried out. Should it be possible to sell the provisional title? In Britain and elsewhere, planning permissions are sold along with the land, and this is really the same thing.

Similarly, it is claimed that after a provisional or even a permanent title has been issued, it is still difficult to subdivide the land or sell off an unused part. The claim is that this keeps land tied up which could be released for other uses. In fact, the regulations specifically allow an applicant to release part of the land during the period when a provisional title has been granted (Decreto no 66/98 art 33), and once a permanent title is granted the unused part can be leased to others.

Many of the proponents of a market in titles of vacant land are members of the elite who have organised land concessions but not do not have the money to develop the land or to carry out the plans on which their provisional title was based. Critics argue that allowing a trade in vacant land would only promote speculation and encourage land grabs by party and state officials.

In fact it is already possible to grant leases and other tenure arrangements in many circumstances. ORAM applied for collective titles for land for associations with the assumption that associations would then enter into contracts with their members for their individual plots of land. And there is nothing to stop someone from applying for a land concession for the purpose of subdivision, for example to build beachfront houses to be sold on 50 year leases. One problem with the latter is that many officials obtained land first and only later began to consider what to do with it, and they often do not have the capital to put in the basic infrastructure. A second problem is that in the rush to grab land in 1990s, too many officials took land in the hope that it would be privatised and they could sell it on to South Africans for farms or holiday homes. The land has not been privatised, there are not enough interested South Africans, and

the five years of provisional permission is running out; officially they should lose that land concession.

Land is already commodified

Advocates of a market in titles argue that this would simply legalise a trade which already exists and which cannot be stopped – land is a commodity which is bought, sold and rented throughout the country at all levels of society. José Negrão, one of the most knowledgeable experts on land and a founder of the Land Forum, now runs a consultancy Cruzeiro do Sul (Southern Cross) and is planning a major investigation into land markets. This follows a 5 April 2000 workshop on 'Land Markets in Mozambique'.

There are already three land markets in Mozambique.

- 'A land market exists in Mozambique, both amongst the urban elites (new urbanization and the expansion of large cities), and in peri-urban and rural areas (valleys and green belts around cities producing vegetables, and rice production in areas where irrigation is possible),' according to Maria da Conceição de Quadros (2002), director of the Technical Secretariat of the Inter-Ministerial Commission to Revise the Land Law. José Negrão estimates that Maputo green zone land changes hands at \$14,000/ha.
- Second is the market among poorer people in Maputo and Matola. Janete Assulai (2002) reports that there is an important market in urban land in the dense inner suburbs of Maputo; a World Bank study of four neighbourhoods showed roughly half the people has 'brought' their plot or were renting it. Aristides Baloi (2001) points to a similar market of small plots of irrigated land or land near rivers, with land changing hands at roughly \$1000/ha.
- José Negrão points to a third market, which is 'an efficient market between the poor'. Land in rural communities is rented, sold, share-cropped and transferred in a variety of ways. Trees are usually owned and are a major asset; trees are bought and sold and sometimes the land is transferred as well. But these transfers are normally just within the community and do not endanger the basic land holdings of the group; 'empirical evidence is that peasants don't normally sell their basic plot of land.'

Vitor Muchanga of the Land Studies Unit (NET) tells a story of the irrigation scheme around the Pequenos Libombos dam which encapsulates many of the issues. A peasant irrigation scheme had been supported by the Italians, but when they left it collapsed, in part due a lack of marketing. People built up debts to the irrigation system. Eventually more than one-third of the people sold or rented their plots to urban people to grow bananas. Often the original occupants stayed on and worked, and found themselves earning three times as much as employees than they had earned as farmers on the same plot. Only recently has the government's irrigation fund started a banana project for the remaining peasant farmers.

Is the elite land grab the biggest block to investment?

Even before the 1997 land law was passed, there was concern about the trend to place 'vast areas of land into the hands of individuals or enterprises that did not use them,' and the law tried to control this, according to Conceição de Quadros (2002), director of the Technical Secretariat. Much of the land given to officials remains unused.

Corruption at all levels remains a serious problem and the land grab continues. Senior people in government, the military and party obtain land and either bypass the consultation procedures completely, or use the district administrator to force through a token consultation. Often they consider it a right attached to the post, to ensure themselves something for their retirement. District administrators have extensive power and have used it to obtain land for themselves, or to force outside investors to take local partners. It was only pressure from the Nampula provincial land campaign that stopped the district administrator in Rapale from taking community land, for example (Kanji 2002).

There is also corruption in the Provincial Mapping and Land Registry Services (SPGCs); many of the development plans on which titles were granted have simply disappeared, which makes them impossible to enforce, and there seems at least one example of a falsified consultation report. One knowledgeable person told me: 'The problem is not foreigners stealing Mozambican land, it is the new Mozambican elite stealing land from peasants. In some places a serious foreign investor can only get land through a dodgy Mozambican.'

In Maputo, the elite are grabbing land in inner suburbs on which to build grand houses.

And Minister Hélder Muteia admits that some consultations with communities over land applications are corrupt. 'Businessmen can simply buy the community leadership to agree to giving land where there are already people. We have seen this,' he told me.

The court system remains so corrupted that it is impossible to enforce any contract or agreement.

Much of the titling process depends on the integrity and knowledge of the staff, which is improving. District magistrates and state attorneys were given a short course in 2001 on land, forest, wildlife and environment laws. Some of the new, younger, better trained administrators know the law; they tend to be more sympathetic to peasants and try to support them in the consultations. District agriculture directors are now better trained and 90% now have cars or motorcycles. In part to keep tighter control on district administrators, the annual coordinating council meeting of MADER in late April 2002 agreed that as well as district administrators, district agriculture directors also had to be involved in consultations.

Nevertheless, the arbitrary procedures and secrecy still seem designed to encourage corruption and to block the work of honest people. Conceição de Quadros (2002) complains of the 'lack of transparency in the cadastral services'. There are still no rules governing the role of the district administrator and governor, nor are there any procedures governing requests to transfer rural land along with buildings. All title approvals are provisional and depend on the investor carrying out an agreed development, but no one checks to see if this happens.

5. De Soto, security of tenure and landlessness

'Capitalism has lost its way in developing and former communist nations. It is not equitable. It is out of touch with those who should be its largest constituency, and instead of being a cause that promises opportunity for all, capitalism appears increasingly the leitmotif of a self-serving guild of businessmen and their technocracies,' writes Hernando de Soto in his book *The Mystery of Capital*. 'Most economic reform programmes in poor economies may be falling into the trap that Karl Marx foresaw: the great contradiction of the capitalist system is that it creates its own demise because it cannot avoid concentrating capital in a few hands.' And he warns that 'at present, capitalist globalization is concerned with interconnecting only the elites' and that 'capitalism is viewed outside the West with increasing hostility, as an apartheid regime most cannot enter' (de Soto pp 221, 224, 241, 242).

This is strong language from an economist of the far right. He was a governor of Peru's central bank and a backer of the 1992 'auto-coup' by Alberto Fujimori and his CIA-linked security head Vladimiro Montesinos (*El Comercio*, Lima, 31 Mar 2002). As Fujimori's Principal Advisor, he initiated the economic reforms that brought such hardship to Peru that Fujimori and Montesinos were eventually overthrown. Perhaps because of his acceptance of so much Marxist analysis and the critiques of globalisation, his book has been widely influential, including in Mozambique.

In his book, de Soto makes three fundamental points:

- ‘The poor are not the problem but the solution.’ In particular, the so-called informal sector needs simply to be recognised and accepted, rather than being marginalised and persecuted.
- Existing informal and extralegal property rights, including squatting, need to be recognised, to give security of tenure.
- There must be a formal property system with titles. This is more than just ownership. Formal titles, de Soto argues, are an abstraction to something which is more easily tradeable and transferable, and are the fundamental explanation of ‘why capitalism triumphs in the West and fails everywhere else’ (de Soto pp 55, 108ff, 219ff, 241).

I will argue that the first two points are correct, but that the third is wrong and inappropriate for Mozambique today. His first point seems self-evident and would be accepted by most policy-makers in Mozambique – but in terms of the question set out in section 1 about who will develop Mozambique, it would require more emphasis on peasants and less on foreign investors and the needs of urban elites.

The second point is more interesting. De Soto argues at length that ‘the recognition and integration of extralegal property rights was a key element in the United States becoming the most important market economy and producer of capital in the world.’ This was through granting ‘pre-emption’ or squatters rights, under which settlers and occupants gained occupancy rights, no matter how they had come to occupy the land (in particular by stealing land from native Americans or by illegally occupying government land). He also points to his own country ‘Peru (and many other countries outside the West)’ where ‘legal procedures to create formal property are not geared to process extralegal proof’ (de Soto pp 141, 156, 175). This is a key point because the Mozambican law does precisely what de Soto demands. It gives full rights to communities and ‘good faith’ occupants, and oral evidence takes precedence over paper titles (lei 19/97 art 12, 15).

De Soto also makes the interesting point that 19th century US occupancy laws were important for ‘recognising a right to land based on improvements made to it’ – ‘cabin’, ‘corn’ and ‘tomahawk’ rights which meant that if a person built a house, harvested a crop, or even cleared the land, then they had a right to it (de Soto pp 124, 136). In Mozambique and the rest of Africa, ‘development defines property’, José Negrão says; it is investment that creates property rights. Planting trees or building a house creates a right to use land, which can then be transferred. ‘The World Bank view is just the opposite. It says you must have property rights before you invest,’ Negrão notes.

Landlessness

It is on his third point, however, that there is a fundamental disagreement with de Soto. He argues that formal titles allow poor property owners to mobilise the ‘sleeping capital’ embodied in their land and labour potential because these titles are a basis for ‘contracts with strangers’, in particular as the way to obtain credit. But ‘what made this stake meaningful was that it could be lost. A great part of the potential value of legal property is derived from the possibility of forfeiture.’ If people ‘have no property to lose, they are taken seriously as contracting parties only by their immediate family and neighbours’ (de Soto pp 54-5).

Thus the risk that people will be thrown off their land is fundamental to de Soto’s system of bringing capitalism to the poor. Landlessness, at least for some, is intrinsic to his strategy.

‘Titling is not a panacea’ warns the World Bank’s Hans Binswanger in what seems like a direct challenge to de Soto. The problem may be that de Soto’s experience is mainly in Latin America. ‘Communal tenure systems are dominant in most countries in Africa’, notes Binswanger, and ‘can be more cost-effective than formal title.’ He adds that ‘many communal tenure systems ... recognize a user’s property rights if the land has been improved,’ giving an incentive to invest. Instead of ‘trying to privatize land rights to “modernize” land tenure in an environment where few of the conditions for such modernization are present, policymakers

should focus on ways to increase secure property rights within given constraints' (Deininger & Binswanger 1999).

Binswanger implicitly challenges de Soto in other ways, too. The World Bank now puts much more importance on equity rather than efficiency, which took priority in 1975. Creating a land market 'may have a negative impact on equity' he warns, while the efficiency gains over communal systems are less than was previously believed. Titles do not improve credit access for the poor in countries like Mozambique which do not have the legal structures and tradition of using land as collateral, and where population density is low and there is less pressure on land. Finally, he notes that land mortgages do not always mobilise 'sleeping capital', as de Soto claims. In fact, the price of the land increases to take account of the ability to borrow against the land, and buyers of the land will have to take a mortgage in order to buy the land, thus they cannot then mortgage the land to obtain working capital, as de Soto and his supporters assume (Deininger & Binswanger 1999).

Thus the potential of landlessness, the newly recognised success of communal tenure, and the inappropriateness of a land market in a country such as Mozambique all argue for the present Land Law and against a freehold system. Freehold tenure and land mortgages are seen by many in Mozambique as the cause of landlessness and concentration of land in a few hands in Brazil. Several people pointed to the land crisis in Zimbabwe, and attempts there to redistribute land and restore a system closer to the one in Mozambique. They noted the fear that a freehold system would lead to the market creating the same situation that colonialism did in Zimbabwe, meaning that in one or two generations, Mozambique would face the same landlessness crisis that Zimbabwe does now. It is with this in mind that the Frelimo party theses for the 8th Congress in June 2002 opposed privatisation of land. As one of its very first statements declared, Frelimo 'struggles to guarantee that all citizens have access to their fundamental rights of dignity, health, education, access to land, water and housing.'

The British attack on de Soto

The latest discussion paper on 'Land Policy' from the British Department for International Development (DfID), released in April, is critical of de Soto and the World Bank, while strongly backing Mozambique's land law as 'innovative' and a model which 'provides local people with clear rights over their land under the law, with opportunities to negotiate with private investors for development purposes' (DfID 2002).

In a specific attack on de Soto, the paper says 'Freehold titles are unlikely to meet the needs of the many of the poor, and titling has not in general led to improved access to formal credit.' Furthermore, 'land titling programmes run the particular risk of land capture by elites at the expense of the poor, creating opportunities for the powerful to assert absolute property rights and concentrate land at the expense of weaker community members.' DfID stresses its commitment to markets and 'making markets work for the poor'. Nevertheless, it says 'the development of formal land markets, especially in urban and peri-urban areas, can penalise or exclude the poor, because of unequal market access, speculation [and] inflated land values. ... Land titling often introduces market distortions by simplifying and disturbing existing patterns of land rights and facilitating access to individualised property rights for the more affluent.' Finally it warns of the special problem caused by HIV/AIDS, where land is sold off to cover hospital and funeral expenses (DfID 2002).

An earlier DfID study showed that in Africa land titling did not improve access to credit for smallholders, but in some countries (such as Kenya) did lead to increased landlessness (Quan 2000).

It is very unusual for a national aid agency to criticise the World Bank, but the DfID paper attacks World Bank 'stand-alone technically driven land reform [and] pre-conceived models not focused effectively on poverty reduction'. DfID warns that 'lenders may also impose conditions,

such as requirements to introduce freehold tenure or complete land registration exercises – intended to support the operation of land markets and the desired macro-economic scenarios' (DfID 2002).

DfID's alternative is based on rights and equity. It says 'secure, safe and affordable access to land for the poor is a significant factor in poverty reduction. ... There is good economic evidence that relative equality in access to land and other assets encourages faster, more equitable growth. There is also evidence that small, owner operated farms, which generate employment at household and community level, make more efficient use of labour than large farm enterprises. ... Smallholder agriculture can be more efficient and a more equitable basis for agricultural growth' (DfID 2002).

How secure must tenure be?

Raising agricultural productivity requires investment in improving the land, and those calling for privatisation of land or a market in titles argue that neither individuals nor companies will invest without a secure title. Several people told me that big foreign investors had gone away because they could not be sure of security of tenure under the present scheme, but it all seemed hearsay. Only Hélder Muteia could give a concrete example, namely of a German company wanting to put in money with a Mozambican company as part of a project to take over a citrus block from the failed Lomaco, but they finally said they would only do so with guarantees from the government, whereas 'if they owned the land they would be here now.' Clearly orange trees are an improvement which can be mortgaged and sold, so it is hard to see what the problem is.

Deputy Minister João Carrilho emphasises individual advanced peasants, and he argues that it is 'indispensable' that peasants who want to invest have individual titles and not simply be part of a community or collective title; they need absolute security of tenure. The titles do not need to be saleable and they can be under the present system. Indeed Carrilho suggests a form of 'community title' in which communities would set up their own formal title registry which would register permanent occupancy as distinct from shifting occupancy. This, he feels, would be enough to encourage investment. The Land Law (art 13) specifically allows individuals within communities to obtain personal titles to their land, although this provision has apparently not yet been used.

Carrilho argues that tenure is a slow evolution. 'Maputo city has no communal land' and eventually most land will be individual, but this will take a very long time. Thus a community title would be an adequate starting point.

6. Is there vacant land?

'The Agricultural Census of 2001 shows that 83%-90% of Mozambique's arable agricultural land (not forest) is not producing anything' – Cynthia Rozell, USAID (Rozell 2002)

'88% of land is not occupied' – Hélder Muteia (interview).

'Mozambique has about 37 million hectares of land for agriculture and actually uses only 4.5 million hectares, which means that we have 30 million hectares still to be farmed, and it makes no sense to tie up this land to prevent investment.' Hélder Muteia (*Domingo* 8 July 2001).

'Mozambique has a lot of fertile, virgin land' – José Mucombo, head of DINAGECA (interview)

'In Nampula and Zambézia, there is unoccupied land – "no man's land"' – donor official (interview)

People are wilfully misusing the Agricultural Census when they say 80% of land is free. It actually shows that 'only 50% of arable land is not used.' – José Negrão (interview)

'There is no free land; one community goes up to the next' – Ismael Ossemame, UNAC (interview).

'There is no "no-mans-land"' – senior MADER official (interview)

With few exceptions, all land falls under the customary occupation of at least one community, and there is no 'free' land between communities – Land Campaign position, 25 Nov 1999.

In part it is a definitional confusion. Mozambique is less densely populated than parts of South Africa. There are substantial parts of Mozambique that could be used more intensively and significant areas where local people would encourage and support investment, but they are not vacant or unoccupied. Nearly all land in Mozambique 'belongs' to some group or individual. Land that seems to be vacant has uses, as a source of firewood or wild produce or as a watershed or space for future farmland as the community grows larger. 'We have never found a community which says it doesn't want investors,' notes Ismael Ossemame of UNAC. But this is not the same as saying the land is unused or vacant. This distinction becomes important in the discussion over consultation, negotiation and delimitation in section 7.

'The vacant land is precisely where people don't want to invest,' comments José Negrão. It is in parts of Niassa far from roads and services, or remote areas of Gaza. 'Even in Nampula there is vacant land. But it is on mountain tops. All the useful land is claimed,' explains Domenico Liuzzi, director of Kulima.

Just as João Carrilho proposes to start supporting peasants nearest roads and towns, so communities themselves and potential investors know they need infrastructure – roads, water, electricity, markets, etc – if they are to have productive and profitable agriculture. Investors want land near services, and communities already occupy and use that land. The experience with Mosagrius makes this point clearly; after some initial problems, local people in Niassa were happy to have South African farmers take over little used land and invest in it. But the project failed. The land had not been farmed by local people because it was so remote, and the South Africans could not get transport costs down to a reasonable level; only seven South African farmers are left (AIM 14 Nov 2001). Similarly, the huge Blanchard project in Maputo province never even started. And only a handful of white Zimbabwean farmers are moving over the border into Manica province. One MADER official commented: 'these high-profile, politically-driven projects don't work'.

Land use planning

Hélder Muteia's views on unused land and foreign investment led him in October 2001 to announce a national land use plan. 'A national land use map will facilitate the process of [approvals for] use and improvement and will reduce the necessity of consulting communities, because we will know the real situation of each parcel and of the peasants there. We will have a situation in which we have a plan of availability of land and therefore we can sharply reduce the 90 days it takes to process an application, perhaps to one month,' Muteia told the press (*Notícias* 10 Oct 2001). 'We want the government to do preliminary consultation and to select land in advance,' Muteia told me.

In early January 2002, Muteia made a direct proposal to USAID for \$1.3 mn for a pilot project for a Land Use Management Plan ('Plano Director de Uso da Terra'), which would be carried out by DINAGECA in 20 districts. In these districts it was intended to create a local economic impact by attracting significant investment by preventing, in advance, conflicts over land. As well as mapping existing and possible uses, the exercise would map priority development areas. The head of DINAGECA stressed to inquirers that the principal objective of the exercise was to provide investors with quicker access to land.

The proposal caused an outcry in the donor community, in government, and even in MADER. The donors were angry because the proposal was done directly to USAID, totally outside the

ProAgri donor-coordination or SWAP mechanism that is supposed to agree all outside support to MADER.⁵

Under pressure from other donors the proposal was pulled into the ProAgri framework. Meanwhile, although USAID is sympathetic to speeding up investment procedures and land use, their response to the proposal was that Muteia was not putting enough emphasis on actually implementing the existing law. Instead of accepting the proposal, USAID instead said it had set aside money for a pilot project to speed up land titling in rural areas – very different from what Muteia suggested.

Other ministries responded angrily to what they saw as Muteia taking over land use planning. This is the responsibility of the Ministry of Environment (Ministério para a Coordenação da Acção Ambiental – MICOA), which has absorbed the old National Physical Planning Institute (INPF) into a new Planning Directorate. MICOA, for example, had already started experiments on community-based land use planning in coastal areas. The proposal to USAID specifically suggests the plan should identify priority mining areas, which is clearly the responsibility of the Minerals & Energy Ministry. In April Environment Minister John Kachamila responded by setting up his own Inter-ministerial Commission to Prepare a Territorial Planning Law, and invited Muteia to participate in Kachamila's commission.

Within MADER the proposal to USAID drew criticism because it was seen as an extension of the policy to simply mark out land and wait for foreign investors. 'If zoning is just to create space for investors, then it is absolute nonsense,' commented one official. To be effective, any kind of zoning needs to be linked with involvement of the community and requires, in effect, the delimitation of community lands (see next section), as well as development of roads, marketing, etc. Otherwise, it is simply another Mosagrus.

Nevertheless, despite the rejection by USAID and many other complaints, in April 2002 DINAGECA cited as its top priority for 2002 elaborating a 20-district pilot of 'the Land Use Management Plan as a fundamental instrument to assure rapid access to land.' The plan 'is intended, above all, to create a local impact through the increased attraction of private investment' (DINAGECA 2002).

'Communal lands' and landlessness

Three terms seem to be used interchangeably: zoning, classification, and land use planning. But there has been a fear both among donors and within MADER that this would be seen in a very narrow sense and would simply divide the countryside into community areas and commercial development areas, with the former being like the British colonial 'tribal trust lands' or 'communal lands'. There is also a concern that zoning is seen in the old socialist central planning sense, of trying to identify rice areas, cattle areas, and so on, rather than let developers have more flexibility to decide what they want to do with the land.

There is an excellent *Manual on Delimiting Community Lands (Manual de Delimitação de Terras das Comunidades, Comissão Inter-Ministerial 2000)* written by the Technical Secretariat of the Inter-Ministerial Commission to Revise the Land Law with the support of FAO and involving NGOs linked to land issues and SPGC technicians on training courses. The Manual specifically says that the government rejected the concept of 'closed boundaries' where the community has exclusive access to the small area it actually farms, and opted instead for 'open

⁵ ProAgri itself came in for heavy criticism from nearly everyone I talked to. One land consultant working for an international NGO noted that most donor representatives on the ProAgri working group 'are disconnected from the reality of rural Mozambique'. A consultant sent from a donor headquarters commented, 'ProAgri shows wonderful donor cooperation, and it has excellent accounting, but there is nothing on the ground.' A donor official commented 'ProAgri has a lot of money for cars, computers and travel, but little seems to go to farmers.'

boundaries' where the communities controls a larger area and can invite in investors or others as partners in development. Zoning or land use planning, as initially portrayed by the Minister, looks like the closed boundary system, creating tribal reserves under local control and investment areas under central government control.

Most peasant farmers are presently limited to what they can cultivate entirely by hand, with a hoe. Simple mechanisation would increase the amount of land they can farm. In effect, the closed boundary approach assumes this will not occur, that peasants can be confined to a restricted area, and that any growth in peasant production will take place through intensification rather than expansion. It also assumes that as the population increases, most young people will find employment off the land. 'Mozambique cannot afford an army of landless. We have no way of absorbing them into other areas, and we cannot afford to become Zimbabwe or South Africa. So rural land must stay in community hands,' argues Arlinto Chilundo, head of the Land Studies Unit at Universidade Eduardo Mondlane.

Although most of the ProAgri donors want MADER to do more to promote and speed investment, their views on zoning are more mixed – precisely because of fears of creating colonial style reserves.

7. Delimitation and consultation

Communities are given occupancy rights over broad (albeit not clearly defined) areas of land which gives them substantial power. They must be 'consulted' about any proposed development in their area, and have the right to have their land 'identified' and registered. The relevant sections of the law and regulations are:

- 'The process of granting a title for use and improvement of land includes an opinion by the local administrative authorities, preceded by a consultation with the respective communities for the purpose of confirming that the area is free and has no occupants' (Lei de Terras 19/97 art 13).
- 'When necessary, or at the request of local communities, the areas covered by the right of use and improvement of land acquired by occupation by customary practices, can be identified and entered in the national land registry according to rules set out in a technical annex' (Decreto no 66/98 art 9).

Investors and consultation

Before an investor is given the right to use land and a title document is issued, there must be 'consultation' with the local community. José Mucombo, director of DINAGECA, argues that 'in practical terms, the land belongs to the community. If it rejects a proposal, a private investor cannot enter. The community has a veto.'

The report of the consultation must be 'signed by at least three and not more than nine representatives of the community' (Diploma Ministerial no 29-A/2000 art 27). Unlike the process for delimitation, the words 'consultation' and 'representative' are not defined in the law and regulations. DINAGECA did issue instructions in 1999 on carrying out consultations. A first meeting is with the district administrator, the land applicant, SPGC and 'a majority of community members'. The rights of the community are explained and the proposal presented, and the meeting selects between 3 and 9 people. Those representatives meet a second time with the administrator, applicant and SPGC, and all must sign the minutes of the meeting and any final agreement.

The instructions sound good, and some consultations seem to have been reasonable, but many have been poorly done and violated these instructions. Three examples of partial successes are:

- In Maganja it is said that a community negotiated with three different forestry companies and picked the one offering the best deal – 8 paid jobs as forestry guards, with bicycles, and an agreement not to cut in sacred areas. There is a report of a similar forestry negotiation in Goba.
- In Guruè in Zambézia Rachel Waterhouse and Carla Braga report an example where a private investor arrived with a ‘credential’ from the governor and asked for a particular piece of land for grazing. The community refused, and the district court judge backed the community (Waterhouse 2000).
- In Namialo, Nampula province, César Tique (2002) reports a situation in which a community had to decide whether 700 ha would be given to a Portuguese private farmer or a local small and medium farmers association, both of whom wanted to expand cotton production. The traditional leaders (régulos) opted for the private farmer, both because they saw the association as competition for power, and because the private farmer offered jobs and inputs for peasant cotton cultivation. If the régulos actually made the decision and not an elected committee, then the consultation rules were violated. One can also disagree about the choice and its links to historic power struggles. But at least a considered choice was made.

Although consultations are supposed to involve two separate meetings, most seem to have been cursory and just a single meeting, with some as short as 20 minutes, and poorly recorded. Maria da Conceição de Quadros (2002), director of the Technical Secretariat of the Inter-Ministerial Commission to Revise the Land Law, notes that some consultation exercises have been ‘rudimentary in the extreme. Cases have been recorded where cadastral teams go to the district in question, quickly inform the community, and gather together the 3-9 signatures needed. In just a few hours the future of significant land resources is decided for the next 50 or 100 years.’

She cites one example of a company which in 1999 applied for 2000 ha for cashew and coconut trees and 1000 ha for pasture for cattle; 20 unskilled people would be employed. The SPGC report said the land was not occupied, although it also said the land had cashew and mango trees and family farms (which suggests it was occupied). There was a consultation meeting with the district administrator, the head of SPGC, and 93 local people. The meeting agreed that the land contained many local farms and some houses. Nevertheless, because of the jobs the community was prepared for the 2000 ha of trees to go ahead, but not the cattle because they would destroy local farms. Suddenly in March 2001 the applicant reported that the community had agreed to the whole project, after it had been paid 62.3 mn mt (then \$3500) compensation – buying land for just over \$1 per hectare. More interesting was that different individuals had been given different amounts – 29 received an average of \$25 each, 6 received \$55 each, and 18 received an average of \$130 each.

In Zambézia there have been only 137 consultations with rural communities and in only a few cases have communities rejected the proposal (Norfolk 2002). But 1141 titles have been issued for 570,012 ha, and an ongoing study of Zambézia indicates that a significant number of applications for titles have been approved without any recorded consultation with the community.

Finally, in the consultation process, the district administrator is very powerful. He or she does the final report. In some cases administrators have been under pressure from above to encourage investments and have pushed communities to agree projects. Arlindo Chilundo of the Land Studies Unit (NET) tells the story of an administrator who went to the community with an investor who planned a tourist project, and the administrator simply told the community ‘This man will use this land and I want no problems.’ People lost their land and trees, Chilundo said. In Mafavuka, Namaacha, Maputo province, a missionary group was given land claimed by local people. The administrator called a meeting with the community and simply said: ‘you may be angry, but they will stay.’ Despite newspaper articles and pressure from UNAC, the problem has not been resolved (Kanji 2002).

Chilundo comes to a harsh conclusion: 'we pretend we apply the law, but in practice we rip off the local communities.'

Recognising community lands

'Delimitation' is defined as the 'identification of the limits of areas occupied by communities ... including entering this information in the national land registry' (Diploma Ministerial no 29-A/2000 Art 2 Definitions). An entire technical annex to the land law was issued in 2000 to show how this should be done. This starts with a 'participative analysis' (diagnóstico participativo) in which the community talks about its history, use of land and natural resources, special occupation conditions, population dynamics and possible conflicts and methods of resolution. Various groups drawn rough 'participatory maps'. The team doing the delimitation combines these into a sketch map (esboço) drawn on an official topographic map and a does a written report setting out the boundaries of the community land based on streams, roads, or even trees and piles of stones. The team is required to work with a broad cross section of the community – both men and women and representatives of 'diverse socio-economic groups' – as well as with people from neighbouring communities. The final report with the esboço and boundary explanations must be signed by representatives of the community – 'between 3 and 9 men and women chosen at a public meeting' – as well as representatives of neighbouring communities, plus the district administrator. It is then sent to the land registry. The Provincial Directorate of Mapping and Land Registry (SPGC) then issues a certificate (Diploma Ministerial no 29-A/2000).

Under the technical annex, delimitation is to be done where there are conflicts over land or natural resources, when there is interest in the land for investment or development, and at the request of local communities. The annex states that if there is a conflict, the local authorities decide who pays, and in the second case the would-be investor pays (Diploma Ministerial no 29-A/2000 Art 7). Who pays in the third case is not specified in the annex, but José Mucombo, director of DINAGECA, said that if a community requests delimitation, it must pay all the costs. Conceição de Quadros (2002) is critical of this response: 'The concern to rapidly process investor requests for land rights is not matched by an equivalent level of concern to register community lands.' And Simon Norfolk (2002) and Harold Liversage of the Zambézia Agricultural Development Project make the obvious point that this means the right to register land rights 'remains out of reach for the vast majority of rural communities.'

Delimitations are not without problems. Initial attempts at delimitation were done too quickly. In Niassa when the provincial mapping and land registry service (SPGC) first mapped community land at the time land was being given to South Africans for Mosagrus, the communities were given land along the road and the new investors land in the interior. But SPGC simply gave communities a 3 km wide strip on each side of the road. The community said its land went down to a river, but SPGC technicians said the communities were demanding 'too much' and rejected the claim. By losing access to the river, the community lost its fishing rights and thus its food security. The SPGC was wrong on two counts; first, it should have accepted what the community said, and second, it should have registered community rights of way to ensure access to the river.

Meanwhile in Zambézia, ORAM rushed through its initial delimitations, leading to errors and inadequate discussions between neighbouring communities.⁶ In at least one case after a delimitation was approved a neighbouring community said it had not been consulted and it disagreed. In other cases the ORAM people completely missed titles which had been issued within the area claimed by the community (Vicente 2000). 'ORAM staff did not always follow land registration procedures and the shortcuts were then used by SPGC as an excuse for not respecting community rights' (Kanji 2002).

⁶ Whether this was the fault of ORAM, sponsor World Vision, or funder DfID is disputed.

A pilot delimitation in Monapo in Nampula also ran into problems. And in some places, district administrators were initially not cooperative.

Since these initial errors the position has improved, because of the publication of the technical annex and the *Manual on Delimiting Community Lands*, as well as the retraining of 120 technicians (SPGC and NGO staff) as part of developing the *Manual*. Meetings with district administrators to make them better understand the process also helped. This has made the rights of communities much clearer to those doing delimitation. The attitudes of SPGC staff and other local government officials remains very variable, however; some see the role of consultation and delimitation solely in clearing the way for investment, while others have a genuine sense of protecting peasant rights. In both Nampula and Zambézia SPGC now accepts delimitations organised by NGOs, and quite broad delimitations are being accepted and approved at provincial level.

Several people estimated to me that about 100 communities have had delimitations recognised at district or provincial level.⁷ It appears that no delimitations have been rejected at provincial level, although a district administrator refused to agree a delimitation in which a community tried to claim part of a long-standing commercial plantation.

Virtually all communities have some land within their boundaries being used by outsiders – titles issued recently or long ago, or simply land which has been farmed for a long time. An ongoing investigation in Zambézia found that up to half of the land in some communities had titles issued to companies and individuals; it proved quite difficult to compile a list with SPGC files not agreeing with local knowledge. In many cases, there are overlaps between these titles, which creates further confusion.

Another issue is where land has not been used for a long time but is officially still private, particularly with respect to privatised state farms which were, in turn, often abandoned colonial farms. This has happened in Zambézia (Boror, Madal, Emocha), Nampula, and Maputo, at least. Indeed, there are examples of people buying parts of privatised companies simply to gain access to land which had not been used by the companies within living memory, and which communities never knew had been assigned to those companies. In Zambézia land abandoned by settlers at independence has been taken over by groups which include senior Frelimo figures, including Bonifacio Gruveta, leading to disputes with local people that have gained press coverage (Norfolk 2000). The 10-year good-faith occupancy rule should apply in many of these cases, but it is hard to enforce when land is given to someone as part of a privatisation without consulting the community.

8. Delimitation at what cost?

Delimitation is probably the only way to give a community real power. But the cost is high, not only in time and money, but because delimitation stirs up old disputes and also raises expectations.

There are two arguments in favour of delimitation. First, it dramatically changes the position of the community. Without a certificate or title, it only has to be 'consulted', and the investor then obtains a 50-year title to the land and the community has no further influence. Once the community has a certificate, any potential investor has to negotiate with the community to obtain a lease and the state no longer plays an intermediary role. In theory, having a certificate substantially increases the power of the community to negotiate an ongoing commitment by the investor, and creates the opportunity for a genuine partnership.

⁷ Although I can only identify 37 in Zambézia and 18 in Nampula, enough others have been mentioned to make 100 seem a good guess.

Second, as DINAGECA works to speed up consultations in order to approve titles within 45 days, it leaves even less time for the preparatory work needed to help a community discuss its land and the potential uses of that land. That means the consultation is done in isolation by a totally unprepared community. Only by doing the very time-consuming delimitation process can a community decide what land is available for outside investors, what types of investment would be acceptable, and what kinds of payments would be expected.

The Zambézia Agricultural Development Project makes two arguments in support of this approach. On the community side, it argues that community delimitation should 'be done before land concessions are approved. It is very unlikely that there can be adequate community consultation in a land concession application unless the community, its leadership, boundaries and neighbours have been properly identified, a process which effectively amounts to community land delimitation' (ZAPD 2000). On the investor side, Simon Norfolk (2000) of ZAPD comments that 'the profile and nature of existing investors in Zambézia is such that they will not be easily convinced to enter into partnership agreements with local communities unless "forced" to do so in order to get initial access to land or natural resources.'

Clearly the country cannot afford to wait to delimit all land before allowing investment. But just as the proposed zoning programme (section 6) would target the most obvious priority investment areas, so delimitation could start in those areas. And if zoning were done well (rather than by quick surveys), it would probably take as long as delimitation.

Creating and resolving disputes

Delimitation exercises have shown that almost every area has disagreements or actual conflicts over land, over natural resources such as pasture and woodland, and between different claimants to traditional power. Some are feuds which have gone on for decades, while others reflect that fact that the war caused massive population movements and many people did not return to where they started. There are also conflicting individual titles within the community areas.

Frequently a *modus vivendi* has developed which means the disagreement is not an issue, and the process of delimitation suddenly brings the dispute to life. At best, these conflicts are eventually resolved. Sometimes this is through meetings of elders who are able to piece together the use of the land back to the colonial era and who can often come to an agreed history. In some cases, the solution is to register common land in the joint ownership of more than one community. But some prove harder to resolve, and delimitation actually creates local tension and conflict.

A delimitation exercise in Manica brought to the surface complex disputes between competing régulos (chiefs) and between competing fumos (subchiefs), some of which dated back to the colonial era. Delimiting the area of Chazuca, the first attempt was made with a brother of a régulo who accepted the colonial boundary, only to have that delimitation rejected later by someone who claimed to be the genuine régulo (Chidiamassamba 2001).

But in some cases delimitation has actually resolved ongoing conflicts. In Manica there were two different disputes between fumos, one over land and the other over forest for charcoal manufacture. Each was resolved when the two fumos and their communities met over the delimitation exercise (Chidiamassamba 2001). In Nicoadala, Zambézia, at least two people agreed not to apply for land in an area being delimited by communities.

The Manica team comments that 'on one hand, the process [of delimitation] can revive conflicts over the use of natural resources which seemed to have been resolved, but on the other hand the process can bring the two sides together into a dialogue.' In Pindanyanga, the delimitation process brought to a head conflicts over resources, but it also helped to bring together people

who had refused to talk for a long time, and eventually facilitated a solution (Chidiamassamba 2001).

There are also a number of ongoing and acrimonious disputes between communities and people claiming big tracts of land. Some date back to the state farm era and population movements due to the war, and the law does seem to provide a framework of resolution of the dispute. Others date back to the colonial era, with communities trying to reclaim land taken from them for plantations in the 1920s and 1950s.

An ongoing conflict in Catuane, in Maputo province, was described by Eduardo Nhabanga of the Endangered Wildlife Trust (Fórum para a Natureza em Perigo). A senior Frelimo person were given land as part of the privatisation of a state cattle farm. The farm had not functioned for 20 years and the land was used by the community. The person said he had been granted 2500 ha of state farm land, but when the NGO investigated it found he was claiming an additional 2500 ha of land which had not been part of the state farm. Of the 5000 ha, the community claimed 3000 ha of pasture and lakes. In March 2002 there was a meeting with 50 people from the community and this person and the district administrator, but it did not resolve the problem, and soon after fences were built cutting off community access to lakes and forests. This is explicitly illegal, since the land law regulations guarantee access to water sources (Decreto no 66/98 art 14). The community has had no support from the local administrator, who may be afraid to challenge a prominent member of Frelimo.

Another example is a large state forestry project of the late 1970s which has now been privatised. The local community was using some of the forest and the new owner tried to push them out; the community responded by burning part of the forest. With outside help, a community delimitation was done, and it was agreed that part of the forest had actually been planted on community land. Once this was accepted by both sides, it became possible to open discussions on how the two sides should interact over this part of the forest.

How long does it take?

At present, the government is committed to complete within 90 days the entire application process for a land title. In some ways this is sensible, because previously applications took years to process, creating massive possibilities for corruption. But that 90 days includes the consultation with the community.⁸

'Some people want things to take a long time. We have to discuss and consolidate before we advance. In the past, it took a year to talk to the community. That won't do. When we decided to cut the application time down to 90 days there was a lot of resistance to that. People said consultation takes six months, but I said no. And we see that applications are being processed in 90 days,' Minister Hélder Muteia told me. DINAGECA head José Mucombe told me he now wants to reduce this to 45 days, and this is set as a priority for DINAGECA for 2002. Indeed, DINAGECA's annual plan for this year repeatedly stresses the need to 'speed-up' access to land as a way of encouraging investment (DINAGECA 2002).

Yet all the people who work with communities say it is a long, slow process, based on regular contact and multiple visits – not just one 20 minutes 'consultation' with the chiefs. One Mozambican consultant commented: 'It is a long step from a community knowing where it lives to being organised and doing something about more efficient land use. It takes a lot of work to get people to think about land rights and how to use land.' It also requires substantial negotiation within the community between different interest groups. Local disputes within communities and between neighbouring communities seem to be the main reason for delay. I could not find anyone who had done an effective delimitation without regular visits to the

⁸ There is no commitment to approve the Environmental Impact Assessment required for approval of large projects within the 90 days, and it may not be possible.

community over more than a year; some had not been resolved over two years of work. Delimitation is labour intensive, involving many people in the process of getting the community to map its territory, and that makes it expensive.

One result of the delimitation process is often a formal land committee, which continues to be active after the delimitation. However some international NGOs have been pushing the organisation of such committees. Participants at a conference in Beira in June 2001 on consulting local communities organised by the Technical Secretariat of the Land Law Commission warned against committees 'imposed by external pressure and which do not have a clear role' (Reunião Nacional 2001).

How much does it cost?

'Delimitation is very expensive,' Mucombo notes. He argues for only delimiting land where there are conflicts. 'Otherwise, it is a waste of money. It would be better to use this money to improve the life of the community.' In any case, he continues, since the community has the power of veto during consultations, delimitation need not be a priority. Furthermore, he accepts that investors will demand infrastructure such as roads, so he sees no point in delimiting areas far from for roads.

Several international agencies are paying national NGOs to do delimitation, mainly in Nampula, Zambézia and Manica provinces. In Nampula, the Catholic church is also involved.

The Mozambican NGO Kulima, a subsidiary of the Italian NGO Cesvitem (Centro Sviluppo Terzo Mondo), has been working in four districts in Nampula province, and has had 18 community land delimitations recognised (so far, only 2 have formal titles), with a total of 95,511 ha. The cost is high because the community analysis process and the development of the sketch plan is labour intensive. Transferring this to maps for formal demarcation, even with portable GPS systems, is also time consuming. According to Domenico Liuzzi, director of Kulima, the organisation has already spent \$200,000 over three years on these 18 land delimitations, which are about 1% of the area of Nampula. The equipment alone costs \$150,000. Once the equipment is available, Kulima figures suggest it costs about \$2000 to do a community consultation and another \$600 to do the final detailed delimitation.

Based on 21 pilots which were carried out during the writing of the technical annex, Chris Tanner estimates the cost at \$2000 to \$6000 per community. ORAM estimated the cost of delimitation at \$3000 per community, but that estimate seemed to exclude some of the actual costs (Vincente 2000).

This does allow a very rough estimate of the cost of delimiting communities nationally. In general, it appears that rural communities are being defined in terms of areas under individual régulos or other chiefs, referring back to maps from the colonial era (even though this is not necessary, as communities can define themselves in other ways). That would suggest that Mozambique has several thousand communities. This would suggest a delimitation cost of \$10-30 mn. If this were spread over 10 years, it would be 2-6% of the MADER budget. It could be argued that doing delimitation first would actually encourage investment since it would reduce disputes, and that this could be considered necessary pre-investment spending by government and donors.

Waiting for something to happen

A Manica team commented on how difficult it was to get communities involved in the first place, but once they become involved 'the process creates many expectations in local communities about the results of the process leading them to begin to dream of big investments and help in their area' (Chidiamassamba 2001).

Delimitation is seen as preventive, so that communities can demand more than just consultation. But what happens after the land has been delimited? All too often, the answer is nothing. Communities feel they have wasted their time, and yet another 'promise' of development has not been fulfilled.

Vitor Muchanga, a researcher with the Land Studies Unit, told about his experience going back to places where they had done pilot delimitations. 'People expected something more would happen after the land had been delimited. A year later, they had virtually forgotten. It was just people from outside who put down markers to mark boundaries that people already know, so it made no difference. Delimitation seems to bring no practical gains – poor communities have no access to investment resources or credit. And worse, some delimitation processes raised old dead conflicts between régulos.'

In a few areas, however, the delimitation process has broadened people's thinking and the land committees set up during the delimitation process have remained active. Chris Tanner comments that 'in areas where delimitations have been well done and where NGOs have been consistently present, the impact in terms of human development is impressive – very increased sense of community organisation, awareness of rights, a much greater perception of what resources exist in a community and what their potential is. These are important inputs to the rural development process.'

9. Negotiation and countering passivity

The technical annex to the regulations stresses that community delimitation does not prevent other economic activities, but that these can only be carried out with the consent of the community (Diploma Ministerial no 29-A/2000 art 3). The land campaign issued a poster saying 'The community can sign contracts' and showing an investor sitting at a desk with the peasants. Although a certificate or title document gives a community real power to negotiate with potential investors, there are no examples of this actually happening. No contracts have been signed. And I only heard of a few cases where communities are even thinking about negotiating with investors.

MADER's National Directorate of Forestry and Wildlife has been working with FAO to promote 'participatory land use planning' where communities identify potential investment areas. In Maputo province near the new Great Limpopo Trans-frontier Park, there has been government and donor concern about local land rights. One community backed with donor money wants to delimit 10,000 ha and then try to find an operator to use the land as a game farm, ensuring jobs and a permanent income stream. In Malema in Nampula a community in an area where aquamarines and other semi-precious stones were mined in colonial times says it knows the location of more stones; it has created an association and would like to resume the mining. They want to help to delimit their community and they are looking for an NGO that might help them find a mining company who would be prepared to go into partnership with the community. A similar story is reported from Mocubela in Zambézia (Norfolk 2000).

Vitor Muchanga, a researcher with the Land Studies Unit, tells of communities in Boane and Nhamatanda which decided what land they could release, and then made contacts with relatives in Maputo and Beira to try to find investors.

One problem is that it remains difficult for communities to negotiate. One donor representative talked about the 'lack of a government-created enabling environment'. There need to be pro-forma contracts or a least simpler contract procedures. And it is hard to enforce contracts, because the courts do not work and arbitration mechanisms are only slowly being established.

'The Mozambican elite does not accept peasants as stakeholders. They only see peasants as cheap labour,' commented one person close to the issue.

Understanding the value of land

Communities which have been 'consulted' and come to an agreement often have no understanding that they are giving up this land permanently, and they have no understanding of the value of what they are giving away. 'Consultation now is really just selling land. Communities feel they have no choice, and have no sense of the value of their land,' commented one donor official. The vague promise of jobs is always important; one consultation in Zambézia actually contains a promise to create 50 jobs, but no promise that these would go to community members. On top of this, it is widely reported that in the consultations communities are asking for small infrastructure – a well, a shop, a health post, or a school. This is often agreed, but the community does not realise the investor is only offering the building, and not the management and upkeep. Who will pay the teacher, for example. And yet, some people are pleased with a relatively cheap sale – one community which traded a piece of land for a maize mill finds its life significantly improved.

Any conditions agreed with the community become part of the development plan and must be satisfied in the five year preliminary period. After that, however, there is no way of enforcing conditions because the occupier has title to the land.

In one instance, peasants agreed to release 2000 ha in exchange for a payment of 60 million mt, about \$2600. In effect, the investor bought the land for \$1 per hectare. This may seem like a lot of money to local people, but they have lost the land forever.

As an official part of the consultation process, the investor is expected to pay the community 300,000 mt, about \$12. But this is sometimes treated as a bribe-like payment for signing the final papers. Arlindo Chilundo of the Land Studies Unit said there have been occasions where 'leaders' acted for personal interest and signed papers in exchange for money.

Communities need more information, so that they can understand the real value of their land. And they need to make deals which involve regular payments over a long time. Land consultant Simon Norfolk (2000) argues that this should be in the form of rental and a guarantee of employment, but that it should not be in the form of a royalty or profit share because it would be virtually impossible for the community to adequately monitor that. The Technical Secretariat of the Land Law Commission organised a conference in June 2001 on consulting local communities which also concluded that it was insufficient to simply 'ask investors to build schools, health posts or mills' and instead that should opt for partnerships and 'more sustainable options' (Reunião Nacional 2001).

10. Urban land and other issues

This paper is already too long and there are a number of related issues which I did not have time to investigate in detail. Legislation relating to forests, minerals, water and wildlife all conflict in various ways with the land law and with community rights under the land law. Trees and animals are detached from the land and use rights can be granted separately. ORAM cities communities in Sofala where companies have logging rights on community land and the community gains nothing.

Communities, however, retain traditional use rights for hunting, firewood, forest plants, water for cattle and small-scale irrigation, etc. These remain, even when titles are issued for others to use the land. Communities must be consulted over any commercial use. But communities must apply for a concession if they want to exploit them commercially. Nevertheless, it is argued that forest legislation contains strong community rights, and that the concept of 'community forests'

gives local communities further power over their natural resources. The government, of course, retains eminent domain powers; it can take land 'in the public interest' but must pay compensation (Lei de Terras 19/97 art 18). This has been used, at least, for roads, mines and the development of national parks.

There are 58 community-based natural resource management interventions, many of which have a land rights component (Quadros 2002). Many have local resource management committees, but their quality varies, with some having simply been imposed by foreign NGOs.

Another issue is the very problematic nature of 'communities' and the wide disparities within communities. Those who negotiate on behalf of the 'community' may not be negotiating with equal fervour in the interests of all groups.

Urban land

Urban land remains one of the biggest unresolved issues. In urban areas, buildings can be sold and mortgaged and land follows buildings. So far, however, most people who live in self-built houses do not have titles, even though the law gives them rights. But even without formal titles, urban land is bought and sold. In Maputo, there are now estate agents not only for the rich, but even in the poorer suburb of Zimpeto (Jenkins 2001).

In 1999, the Technical Secretariat of the Inter-Ministerial Commission to Revise the Land Law drafted regulations for urban land, which were accepted by the presidents of the municipalities, but rejected by the government (in particularly the Minister of Public Works & Housing).

There are two very different approaches to urban land. The technicians put urban planning first. They argue that the inner neighbourhoods of the 'caniço' in Maputo, such as Mafalala, developed in such a haphazard manner that they are planning and environmental disasters; in many places, for example, the space between buildings only allows a footpath instead of a street. In any case, it is argued, houses are illegal and do not benefit from 'good faith' occupancy provisions because they were built without permission and in violation of the 1970 colonial master plan, as well as the 1985 structure plan (which was never formally adopted). The view is that these people must move out to new plots on the periphery to allow a proper redevelopment. Titles would only be issued where people had settled on plots assigned to them properly by the city council. The other view is to simply give titles to everyone in the simplest possible way; people could sell their titles to developers, or high density redevelopment could take place under eminent domain powers.

Critics of the former view say that the planners have visions of London or Paris that are unrealistic in Mozambique, and that especially in Maputo they want to clear poor people out of the inner suburbs in order to sell the land to the new elite who want to build expensive houses. Critics of the latter view say that having to work with hundreds of different title holders will make redevelopment impossible.

Zefanias Chitsungo, National Director of Housing & Urbanization in the Ministry of Public Works & Housing, said 'Mafalala and parts of Polana Canico are disordered and illegal. The city must be able to take over the land for expansion [of the cement city]. You can only give titles on land which is properly urbanised and parcelled out.' But Chitsungo calls for compensation, even if people are living in an area illegally, as was done when the toll road was built into Matola and the drainage system was built in Maputo. 'We must recognise that people built houses and no one stopped them, even if the construction was illegal.'

But Paul Jenkins (2001), formerly with the Maputo city council and now with the Edinburgh School of Planning, warns that before the debate about an urban land policy is resolved, 'it is widely expected that the urban poor in relatively good locations will be displaced by market forces, with payments linked to much lower "informal" market prices rather than the high formal

market prices.’ Indeed, Jenkins argues that this is in the ‘real interest of both the state and private sector, which seem to collude as much as possible to allow this.’ Jenkins calls for ‘a mechanism which recognises customary land rights as soon as possible,’ possibly some sort of interim title which could be granted at neighbourhood level.

Even without the approval of regulations, under the present law there seems nothing to stop a neighbourhood from calling itself a ‘community’ and delimiting and titling its land collectively.

The 33 elected municipal governments have quite broad powers to set up their own planning and titling rules. Nacala has done this, removing people from areas threatened by erosion and giving titles to anyone else who wants one. The architecture faculty of the university is doing a pilot scheme in Lichinga. Matola has demarcated plots and then sold them. But Maputo’s mix of problems is special, because it has: some of the most densely packed and disorganised neighbourhoods, central government officials who dream of a modern capital, the most pressure to clear land for elite housing, and some of the highest levels of corruption.

11. Possible actions

‘Not only is little attention given to the registration of community use rights as a means to improve the capacity to “negotiate” out of poverty, but there would also appear to be a growing level of government resistance to this aspect of the new policy framework,’ conclude Simon Norfolk and Harold Liversage of the Zambézia Agricultural Development Project. Indeed, there are ‘clear indications from senior officials that the provisions of the Land Law that are designed to protect community tenure are considered to be obstacles to the objective of attracting capital investment and land development in rural areas. This view maintains that there are already enough disincentives to rural investment in Mozambique without requiring investors to enter into expensive consultation processes with local communities’ (Norfolk 2002).

‘While project support through NGOs and others will be needed for a long time to come, assisting communities with the complex task of delimitation, and afterwards, negotiating with outside interests, this process has the potential to end dependence at local level, and by extension, end the present national dependence upon external assistance,’ Chris Tanner, an FAO consultant to the Technical Secretariat of the Land Commission, told me. He also comments on ‘a singular lack of confidence in the ability of ordinary Mozambicans to undertake their own development.’

I agree with Norfolk, Liversage and Tanner. There is a need to shift the balance more toward peasants and the poorest. It is not the purpose of this paper to propose actions which should be taken. But I do want to use this section to highlight eight suggestions which have been made by Mozambicans and others, both during my interviews and in papers, as ways of increasing the power of peasants in a still unequal struggle over land.

a) Continuing the work of the land commission

The Inter-Ministerial Commission to Revise the Land Law and its Technical Secretariat were set up in 1995. It promoted the debate on the land law, then drafted the law, then drafted the regulations and technical annex, and issued various manuals. It has continued to work on land policy issues, but it never gained the ear of the new minister, Hélder Muteia. In any case, it has long outlived its title and original purpose, so is due for restructuring.

A working group proposed that the Technical Secretariat be replaced by a Network on Land and Natural Resources (Rede de Terras e Recursos Naturais), seen as a light and flexible structure to support the application of the Land Law and regulations. It would have focal points at provincial level which would not direct the implementation of the Land Law, but rather serve

as a node for the exchange of information and experience of those organisations in the province that are applying the law – civil society, government, private sector, and academics.

The debate on new institutions relating to land was still going on when I did my research, and seems still unresolved. But several things seem likely. The Inter-Ministerial Commission will be abolished and the Technical Secretariat will become (or be replaced by) a small advisory office to the minister, with less independence than it has now, and with the network idea rejected. And DINAGECA will gain increased power over land delimitation, titling and zoning.

The Technical Secretariat has increasingly become a support structure for those who want to empower communities, and this work needs to be continued in some way.

b) Improving ‘consultations’

Inadequate and dishonest consultations are probably the main way in which peasants are currently being cheated out of their land rights. Better training of SPGC staff is helping, but the rush to clear applications from investors in 45 days is likely to further squeeze consultations. The Technical Secretariat of the Land Law Commission organised a conference in Beira in June 2001 on consulting local communities. ‘The participants noted [the need] for a broad consultation with the largest number of community members possible, and that this cannot be substituted merely with a consultation with community representatives’ (Reunião Nacional 2001). This is a clear acknowledgement that the 1999 DINAGECA instructions for consultations are not being followed. There have been cases of non-representative people agreeing to sign the consultation form for a fee (Norfolk 2000). Better enforcement of consultation rules would help to protect peasant rights, especially with the speed up in consultations. DINAGECA seems not interested in the issue and the Technical Secretariat of the Land Commission is probably now too weak to press for improvements.

c) Continuing delimitation

Delimitation is expensive and time consuming, but it seems the only way to defend peasant land. There are strong arguments that it should be done before investors arrive, both to strengthen the community and to reduce potential conflicts with investors. But there is little money from the big donors for this. All registration of community land rights has been done with donor money from outside the ProAgri framework (Norfolk 2002). One member of the donor ProAgri working group said ‘ProAgri has little money for community delimitation. Instead it is geared to private investment and stresses processing applications quickly.’ A Mozambican working for a donor agency commented: ‘I think MADER must invest heavily in delimitation in order to prevent conflicts. The technical annex is not being implemented.’ But the bias from that agency’s headquarters is toward investors and not peasants.

One suggestion is to create District Delimitation Funds, perhaps managed by district administrators, to carry out delimitations of communities that request them. This might be linked to district land commissions which would involve local government officials, community and traditional leaders, the private sector, and perhaps provincial or district NGOs (Vicente 2000). Another version is Community Land Delimitation and Negotiation Funds, which could pay the organisers suggested below.

d) Community organisers?

The participants at the June 2001 conference on consulting local communities ‘agreed on the necessity of training facilitators, extensionists, and para-legals by associations, NGOs and other to contribute to increasing the level of organisation of communities’ (Reunião Nacional 2001).

'No one is assisting the communities. They do not have lawyers. They are vulnerable and have no one to defend them. Civil society must organise itself. We need community advocates,' said Arlindo Chilundo of the Land Studies Unit (NET). 'Proposals must be more widely publicised and consultations more widely advertised. We need local NGOs to do this.'

'Someone needs to negotiate in the name of the community,' said a Mozambican consultant. 'But who? The régulo alone cannot do this.' ORAM has suggested a 'barefoot lawyer'. There are a few examples where people from the community have been able to take leading roles. One example cited to me was the son of a régulo in Manica who has been to school and who knows that law and has become the spokesman for the community on land issues. Even Hans Binswanger of the World Bank suggested some sort of 'community agents' who would work on a performance-based contract to try to find investment partners for a community. Perhaps local NGOs or even local consultants could try to provide such a service commercially, and communities would use money from the District Delimitation Funds suggested above to purchase services.

Community organisers could be involved in five overlapping roles:

- Supporting communities during consultations.
- Working with communities on delimitations.
- Helping communities to monitor existing title-holders within their area.
- Doing more detailed work with communities to promote investment – helping them to identify their resources and then to go out and to sell to an investor.
- Serving as a professional intermediary between investors and the community, but explicitly on the side of the community.

Several people noted that serious investors do not fly in and out; they expect to remain for a long time, and they want to negotiate a serious deal that will maintain good relations with the local community. Serious investors want good consultations or negotiations, and they would actually like intermediaries who would do the consultations and broker the deal. Serious investors making applications in areas which have not been delimited will want to do their consultation before they make an application, rather than do a rushed consultation during the 90 or 45 days. But there are no intermediaries who can do such work.

Community organisers and intermediaries would not need to be highly paid professionals. They might be local people with secondary schooling who were given basic training in delimitation, negotiation, and investment and planning issues. They would then need professional back-up which they could call on – lawyers, agricultural experts, mining engineers, forestry experts, etc – which could be supplied by NGOs at a provincial or national level to advise when the community needed help.

e) Enforcement

Enforcement of regulations and agreements is the most important way to protect communities and prevent land speculation. After he launched the debate over land privatisation, Minister Hélder Muteia said 'we know that many people have titles but are not using this resource, particularly in the districts of Namaacha and Boane. We are going to repossess this land so that it can produce for the people.' The Sunday newspaper *Domingo* asked Muteia: 'will the Minister have the courage to take land from highly placed people?' He insisted he would (*Domingo* 12 Aug 2001). At the same time, José Elias Mucombo, director of DINAGECA, said the first step was to ensure people paid taxes on their land, but that they would also cancel titles where people had not followed the plan (*Demos* 15 Aug 2001).

But nothing happened. DINAGECA admitted that it has not been checking to see if the conditions of provisional titles are being met. In its plan for 2002, DINAGECA included monitoring of whether plans are being complied with, publication of information where plans are

not being carried out, and the cancelling of provisional titles where the land is not being used. Documents which are signed during 'consultations' form an official part of the development plan, but there seems no attempt to determine if these promises are been carried out; in at least one case, in Nicoadala, Zambézia, the investors reneged on the agreement and nothing was done (Norfolk 2002).

The rules require that if a provisional title is issued, the boundaries must be marked out on the ground within a year, but this is often not done – and no one seems to check. This is important to inform communities about the extent of third-party legal rights within their community. Although DINAGECA's land tax collection rate is improving, there seems little attempt to monitor this or try to collect back taxes.

Much of this is the responsibility of DINAGECA, and there is no monitoring of DINAGECA. No one checks to the quality or accuracy of consultations. No one is checking to see if DINAGECA really follows its 2002 plan and checks on senior Frelimo figures who are not using their land. Arlindo Chilundo of the Land Studies Unit said they asked donors for money to monitor DINAGECA, but this was refused. This is hardly surprising, since the ProAgri donors, in general, are strong backers of DINAGECA and its private-sector bias. But it does mean there is no monitoring.

Simon Norfolk of the Zambézia Agricultural Development Project notes that there is a strong argument for including local communities in the monitoring and enforcement. This could easily be one of the tasks of the land committees that are often set up at the time of delimitation, and would provide a local justification for keeping these committees active.

f) Pilot partnerships

So far, apparently no community has negotiated a genuine partnership with an investor. The Zambézia Agricultural Development Project suggests the need for donor and NGO support for pilot community/investor partnerships, both to show it can be done, but also to discover some of the pitfalls (Liversage 2000).

g) Guarantee funds

Several people stressed the need for donors to do more to support the development of banking and credit institutions, and that they must go beyond micro-finance. One suggestion made repeatedly was the donors need to set up a guarantee fund, to insure loans made by private banks to the rural sector. This could be important in areas where communities have delimited their land, and now want to make small investments such buying a pump for irrigation.

h) Transparency

There remains a lack of transparency in the entire process, including a lack of rules for how decisions are made. This creates space for corruption and for rumours of corruption, which in turn creates distrust. Judgements do need to be made about whether a development plan has been completed, about how good a consultation is, etc. But more confidence in the system would be created if these judgements were written and were public. NGOs and other donors may wish to press harder on this.

What role for local NGOs?

Civil society has played a major and dynamic role in the land debate over the past 10 years, and still plays a key role both in provoking debate and in providing information and delimitation services to rural communities. Nazneen Kanji and Carla Braga in a new study on the role of NGOs promoting land rights in Mozambique say their 'fieldwork revealed considerable

confidence and trust in NGOs, in particular, as a vehicle of communication between local people and governmental authorities. ... Increasingly, peasant groups actively seek the assistance of NGOs to resolve land conflicts or to make land claims' (Kanji 2002).

But there is also a worry that local NGOs have become over-stretched, over-funded and over-inflated and so dependent on international funding that they have lost touch with their local constituency.

Local NGOs and the Land Campaign played a key role in defending peasant interests during the debate over the 1997 land law. The Land Forum (Fórum Terra) is now the joint platform of the various community groups and peasant associations, and it took a strong stand against privatisation of land. But its position has been confused and unsure on the sale of titles, which has huge support from elites and many donors, and it seems civil society is no longer able to play a leading role. Indeed, it seems as if too many of the key civil society actors are caught up in the privatisation/title-market debate and are paying less attention to the rural poor.

'Local NGOs have become overgrown monsters just serving donors,' commented one donor official. 'But it is our fault. We all jump on any tiny civil society blade of grass that pops up and offer money.' The official went on to note that 'there are so few educated people that we all compete for them.' In their study, Kanji and Braga found this problem being compounded because 'national NGOs have lost staff to international NGOs which offer better wages and conditions than they are able to provide' (Kanji 2002).

Kanji and Braga confirm that 'NGOs are being forced to grow too fast and lack the capacity to absorb and manage donor funds.' In particular, 'ORAM received such volumes of funding to implement training and delimitation projects on community land that it has had to grow extremely quickly, generating a series of capacity problems' (Kanji 2002).

One donor official criticised the fact that so many donors have funded community information projects around land. 'Every donor wants to do awareness creation. It's a huge waste of money. It's been poorly done. The consultants and NGOs just pocket the money and run.'

Increasingly, NGOs have narrowed their vision and become businesses. 'NGOs are delimiting land, but not capacitating people. There is a lack of imagination – the NGOs just carry out their task, but they are not advocates and they don't generate ideas,' commented one observer. Simon Norfolk and Harold Liversage from the Zambézia Agricultural Development Project are critical of ORAM, one of the biggest NGOs working in this area, for delimiting without checking for private applications in the same community areas and not working with the same communities on consultations (Norfolk 2002). In their study, Kanji and Braga found that peasant associations complained that NGOs 'did not show communities how to go about solving problems themselves and who go in at positions of power, making [the communities] very dependent on NGOs. ... In Mozambique where there is a history of top-down approaches to policy and programmes ... NGOs have to consciously adopt more empowering approaches to community work' (Kanji 2002).

Most Mozambican NGOs have become service providers and are thus commercial, job-generating entities which are increasingly distant from the idea of an 'NGO' as a self-organised civil society body independent of both state and market and representing some community.

For some NGOs, information campaigns and delimitation have become a business and provide a significant part of their income. A Mozambican consultant told me: 'The honest NGOs like UNAC and the Catholic Church in Nampula have been really good on land. But if we expand these projects, how can we guarantee integrity and honesty?' Another said: 'the NGOs have huge power. How do we ensure they use it well?'

Several of the suggestions in this section assume a civil society role, yet many of the NGOs donors deal with have already exceeded their own capacity. Two responses to this were suggested during my interviews. One is to accept that NGOs are businesses, and to open the whole process of dealing with communities to private individuals and companies. The other is for donors to use their funds and power to force the traditional NGOs to stop doing the work themselves and to train more people at community and provincial level, who would then set up NGOs or companies to do the work locally. Either way, community activists or advocates must come from the communities; they may be less well educated, but with some training and back-up could be more effective than outsiders coming from commercial NGOs.

12. A concluding note

Mozambique's land law remains one of the best in Africa and it is powerful in the way it entrenches peasant rights. I reject totally the view of Cynthia Rozell that 'there is little indication that law can achieve its objectives' and instead opt for the view of Ismael Ossemame that 'we are satisfied with the law, but it has only started to be applied.' And my inquiries suggest that the way in which the law is being applied is improving rapidly. The problem now is that some in MADER, DINAGECA and the donor community are prioritising private investment rather than peasant-biased development, and are trying through procedural changes, speed-ups and zoning to limit the power peasants gained through the Land Law.

'The new law and its instruments are an excellent example not only of making new laws to regulate and achieve socially just objectives, but also of using new legislation as a powerful new development tool. Implementation of the law is still highly problematic however, as it comes into direct conflict with urban-based interests who seek to maintain their control over natural resources, or appears to complicate the process of allocating and managing land rights with its strong focus on community consultation and participation,' notes Chris Tanner (2002) in his new FAO paper.

There is a need for more support to actually empower peasant communities to use the law both to defend their land and to promote local development. One donor official commented: 'The peasants do want investment, but they don't want land grabs. They want processing, a reliable buyer for their crops, and at least seasonal jobs.'

And there is the overriding issue of corruption. Land grabs at all levels as well as bribery and other forms of corruption continue to distort the system. The lack of a functioning court system means that the law and contracts cannot be enforced. This works against both peasants and serious investors. And it creates a demoralising cynicism in the new younger generation of district and provincial officials who really want to defend peasant rights and promote development. Curbing corruption would do much more to promote investment than changing the law to privatise land or legalise the sale of titles.

The push for land privatisation, which provoked this study in the first place, is off the agenda; no one wants it. The discussion on a trade in titles should probably be ignored by the international NGO and donor community, both because it is being quite intensely and adequately debated by Mozambicans, and, equally importantly, because it is a sideshow mainly of interest to an urban elite and will have little real effect on Mozambican development.

In the end, the land debate is really a proxy debate, to replace a debate about development policy that remains tabu. Development policy is still a catechism set in Washington and recited by senior figures in the Mozambique government and at the headquarters of donor agencies. Arguing about land privatisation and land policy is a coded way of talking about development strategies. And it would make more sense if Mozambicans could be encouraged to have that debate in public.

Abbreviations

- BPD – Banco Popular de Desenvolvimento – People’s Development Bank
BIM – Banco Internacional de Moçambique – Mozambique International Bank
CG – donor Consultative Group which meets annually
CTA – Confederação das Associações Económicas de Moçambique – Confederation of Business Associations of Mozambique
DfID – UK Department for International Development
DINAGECA – Direcção Nacional de Geografia e Cadastro – National Directorate of Mapping and Land Registry
DUAT – direito de uso e aproveitamento da terra – right to use and improve land
IFIs – international financial institutions (mainly IMF and World Bank)
IMF – International Monetary Fund
MADER – Ministério da Agricultura e Desenvolvimento Rural – Ministry of Agriculture and Rural Development
MICOA – Ministry of Environment – Ministério para a Coordenação da Acção Ambiental
NET – Nucleo de Estudos da Terra e Desenvolvimento – Land and Development Studies Unit (Universidade Eduardo Mondlane)
ORAM – Associação Rural para a Ajuda Mútua – Rural Organisation for Mutual Help
PARPA – Plano de Acção para a Redução da Pobreza Absoluta (2001-2005) – Action Plan for the Reducation of Absolute Poverty (2001-2005) – Mozambique’s Poverty Reduction Strategy Paper (PRSP)
ProAgri – Programa de Investimentos Públicos na Agricultura – Programme of Public Investment in Agriculture
SPGC – Serviço Provincial de Geografia e Cadastro – Provincial Mapping and Land Registry Service
UGC – União Geral das Cooperativas – General Cooperative Union
UNAC – União Nacional de Camponeses – National Peasants Union
USAID – United States Agency for International Development
ZADP – Zambézia Agricultural Development Project

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12 July 2002