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**OPTIONS FOR STATE FARM DIVESTITURE
AND THE CREATION OF SECURE TENURE**

A Report to USAID/Mozambique

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Table of Contents

Introduction	1
1. Background: The Evolution of Land Policy	2
2. The Current Legal Framework	5
3. Models and Current Framework for Divestiture	8
4. Securing Tenure: Cadastral Survey, Titling and Registration	12
5. Tenure Issues in Divestiture	14
6. Related Tenure Issues	23
7. Some Options Summarized	25
References	29
Appendix I. Statement of Work	
Appendix II. Farm Types and Areas by Province	
Appendix III. Land Tax Tables (Dip. Min. 118/87)	
Appendix IV. Individuals and Institutions Consulted	
Appendix V. A Land Market Approach	

- 1 -

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Introduction

The Policy Framework Paper 1989-91 developed by the World Bank and the Government of Mozambique (World Bank 1989, para 40) indicates: "Efforts will continue to be directed at making state farms more efficient and profitable. It is now Government policy that those state farms that continue to have large deficits will be restructured, or, in some cases, closed and their land and other assets distributed to more efficient producers." An Action Plan was to be produced for each state farm enterprise by mid-1989. One of the policy impacts expected through USAID's Private Sector Support Program is divestiture of state farm land covering approximately 10,000 hectares to private family and commercial farmers. A Letter of Intent from the Ministry of Cooperation of August 31, 1989, confirms the Government's plan in this regard.

This paper attempts to provide some basic information and a framework for thinking about tenure and land management issues in the divestiture of state farms. It is based on a two-week visit (Nov. 22-Dec. 5, 1989). The statement of work for the consultancy is attached (Appendix I). The paper first briefly examines trends in land policy in recent decades and then reviews the current legal framework for property rights in agricultural land. Later sections explore a series of issues specific to divestiture--e.g., divestiture to whom, how, on what terms--and identify some important related tenure issues. A concluding section summarizes options which USAID/Mozambique might consider.

For their helpfulness and patience, my thanks to Carlos Pascual and Julie Born of USAID/Mozambique; to local staff of the mission, in particular Luisa Capelao and Fernando Paixao, and to those officials and other Mozambicans consulted (listed in Appendix IV). The invaluable assistance of Dr. Abel David, Mozambican attorney, is gratefully acknowledged, though any errors of law or fact are the responsibility of the author.

1. Background: The Evolution of Land Policy

Prior to independence, tenure innovation was largely confined to concession agriculture. No attempt will be made here to trace in detail a complicated legal history which begins in the mid-18th century. Legislation in 1918 (Decree of 16 March 1918) divided land into three classes, the third being for indigenous people. Outside of the reserves, land classified as vacant was available through public sale. In theory, an African progressive farmer could obtain up to two hectares. But financial capability had to be demonstrated and demarcation and survey of the land was required. The process was expensive and the process complicated. This legal regime displaced Africans from large areas of the country's best land, and effectively denied them future access to it.

By 1961 international pressure on Portugal resulted in a new Statute of Native Agriculture (Decree No. 43897 of September 6, 1961). This decree contained no recognition of traditional land rights of individuals and families (see 6.3 below for a more detailed discussion on this point). It recognizes three classes of vacant lands: Class 1, land for classified towns and settlements, including their outskirts; Class 2, land reserved for common ownership by Africans, to be utilized in accordance with their usages and customs, and Class 3, all vacant lands not included in Classes 1 and 2. The decree allowed Africans access to land under statutory tenure only in limited cases:

- Under art. 226 of the 1961 decree, subject to authorization by the governor of a district, and subject to consent of the local administrator's advisors that the lands be individually appropriated, the local administration could grant concessions from Class 2 (reserve) lands to residents of the administrative jurisdiction, so that they could be settled with permanent farms (as opposed to shifting cultivation);
- Under arts. 229 and 231 of the 1961 decree, local residents could become renters or tenants from the local administration of available Class 2 lands, but not for more than fifty hectares, unless they could prove that their resources and capability justifies a larger amount.

Use rights acquired in these ways could be transmitted to other residents only with the authorization of the governor, but the rights could not simply be retaken by government and could be used to secure loans. Ultimately, the only way in which a native Mozambican could acquire as full rights to the land as a Portuguese settler was to irrevocably abandon his African personal status by becoming (with his descendents) assimilated and thereby subject to the statutory law on private rights in land applicable to Portuguese. African commercial producers anticipated that after independence they would have easier and more secure access to land.

Table 1 gives some sense of the patterns of ownership and size of farms that existed shortly prior to independence. While less than 15 percent of the land was under cultivation, over 50 percent of the cultivated land was in the hands of a few large (greater than 720 hectares) European-controlled farms,

producing cotton, sugar, tea, sisal, and cashewnuts. Another quarter was occupied by small commercial farms (greater than 20 hectares) managed by Portuguese settlers and African progressive farmers.

Table 1
Land Utilization, 1970

Size of Holdings	No. of Enterprises	Total Area (ha)
Total no. of enterprises	1,652,328	4,981,058.9
Enterprises of less than 0.5 ha	306,077	92,116.5
Enterprises of 0.5 ha and more	1,346,232	4,888,942.4
0.5 - 2 ha	952,866	1,089,026.8
2 - 5 ha	344,162	979,692.2
5 - 10 ha	38,003	244,964.2
10 - 50 ha	8,729	152,532.5
50 - 200 ha	899	90,689.2
200 - 1000 ha	1,074	415,428.1
1000 - 2500 ha	270	402,840.2
2500 and more	219	1,513,769.2

Source: Mozambique, Direccao General de Comercio Externo, Mozambique Economic Survey Lourenco Marques, 1975) p. 25, as quoted in Issue: A Quarterly Journal of Africanist Opinion (Vol. VIII, No. 1, 1978), p. 18.

The socialist tendency of land policy in independent Mozambique was indicated in the 1975 independence constitution (Article 8): All land belongs to the whole people through the state. Land may be either state property or cooperative property. In 1975 and 1976 an internal debate on property rights in land took place within FRELIMO against the background of a hardening of official ideology along Marxist-Leninist lines. Action was precipitated by the flight of great numbers of Portuguese settlers and plantation operators. The government moved into this vacuum ("intervened") on a de facto basis to provide salaries for the farm labor forces and to maintain commercial production. A two-pronged tenure strategy was enunciated at the Third Congress of FRELIMO in February 1977: (1) reorganization and operation of "intervened" medium and large plantations and other commercial production

schemes as state farms; and (2) development of communal villages involving cooperative production, modeled on Tanzania's ujamaa villages, a model with which FRELIMO had experimented in the liberated areas of Northern Mozambique with some success.

The communal villages appear never to have amounted to much as cooperative producers. Little was invested in them and they never accounted for more than one percent of either cultivated area or gross production (Kifle 1983). A number of authors (Cahen 1986, Geffray and Pederson 1986, Meyns 1988,) suggest that the compulsion used in moving people to the communal villages and the dislocations in local relationships of power involved in the process created resentments which, together with expansion of the state farm sector, undermined FRELIMO's support in the rural areas. By 1984, areas cultivated by cooperatives peaked at only 13,000 ha., and by 1986 had declined to a third of that figure (World Bank 1988: 16).

The state farms received by far the bulk of public investment. These farms were created through consolidation of plantations and smallholdings. The properties were not nationalized, simply taken over. The legal position, according to Sachs (1983: 4), was that "no formal confiscation was necessary or undertaken: the ownership disappeared with the owners, and, in terms of the provision of a general statute dealing with abandoned properties, the farms devolved to the state after a period of three months' absenteeism by the owners." (The legal position is actually more complicated; see 5.3 below.) In fact, numerous holdings which had not been abandoned were incorporated into state farms as well, for instance when they were in an area where most other farms around had been abandoned. In Chokwe, large numbers of Mozambican farmers lost their holdings to CAIL in 1977 following that year's floods. Farms were consolidated into larger and larger units. Areas under cultivation were expanded and mechanization increased.

In light of the extremely poor performance of the cooperative and state farm sectors, the Fourth Congress of FRELIMO in 1983 radically adjusted priorities, calling for increased attention to family and private commercial producers. Economic Action Programs for 1984-86 and 1987-89 have involved price liberalization for fruits and vegetables, a foreign exchange retention scheme, and the breakup and distribution of some state farms, notably at Chokwe in Gaza Province.

The trends in land use in recent years stand out fairly clearly in Table 2: a contraction of the state farm and cooperative farm sectors relative to the private farm sector; the emergence of a mixed sector (state/private joint ventures); and a substantial decline of total area cropped.

It is difficult to know what portion of the land which has fallen out of these categories is now being cropped by the family sector, which is not shown in the table. That sector is still estimated by the World Bank (1989: 16) to constitute 90 percent of the cultivated area, in spite of the dislocation of 40 percent of the country's population. USAID and Ministry of Agriculture estimates are a bit lower (Appendix II, which gives a breakdown by province).

Table 2
Cultivated Areas, 1983-1986*
(000 hectares)

Category	1983	1984	1985	1986
State	118.6	122.8	90.7	66.9
Cooperative	7.9	13.0	6.4	4.7
Private	41.2	53.7	45.3	54.9
Mixed**	-	-	-	1.9
TOTAL	167.8	189.5	142.3	128.6

* Cultivated areas do not include sugar plantations.

** Mixed consisted of the joint venture between LONRHO and the Government.

Source: INIA, Ministry of Agriculture, from World Bank, Mozambique Agricultural Survey, 1988, p. 16.

2. The Current Legal Framework

While the basic tenure policy of FRELIMO was settled by 1977, it was not until 1979 that a new Land Law (Law No. 6/79) was enacted. It was described in the presentation speech to the People's Assembly as "a weapon in the struggle to build socialism." An English translation of the law is available (Sachs 1983). The law covers the basic types of right-holders: the state, cooperatives, private holders, and families. Little space is devoted to rights of state enterprises (a matter for administrative law) or cooperatives (which had their own statute, Law No. 9/80). The law focuses on private title-holders and families. Land Regulations enacted in 1987 (Decree No. 16/87) clarify some points. (References in the material which follows are to articles of the law unless specifically indicated to be to the regulations.)

The law begins with a series of broad provisions. All land is the property of the state and cannot be sold, ceded, rented, mortgaged, or pawned (art. 1). (A building or trees or other improvement on the land can however be mortgaged, as the regulations, art. 2, make clear.) All single or collective persons with legal personality can hold title to use land (art. 4) and the state will defend that title (art. 5). The right does not include freedom of management, however; the user "must utilize the land rationally, in conformity with the authorized plan of exploitation" (art. 6). Such titles

arise through a license from the state, except for family farms (art. 8). No fees are payable for use by the state or state agencies or by families, but for private farmers, fees will be charged (art. 9). The English term "lease" rather than "license" will be used here to translate licença; a "license" in English and American law is a much more limited interest in land than that provided by this statute.

The distinction the law draws between private farms and family farms is the conventional Marxist distinction: family farms employ no labor, while private farms do (art. 15). Family farms are dealt with briefly. Rights in family farms arise through use, without the license from the state which is ordinarily necessary (art. 8). Compensation is to be paid when agricultural development causes any damage to family holdings (art. 13). Integration of such farms into cooperative farms is encouraged (art. 16). Rights of commons are recognized (art. 15). Shifting cultivation in forest zones is approved so long as precautions are taken against environmental damage (art. 17). Land must be used for at least three years before the family farmer moves on (art. 18).

The provisions on private farmers are more complex. Their rights must originate in a lease from the state (art. 8) and fees are payable (art. 9). A lease may be perpetual or temporary. In the original statute, "temporary" is limited to between five and fifteen years, but a recent amendment (Law No. 1/86) allows a lease to be given for as long as fifty years. While private titles (for individuals or private entities) are subject to this limit, it does not apply to mixed (private/state) enterprises, in which case use is guaranteed for the life of the enterprise (art. 10). (By art. 21 of the regulations, if an interruption of use is not the fault of the farmer, the term of the lease does not run during that period.) Such rights are inheritable. They are transferable only by inheritance, on the death of the holder, to his or her spouse and heirs according to the terms of the civil (as opposed to customary) law (art. 32). (The Land Regulations, art. 16, add that the spouse and heirs must within six months after the death of the holder make an express declaration that they will follow the authorized plan, or apply for a modification of it. They may subdivide the land but only if it does not impair production.) Heirs cannot transfer the land, but can transfer improvements, infrastructure and buildings, if they have prior authorization from the leasing authority; the state enjoys a preferred right to purchase such improvements if it chooses to do so (art. 33).

Leases are terminated by (1) expiration of the term, (2) renunciation by the holder, and (3) revocation by the state (art. 34). (According to the regulations, art. 20, a lease is automatically renewed for the same or shorter periods, and a lease no longer simply expires, but must be renounced or revoked in order to terminate.) In case of termination, all improvements, infrastructure, and construction revert to the state (art. 35). The causes of revocation are (1) non-fulfillment of the plan of exploitation, except if caused by force majeure, and (2) the state's need to use the land for other purposes. In the latter case, "just compensation" is required (art. 36). (The regulations, art. 19, require six months notice for revocation, except in cases of urgency. The entity to which the land is then assigned must pay for the value of the improvements which cannot be removed and for all the losses suffered. The position on compensation in cases of renunciation is not clear.)

Rights to land and details of their use and capabilities are to appear in a National Land Register (arts. 37, 38). It is obligatory to register the creation, termination, and transmission of such rights (art. 39).

Portions of the 1987 regulations have been cited above in clarification of provisions of the Land Law, but the regulations also break substantial new ground. They set out the process for cadastral survey and titling of land, which are dealt with in the next section of this report, on cadastral survey, titling and regulation. They also specify the areas of land which may be dealt with in leases granted by provincial government, the Minister of Agriculture and the Council of Ministers. A provincial government may grant rights to use land for agricultural products, livestock, or forestry in areas below 250, 500 and 1000 ha respectively. Leases for larger areas must be approved by the Minister of Agriculture. The Council of Ministers must approve the setting aside of land as a protection zone. Within municipalities, the municipal Executive Council approves leases.

The regulations seek to regulate family production. A family farm need not have a lease, but can apply for one (art. 55). The regulations reiterates that no lease is needed for subsistence production. A family is defined as the extended rather than nuclear family. Formal marriage is not required; the key criterion is "a community of material and affective life." Occupation of land by families is not subject to taxation (art. 47). The regulations seek to limit areas of occupation. For each member of the family group, a family is supposed to have in perennial or annual production no more than a quarter of a hectare in irrigated and a half a hectare in rainfed agriculture. If shifting cultivation is practiced, the family may have a complementary area not exceeding 10 hectares. Each family is entitled to access to common pasture for its livestock. If the pressure on land is great and these amounts cannot be managed, the amount can be reduced by local authorities taking into account social, economic and cultural realities of the region. These size limitations will mean little to most family farmers, who work well beyond the ability to the state to regulate their land holdings. But they are important when divestiture is shifting land to family farms. Ideas of appropriate sizes seem to be based more on notions from earlier periods based on than any analysis of current data on the economic viability of operations on a certain scale at current prices. Appropriate scale is affected by a variety of factors, including agricultural prices and technologies, and these are changing. This is a priority area for research.

If the family group is moved from the land they occupy, there must be an express declaration of why this is necessary for the convenience of the state in the public interest (art. 50). In such a case compensation must be paid in advance, before the move, and new land of similar value must be provided. Those being moved should be able to view it before they move (art. 52). If a family group leaves land of its own volition for over two years without justification, the right to use the land terminates and all improvements on the land go to the state without compensation. Where a lease has been granted, it must be cancelled in this case. But even if such a cancellation has taken place, the family group may return to the land at a later date if no one else has begun to use it (art. 50).

Finally, the regulations contain provisions on dispute resolution. An administrative appeal process within the Ministry is described (art. 69), with the possibility of a further appeal into the regular courts, except that a decision by the Council of Ministers is not subject to appeal (art. 70). But there is also a provision for conciliation of disputes, and the composition of conciliation committees (art. 82). It is not clear in what circumstances each of these routes is appropriate.

3. Models and Current Framework for Divestiture

Divestiture began about 1985. State farms had failed as a production strategy and had accumulated heavy debts to the Bank of Mozambique. Information was obtained on three early instances of divestiture (there are others), which provide quite different models. The 1989 divestiture law and the draft divestiture master plan are then discussed.

3.1 CAIL (Chokwe), Gaza Province

The Complexo Agrícola e Industrial de Limpopo (CAIL) is a 25,000 ha agro-industrial complex. (The information which follows is largely from Bowen 1988.) An irrigated colonization scheme was established there in 1954. Over 2,000 African families were expelled from the area initially, and others as the scheme expanded. A few assimilados were permitted to cultivate two-hectare plots on a probationary basis. After 1959, Africans were in theory entitled to the same treatment as Europeans. In the 1970s the number of Africans had risen to a third of the 1,500 settlers, although they held smaller holdings. Many others (2,584) were in a probationary status. In the two years immediately after independence, the number on probation rose to 6,000, with a further 10,000 applying. In 1977, serious flooding by the Limpopo provided the occasion for resettlement of these landholders and their incorporation into communal villages. They were not allowed to return to their farms. Ninety-two percent of the area was incorporated into state farms, while eight percent went to cooperatives.

By 1982 it was realized that CAIL was unmanageable, and it was broken into four farms. The further breakup into family and private farms is shown in Table 3 (Bowen 1988). The irrigation system continues to be managed by SIREMO (Sistema de Regadio Eduardo Mondlane), a state service. There have been complaints from private farmers that remaining state operations receive priority in allocation of water. One of the more complicated issues involved in the breakup of the state farms has been water control for smallholders. There is a concern that there has been a fall in efficiency of water use and increased waterlogging and salination. Diversification of crops creates different water needs for different plots. Experiments are underway with peasant associations based on the 16 ha irrigation sections.

Table 3
Land Occupation By Sector, Chokwe Irrigation Scheme

Sector	1985			1986-87		
	Units	Ha	%	Units	Ha	%
State	10	11,000	45.8	7 ^a	8,500	32
LOMACO ^b	-	-	-	3	2,500	9
Family	12,000	9,000	37.5	14,371	9,650	36
Private	300	2,500	10.4	436	4,600	17
Cooperative	14	1,500	6.3	14 ^c	1,500	6
TOTAL		24,000	100.0		26,750	100

a. The seven state farms are in Lionde, Massavasse, Conhane, Nwachicoluane, Mapapa, Hokwe, and Chilembene.

b. LOMACO is an enterprise jointly owned by the Mozambican government and LONRHO. It took over the territory formerly controlled by three state farms in Chilembene-Hortil, Matuba, and Macarretane.

c. In 1987, there was a total of 2,583 cooperative members.

Source: GDEAC, Chokwe, August 1987.

The selection process for private and family farmers has been complex and to some degree political. Criteria for private farmers included capacity, experience, and assets. Preference was given to those who had been settlers or on probation prior to 1977, and some farms went to settlers of Portuguese origin who had remained after independence. Private holdings range in size from four to 200 ha, with an average of 8.5 ha. Family farmers applying were prioritized as follows: (1) "pure peasants," relying entirely on agriculture; (2) local residents, born in the area; (3) local residents born elsewhere, but having the means of agricultural production; and (4) workers on state farms--to stabilize that labor force. Widows and other female-headed households were given preference. While most of the parcels allocated to families are less than one hectare, allocations have sometimes been made to several members of one household, and there are many instances in which a household farms four to five hectares.

Systematic records of private and family farms, including their land size, may not be being kept--there was conflicting information on this point. It is clear, however, that titles (leases) for land use under the 1979 Land

Law are not generally being given, nor are holdings being systematically surveyed. Contracts are being signed with private farmers but not with family farmers. The contracts for the private farmers specify crops to be grown and yields to be obtained. A fixed percentage of crops, depending upon area of holding (40 percent for 4 ha, 95 percent for 159-200 ha) must be sold to the state. Private and family farmers do, however, market substantial rice and vegetables on the open market. Both private and family farmers must comply with the agricultural calendar set out by the Ministry of Agriculture, on the basis of which water supply is planned.

3.2 LOMACO, Umbeluzi, Maputo Province

These former state farms, two irrigated citrus farms (1 May and Olso) and one cattle ranch (Changala) were merged to create this concession totalling 35,000 ha. The operation is now managed by a mixed (state/private) venture (LOMACO) in which the private partner is LONRHO, a multi-national, and holds a 51 percent interest. The mixed venture has a twenty-year concession, renewable if both parties agree. No rent for land is paid--the land is the government's contribution, while LONRHO has contributed investment funds and management. The enterprise pays a 4 MT/m³ charge for water, based on maximum capacity of installed pumps. The enterprise has a private security force.

The farm remains devoted primarily to irrigated citrus, and has been investing in improved irrigation and replanting of trees. A herd of 5,000 cattle on the books turned out to be 400, and is only being maintained at that level. Some cotton is being tried, and there are plans to place a small area in flowers for export. Almost all production is for export, although small amounts of land are used to grow food crops for the labor force. The enterprise has complete freedom in its marketing and it has sent most of its citrus to East Germany.

This farm involves no private or family farmers, just a permanent labor force of about 800 and seasonal labor mobilized by the district administrator. LOMACO provides the food for the permanent labor force, purchasing rice and beef for this purpose. Permanent workers earn a minimum monthly salary of 17,000 Mt. and can elect to take up to one-half their salaries in food.

LOMACO has been seeking to expand to another state farm (25 June), for cotton production. Part of that farm (380 ha) is to be available next month, but other areas have already been allocated to "important people." Cultivation of these areas appears to be unintensified, growing cassava, for instance. The licenses for these areas might be terminated for failure to utilize according to plan, but such judgments were said to depend on who the holder was, more leeway being allowed to influential people. There are also squatters on one area of 25 June which LOMACO is acquiring. The district administrator has promised to expel them.

Deforestation of the concession area is progressing rapidly. This is being carried out by owners of trucks who send in work gangs to cut firewood for transport to Maputo. The process began several years ago when government, before filling the reservoir which provides the irrigation for the scheme,

called for the cutting of the trees there before they were inundated. The process has continued, however, at the rate of 35 truckloads a day. LOMACO receives nothing for the timber and has queried government whether they may stop the cutting, but have been told that the firewood is too badly needed for Maputo.

3.3 Mixed Cotton Enterprises, Nampula

The contracts for these two new enterprises have not yet been signed. There are protocols setting out the intentions of the parties and while the general outlines can be seen some important details remain to be settled. What follows is a preliminary and tentative description. The divested property is the Cotton Company of Nampula, a state farm built from three "intervened" enterprises. It has been divided into two pieces, one for a Portuguese group and one for an old Mozambican firm with long experience in cotton. Two mixed ventures have been created.

The term of the concession is indefinite--mixed enterprises are not subject to the 50-year limit in the Land Law (art. 10(5)). The enterprises get the factories and some land for direct production. Cultivation will, however, be primarily by private and family producers. Many are already on the land. The number of farmers will be increased by settlement from outside the area, including displaced persons. Some rearrangement of holdings and residential patterns is planned but this is supposed to be accomplished through the attraction of service centers rather than compulsion. It is unclear what security of tenure private and family producers will have, and whether their tenure will derive from the state directly or from the mixed enterprises.

The mixed enterprises will provide extension and inputs for cotton production, on account against production. Each enterprise undertakes an obligation to purchase any cotton grown within its area, and has an exclusive right to purchase within the area. No one will be forced to grow cotton. It is however hoped that the area will be largely in cotton to facilitate supply of services, with foodstuffs being purchased from outside, though it is anticipated that some food crops will be grown within the area of the enterprises.

3.4 The New Divestiture Law

A very recent law (Decree No. 21/89) specifically deals with divestiture of state assets. It does not provide for alienation of state land, but rather for a shift from direct state exploitation of land to exploitation by mixed, private, or family enterprises. The ownership of land remains with the state. An "enterprise" may, however, be alienated. A state farm with its infrastructure, equipment, buildings, perennial crops, etc., can be transferred and payment received for it. The right to use the land may be transferred with the enterprise, or may be vested elsewhere, for instance in family or private producers. Under the new statute, divestiture is onerous, i.e., for payment (art. 1). The decision to divest is made by the Minister or Secretary of State to which the enterprise or property belongs. A proposal for divestiture must go to the Ministry of Finance, which reviews it and

either approves or refuses the divestiture (art. 2). The actual divestiture of enterprises which are in just one locality (not national) can be handled at provincial level, once approved by the parent ministry (art. 3). Divestiture is by sealed bids or, with special permission of the Ministry of Finance, by other materials such as public auction (art. 5). A valuation is made first and a reserve price fixed (art. 6). To be permitted to bid, a deposit must be made of 10 percent of the valuation.

There is a special commission for administration of each divestiture, at national or provincial level (art. 11). The person making the highest bid receives the property; when two bids are equivalent, preference is to be given to Mozambican citizens and fighters in the national liberation war (art. 27). Payment must normally be made in full in one payment within one month of the award, plus 1 percent for costs, but the Ministry of Finance can approve a different plan of payment. Failure to pay on time results in loss of the deposit, voiding of the award, and re-award to the second highest bidder (art. 34). The income from divestiture goes to a special fund to be managed by the Council of Ministers. Debts of the enterprise must be paid out of the income before it is deposited in the fund. If there is insufficient money received to pay all the debts, the Ministry of Finance decides which debts will be paid (art. 47).

3.5 Draft Action Plan

I have had the opportunity to review a draft Action Plan for divestiture, prepared by the Ministry of Agriculture pursuant to its commitment in the Policy Framework Paper. My understanding is that it is being substantially revised, so comment in detail does not seem to be called for. In general terms, it seems that in cases where the state will cease direct cultivation, the plan often calls for the Ministry to retain a major service, input supply or other role. This will tend to dilute the effort to reduce losses on these operations, and should be left to private supply and marketing channels wherever possible. I do not have a good sense of the extent and effectiveness of such private channels. They cannot be presumed under current security conditions to exist or to be ready to spring into existence. USAID/Mozambique staff and the Ministry of Agriculture will have a better sense of this. It might be helpful if the action plan specified staffing implications.

4. Securing Tenure: Cadastral Survey, Titling and Registration

DINAGECA, the Ministry of Agriculture's National Directorate for Geography and Cadastre, conducts property surveys and operates the national land registry. DINAGECA appears to have been a superior operation prior to independence but has been badly neglected since that time. The land registry and cadastral mapping are now out of date, and no longer correspond to the reality of land use. Neither the state interventions of the last decade nor the beginning of divestiture has been carried out through this agency, although the law clearly requires this. The result is a staggering potential for land disputes in the future, reducing security of tenure.

DINAGECA is responsible for identification and survey of land granted by the Minister of Agriculture and for issuing leases. The process, set out in the Land Regulations of 1987, is as follows:

All applications for titles are supposed to go first to DINAGECA (art. 17). An application should go to DINAGECA's provincial office if the size of the land is such that a license can be granted by the Provincial Governor, but if the land is large enough so that the grant must be made by the Minister of Agriculture or the Council of Ministers, application must be made at the DINAGECA's central office in Maputo (art. 29). DINAGECA's provincial office is then requested to investigate the situation of the land, its suitability, and its availability for grant. Provisional occupation is possible immediately when DINAGECA reports positively (art 32). When DINAGECA reports positively to the granting authority, a grant may result. In that case the parcel is then surveyed and the license is authorized by the Provincial Governor or the Minister of Agriculture as the case may be. At this point the file comes to DINAGECA's head office, which issues the title. There is a standard form for the title, in Annex I to the Land Regulations (art. 37).

The title is sent by DINAGECA to the Custodian of the Property Registry (Conservatorias de Registo Predial) in the Ministry of Justice for registration, which completes the process (art. 60). A copy of the title is then sent to the title holder, and a copy to the province. The original is retained in DINAGECA's National Land Archives (art. 61).

This process was said to take about four months if everything goes smoothly. A month's posting of the intention to grant a license is required. The few files examined seemed to have taken about a year. The process was said to move much more quickly if an applicant carried the file from one office to the next and between Maputo and the provinces. The process is sufficiently complex to exclude potential applications from the family farming sector. DINAGECA has about 40 active files which it is processing now. The flow is uneven, and is often determined by political events. Titles tend to be granted on the occasion of presidential visits: the national office has been informed that 80 files are coming in from Zambezia as a result of the President's recent visit there.

DINAGECA has three divisions: (1) Geography and Photogrammetry, (2) Cartography and Aerial photography, and (3) Cadastre. The Cadastre Division, which carries out the work described above, has two departments, Cadastre and Survey. It maintains the National Land Archives, with 60,000 files. The Headquarters has a staff of 180. There are provincial offices in each province, each with a staff of 10 (approximately 4 administrative and 6 technical staff), a single vehicle and 1-2 theodolites. DINAGECA does its own training. Survey is not currently taught at the university. DINAGECA's program trains standard 6 trainees for 3 years, but in 1991 will go to Standard 9 plus 3 years. Trainees are Government employees, mostly from DINAGECA but also from the staff of municipal executive councils and other ministries, such as Public Works, which are involved in physical planning. Sixty finalists complete the course every year. For advanced training, candidates go to England, Sweden, Russia and Portugal.

DINAGECA inherited a surprisingly broad geodetic network, established during the colonial period. It covers most of the country, is most dense in the major river basins and along the coast, and has large areas where densification is required. Where density is not sufficient, surveys are done without tying them into the network. Some staff are trained in survey using

aerial photography, but for most areas of the country the most recent aerial photography is from 1958, far too old to be of any use for cadastral purposes. The Land Regulations require that surveyors also gather information on soils and potential of the parcels they survey, for which they need specialized training. At independence, registered holdings were shown on national cadastral maps at 1:250,000. New maps had been prepared at 1:50,000 and the information had just begun to be transferred at the time of independence. The process has not been completed, and the information shown on the older maps is increasingly out of date.

It is out of date because very few dispositions of land by the Provincial Governors or the Minister of Agriculture are being sent to DINAGECA for issuance of a title and registration. The Ministry has badly neglected this part of its work. Why has this happened? First, surveying and registration were thought of as part of the paraphernalia of a capitalist system of land tenure, and there was a failure to recognize the need of a public system of land allocation for good records of use rights. As one person put it: "After the liberation, why did anyone need security of tenure? To suggest that legal protection was needed seemed to suggest that the Government couldn't be trusted."

Also, there was a strong negative reaction against the survey profession at independence. Survey was associated with colonial takings of land for European settlers. At independence the private survey profession was made illegal, and DINAGECA was required to take over all surveying. Allocations of land have in fact been treated as matters of administrative discretion by the Ministry, and the formalities largely ignored. At the time of the "interventions" titles were not altered. Nor are they being altered for divestitures to family farmers and private farmers, including land allocations by the Green Zone Office. The records of DINAGECA are no longer a trustworthy reflection of the facts on the ground, and confusion has been created which will take decades to undo.

DINAGECA's mapping and geography capabilities have been drawn upon by government, but DINAGECA is frustrated that its cadastral and titling capability is not better used. But DINAGECA could not begin to do all that would be necessary if the law's requirements were observed. The basic question is how the confusion created over the past fifteen years can be rectified. DINAGECA will next year take a first step. Swedish SIDA is funding a pilot exercise in systematic survey of land occupation on 5,000 ha on the west bank of the Nkomati River, in Marracuene, Maputo Province. The area has a mixture of family, private and state enterprise holdings. Recent aerial photography at 1:40,000 was flown for a forestry planning exercise, and can be used for this pilot. The pilot will be particularly useful in establishing the dimensions of the problem and developing strategies for dealing with it.

5. Tenure Issues in Divestiture

5.1 Appropriateness of Divestiture

There should be no doubt that divestiture is a process worth supporting. It is, first, an urgent financial need. Government must cease to take the

financial losses it has been sustaining through the state farms and must seek to recover some of those losses, especially those represented by the indebtedness incurred by these state enterprises to the Bank of Mozambique. It is, second, a potential means of increasing production through greater reliance on private and family farming. Evidence remains strong that breakup of large operations--either private or public--increases efficiency and raises yields per hectare and profitability. These gains are nowhere greater than in the breakups of state or collective production operations. In China, reorganization of production to family units beginning in 1978 is estimated to account for three-quarters of the increase in agricultural output by 61 percent between 1978 and 1984. A World Bank working paper argues that the greatest production returns to land reform in the third world today lie in the deconstruction of the state farm sector in socialist economies (Binswanger and Elgin 1988).

5.2 Security and Quality of Tenure

Current land law provides limited security of tenure. While registered titles to rights of use are available to family farms and are legally (if not always in practice) required for private farms, there are several important limitations to the lease tenure available.

a. Duration. The rights are not perpetual but for up to 50 years. The recent increase of the maximum term to 50 years from 15 years in the 1987 Land Regulations is a major improvement. But fifty years is the maximum, not the minimum or required term. It is not clear how many leases are being made for this maximum. On the other hand, the provision of the regulations for automatic renewal of leases make the term specified less important.

b. Plan of Development. All leases incorporate by reference a plan of development. The lease can be terminated if the projected development is not achieved. On the face of it such provisions seem reasonable enough, but in fact they have a poor record in most countries where they have utilized. If the economic incentives to develop are not there to begin with, or are undermined by later developments, the development conditions will rarely accomplish more than symbolic gestures at development. The first meter of a wall is built, or some other partial measure taken which is offered as evidence of a good faith attempt to comply--as a preliminary to a request for an extension of time because of difficulties faced. In fact, the leaseholder cannot afford to move ahead with a losing proposition, whatever the plan of development says. Where the parcel is part of a government development scheme, the holder is often required by the development conditions to use the land in a way which does not reflect his or her own best interests. There is usually little follow-up. Outside schemes, governments lack the ability to monitor such development conditions effectively or consistently. But they can be abused by officials, and in fact this has been common in countries where they have been utilized (Bruce 1989). Development conditions are used as an excuse for evicting a landholder whose land is desired for some influential applicant, or are used by monitoring officials to extract gifts from landholders in return for turning a blind eye to failures to comply. In the end, they often reduce security of tenure without serving development ends.

This is a critical area, where a major reorientation in government thinking is needed. Planning production seems to be a deeply ingrained habit of mind. There is a need to cultivate an understanding that the state plans agricultural production badly. The state usually bases such planning on land capability criteria, and lacks the flexibility to respond quickly to changing weather and market conditions and new opportunities. Family and private farmers can do this, and should not be restrained.

c. Mortgaging and Selling. One rationale for providing secure registered titles to land is that such titles can be mortgaged, thereby potentially increasing the credit supply to agriculture, and sold, their allocation by market mechanisms leading to more profitable factor combinations and more efficient production. These benefits materialize to a greater or lesser degree in different circumstances, but here the possibility is entirely foreclosed because the 1979 Land Law flatly prohibits such transactions.

USAID/Mozambique could utilize opportunities for influence on policy provided by commodity supply programs to press for law reform, either for (1) full private ownership of land, or (2) reform of the lease system. The first reform approach is fairly straightforward but may not be acceptable to the Government. The second is more complex, but possible. If fifty-year lease terms were made standard; if development conditions were largely eliminated, with the possible exception of some conditions in large irrigation schemes (see 5.6. below); and if the lease could be freely sold or mortgaged, farmer tenure would be greatly enhanced. Sale and mortgage of a long-term lease is possible. It happens often in the U.S., although the lease must usually specifically allow it. What is being sold or mortgaged is the remaining years of the lease. In the case of a mortgage, if a bank forecloses on the lease it will then sell the remaining years of the lease to another farmer, thereby recouping the bad debt. One can borrow as much against a 99-year lease (at its outset) as against owned land; a fifty-year lease should have a significant market value, although perhaps less than owned land. The problem of insecurity in the last years of a leasehold appears to have already been dealt with by the provisions on automatic renewal in the 1987 Regulations.

Such a series of changes would reorient lease tenure from being a command cultivation mechanism in a highly planned agriculture and allow it to mesh with a more market-driven agriculture. It would certainly be worth doing if the option of full ownership appeared foreclosed. It is a process which government has already begun with the extended fifty-year maximum term and the automatic renewal provision.

d. Gender Issues. There is nothing in the legislation which limits leases to men, and in the divestiture in Chokwe there was apparently a particular effort made to allocate land to widows and other female-headed households. There is no reason why a husband and wife could not each have private farms. There are no size limits for private farms. There are size limits for family farms but for land under permanent cultivation they are framed as X amount of land per household member. Land being assigned in divestiture could presumably be divided among household members, but to the best of my knowledge this has not been done, nor, given the small scale involved in many cases, would it necessarily be an advantage for women farmers.

The civil law of inheritance--which applies to leases rather than customary law--allows a widow half of the inheritance. The other half goes to the heirs. It is not clear whether the civil law is actually followed, or customary law, which will vary from one group to another. In other African circumstances for which studies exist, customary norms of inheritance have tended to persist even where legally inapplicable (Bruce 1986). A project for reform of Mozambique's family law has been underway for some time, but has not yet been finalized.

5.3 Prior Rights and Claims

Can one be confident that the state can pass a good right to land involved in divestiture, unaffected by prior claims by others upon the land? This question is worth asking because of the legal confusion which has accompanied both "interventions" and divestiture. The titles to the intervened farms have in most cases never been altered. The interventions by the Ministry of Agriculture were administrative assignments of land to state entities and cooperatives, which were never processed through DINAGECA to obtain titles as the 1979 Land Law requires. (Most of the state enterprises never had the legal personality necessary to own property.) Now, as divestitures to private and family farmers are taking place, the same thing is happening. The titles are not being registered. It is not even clear that good records of the divestitures are being kept.

The consequences of this are not entirely clear. Sachs (1983) contends that the original title-holders have lost their titles by abandonment. Sachs is apparently relying on Decree Law no. 16/75 of 13 February 1975. Its art. 10 provides that property will be considered abandoned by the owners if normal use over a period of more than 90 days cannot be proven. The presumption of abandonment is not conclusive until a proclamation is posted in the prescribed manner for 60 days and has appeared in the Official Bulletin and in the newspaper most read in the locality. If the presumption is not rebutted by the proprietors or their legal representatives within the notice period, the abandonment and appropriation by the state or local authorities is to be declared by a ruling of the Minister of Economic Planning or the Minister of Internal Administration, as the case may be.

This decree law was enacted before the independence of Mozambique and the ratification of the independence constitution, which established state ownership of all land. The question must be raised whether it applies to the abandonments in the immediate post-independence period, when the state had been declared the owner of all land. There are really two legal questions here. First, did the Constitution's declaration of state ownership of land eliminate all rights in land, so that the only recognized rights are those subsequently conferred by the state, or did it simply reduce the extent of existing rights to use rights, which use rights were later given clear definition in the 1979 Land Law? The Constitution itself is not clear on the point, but the 1979 Land Act (art. 8) and the 1987 Land Regulations (art 81) seem to assume that all rights must arise under their provisions. This would appear to exclude the possibility of claims by former right-holders. Second, if earlier rights subsisted as use rights, then does the 1975 decree law on abandonment apply to abandonment of such use rights? This second question should probably be answered in the affirmative under normal canons of

statutory interpretation, especially since the 1975 decree law was by terms of its stated purpose in the preamble intended to apply to the dislocations and potential conflicts created by independence.

On balance, because of the negative answer to the first question, it seems unlikely that such claims survive. Though if pre-independence rights survived as use rights, and those use rights were subject to the provisions on abandonment in the 1975 decree law, then the loss of those rights might presumably be attacked by the original right-holders on the grounds that abandonment did not occur or was coerced, or that there was a failure to comply with the formalities required by art. 10 of the 1975 decree law. If such a claim were successfully established, what then would be the position of the state and of those to whom the state may subsequently have in good faith assigned rights in the land? It is not clear which right would be legally preferred. Lack of registration might legally prejudice the holders of leases granted later, but it is not clear from the 1975 Land Law or the 1979 regulations whether a failure to register invalidates a lease by the state or merely places the lessee at a practical disadvantage in proving his right. Nor is it clear whether the losing claimant to the use right could successfully sue the state for damages for breach of a contractual obligation to provide the designated land.

An attempt was made to deal with this confusion by the 1987 Land Regulations. These provide that those in possession of land, if they do not have titles, must come forward and apply for titles. Art. 81 of the Regulations provides for compensation with other land and for permanent improvements by occupiers of land in good faith who, on seeking to clarify their title, find that a conflicting right is preferred by government. Private and mixed holders have three years to come forward, but state agencies have only one year, which expired on 25/9/88 (arts. 79 and 80). It was specified that state agencies must come forward, or be liable to withdrawal of their right to use the land. According to DINAGECA, they did not come forward, but land has not been retaken.

Almost no private holders have come forward, two years into the three-year period ending on 25/9/90, but the regulations make no corresponding threat of revocation of rights of private holders for failure to register.

No one outside government seems to be aware of these provisions. They are not achieving their purpose, but potentially add to the uncertainty. The net effect of such legal uncertainty may be to increase government's discretionary power to determine who will end up with the land.

5.4 Beneficiaries of Divestiture

The legal arguments mentioned above may or may not be eventually sorted out with rigor in the courts or by new legislation, but they can serve as arguments for those seeking to become beneficiaries of the divestiture. The criteria used in Chokwe have been detailed earlier (see 3.1). One criterion was having held a pre-intervention farm or having been on probation to receive one.

Older claims are brought forward as well. As one Ministry of Agriculture official explained: Many local people were evicted from Chokwe when the irrigation was established. They had a quarrel with the settlers, and when the state farms took over, they inherited the quarrel. These claims are brought forward now. Having come from the locality was one criterion for receiving land divested.

None of these claims are likely to be accepted as legally binding. They will be qualified by other criteria such as assets and affected by factors such as influence through kinship or other connections. What the claims do make clear is that the process of allocation of divested land is to some extent a political process. Part of divestiture is a reaching out by the government to elements in rural society with whom it had previously rejected alliance. This is legitimate, and it would be unrealistic to expect too orderly a process.

This does not mean that AID should not press the case for certain groups, increasing the consideration they may receive in the selection process. There are certain groups of potential beneficiaries to which AID should seek to discourage land allocation; civil servants, retired soldiers, and urbanized poor make notoriously bad farmers. In particular, allocation of choice divested land to "important people" in government can seriously erode any broad support for the divestiture process.

There are other groups whose case AID should argue: smallholders, those with the assets and expertise to become serious commercial producers, and women. Smallholders may in particular need AID's support. There may be lingering illusions in government concerning economies of scale (see 5.5 below). Moreover, the need to recoup the indebtedness of state enterprises seems under the divestiture statute of 1989 to slant divestiture towards those who can afford to pay most. These are not necessarily the most productive. In the interests of long-term productivity, equity, and political reconciliation with local people, it is important that the ability to pay not become the only criteria. USAID should help the Ministries of Agriculture and Finance think through mechanisms for deriving revenue from divestitures to smallholders. (An article on a relevant AID program in Guatemala is attached as Appendix V.) AID may also want to sponsor research to monitor the mix of beneficiaries, and to develop realistic strategies.

5.5 Size of Holdings, Viability of Farm Enterprises

There is virtually no empirical information on the basis of which the author can evaluate or recommend sizes of holdings on divestiture, or the economic viability of the farms created. On the basis of the comparative experience there is for almost all crops an inverse relationship between scale and productivity per hectare--all other things being equal. The smallholder invests family labor at a low opportunity cost and experiences low labor supervision costs which larger operations cannot achieve. Potential economies of scale in large operations are usually not realized in practice because their realization imposes heavy demands on management capabilities. The net result is that smaller holdings are usually more efficient land users, with larger yields per hectare. There is however a point, somewhere below a hectare for irrigated land, where smallness can become a disadvantage.

Holdings too small to provide a livelihood will invite a diversion of household labor to other supplementary activities, such as a shift of labor into rainfed cultivation in years of good rainfall. Smallness can become a disadvantage even for small holdings larger than a hectare, if access to technologies, inputs, or credit is so arranged as to discriminate against small producers (Bloch 1986).

So far, the author has seen no estimated or actual farm budgets for divestiture situations. A trial-and-error approach appears to be in use, and indeed one of the strong points of divestiture to date is the diversity of patterns which are emerging. There is an important monitoring need here, and it is unclear by whom it will be undertaken. USAID/Mozambique should consider supporting monitoring research in this area.

5.6 Activities on a Scale Above Farm Level

As with land redistributions which break up large private holdings, the characteristic mistake in a divestiture situation is to neglect to think through who will now assume tasks which the former owner (the state) performed--however badly it performed them--functions such as input supply, extension, and marketing. In some cases private operators will be able and willing to take up this slack. In others intermediary institutions will be required.

For many "plantation" crops such as sugar, for which a large scale of operation was once considered important and for which centralized processing may still be important, "outgrower" arrangements have proven efficient. A large operator manages a primary processing plant and a core estate but obtains most of its production through production contracts with small or medium farmers. Credit and input supply can be administered by the large operator. The arrangements in the cotton mixed enterprises in Nampula noted earlier are interesting and should be monitored. Although these arrangements often tend toward local monopolies and can retard real competition, competition may in any case be difficult to develop in some areas because high transport costs make it impossible to compete with a local processing operation.

Input supply and marketing cooperatives are another option here. A new law on agricultural cooperatives was enacted this year, providing a legal framework for service cooperatives. Recent experience in Maputo's Green Zones has convinced some observers that service and marketing cooperatives can make an important contribution in this area.

In both the above cases, however, the land rights of smallholders should not be based on their participation in any scheme. It may not be possible to achieve real "arm's length" dealing, but land access should not be used to compel participation. It would be unfortunate, for instance, if instead of contract-farming operations, divestiture created large numbers of tenants on large private or mixed operations.

Irrigation may be a special case. In Chokwe's new smallholder areas, difficulties in water management appear to have led to decreased efficiency in water use, waterlogging, and salinization. Some of this is likely temporary,

but in part it reflects a more fundamental problem. An irrigation schedule assumes a crop calendar, and is far easier to administer when everyone is growing the same crops. Confusion can result when individual farmers begin diversifying their production. The conventional answer to this problem in irrigation schemes in Africa has been to use leasehold tenure to impose a duty to comply with a common pattern of cultivation, with failure to do so resulting in termination of the lease. Even countries such as Kenya, which provide full ownership rights to rainfed land, often utilize leasehold tenure in irrigation schemes. The Land Tenure Center's Dr. Peter Bloch has studied these approaches and thought a good deal about strategies for decontrol (Bloch 1986). He would be able to provide a better understanding of possibilities at Chokwe, if he could spend a few weeks there. Local water user associations with control over water allocation within Chokwe's 16 ha. sections would be one possibility for more flexible planning of allocations (Bloch 1986, Jurriens 1984). Associations of smallholders are being created at Chokwe, but the author has been unable to get a clear sense of whether they are playing the water management role suggested here.

5.7 Ability to Manage Divestiture

From a tenure standpoint, divestiture to family and private units is being carried out largely outside the licensing procedures under the 1979 Land Law. Titles are not being provided. It is not clear that adequate records are being kept at local level. Family farmers appear to be particularly disadvantaged, their rights uncertain. (Licenses are optional for family farmers under the Land Law). Private holders, while they are not receiving titles as required by the Law, are said to be receiving written contracts. But the author has not so far been able to obtain one of these, and has no clear sense of the terms specified, beyond what has been stated in 3.1. above. Large private agro-industrial concerns and mixed enterprises may also be disadvantaged somewhat by lack of a title, but are likely to at least have more adequate contractual arrangements with government.

Titling and registration are normally economically justified in cash-crop areas such as irrigation schemes or cotton farms. Scaling down management units alone will increase efficiency to some extent. Returns would likely be greater if the suggested tenure reforms were carried out. Such returns are of course not easy to estimate. They depend on whether legal opportunities facilitated by titling are accompanied by real opportunities; for instance, a registered title which can be mortgaged may have little impact if lenders are disinterested in lending to smallholder agriculture because of low agricultural prices. Any pilot titling effort in the divestiture context should involve study of its economic and social impacts.

What should policy be on titling and registration in divestiture situations? Large numbers of small and medium farms are being created. Titling and registration could be left to farmer demand, with increased security of tenure available to those who can and will meet the expenses. This approach, however, would be radically inefficient in terms of use of very scarce skilled manpower and equipment at DINAGECA. "Systematic" (as opposed to "sporadic") titling and registration would be more appropriate, with all holders in a given area being surveyed titled and registered at the same time.

As suggested earlier (4. above), DINAGECA's cadastral and titling units have been seriously neglected in the years since independence. They are understaffed and underequipped. DINAGECA will require considerable financial support to rebuild before it can sort out the chaos created in recent years and conduct the large number of surveys and titles called for by divestiture to private and family farms. While the Swedes are supporting some very useful work at DINAGECA, the support is still modest compared to the need. USAID/Mozambique should consider the possibility of strengthening this institution, which must provide the public infrastructure for a system of private rights in property. One possible approach would be for AID to fund a pilot titling effort in a situation of divestiture to private and family farms, pressing the Ministry of Agriculture for improved tenure terms in contracts as part of the same pilot, and studying impacts upon and responses by farmers.

5.8 Government's Ability to Derive Revenues

Government must derive revenue from divestiture. Decree No. 21/89 of 23 May 1989, on divestiture of state enterprises makes it clear that government can charge private interests for the assets and facilities divested. It is less clear, given the risks involved, how much private enterprises will be willing to pay for these divested enterprises. While the 1989 decree on divestiture is well-conceived and on the face of it seems appropriate, no experience under it has been accumulated yet.

There are also opportunities for government to less directly derive revenue from divestiture, through the impact on tax and fee revenues. A law on taxation of cultivated land is in place (Diploma Ministerial No. 118/87), which is extremely unusual in sub-Saharan Africa. This law can be summarized. By art. 9 (3) of the Land Law, this applies only to private farms, and not to family farms, state farms or mixed enterprises. The regulations create a tax on use of land for agriculture, animal husbandry or forestry, and is framed as a per hectare per year charge, payable in advance (art. 1). The basic tax is 1,250 MT/ha adjusted by district (tables 1-10), quality of land (table 11), area of holding (table 12), and level of investments (table 13) (arts. 4-7). The tables are included as Appendix III. The last is particularly interesting; investment reduces tax levels (art. 7). The tax is collected by the department of finance for the fiscal area in which the land is located, in January-March (arts. 8, 9). The department of finance is to keep a register of individual or corporate persons liable for the tax (art. 12). When a new license to use land is approved and registered, it is not to be delivered to the right-holder until he produces evidence of having paid the first year's taxes (art. 14).

It would seem that there is a good prospect of government deriving revenue as land moves into private hands in divestiture situations. Water charges are also imposed on private farmers. The author lacks information on whether and at what cost these taxes and fees are being collected, but their very existence is encouraging. Such charges may be more effective against ineffective use of land and water resources than development conditions. For instance, a land tax imposes costs for keeping land idle and so tend to undermine land speculation. We need to understand better the economic impacts of these charges on farmer behavior in Mozambique's present conditions.

The legal position is quite positive, but it has been difficult to form a clear sense of how effectively government can utilize its legal opportunities.

6. Related Tenure Issues

There are a number of tenure issues which seem to me to be of an importance on a par with divestiture, and so should be mentioned. Some of them are broader than the divestiture issues, affecting both divestiture and non-divestiture situations. Some of them are indeed so broad that it is not clear how much can be done about them at this point in time.

6.1 Overlapping Land Rights and Occupations Without Right

The first is the growing confusion of land rights, which is not limited to divestiture situations. In the area around Maputo, there are now many instances of overlapping land rights which will eventually need to be sorted out. There are in addition many intractable facts which have been created, whole villages including permanent structures which have been built by squatters, often displaced persons, sometimes with the acquiescence of authorities but with no legal authorization. It may not be possible to deal with this issue until there is some place for these people to go. But a study of these land problems should be an important part of any examination of agricultural and institutional viability in the Green Zones. Such an examination was said by a number of those consulted to be badly needed.

Recognition of this problem implies a need to strengthen DINAGECA, initially to increase its ability to experiment on a pilot basis with strategies for dealing with this problem. There is also a need to rethink some of the fundamentals. For instance, could surveying be privatized? There is now no private survey profession in Mozambique, the profession having been nationalized after independence. There are some problems with the idea--DINAGECA might lose all its qualified staff to the private sector very rapidly, and the resolution of the current confusion of land rights will require adjudication of rights, a function which private surveyors cannot perform--but the idea may nonetheless be worth pursuing in some form.

6.2 Structural Adjustment and Problems at the Interface of Tenure Systems

If structural adjustment is successful in making agricultural production more profitable, there is every likelihood that this will enhance conflict between local government, traditional authorities and local people over land. Under the system now in force, government titles applicants with land which they or the government have identified as unused. Experience in other African countries has shown that such systems have a great potential for land grabbing, especially as agriculture becomes more profitable. They become a major cause of resentment against government. Few areas are considered by local people not to be subject to rights by some group. While government legitimately thinks in terms of settlements in areas of low population density, it must find a different style to accommodate local concerns. Local people will otherwise see every project as a step in a process which eventually threatens to take all their land.

The Land Tenure Center has worked with the Government of Somalia on this set of issues over the past three years and a set of policy proposals by the Ministry of Agriculture are now before the Cabinet. They involve the abandonment of titling and registration in traditional areas except after a detailed examination of the situation and development of a plan for comprehensive registration of all existing rights at the same time. Until such a plan can be put in place for an area, customary law is explicitly recognized as controlling land access (Roth, et al. 1989).

There is a need for Mozambique to rethink the interface between the national and local systems of land tenure.

6.3 Lack of Understanding of Indigenous Land Tenure Systems

There is probably less known in Mozambique than in any other African country in my experience about indigenous land tenure systems and the traditional structures of authority involved in them. One consistent thread running from the Portuguese colonial ideology into that of FRELIMO in the early independence period is the rejection of African tradition and the tenure systems it involves.

While the Decree No. 43894 of 1961 at first glance appears in its art. 8 to provide some recognition of customary practices, in fact "the colonial concept of 'common ownership' subverted the individual nature of occupation and utilization of lands under the customary land system" (David 1989). Article 8 recognizes land as owned in common by local residents--rather than the land-administering community as defined by local custom--and specifically excludes rights of individual property, which might develop out of customary practices as economic and other circumstances change. Article 224 confirms that free individual occupation of land "does not confer the right of individual property." Custom is said to govern the use of such land, and in cases not covered by custom, the dispositions of written law on private rights over things held in common are to apply. It is precisely in those cases that legal innovation to meet new needs of individual producers for more secure tenure is required. The net result, David (1989) concludes, is that "instead of respecting local customs, colonial law reduced the complex and flexible individual/community relationship of customary land systems to a simple and rigid scheme of medieval origin, the regime of baldios do poro (commons) of Portuguese law."

Today, such land is state-owned and can be reallocated for the convenience of the state in the public interest, subject under the 1987 land regulations to compensation. The fact of occupation and use gives certain rights under art. 8 of the 1979 Land Law, but there is no recognition of the basis of such rights or occupation in customary land tenure.

If the government is now beginning to seek accommodations with leaders with traditional legitimacy in the rural areas, authority over land will be a critical factor. More needs to be known about these systems, but research may be impossible under current conditions. There is however a clear need for focused public discussion of these issues.

7. Some Options Summarized

In The course of this report a number of needs have been identified. Those needs are opportunities for USAID and the Ministry of Agriculture. They are summarized below, as options to be considered. They are by no means mutually exclusive. On the other hand, they are not for the most part mutually dependent.

a. Divestiture deserves USAID/Mozambique's support:

- Divestiture of state farms can, if properly carried out, both provide significant financial relief to government and increase production.
- Even more important, the manner in which early divestitures are carried out--to whom, on what terms--will create tenure models which will have long-term importance for Mozambique.
- USAID should use its support of divestiture through its Private Sector Support Program as an occasion to think through critical tenure issues with the Ministry of Agriculture.
- Since PSSP support is largely through commodities delivered via market channels, and so there is no readily identifiable, localized subset of beneficiaries whose tenure should be of primary concern, beyond to broad specifications of private and family farmers.
- The focus might instead be on land policy and the information needs of a land policy reform process.

b. The implications of divestiture for staffing levels in the Ministry of Agriculture need to be explored more carefully:

- To achieve the savings needed, divestiture must in many instances eliminate all but an extension role for the Ministry of Agriculture.
- Losses incurred by the state farms have been in part due to extensive underemployment of staff, especially those not directly engaged in production.
- A meaningful divestiture plan needs to specify staffing levels on state farms and the numbers to be retained, shifted to other roles, and eliminated from employment by the Ministry.

c. Further tenure reform is needed:

- Tenure under state leases has been strengthened recently, and it needs to be asked by USAID/Mozambique and the Ministry of Agriculture whether full private ownership is not an appropriate next step.

- There are important tenure reforms achievable even within the framework of leases, in particular elimination of plans of development for leased holdings, and recognition of rights to sell and mortgage leases.

d. A more explicit government policy on claims based on pre-"intervention" rights needs to be elaborated:

- Investment will be undermined by uncertainties and perceived risks to current possessors from such claims, if the Ministry of Agriculture fails to develop a clear policy.
- The discussion of the legal complexities in the report might provide a starting point for such an elaboration, but there should be compelling reasons for the position eventually taken, and the law should be brought into line with that position if necessary.

e. There is a need to develop clearer priorities for family and private smallholders as beneficiaries of divestiture:

- USAID/Mozambique and the Ministry of Agriculture might attempt to think through together an approach to deriving revenue from divestiture to smallholders.
- The land market approach adopted in the Penny Foundation project in Guatemala (see Appendix V) has some limitations but could provide a basis for discussions between USAID and the Ministry.
- There is a pressing need for empirical study of the economic viability of different sizes of holdings and their broader economic consequences.

f. Thinking through issues of smallholder agriculture requires an examination of activities on a scale above farm level:

- Private entrepreneurs may be able to take up some of the slack as the Ministry of Agriculture divests functions as well as farms, but in other cases intermediary institutional arrangements such as contract farming and service and marketing cooperatives may be needed.
- Experimentation with different institutional models for increasing market access for farmers should be encouraged, and arrangements made for the careful monitoring of their successes and failures.
- In the irrigated sector, the potential of local water-user associations as vehicles for water management should to be explored, as an alternative to scheme-imposed crop production requirements enforced by threat of loss of tenure.

g. The impact and potential of land taxes and water charges need to be carefully evaluated:

- USAID/Mozambique and the Ministry of Agriculture need to focus on these charges, as a possible alternative to development conditions for encouraging efficient resource use.
- Their economic impacts at current levels need to be evaluated, and optimum levels determined.

h. Restoration of a reliable system of registry rights in land must accompany divestiture:

- This is a disaster-area in land administration, and mistakes have been made which will take several decades to remedy.
- This problem extends beyond divestiture situations. In areas of acute competition for land, as in peri-urban areas around Maputo, overlapping land allocations by different government agencies and occupations without right have become serious problems.
- USAID needs to explore with Swedish SIDA its plans for strengthening DINAGECA.
- Possibilities which deserve consideration are a pilot for titling in a divestiture situation or in the Green Zone, and a study of the possibilities for re-legalization of the private surveying profession.

i. There are policy issues concerning national land laws and indigenous land tenure systems which call for government to reexamine its fundamental assumptions about legitimacy and authority in rural society:

- Understanding of Mozambique's indigenous tenure systems needs to be deepened. If this cannot be achieved through field research under current security conditions, a public dialogue on the pros and cons of such systems would be an important first step.
- The interface between these systems and national land law needs to be reconsidered, seeking an alternative to a model which creates a growing sense of deprivation on the part of rural people.

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Appendix I

Statement of Work

The activities under this purchase order consists of information gathering, analysis and advice to the GPRM and the USAID Mission regarding the following topics related to a divestiture program:

- A. Prior (i.e., pre-state farm) ownership or claims and means of settlement.
- B. Current land tenure policy (i.e., state vs. private ownership/use rights); existing legislative framework for divesting and providing security of tenure to male and female beneficiaries.
- C. Policy tendencies in terms of preference for fee simple ownership, other forms of ownership or leasehold, and whether the form envisioned (e.g., individual, family or group registration) will assure equitable access by the actual farm operator, the ability of the operator to use the land as collateral, etc.
- D. GPRM capacity to divest, title band register (or alternatively, execute and manage leases), including current donor activities supporting improved capacity.
- E. Beneficiary selection procedures, including gender criteria.
- F. Adequacy of knowledge re: the agronomics of the areas in question and the appropriateness of the size of holding and designated use for assuring economic viability of the beneficiary enterprise.
- G. GPRM capacity to derive revenue (i.e., collect rents or mortgages, tax, etc.) from divested land.
- H. Post-divestiture farm-level capacity to manage and maintain holdings in which economies of scale suggest operation on a consolidated basis (e.g., land under irrigation), any prior infrastructure (e.g., for processing) or other major capital investment, such as irrigation works.
- I. Need for and institutional structures/capacities to support beneficiaries in a transition period.
- J. Any other aspects deemed necessary for a successful divestiture effort not included above.

Appendix II

Farm Types and Areas by Province

Province and Sector	Number	Percent of Total	Average Farm Hectares	Total Hectares	Percent of Total
<u>Maputo Province</u>					
Commercial Farmers	850	0.81	25	21,250	14
Family Farmers	92,400	87.7	0.8	73,920	51
Coop Members	12,100	11.48	30	6,000	4
State Farms	15	0.01	3,000	45,000	31
<u>Gaza Province</u>					
Commercial Farmers	1,173	0.95	20	23,460	15
Family Farmers	120,000	97.02	1	120,000	75
Coop Members	2,500	2.02	60	2,500	2
State Farms	13	0.01	1,000	13,000	8
<u>Manica Province</u>					
Commercial Farmers	250	0.27	60	15,000	8
Family Farmers	90,000	98.08	1.5	135,000	77
Coop Members	1,500	1.63	120	1,500	1
State Farms	12	0.01	2,000	24,000	14
<u>Sofala Province</u>					
Commercial Farmers	120	0.17	100	12,000	15
Family Farmers	70,000	98.97	0.8	56,000	72
Coop Members	600	0.85	50	600	1
State Farms	6	0.01	1,500	9,000	12
<u>Zambezia Province</u>					
Commercial Farmers	160	0.13	180	12,800	8
Family Farmers	120,000	99.53	1	120,000	71
Coop Members	400	0.33	50	400	0
State Farms	12	0.01	3,000	36,000	21
<u>Nampula Province</u>					
Commercial Farmers	120	0.07	80	9,600	2
Family Farmers	250,000	99.53	1.5	375,000	97
Coop Members	800	0.32	75	800	0
State Farms	6	0.00	400	2,400	1
<u>Cabo Delgado Province</u>					
Commercial Farmers	60	0.07	100	6,000	8
Family Farmers	80,000	97.48	0.8	64,000	86
Coop Members	2,000	2.44	40	2,000	3
State Farms	5	0.01	400	2,000	3

Source: Ministry of Agriculture, Government of Mozambique;
USAID/Mozambique Estimates.

Appendix III

Land Tax Tables

(Diploma Ministerial 118/87)

TABLE 1

Cape Delgado Province

DISTRICT	TAX (Meticais/ha)
Ancuabe	1,255.15
Chiúre	1,207.36
Macomia	1,220.42
Mecúfi	1,210.01
Meluco	976.49
Mocímboa da Praia	1,359.09
Montepuez	1,214.07
Mueda	1,042.76
Namuno	827.65
Palma	862.90
Pemba	1,392.31
Quissanga	1,220.74
Balama	827.65
Muidumbe	1,207.36
Nangade	862.90
Ibo	1,220.42
Pemba (city)	1,392.31

TABLE 2

Niassa Province

DISTRICT	TAX (Meticais/ha)
Amaramba	1,189.25
Lago	931.27
Lichinga	1,434.23
Majune	1,151.95
Mandimba	1,156.43
Marrupa	964.39
Maúa	731.26
Mavago	949.72
Mecanhelas	1,101.85
Mecula	837.24
Sanga	884.91
Metarica	1,189.25
Muembe	949.72
N'gaúma	1,156.43
Nipepe	731.26
Lichinga (city)	1,434.23

TABLE 3
Nampula Province

DISTRICT	TAX (Meticais/ha)
Angoche	1,367.28
Eráti	1,210.23
Ilha (city)	1,795.42
Lalaua	1,278.88
Malema	1,168.12
Meconta	1,340.05
Mecubúri	988.78
Memba	1,081.59
Mogovolas	1,171.30
Moma	1,018.71
Monapo	1,654.86
Mogincual	1,276.19
Mossuril	1,387.33
Muecate	1,255.05
Murrapula	1,170.37
Nacala-a-Velha	1,466.89
Nampula	1,613.19
Ribauè	1,278.88
Namapa	1,210.23
Nacala (city)	1,466.89
Nampula (city)	1,613.19

TABLE 4
Zambézia Province

DISTRICT	TAX (Meticais/ha)
Alto Molócuè	1,270.35
Chinde	1,435.79
Gilé	1,051.45
Garuè	1,332.64
Ile	1,238.19
Lugela	1,098.11
Maganja da Costa	1,115.99
Milange	1,100.02
Mocuba	1,623.06
Mepeia	1,263.66
Morrumbala	1,038.91
Namacurra	1,394.92
Namarrói	989.91
Pebane	982.89
Quelimane (city)	1,471.67
Inhassunge	1,471.67
Nicoadala	1,435.79

TABLE 5
Tete Province

DISTRICT	TAX (Meticais/ha)
Angónia	1,224.19
Cahora Bassa	1,272.95
Changara	1,151.20
Chiúta	1,175.61
Macanga	1,298.79
Máguè	639.35
Marrávia	946.22
Moatize	1,765.39
Mutarara	1,449.55
Zumbo	691.10
Chifunde	1,224.19
Tsangano	1,224.19
Tete (city)	1,765.39

TABLE 6
Manica Province

DISTRICT	TAX (Meticais/ha)
Báruè	1,139.88
Gondola	1,944.05
Guro	865.59
Manica	1,784.59
Mossurize	1,087.46
Sussundenga	1,303.28
Tambara	762.40
Machaze	1,087.46
Macossa	1,139.88
Chimoio (city)	1,944.05

TABLE 7
Sofala Province

DISTRICT	TAX (Meticais/ha)
Búzi	1,304.26
Caia	1,234.14
Chemba	997.22
Cheringoma	1,116.91
Chibabava	937.22
Dondo	1,907.00
Gorongosa	919.00
Morrromeu	1,436.88
Machanga	937.22
Maringue	1,234.14
Muanza	1,116.91
Nhamatanda	1,907.47
Beira (city)	1,907.47

TABLE 8
Inhambane Province

DISTRICT	TAX (Meticais/ha)
Govuro	928.60
Homoíne	1,351.05
Jangamo	1,781.25
Inbarrime	1,268.57
Massinga	929.18
Morrumbene	1,203.69
Panda	704.80
Viankulo	972.54
Zavala	1,353.02
Inhassoro	972.54
Funhalouro	929.18
Mabote	928.60
Inhambane (city)	1,781.25
Maxixe (city)	1,781.25

171

TABLE 9
Gaza Province

DISTRICT	TAX (Meticais/ha)
Bilene	1,542.89
Guijá	1,087.75
Chibuto	1,221.63
Chicualacuala	796.80
Xai-Xai	1,618.32
Chókwè	1,726.29
Mandlakaze	1,186.09
Massingir	1,233.69
Mabalane	796.80
Chigubo	796.80
Xai-Xai (city)	1,618.32
Massangena	796.80

TABLE 10
Maputo Province

DISTRICT	TAX (Meticais/ha)
Doane	1,963.74
Manhiça	1,910.36
Magude	1,321.79
Marracuene	1,775.74
Matutuine	1,328.46
Moamba	1,752.87
Namaacha	1,513.46
Maputo (city)	1,963.74
Matola (city)	1,963.74

TABLE 11

Adjustment of Tax According to Type of Land

-- EXCELLENT (Class 1) -- Index 200%

Type of land and soil conditions where investment risk, considering the general agrological factors, is practically nil, therefore the probability of success is almost total.

-- VERY GOOD (Class 2) -- Index 140%

Type of land and soil conditions where investment risk, considering the general agrological factors, varies between 5% and 15%.

-- GOOD (Class 3) -- Index 100%

Type of land and soil conditions where investment risk, considering the general agrological factors, varies between 15% and 45%.

-- REASONABLE (Class 4) -- Index 80%

Type of land and soil conditions where investment risk, considering the general agrological factors, varies between 45% and 60%.

-- MEDIOCRE (Class 5) -- Index 70%

Type of land and soil conditions where investment risk, considering the general agrological factors, is above 60%.

1/2

TABLE 12
Adjustment of Tax According to Land Area

LAND AREA	INDEX TO BE APPLIED
Up to 100 ha	100%
From 100 up to 500 ha	95%
From 500 up to 1,000 ha	90%
From 1,000 up to 5,000 ha	80%
From 5,000 up to 10,000 ha	60%
Greater than 10,000 ha	50%

TABLE 13
Adjustment of Tax According to Average Investment per Hectare

AVERAGE INVESTMENT PER HECTARE (Meticais/ha)	INDEX TO BE APPLIED
Up to 5,000	100%
From 5,000.00 up to 10,000.00	90%
From 10,000.00 up to 50,000.00	85%
From 50,000.00 up to 100,000.00	70%
From 100,000.00 up to 200,000.00	60%
Greater than 200,000.00	40%

Example of how to determine the tax on the use and profits of land:

A farmer utilizes, for the purpose of rain-fed agriculture, a parcel with an area of 1,500 hectares, located in Montepuez District, Cabo Delgado Province. The land is classified as Very Good (Class 2). The user is proven to have made a total investment of 22,500,000.00 MT.

So that we have:

- Base value of the tax:
1,250.00 MT/ha;

- Adjusted value for the district:
1,214.07 MT/ha;
(constant value in Table 1, line 7, "adjusted tax");

- Adjusted value for the class of land:
1,214.07 MT/ha X 140% = 1,699.70 MT/ha
(Table 11, Class 2);

- Adjusted value according to size;
1,699.70 MT/ha X 80% = 1,359.76 MT/ha
(Table 12, line 3);

- Adjusted value according to intensity of investment:
Total investment 22,500,000.00 MT : 1,500 ha = 15,000.00 MT/ha
1,359.76 MT/ha X 85% = 1,155.80 MT/ha
(Table 13, line 2);

- Tax value to be paid per hectare:
1,155.80 MT/ha;

- Tax value on the use of land to be paid annually:
1,155.80 MT/ha X 1,500 ha = 1,733,700.00 MT.

Appendix IV

Individuals and Institutions Consulted

22 November Wednesday	11:00	Arrive Maputo.
	14:00	USAID Staff (Pascual, Paixao, Born, Capelao): Briefing on expectations, program, and procedures.
	16:00	University (Faculty of Agriculture, Firmino Mucavele, Ag Economist).
23 November Thursday	10:00	Ministry of Agriculture (Joao Carrilho, National Director of Rural Development, and Conceicao Quadros, Lawyer): Orientation and plans for redistributing some state farm lands to family and private commercial farmers.
	14:00	(Attorney Dr. Abel David): Past and present laws and regulations governing land title and tenure in Mozambique.
24 November	08:30	Visit to commercial and irrigated farms at Umbeluzi (accompanied by Jose Carreira, UNDP Economist, Water Resources).
27 November Monday	15:00	Arquivo Historico, Maria Ines Nogueira da Costa, Director.
	16:30	Commercial farmer, Inacio de Sousa.
28 November Tuesday	10:00	National Directorate for Geography and Cadastre, Jafar Mussa, Director.
	14:30	Norwegian Aid (NORAD), Arne Disch, Director.
29 November Wednesday	09:00	DINAGECA, Junaide Amade, Director of Cadastral Department.
	14:30	University, Ana Loforte, Department of Anthropology and member of Center for African Studies.

30 November Thursday	08:00	Sousa Cruz, Minister of State for Administration.
	10:00	Maria da Conciecao de Quadros, Lawry, Ministry of Agriculture.
1 December Friday	08:30	University, Faculty of Agriculture, Dr. Rodrigues Pereira, Dean, and Antipas Mate, Department of Rural Engineering.
	10:30	Abel David, discussion translations legal documents.
	02:30	University, Center for African Studies, Brigitte O'Laughlin.
2 December Saturday	10:00	Seminar, Amphitheater 200, Biology Bulding, E.M. University: "Reforming Land Law to Provide Incentives to Increasing Agricultural Productivity: Experience in Africa."
4 December Monday	15:00	USAID: Oral presentation of findings and recommendations to Director and staff.
5 December Tuesday	09:00	Working Group: Oral presentation of findings and recommendations to members.
	18:00	Depart Maputo.
26 December		Final reports sent DHL to Maputo.

Appendix IV

A Market Approach From A.I.D.'s Front Lines, November 1988

Land Market Approach Opens Opportunities

by Michael Yates

In Guatemala, a nation historically torn by land ownership strife, 1,647 formerly landless or land-poor *campesinos* now peacefully till their own fields, thanks to an Agency-supported project initiated by a local private voluntary organization, the Penny Foundation.

New fields of coffee, pineapple, cacao and vegetables planted by participating farmers now flourish where lands were underused or lay idle. Yet land tenure remains a politically explosive issue in many parts of the world. Lack of access to land is often considered an important constraint to agricultural

"The program's market-oriented approach to resolving long-standing land tenure issues in Guatemala is promising."

and rural development and a major source of social unrest.

How was this important social and economic transformation achieved in a country like Guatemala, where traditional attempts at improving access to land, including expropriation, have ended often in violence and failure? The answer is through an experimental mechanism for resolving problems of land access, one that brings together willing sellers and buyers in a free land market. The positive results are plain to see in the Guatemalan countryside.

The Penny Foundation project, funded by a series of grants totaling \$10.5 million from USAID/Guatemala since 1984, is the first successful land purchase and sale program of its kind supported by the Agency and one of the few ever attempted in Latin America. It also is supported by the Bureau for Latin America and the Caribbean's (LAC) Tenure Security and Land Markets Research effort, a subproject of the Bureau for Science and Technology's (S&T) Office of Rural and Institutional Development's Access to Land, Water and Natural Resources project (ACCESS) with the University of Wisconsin Land Tenure Center (LTC).

With support from the LAC project, the LTC began close collaboration with USAID/Guatemala and the Penny Foundation during the project design stage.

"The project's success has led to quick growth and widespread local and international attention," observes Mission Director Anthony

Cauterucci. "Today it is being looked at as a potential model for other parts of the world."

In a country where land reform is a sensitive issue, Cauterucci notes that "the Penny Foundation voluntary land sale/purchase program is providing an effective mechanism through the private sector for dealing with one of the most serious problems confronting Guatemala."

As broker and facilitator for the land sales, the foundation acts as a single trustworthy buyer that sellers can deal with, rather than negotiating with a large number of individual small farmers who are inexperienced in legal and financial matters. Sellers receive up to 50% cash and the balance in promissory notes with terms up to five years for their land. Buyers put down 10% and pay the foundation the balance over a 10-year period, paying market rates of interest.

Titles are issued at purchase, rather than waiting until the entire mortgage is paid off (as with government land sale programs). To date, 23 farms totaling 6,157 hectares have been purchased on the open market to be subdivided for sale to program beneficiaries. The foundation expects to use its revolving fund to purchase on the average 1,350 hectares each year in the foreseeable future.

The Penny Foundation program is an effort to respond to economic, agronomic and political realities. Because beneficiaries must grow commercial crops in order to meet their annual land payments and increase their standard of living, good markets for new production are essential. A grace period of three to four years is provided before loan repayment begins in order to allow for establishment of tree crops with delayed returns, such as coffee, cacao and mango.

Foundation agronomists provide direct technical assistance to participating farmers during the initial five-year period. The foundation also provides selected inputs through USAID project-funded production credit and other essential services such as housing, schools and water using donations from the Guatemalan private sector, which started the Penny Foundation 25 years ago.

By foundation requirements, all farm units must be large enough to ensure a potential income that compares favorably with what the farmer might earn in the city. This is substantially more than the \$1.50 per day that the typical beneficiary could make as a day laborer.

These income gains are achieved through higher productivity with more labor-intensive production practices. In fact, the large farm units actually become more productive when they are divided into smaller farms. Rural-urban migra-



Don Jose, a Guatemalan farmer, signs the mortgage to land he bought through a USAID-funded voluntary land sale and purchase program.

tion is reduced as a result, and family and social stability is encouraged in the newly settled areas. This also curtails increased pressure on the already overburdened infrastructure of the neighboring villages and towns.

As the success of the foundation's initial efforts makes clear, however, simply providing access to land may not be enough. The foundation's approach takes into account the full context that surrounds the issue of small farmer access to land and enhanced rural and agricultural development.

Antonio Gayoso, director of S&T's Directorate for Human Resources, recently visited a three-year-old project site in full operation. "The new owners had already started small vegetable and fruit gardens for additional market income while their young tree crops develop," Gayoso says.

"Morale among the settlers seemed high, and the farmers showed a clear understanding of the mechanisms and implications of the loan transactions," he notes. "As one farmer explained, 'Yes, I understand that I have to pay the mortgage in order to keep the land, but for me this is a wonderful opportunity. It is my only way to acquire my own land.'"

The Ministry of Education has assigned a schoolteacher to the project site to assist the Penny Foundation teacher, and an owners association has already begun operations.

However, some difficulties remain, including those associated with marketing farm produce. These problems suggest that even more careful attention should be given to key support services, such as identifying marketing opportunities and making them more effective.

Since the program is still relatively new, it may be too early

to draw firm conclusions about its potential value as a model for other parts of the world. The costs associated with this kind of comprehensive approach are high, for example, and could be an important constraint to continued, rapid expansion.

A secondary mortgage market has yet to develop, and this, too, may limit the program's ability to expand as rapidly as may be desirable. In addition, sustainable development of the project sites, and of the program in general, will take several years and will only succeed if political stability continues.

But the key point is that there now exists a strong sense of new possibilities and opportunities. The government of Guatemala is now implementing a similar land purchase/land sale program (but with a cooperative production model, rather than with individually titled fields). Other private and non-governmental organizations could eventually become involved.

Meanwhile, the foundation continues to work through the land market, tapping dormant human and agricultural production potential and promoting an entrepreneurial attitude that will enrich the development of the country as a whole.

While not a panacea for all land tenure problems, the Penny Foundation's straightforward and unthreatening market-oriented approach to resolving longstanding land tenure issues in Guatemala is certainly promising.

USAID's support of this effort has attracted the attention of the Senate Committee on Appropriations (in an addendum to the Foreign Assistance and Related Programs Appropriation Bill, 1988, Calendar No. 463, Report 100-236, page 99). In that report, the

(continued on page 6)

Land Market

From page 5

members write, "The Committee commends AID for expanding its pilot open market land purchase project in Guatemala into a full-scale effort, even if modest in size. Evidence to date for this small land distribution program, through the Penny Foundation, indicates dramatic increases in incomes, productivity and job creation for the small farmer purchasers who are the beneficiaries."

"It is clear that the impact of the Penny Foundation project on landlessness in Guatemala is primarily a demonstration of the potential of the land market approach," says Eric Chetwynd, acting director of the Office of Rural and Institutional Development. "While no small achievement, successful establishment of 1,647 *campesino* families on their own plots of land is just a modest beginning in a country like Guatemala, where land distribution is among the most skewed in the world."

Alleviating land pressures on a significant scale, Chetwynd explains, would require wide expansion of this program.

But the foundation project does show how land markets can peacefully and effectively increase the access of landless and land-poor farmers to productive lands, stimulate agricultural production and increase regional income.

Meanwhile, S&TRD's ACCESS Project with the Land Tenure Center continues to advise and analyze this pioneering effort and to help provide guidance for other countries that are planning or proceeding with similar land reform programs.

"The Guatemalan *campesinos* appear convinced that the foundation's approach is a good one, and they are working hard so they can own their own land and improve their standard of living," says Cauterucci. "The opportunities offered by the foundation and the Agency can help them realize these important goals, underlining again that 'opportunity' is what economic growth is all about."

For more information on this or other promising approaches to land tenure issues in USAID-assisted countries, contact Tom King in LAC/DR or Michael Yates in S&TRD/RRD.

Yates is an agricultural systems analyst in S&T.RD.

**Further Information Needs Concerning
Tenure and Divestiture**

A Report to USAID/Mozambique

**John W. Bruce
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28 December 1989

44

**Further Information Needs Concerning
Tenure and Divestiture**

A Report to USAID/Mozambique

The scope of work for this consultancy calls for an appraisal of gaps in knowledge and possibilities for dealing with them. The gaps are extensive. Focusing down on the information needed to think constructively about the reform of land policy, most of the needs can be clustered under five headings. The first is critically important to tenure policy and national unity in Mozambique, but is not related to divestiture; the others are directly related to divestiture. A sixth point deals with geographic focus.

1. More information is needed on customary land tenure systems, related authority structures, and the interface between these and the national system of land administration.

The government's communal villages program was its major policy initiative in the customary tenure areas. It failed, and is now believed to have contributed significantly in some provinces to disaffection with government. Similarly, the extension of the areas of state farms deprived local people of land and created resentment. This has of course now been stopped. But the current practice, whereby government carves land for lease to private farmers (often outsiders) out of "unused" land in the customary tenure sector, legally state land, seems likely to increase disaffection. Structural reform and programs which subsidize mechanized cultivation will tend to accelerate this process by increasing demand for land.

The security situation likely precludes any effective research on this issue. Many of the areas involved are relatively insecure and the issue of interest is thought to be directly related to the insecurity. The only alternative which occurs to me is stimulation of and support for a process of dialogue between officials and influential figures in rural society. It might be possible to do a policy workshop in Maputo to review the experience of other African countries, leading to a series of more strictly Mozambican workshops at provincial and local levels, with feedback into a follow-up workshop at national level.

It is difficult to know how government might respond to this idea. They remain leary of traditional authorities in the rural areas, who would need to be involved in the dialogue for it to be useful. A possible place to float the idea initially would be with Mr. Sousa Cruz, Minister of State for Administration. The Ministry of Agriculture would of course need to be involved. LTC would be willing to help a local institution (the Center for African Studies at the University?) put together an initial seminar and

participate in the final seminar, if government were receptive to the idea. Participation by a few knowledgeable people from African countries with happier experiences in this area would be essential. LTC has recent experience with similar seminars in Lesotho and Swaziland.

2. More information is needed on the actual terms on which land is received in divestiture to private and family farmers, and the impact of those terms on production.

Divestiture is proceeding largely outside the legal processes for creating land rights. One of the results is that the many decisions made at provincial or lower levels leave no central records from which this information can be compiled. Policy dialogue with government on tenure policy needs to be better informed on what is actually happening and about its economic and other impacts.

Gathering information on actual terms could probably be done in a three to four week exercise involving reconnaissance trips to several areas. Local consultants could be used. Such an exercise would need to be carried out in collaboration with the Ministry of Agriculture. If desired, LTC could help the Ministry develop a framework for this exercise and possibly participate in some field visits.

Research on the socio-economic impact of these arrangements can however only credibly be done as long-term, in depth research involving multi-stage sample surveys. And it could only be decided if this is worth doing after a reconnaissance.

It would also be possible within this same general focus to (1) bring experience elsewhere to bear on the question of revenue from divestiture to smallholders, and how this affects the priority smallholders receive as beneficiaries of divestiture; and (2) examine institutional options for support of smallholder agriculture such as contract farming, service cooperatives, etc.

3. More information is needed on the economics of new private and family farms, and in particular the impact of size of holding on the production and viability of the new units.

Appropriate scale will differ for irrigated and rainfed agriculture, by crop, and in relation to other factors such as agricultural prices. Different scales would obviously be appropriate in, for instance, the irrigated areas in Chokwe, cotton holdings in Nampula, and the Green Zones near Maputo. The scale issues are critical because of the artificial (but perhaps medium to long-term) land shortage created by the security situation.

This issue very directly affects the Ministry of Agriculture's divestiture planning and the productivity consequences of divestiture. To date decisions on scale have not been based on empirical evidence or even on well-informed economic projections. There have in our discussions been important differences among knowledgeable people as to the adequacy of, for example, the quarter to half-hectare irrigated plots provided in the Chokwe divestiture.

Studies on scale issues would need to involve sample surveys and be carried out in a variety of areas, such as an irrigated area, a rainfed area and a green zone. These scale issues and the above item on economic impacts of tenure terms in divestiture might be investigated in an integrated study, because they would need to cover the same diversity of areas.

4. Information is needed on the land tax and its economic impacts, current and potential.

Mozambique is one of only four countries in sub-Saharan Africa to have a land tax. Most economists feel that land taxes can play a more useful role than development conditions in discouraging underutilization of holdings. How well they do this depends upon their level and other factors. Because there is no normal market in land here, the issue might not be whether such a tax pushes unused land onto the market, but whether it discourages application for too-large areas or results in their being put into production or returned to the state.

5. A better understanding is needed of the requirements and potential of DINAGECA, and how its needs might be addressed.

DINAGECA's revitalization and reorientation are critical to implementation of a program to ensure security of tenure for family and private farmers. On the other hand, any AID commitment in this area should be tied to tenure policy reform; there is no point in going to considerable expense to register titles which are so restricted and fragile as to not be worth securing.

AID should discuss the situation of DINAGECA with SIDA, which is already involved there. If AID were then interested in following up on this, LTC could suggest a consultant. The need is to assess the situation at provincial as well as national level and to consider how to strengthen some areas of DINAGECA's cadastral work but shed others, for example by re-legalizing private surveying.

6. Studies and other information-gathering might be especially valuable in two situations: peri-urban areas and resettlement areas for displaced persons.

Maputo's Green Zone and the peri-urban areas of other cities can have an important impact on urban food situations, but it is in these areas that tenure confusion and conflict over land are greatest and likely to become more acute with time. One possibility for approaching this would be through AID's project on Economic Growth in Peri-Urban Areas of Africa. The project is a collaborative effort among three institutions with cooperative agreements with AID's Bureau of Science and Technology: ACCESS II (Land Tenure Center, University of Wisconsin); Experimental Approaches to Rural Savings Mobilization (Ohio State University); and Human Settlements and Natural Resource Systems Analysis (SARSA) (Clark University, Institute for Development Anthropology, and Virginia Polytechnic Institute). The project is supported from Africa Bureau's Strategic Studies funds and by the Bureau of Science and Technology. I have arranged for USAID/Mozambique to be placed on the list of missions to be queried about interest in the project.

47

The resettlement context could offer important opportunities for action research: putting into practice and monitoring on a pilot basis some of the ideas concerning tenure and divestiture. As a result of the comments of the Ministry of Agriculture on the draft Food Security Study, new text is being added which reads: "As a matter of priority, donor assistance should be sought to help the Ministry of Agriculture design and implement resettlement programs [for displaced persons]." This might imply a greater involvement in site-specific project activities than has previously been the case under USAID/Mozambique's Private Sector Support Program, but should be considered.

4