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**LAND TENURE ISSUES IN POST-WAR  
MOZAMBIQUE:  
CONSTRAINTS AND CONFLICTS**

by

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# **LAND TENURE ISSUES IN POST-WAR MOZAMBIQUE: CONSTRAINTS AND CONFLICTS**

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## **I INTRODUCTION**

Nearly two decades after independence, Mozambique is unable to produce enough food to sustain its population. In many areas of the country, hunger and malnutrition are acute. The country is dependent on foreign assistance and food aid, and much of the rural population lives in absolute poverty. Several factors have contributed to this outcome. Most importantly, Mozambique has experienced more than fifteen years of violent military conflict and several years of crushing drought. But the war has not been the sole factor leading to this outcome. Post-independence agricultural and economic policies have exacerbated the crisis.

International emergency and development assistance will begin to diminish as Mozambique moves toward post-war reconstruction and democratic elections. Structural economic and political reforms are necessary if the country is to capture private investment and achieve food security. The formal land tenure system of the country, including land distribution, land access, land tenure security, and mechanisms for resolving land disputes, is a constraint to the agricultural sector. This issue must be addressed.

Research conducted by the Land Tenure Center elsewhere in Africa has shown that the types of property rights that people hold impact investment and sustainable management of natural resources. Land rights, systems of land distribution or allocation, and mechanisms for land dispute resolution impact land tenure security, and by extension, natural resource management and investment in agriculture by all producers. These rights, systems and mechanisms will also influence democratization. If land rights are viewed by all categories of producers as secure, and if the process for acquiring and securing rights is seen as transparent and politically legitimate by the population, producers will make long term investments and the process of democratization will evolve. If rights are not secure, and the process of land distribution is not seen as transparent, under-investment or speculation, and political insecurity may result. In Mozambique, this could well lead to a resumption of violence.

The fundamental questions which government and donors must ask are: In the current legal framework, do individuals have security of land tenure? Do both "family" and "private" sector farmers have rights in land which are secure and of adequate duration to encourage investment and proper exploitation and management of natural resources? Are these rights granted or acquired in a way that is transparent to all Mozambicans? Can these rights be defended by all in a forum that is accessible and that is seen as politically legitimate? Research

conducted in Mozambique over the last two years indicates that these questions cannot be answered in the affirmative (See Myers and West, 1993; Tanner, Myers and Oad, 1992; West and Myers, 1993; Rose, et al., 1992; Roth, Boucher and Francisco, 1992).

Policy makers and donors have been engaged in a dialogue for the past two years concerning reform of the land tenure system. Some questions in this dialogue include: What regime of property rights will be legally recognized? Will it include private property rights? Will individuals be permitted to transfer rights, including selling, leasing and mortgaging land? Will land markets be permitted? Who will have responsibility for land distribution and approving access to land? How will land disputes be resolved? Who will adjudicate disputes, which rules will apply (i.e., statutory or customary), and how will decisions be enforced?

The purpose of this paper is to illuminate some discrepancies between the current formal land tenure system and the actual system of land tenure relations that is evolving in Mozambique in the post-war period. I also discuss conflicts between smallholders and commercial producers. The objective is to note potential constraints that may be created by these inconsistencies, and by competition between classes of producers, and to help policy planners develop reasonable solutions. I begin the paper with a brief outline of the legal and administrative framework for the land tenure system in Mozambique. I then discuss emerging land tenure issues of critical importance, including land scarcity, land conflicts, land speculation, and legal and policy constraints. In the last section I discuss some options for future intervention.

Material for this paper is drawn from research conducted over the last three years in Mozambique by the Land Tenure Center, University of Wisconsin-Madison. The project initially focused on issues relating to divestiture of state farms and land policy reform. In the last few months, since the Peace Accord was signed, the project has focused on the problem of land access for "returnees" from other countries and also from within Mozambique. This research project is funded by USAID/Mozambique.

## **II. LEGAL OVERVIEW**

Three major pieces of legislation have enunciated land law in Mozambique. Land law was first articulated in the Constitution of 1975, which nationalized all land. This code declared that all land in the country belongs to the state, through the people. Article 8 of the Constitution states, "The land and natural resources in the soil and subsoil . . . are the property of the state." In addition, this document and others that followed attempted to identify four economic producer categories: family (sector) farmers; private (sector) farmers;<sup>1</sup> cooperative sector; and state sector (which included the state agricultural enterprises). Land law, policy and administration have been

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<sup>1</sup> Criticism of the dichotomy between "private" and "family" sector farmers has begun to emerge in recent literature (see Myers and West, 1993). In this paper I will generally use the terms "smallholders" and "commercial farmers."

tailored to these categories. A new Land Law, Lei de Terras, (Law no 6/79) was issued in 1979. This law institutionalized the process of land nationalization, and it defined rights to, and procedures for, administration of land. Subsidiary legislation was passed in 1987 with the Land Regulations Decree (No. 16/87). A new constitution was adopted in 1990. However, it made no major changes in the legal status of land; land is still the property of the state. The new constitution does, however, recognize and protect "rights acquired by inheritance or occupation," and it theoretically permits leasehold relationships.<sup>2</sup> Between 1979 and 1992, a number of Presidential and Ministerial decrees, and several laws, were enacted which have made minor modifications to the Land Law (see Myers and West, 1993).

In effect, land cannot be sold, ceded, rented, mortgaged, pawned, or in any way privately transferred. However, existing infrastructure and other unexhausted improvements on the land can be alienated. The Land Law and Regulations permit the state to (re)acquire and distribute land--that is, to make concessions--at will.

Security of tenure is theoretically guaranteed for private sector farmers by registration and title, and for family sector farmers by occupation. Two types of documents are available: Certificate of Family Occupation and Title of Use and Exploitation. Land title, which is a lease of use rights from the state, can be held by all individuals or collective bodies with legal identity. An amendment to the Land Law made in 1986 (Law no. 1/86) permits the granting of land titles to private individuals for up to 50 years. While anyone may apply for a title, only private producers are required by law to do so. Private sector farmers are also required to pay tax on their holdings.

A title does not grant unconditional ownership. According to the Land Law, the land must be used rationally and in accordance with a pre-authorized development plan. If the land holder does not conform to this plan, the lease and title may be terminated and use of the land may revert to the state (Roth, Boucher and Francisco, 1992).

Beyond these legislative measures, the government enacted other decrees and laws, and pursued policies that affected land tenure security and agricultural performance. Primarily among these were 1) the creation of the state farm sector; 2) the villagization program; and 3) the adoption of a political structure at the local level that was intended to supplant the customary political structure. Beginning with the Constitution of 1975, the Government committed itself to the socialization of the countryside. Shortly after independence, the government embarked on an agricultural program that emphasized large-scale agriculture, i.e. state farms, and de-emphasized small-scale private production. Many smallholders lost land as these state enterprises were created or came into operation. Others, while remaining on "their lands," had

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<sup>2</sup> The legality of leasehold arrangements is unclear. The 1975 Constitution specifically states that leasehold arrangements are not permissible, and in the 1990 Constitution the same passage exists without the word "not." Some in government have argued that this was a typographical error and that the government did not intend to legalize these arrangements.

their rights reduced, and became tenants and laborers for the state enterprises. These policies, possibly more than the legislative interventions, had significant impacts on land tenure relations and agricultural performance. These impacts, as illuminated by current research, will continue to significantly affect processes of land access, land tenure security, agricultural investment and post-war reintegration of the population (Myers, 1993, forthcoming; Myers and West, 1993; Tanner et al., 1992; West and Myers, 1992).

Concurrent with the formation of the state agricultural sector, communal villages were established, and in some cases people were forcibly relocated, losing land and land rights. Large-scale cooperative farms were established on former private Portuguese holdings and on customary smallholder lands. In an attempt to avoid class differentiation and to consolidate its power, the Government undermined customary local political authorities and attempted to replace them with FRELIMO party representatives. The powers granted to these "representatives" included distribution of land and dispute resolution in their zones' of responsibility.<sup>3</sup>

Beginning in 1989 the Government started to "restructure" (divest) the state agricultural sector by closing most state farms. Laws were passed and decrees enacted to permit alienation of state assets. However, none of this legislation addressed the question of alienation of state lands (see Myers and West, 1993). This issue remains unresolved, and is the source of problems affecting security of tenure and agricultural investment.

It is important to bear in mind that as a result of the war and changes in the economy, and as part of the process of decentralization, Provincial Governments have been acting independently of the Central Government in Maputo with regard to land and agricultural policy. With international assistance, they have also been acting on their own with regard to reintegration of displaced populations. Provincial policy or actions are sometimes unknown or unsanctioned by the Central Government. Some policies implemented at the Provincial level are contrary to Central-level policy or laws and legislation. For example, most Provinces have initiated divestiture of state farm assets and lands on their own terms. They have divested land without regard to criteria or priorities established by the Central Government, and they have frequently done this outside the established law. In another example, Provincial-level officers in several Provinces (particularly in Nampula, Zambezia, Manica and Cabo Delgado) stated that they would not recognize land concessions granted for land in their Provinces by the Government in Maputo. There is great variation from Province to Province in the Central Government's ability to apply the law, and there is great variation in the way that the Provinces are treating land and agricultural policy. To a certain extent, the Provinces are growing more and more independent from Maputo in the realm of land and agricultural policy.

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<sup>3</sup> For a more complete discussion of the socialization program, villagization, and FRELIMO's consolidation of power at the local level see Hanlon (1990), Geffray (1990), Urdang (1989), and Egero (1992).

### III EMERGING LAND TENURE ISSUES IN POST WAR MOZAMBIQUE

#### 1. EVOLVING LAND TENURE RELATIONS

The "official" land tenure system of Mozambique, as previously noted, is state ownership of all lands. As in urban and periurban zones of the country, land access and distribution in rural areas is theoretically controlled by government. An individual who wishes to acquire land, for commercial or smallholder production, in either periurban (e.g., Green Zones) or rural areas must contact the Executive Council and the Director of the District Agricultural Office in the area where the land is located. These two bodies are de jure responsible for land distribution and settlement of land conflicts. When an individual wants land, the Executive Council is charged with finding a suitable plot. The Executive Council is supposed to work in cooperation with district level extension officers, who in turn consult local individuals of "high standing" in the community. District and Locality officials claim that this is the process followed by "family sector" farmers. Officials state that once land is acquired the process stops, without the issuance of a title or registration, because further action is unnecessary to secure tenure rights. This implies that tenure rights for smallholders are secure. However, as noted below, this is not accurate.

For commercial (or "private sector") farmers the official process is somewhat different. An individual who desires less than 250 hectares of land must first contact the Provincial office of DINAGECA (Direcção Nacional de Geografia e Cadastro). The Provincial office investigates the application to determine if the land is suitable and available for exploitation. Provisional right to occupy the land is granted if a favorable report is received from the District office. The land is then surveyed by DINAGECA and a usage permit is issued. Once a definitive title is awarded, it is submitted to the Custodian of Property Registry (Conservatório de Registo Predial). If the request is for more than 250 hectares, the process begins with the Central office of DINAGECA in Maputo. In theory, the entire procedure from application to receipt of title and registration should take about four months. In actuality, many applications require a year or more to be processed (Bruce, 1990; Roth, Boucher and Francisco, 1992).<sup>4</sup>

Land disputes occurring within the "family sector" or between smallholders and the "private sector" are supposed to be resolved through the formal structure, beginning with Locality officials or officials at the community-level, i.e. enquadradores, secretarias de aldeia, lideres de comunidade, or others who are appointed by, or brought into cooperation with, the official Government at the local level. This often includes lineage heads or other "traditional" authorities such as chiefs. If these individuals are unable to resolve disputes the conflict is passed up to the District level. Resolution of land disputes involving the "private sector" normally begin at the District level. The procedure actually followed by smallholders or larger commercial farmers to acquire land often does not conform to official practice.

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<sup>4</sup> It is uncertain if the titling process functions with regard to rural land. Our research indicates that while applications are made to DINAGECA the titles are infrequently issued.

Parallel to the formal system, customary legal and administrative systems of land tenure exist at the local level.<sup>5</sup> Smallholders who require land do not normally approach the Government appointed officials or the Executive Council for assistance. In most areas where research has been conducted in Mozambique, smallholders negotiate directly with a "land abundant" family or with the local (i.e., customary) authority. In many areas this individual is, or is related to, the former Regulo or local customary chief. Smallholders (both women and men) have reported gaining access to land through a variety of means, including: clearing virgin land, inheritance, borrowing, marriage, leasing and purchase. Indeed, in some areas of the country where land concentration exists or where demand is high, lively markets for land or land rights exist.<sup>6</sup> In a few cases smallholders reported gaining access to land through the official channels. However, these people often noted that they felt insecure in their rights to the land. For example, they would not plant trees, and they frequently did not know if they would have access to the same parcel in the following season (Myers and West, 1993; Myers 1993, forthcoming). The customary process of land acquisition, although somewhat different for each ethnic group, is in many essential ways the same for smallholders (including natives, displaced people and refugees) throughout the country. Significantly, most farmers do not recognize the state's ownership of land, and past and present attempts to relocate or dislodge people from their lands are often seen as an antagonistic move by the Government.

A critical constraint to smallholder security is the limitation of the official court system. Tribunals were established immediately after independence to hear disputes. These tribunals, which have authority down to the community level were not mandated to adjudicate land disputes involving the family sector. Land disputes can only be heard at the Central level of Government, effectively excluding smallholders involved in land conflicts from the judicial system. For smallholders, there is no separation between executive and judicial government. The officials at the Locality level who make executive decisions also make judicial decisions.

With regard to disputes, most smallholders stated that if they had a conflict they would discuss the issue with the "old ones"--the senior elders or lineage heads in the village. In only a few cases have smallholders stated that they would present their disputes to Locality-level officials. Smallholders frequently stated that the officials did not know the area or were not qualified to hear disputes. They did not have confidence in these individuals. Some people stated that the officials would charge them money to hear disputes and then would fail to resolve the problems. In addition, many smallholders could not identify their Locality officials, but could

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<sup>5</sup> As noted above, sometimes customary authorities work in conjunction with official institutions. Elsewhere, and at other times, they function separately.

<sup>6</sup> Examples of these high concentration areas include: land around or near the former state farms; the Beira Corridor; land along the Zambezi and Limpopo Rivers; agricultural land in Maputo Province; the Green Zones; and land near urban areas.

readily name and state the location of the house of their Regulo or other customary leader (*ibid.*). In brief, smallholders rely on customary systems of land distribution and dispute settlement mechanisms.

Since independence, customary tenure systems have been evolving rapidly in Mozambique, initially as people responded to the constraints created by the war and years of drought, and more recently as people have begun to respond to the opportunities and constraints created by peace and economic transformation. This process is occurring faster in communities that have land near urban areas or land that is of greater market value. There have been many consequences, which we are just beginning to understand. Land and natural resources are now more frequently controlled by families and family segments, where previously lineages and communities exercised control. Individualized tenure is emerging or becoming more common in rural areas. These changes are being seen in both matrilineal and patrilineal areas. There have been important effects on women's tenure arrangements. We have recorded interviews that suggest a gradual transformation from matrilineality to patrilineality, as men gain greater control over land, and inheritance patterns change in the process. This process appears to have been greatly accelerated by the war and population displacement. In some areas power struggles are emerging between former Regulos and former chiefs or customary authorities (where these are not the same individuals), and in other areas struggles are emerging between Regulos (or chiefs) and local Party or Government representatives. While some of the changes in tenure or power relations may have negative impacts, such as weakening some producers' rights, the capacity for transformation should be seen as positive. Tenure systems that are flexible and responsive to changes in political and economic changes are more likely to encourage investment and productivity than those systems that are static and closed. In addition, these power struggles are inseparable from, and an important part of, the move toward democratization (Myers, 1993, forthcoming).

Commercial landholders are acquiring land in a variety of legal and extralegal ways. Commercial farmers who acquire land through the legal, or official, channels usually begin the process by identifying a parcel of land. The Provincial or Central office of DINAGECA reviews the application and contacts its district office to verify the suitability and availability of the land. By law the application should be denied if the land is occupied by smallholder farmers (Land Law Regulations 1987, Article 32). In practice this rarely occurs. The District offices lack the manpower and vehicles to check most applications. In addition, many District and Provincial officials expressed the opinion that smallholders were incapable of exploiting the better, more sought after lands. They felt that these lands should rightly go to commercial interests, and often stated that private (commercial) sector agriculture has precedence over smallholder agriculture. Consequently dispossession of smallholders frequently occurs when they occupy land that commercial interests desire (Myers and West, 1993, Tanner, et al., 1992). When this happens, smallholders are not compensated, and they lose their investments. In some cases where smallholders have been displaced by commercial farmers, smallholders have remained on the land as tenant farmers (with reduced rights) and have worked for the new owners as agricultural laborers.

Despite their better success in acquiring land, "Private Sector" farmers are not assured security of tenure either. Commercial farmers, including the largest enterprises and joint ventures (such as JFS and LOMACO), express uncertainty with regard to their land rights, primarily they complain about the quality and duration of these rights. As a result, some express a hesitancy to invest or state that their investments will remain tentative and minimal until they have greater security. Other potential commercial agricultural investors have stated that they are unwilling to invest in agriculture at this time, but will do so in the future if they can be assured that their investments will be secure (*ibid.*). In some cases this hesitancy is leading to land speculation, which will generate additional problems. This point is further discussed below.

## **2. LAND SCARCITY**

The total land area of Mozambique is a little less than 80 million hectares. Of the total hectareage, only 36 million hectares are considered arable. This figure includes 16 million hectares of forested land. It is estimated that only 18 million hectares are suitable for agriculture.<sup>7</sup> Despite its large land area, and relatively small population (approximately 15 million), it is a mistake to assume that Mozambique is a land abundant country. Officials and donors frequently assume that there is plenty of land available for all commercial and smallholder farmers. In some areas of the country there is indeed sufficient land available to meet demand. In other areas the reality is quite different, particularly in the current post-war period. In fact, land is a scarce good in many areas of the country. Agricultural policy in the colonial period, post-independence policy and the war have all led to an artificial land scarcity.

Locality, District and Provincial officials have stated that they welcome commercial interests to invest in their districts. While commercial investment in the agricultural sector is important and should be encouraged, the fact is that in many areas of the country there are land shortages resulting in competition between smallholders and commercial interests, as well as among smallholders. This competition is intensified by the formal land tenure system, which favors large-scale interests and undermines security of tenure (as discussed above), and by economic and political opportunities and constraints created in the immediate post-war period.

Part of the competition for land occurs because there is a limited amount of land that is readily accessible and in proximity to other economic opportunities. Commercial and smallholder farmers are attracted to the same areas--those that have infrastructures (roads, wells, etc.),

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<sup>7</sup> Despite this total, the country has never utilized more than 4 million hectares, for all sectors of agricultural producers.

markets, transportation and relatively good security.<sup>8</sup> These areas are also less plagued with the problem of explosive mines.

While government officials may say that plenty of land is available, current research reveals that very few individuals, including smallholder farmers and commercial agricultural interests, are interested in moving to rural areas that are far from infrastructure, markets, transportation, security and other social amenities. Smallholder farmers recently interviewed in three locations in Zambezia Province frequently reported that they were "leasing" or "borrowing" land from customary authorities. Many were doing this instead of returning to their "areas of origin," because the new locations offered them greater economic opportunities.

The issue of land scarcity is particularly complicated in certain areas of the country where there is high population density (not counting returning populations), such as in Zambezia and Nampula Provinces. Land scarcity is also acute in areas near former state farms, in Green Zones, near urban areas, throughout Maputo Province, and areas near new private or joint venture agricultural enterprises, such as LOMACO's operation in Montepuez which covers 39,000 hectares of direct production and controls more than 1.5 million hectares via indirect production.

Another factor constraining access to land and leading to land scarcity is traceable to uncertainty regarding the status of former Portuguese landholders. In several cases we found that smallholders would not occupy land abandoned by Portuguese private interests because they felt that the landholders would return to claim their possessions. We believe that there are many former Portuguese landholders who have returned to Mozambique and resumed agricultural operations, and that there are many others who intend to do the same.

Land scarcity, in real or relative terms, has an impact on smallholders and commercial producers. It creates unfair and unequal competition, where those with connections and resources undercut the weak. In this process, smallholders will gradually lose access to land in highly sought after areas. If other opportunities are not created, the position of many smallholders will become more fragile as economic transformation takes place. Security for larger commercial interests are also weakened because smallholders who feel that they have been unjustly dispossessed of their land and resources may pose threats to those who are occupying and investing in the same land. Displaced farmers have been known to destroy crops and sabotage machinery. Land scarcity also means that commercial producers will constantly maneuver for access to the best land (i.e. land located in the most commercial areas). In an environment where the procedure for acquisition is not transparent and rights are not secure, producers will not invest.

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<sup>8</sup> Although the peace accord was signed in October 1992, there have still been isolated attacks by "bandits." In addition, many people state that they are not certain that the war is over or that the cease fire will hold. They express a fear of a resumption of hostilities. For many individuals in certain areas of the country, this means that they are not willing to move too far from what they perceive as secure zones. These zones are frequently near the "urban" centers.

### **3. LAND ACCESS**

We have just begun to look at land access issues in the post war period. We have focused on issues of land access for returnees from other countries and from within Mozambique. The questions we have sought to address include: Where are people going? Are they returning to their areas of origin? Are they gaining access to land or land rights? What are the terms and conditions of these rights? Who is "granting" rights? Are they investing in the land?

It is a common opinion among officials and donors that the displaced populations will all return to their "areas of origin," and, as noted above, that there is plenty of land for all. This is not an accurate perception. Many smallholders will not go back to their "traditional lands." Indeed, many are not sure of their "areas of origin." When asked, "Where do you come from?" displaced people often list several locations since many have been displaced several times over the last 16 to 20 years. In addition, many are not sure because they were "given" new land or relocated forcibly by the Government into new villages. Farmers don't know if they should return to these lands, move elsewhere or return to the land of their parents.

In general, where displaced people go and when they move there will depend on a number of factors, including where they came from, the length of time they have been displaced, the number of times they have been displaced, the land rights or work they have acquired in the new place, and the economic opportunities that exist in their present location. This process is also being influenced by the distribution of emergency assistance and seed packs. If the quality of life is perceived as better, or if there are better economic opportunities in the present location, displaced people are less willing to move back to "their areas of origin." On the other hand, smallholders who are in a weaker economic position and have less land or weaker land rights than before they were displaced, and those who were moved forcibly by government policy, are more likely to relocate.

At any rate, it is not clear where they will go. Some will return to "areas of origin," while others will seek new opportunities elsewhere. Those who were displaced to refugee camps or to rural areas lacking economic opportunities have expressed a desire to return to their own lands.

A large number of people have already started to move, but many of these are moving in stages. Some families send one or two members back to the family lands to clear land and begin planting. If the season is successful and the area remains secure, other family members will follow. In the interim, the family will remain divided to optimize its opportunities and minimize its vulnerabilities. Another category of "returnees" are those who have been "leap-frogging" from their areas of displacement to areas of origin. They have chosen to farm on land that is not in the area of origin for at least one season. Some claim that they will continue to move in the next season if the harvest is good and the security situation remains stable. But it is unclear what the long term intentions of these individuals are.

Another category of individuals who have problems with land access are those who have been dispossessed of their land but remained in residence on it. Cooperatives, communal villages, state farms, and now private interests and joint venture enterprises have "displaced" people by reducing their status to that of tenant or laborer on their land. These individuals have no place to go, unless their communities have additional land available. In some areas of the country this will be possible, such as in parts of Tete, Niassa and Cabo Delgado; but in other areas of the country land opportunities are extremely restricted. It is likely that this category of individuals will grow as the Government continues to grant land concessions.

All of these cases lead us to conclude that there are many people currently moving, and that the countryside in post-war Mozambique is in a state of intense transformation, and that the magnitude of this process is unlikely to diminish in the near future. This is not necessarily negative, as this movement creates economic opportunities for many, and helps the processes of transformation of customary systems of authority and the development of democratic institutions. Nonetheless, the overall impacts on agriculture remain to be seen. It is certain that smallholder agriculture will experience significant changes in the future. Most likely, many smallholders who have, or had, land in highly commercial areas will be marginalized, and within the current legal and policy framework they will find it increasingly difficult to gain access to land in these areas.

#### **4. LAND CONFLICTS**

Research conducted over the last three years, has revealed a growing number of land disputes involving both smallholders and commercial producers, particularly in areas that have large concentrations of displaced populations and in areas where demand for land is high, such as in urban areas, the Green Zones, irrigated farming areas, former state farms and private estates. The journal Noticias has increasingly devoted coverage to land problems and conflicts in the country. It frequently reports land conflicts among smallholders and between smallholders and commercial producers.

Research has illuminated at least ten different types of land conflicts, which include:

1. Conflicts between the state and smallholders (and in a few cases larger commercial interests) due to expropriation of lands by the state.
2. Conflicts between the state and smallholders over state farm land that smallholders have occupied as squatters, laborers or former owners.
3. Conflicts between the state and commercial producers over land alienated more than once by the state to different parties.
4. Conflicts between the state and commercial producers over state farm land.
5. Conflicts between the state and commercial producers over short-term leases.

6. Conflicts among private commercial producers.
7. Conflicts between new commercial producers and returning Portuguese producers.
8. Conflicts between joint venture enterprises and private commercial producers.
9. Conflicts between joint venture enterprises and smallholders.
10. Conflicts among smallholders, particularly between displaced or returning and local (native) populations.

We have noted a high incidence of land conflicts between commercial farmers and smallholders in the Beira and Limpopo Corridors. We have also documented numerous land conflicts between smallholders and commercial farmers over land belonging to the former state farms, or land that is near these farms, as well as over irrigated land. It is difficult to say how much land in the country is under dispute, but we do know that the disputes are occurring where the most investments have taken place. Land conflicts are occurring in areas of higher population density and where the land has greater value. We should not be fooled into thinking that these areas represent a small part of the country and therefore that the conflicts are localized and minimal. The conflicts should not be dismissed, because they are in fact occurring in precisely the areas where agriculture is concentrating or expanding at the present time (Myers and West, 1993; Tanner et al., 1992; Rose, et al., 1992; Roth, Boucher and Francisco, 1992).

As noted above, conflicts involving commercial farmers are initially heard at the level of the District in which they occur. However, many conflicts are never actually heard or settled by formal authorities. Our research uncovered cases in which officials responsible have refused to resolve land conflicts. Reasons for this failure include the following: 1) the injured parties did not pay for the services of the official; (2) the officials are not present or available; (3) the officials do not know the facts of the case or the law. In some cases, the conflict is generated by local officials themselves and the injured party has no recourse. In one example, prime agricultural irrigated land was confiscated by Locality officials. When the farmer (whose family is one of political importance in Maputo) questioned the officials, he was told that the Government needed the land for a seed farm. Once the officials discovered who the farmer's family was they discontinued their operation. Today the land remains uncultivated because neither party is sure of its position.

This raises two important points. First, very few individuals (either civilian or official) know the laws and policies that apply to land and agriculture. This includes people in all Provinces and officials at all levels of government. Second, there are very few legal structures intact and few trained administrators (or judges) to administer the law. In fact, land disputes have no well defined place in the litigation process, as no courts exist to hear them until the case is brought to the Central level of government. Consequently, many disputes involving the commercial sector or the state are unresolved or resolved extralegally. This leads to uncertainty

and insecurity, which in turn, leads to underinvestment, speculation and poor resource management.

We have just begun to investigate the types of land conflicts that are occurring as displaced people return to agricultural production--either on their own lands or as tenants on land belonging to another. As noted above, people are using the customary systems of land access and allocation to acquire or reclaim land rights. When conflicts occur, most farmers interviewed stated that they use the customary system to resolve their disputes. For example, when a farmer returns to his land and discovers another (displaced) farmer using his parcel, elders reported that they would hear the case and that if the returning man proved his case the other user would be allowed to harvest his crops before leaving the parcel. Officials are brought into the process when the dispute is between two communities or when a Government official distributed the land without consulting local customary authorities. Smallholders' rights are weakest and they are losing conflicts most frequently when they encounter commercial farmers or the state. So for example, smallholders who are farming near former state farm lands or commercial estates are less likely to invest in the land or employ good resource management practices because they feel they may lose the land.

Conflicts among smallholders at this time do not appear to be unmanageable or overwhelmingly detrimental to recovery of the agricultural sector. However, conflicts between the state and commercial producers, or between commercial producers and smallholders may create serious constraints to the revitalization of the sector. We believe that the number of land conflicts will continue to grow as long as there are discrepancies between the formal land tenure system and actual practice.

## **5. LAND SPECULATION**

We are just beginning to collect data on the subject of land speculation. However, we believe that a large percentage of land being granted on concession by the Government is being acquired on speculative grounds. Some of this may be intentional as people hold land with no intention of investing in it. Some believe that the land will appreciate in value so that they will be able to sell it for a profit. There is a widespread opinion that Government will act soon (or shortly after elections) to create private property and legalize land markets. Even if Government does not do this, unofficial markets will continue to operate, and as the economy grows land markets will flourish. Although the law states that applicants for land or titles must present development proposals, it is unlikely that any part of the Government has the political will or institutional capacity to enforce this provision.

At the same time, many people speculate unintentionally. These individuals are acquiring land with the intention to invest and produce, but are prevented from doing so by tenure insecurity or other economic and political uncertainties. Evidence for this trend comes from a

number of anecdotal cases, as well as from interviews with District and Locality officials and with some holders of larger land concessions.<sup>9</sup>

In addition, we have been collecting data on land concessions from the Buletim da Republica. Since 1991, more than 10,000 hectares of land in highly commercial areas have been officially granted on concession.<sup>10</sup> This figure does not include the enormous tracts of land granted to the joint venture enterprises, or private enterprises that existed before independence and have recently reemerged. It is clear that land speculation is of little economic benefit to the country and undermines the development of the agricultural sector.

#### **IV LEGAL AND POLICY CONSTRAINTS: MISSED OPPORTUNITIES**

In 1983 FRELIMO called for a shift in agricultural policy away from the state sector and toward smallholder agriculture. Prior to this, policy and legislation reflected an ideological bias in favor of large-scale agriculture. But the party and Government have been unable to articulate a new vision and transform rhetoric into reality. Government is not encouraging smallholder agriculture. In fact, it has simply shifted its focus from state sector agriculture to large-scale "private" or joint venture agriculture.

Although land laws and policies favoring smallholders exist, they are not being enforced. In addition they are often contradictory or unclear, and few people outside the Ministries in Maputo are aware of their provisions. To most Mozambicans, the formal processes for acquiring land and securing tenure are not clear. This creates confusion and uncertainty, and permits unscrupulous individuals to manipulate the system and deprive individuals of their land and natural resources. At the same time, this lack of clarity discourages commercial producers from investing, undermining the revitalization of agriculture and stimulating uneconomic speculation.

All levels of "official" Government are becoming targets of public animosity of their role in, or conspicuous absence from, this process. Land conflicts are increasingly on the rise. The political legitimacy of the Government and FRELIMO is being undermined by conflict between traditional institutions and official institutions of governance. In many areas, local officials are caught between formal and customary authorities, antagonizing, and being attacked by, both. All of this insecurity, uncertainty and conflict feeds civil unrest and fuels the possibility of renewed war.

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<sup>9</sup> Also see the work by Rose, et al., (1992), and Roth, Boucher and Francisco (1992). While both works focus on the Green Zones of Maputo, they contain examples of land grabbing for speculative purposes. More important than their empirical examples are the trends that one can see emerging in the Green Zones with regard to this process.

<sup>10</sup> To date, we have been able to review only 20% of the issues of the Buletim da Republica. It is likely that the actual figure of reported or official concessions is substantially larger.

Government has been unwilling or unable to articulate a clear land policy that is appropriate for the current economic and political conditions in Mozambique. Socioeconomic changes have made many laws and policies inadequate. The questions of what sorts of rights will be attainable, and who will be permitted to hold them, and for how long, have not been definitively answered. The Government has missed opportunities as a result of its failure to articulate a coherent land policy, including the chance to encourage the emergence of a small-scale entrepreneurial sector and establish a more cooperative relationship between Government and traditional authorities. This lack of clear policy is hindering the establishment of small-scale networks of commerce and finance and the emergence of small-scale capitalization within the agricultural sector. Government has failed to recognize the capacity of rural society to take advantage of new economic and political opportunities and to contribute to the social transformation of its own communities.

The current status of land policy and administration in Mozambique represents a no-win scenario. Under the rhetoric of justice and social equality the state has absolute rights to all land in the country, yet it is unable to protect the rights and advance the interests of the majority of the population. At the same time it is unable to capture private investment. Those individuals who are aware of the workings of the system, many of whom are government officials, are able to manipulate the system to their advantage, depriving rural Mozambicans of their land rights. Yet it is questionable whether these individuals are investing in their holdings. Preliminary research suggests that many of these individuals are acquiring land for speculation.

The Government is granting concessions, acquiring and reacquiring land from smallholders. It is also distributing land from the closed state farms to commercial interests and joint-venture enterprises. These lands are essentially being given away as free goods. In effect, the country's most important resource is being squandered.

## **V. OPTIONS FOR FUTURE INTERVENTION**

It is apparent to us that land issues are critical in Mozambique, and that land tenure problems are constraints to revitalization of the agricultural sector and the implementation of democratic reform. Land issues will remain central to structural economic and political reform in the future. The longer the Government waits to address these issues, the more complicated and intractable they will become. If Mozambique is to move forward in achieving food self-sufficiency and developing democratic institutions, these land tenure constraints must be addressed as soon as possible.

The options chosen must be seen as politically legitimate by all sectors of the population. "Reforms" which are imposed by the Central Government, or are not viewed as legitimate, will be rejected at the local (community) level. At the same time, reforms that are hostile to commercial farmers (including smallholders) will undermine recapitalization of the economy. Reforms must stimulate investment and productivity, while at the same time, balancing the

interests and needs of commercial producers and smallholders. It is important that Government recognize that smallholders are potentially substantial contributors to agricultural production.

Donors can help the Government to achieve these objectives. Mozambique needs additional technical assistance, primarily it requires further applied research and evaluation of land tenure issues. In addition, Government requires technical assistance with constitutional, legislative and judicial reform. Government should be encouraged to continue decentralization of its functions and to consider legal reform of property rights. Donors should also focus on programs that encourage commercial and smallholder investment in agriculture. Rural credit schemes, infrastructural improvements (such as transportation and roads), and new markets will produce an environment that is attractive to commercial and smallholder investors.

Some of the recommendations presented here will require both legal and administrative changes. More importantly, they will require political commitment on the part of the Government to address the problem. Some of the recommendations could be implemented immediately, while others will take time. With this in mind we recommend the following intermediate and long term actions.

#### **INTERMEDIATE-TERM RECOMMENDATIONS**

1. Government should stop making land concessions for the next twelve months, and should discourage the unofficial "concessional arrangements" being granted in the Provinces by District and Locality officials.
2. Government should revise and enforce its land taxation code. Commercial landholders should pay land taxes that reflect the market value of land. This step would effectively discourage land speculation. Proceeds of these taxes should be returned to the local communities in which the land is situated.
3. Land markets should be legalized. Government should acknowledge transactions that are taking place, and instruct courts to consider disputes over property alienation or alienation of land rights.
4. Government should create secure private rights in land. Rights which give an individual the highest (and broadest) degree of control over his/her resources tend to give greater security of tenure and thus foster investment and proper resource management practices.

5. Until Government is able to institute a regime of private property rights or private rights in land, the terms of land leases granted should be extended to 99 years. These leases should be made renewable. This should also apply to divested "state land," including state farms, cooperatives and communal villages.
6. Government should make clear pronouncements on the land tenure regime that currently exists, and its intentions to reform the regime. It should endeavor to make known to all Mozambicans the types of reforms it is considering.
7. Government should make a clear pronouncement on the status of the state farm sector, and the status of each farm. If a farm is declared closed, Government should move ahead with divestiture. Government should not exclude smallholders from receiving divested land, and where possible should designate some state farm land, not yet divested, for smallholder occupation.
8. Government should avoid entering into joint ventures which would continue to place demands on state resources without substantial returns, and should seriously consider privatization of its interest in existing joint venture enterprises.
9. Government should make clear pronouncements on the status of local customary institutions. As a long-term recommendation, their powers should be recognized and legitimated, particularly with regard to land distribution, resource allocation, and dispute resolution. These institutions should be studied further, and when particular customary rules are found to be detrimental to underprivileged individuals, including women, they should be changed through a process of negotiation and legislation.
10. Government should invest greater authority in the Ad Hoc Land Commission to study land issues and make policy recommendations. Its terms of reference should be extended and it should report directly to the Council of Ministers.

### **LONG-TERM RECOMMENDATIONS**

11. Government should address the problems of title registration. The process should be streamlined and made accessible to all producers. Registration should be encouraged, particularly for selected lands in highly commercial areas. Fees for registration of smallholder parcels, in these selected areas, should be waived by the Government. The Land Commission should be assigned the task of reviewing DINAGECA's procedures and making recommendations for revision. The Government should provide resources and manpower for this task.

12. **Government should promote or encourage the development of local community-level Land (distribution) Boards. It should invest authority over land, including alienation and distribution, in these institutions.**
13. **Government should promote or encourage the development of local community-level Land Tribunals. The Land Tribunal would be empowered to adjudicate land disputes involving smallholders. The Tribunal, while independent, would function in conjunction with the Land Board. Individuals selected to represent the community on the Land Board and Tribunal would be selected by the local community. In a few rare cases, some members (of either body) may be selected jointly by the local community and the Provincial Government. Authority vested in these bodies could only be overridden by other levels of Government in extraordinary circumstances (to be predetermined). The Land Boards and Tribunals will use the customary law of the local community.**
14. **Government should create a Ministry of Lands and Natural Resources to coordinate land policy and natural resource management.**
15. **Government should invest in the development of the judiciary, as it will be necessary for the adjudication of land disputes that rise above the Land Tribunal. Government should endeavor to integrate the formal and customary legal systems.**
16. **Government should implement constitutional reforms and new laws to enforce the above recommendations.**

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