

**Analysis of the Parliamentary Debate
and New National Land Law for Mozambique**

by
Scott Kloeck-Jenson
Land Tenure Center Project - Mozambique

September, 1997



***LAND
TENURE
CENTER***

Instituto de Pesquisa e Educação
sobre a Estrutura Social, Instituições Rurais,
Uso e Desenvolvimento dos Recursos.

Land Tenure Center Project - Moçambique
Universidade Eduardo Mondlane
Campus Universitário - Faculdade de Letras
2º andar - sala #322 - tel/fax: 494743
email: scottkj@zebra.uem.mz
Maputo - Mozambique

**Analysis of the Parliamentary Debate
and New National Land Law for Mozambique**

**By
Scott Kloeck-Jenson
Land Tenure Center Project-Mozambique**

September 1997

**All views, interpretations, and conclusions expressed
in this publication are those of the author and not
necessarily those of the supporting or cooperating
organizations.**

Analysis of the Parliamentary Debate and New National Land Law for Mozambique

by
Scott Kloeck-Jenson¹
Land Tenure Center Project-Mozambique
September 1997

I Introduction

Following two weeks of intense parliamentary debate and nearly five years after the Land Tenure Center-organized *First National Land Conference in Mozambique*,² the *Assembleia da Republica* formally approved a new land law on July 31 which replaces earlier land laws n ° 6/79 and n ° 1/86. The following analysis of the new land law and the parliamentary debate leading up to its passage has two primary objectives. First, it will provide a descriptive analysis of the law's main provisions and the mechanics of its implementation. Second, it will critically assess the law in certain key areas, highlighting ambiguities which the Interministerial Land Commission should address as it amends the land regulations and drafts a new law regarding "local communities". Specifically, this analysis evaluates the law's potential impact on foreigners, smallholders and women. It stresses that although the new law includes provisions which could enhance tenure security for smallholders and women, achieving this will depend on clarifying ambiguities in the new law through appropriate changes in the accompanying land regulations. In particular, it argues that the government should be strongly encouraged, as it drafts the new regulations, to establish mechanisms which would ensure that local community "participation" in the titling process actually entails a capacity to veto requests which the community perceives to be contrary to their interests and/or usurps the rights of non-titled smallholders. In addition, the Interministerial Land Commission should, in making these amendments, establish safeguards which require local community involvement in the process of granting definitive authorization to the thousands of land requests which have already received provisional approval according to procedures established by the old law. Finally, the analysis offers a set of recommendations for consideration by the Interministerial Land Commission as it begins revising the existing land regulations and drafting a new Local Community law as required by Article 27. Attached is also a draft of the land law (in Portuguese and English) as it was submitted for final parliamentary approval (i.e. with the inclusion of parliamentary-approved amendments) on July 31.³

¹ The author is currently the Resident Project Manager for LTC-Mozambique and can be contacted in Maputo (tel. 494743). The author would like to acknowledge helpful conversations as well as useful comments on earlier drafts from Conceição Quadros, Dr. Arlindo Chilundo, Julieta Eliseu, Jennifer Garvey, Erasmo Nhachungue, Dr. Harry West, and Dr. Gregory Myers. All views, interpretations, recommendations, and conclusions expressed in this paper are of course those of the author and not necessarily those of the aforementioned individuals or supporting or cooperating institutions.

² The University of Wisconsin-Madison Land Tenure Center Project in Mozambique is funded by USAID and has addressed land and natural resource tenure issues through applied research and policy dialogue with the Mozambican government and civil society as well as international donors and non-governmental organizations (NGOs) since 1991. In addition to the 1992 National Land Conference, LTC has sponsored and helped to organize, in conjunction with the Land Commission (now termed the Interministerial Land Commission) within the Ministry of Agriculture, two other National Land Conferences (May 1994 & June 1996).

³ The official law has not yet been published but should appear in the *Boletim da Republica* in the near future.

II Descriptive Analysis of the New Land Law

A *The Nature of Land Use Rights under the New Law*

The new land law has shed much of the socialist imagery and phraseology present in the 1979 law. No longer are there references, for example, to "socialist planning" or a legal context which facilitates the "construction of socialism." The new law no longer makes reference to Mozambican and foreign *latifundarios* who simply "exploit" the Mozambican *povo*. Indeed, the new law's preamble notes that new legislation was necessary to better accommodate the country's new political, economic and social context as well as to guarantee access and secure tenure to land not only for Mozambican peasants, but also for Mozambican and foreign investors.

This is not to suggest that language predicated on state-directed development does not remain. State ownership of land continues to be enshrined in Article 3, which states that "the land is state property and cannot be sold, or in any other way alienated, mortgaged or pawned." The new law still makes reference to government agencies "effectively organizing the utilization, protection and conservation of land" [Article 5(1c)] as well as to government's prerogative to "determine appropriate regions for specialized production" [Article 5(1d)]. Like the old law, Mozambican and foreign individuals or collectivities receive leasehold rather than freehold rights. The new law does not, as some donors desired, create a legal framework constituted on the principle of private property and free land markets.

Yet it should also be recognized that the new law, in contrast to the one it replaces, devolves more authority and autonomy to private investors as well as to local communities. It assumes a more conciliatory approach towards capital, both foreign and national.⁴ It provides *potential* safeguards for rural smallholders by being more explicit than the old law in granting land use rights through occupancy as well as by requiring local community "participation" in the formal land titling process.⁵ And while the final outcome will depend largely on how the accompanying regulations are crafted (and the extent to which they and the law are actually implemented or enforced), the new law is a step in the right direction towards creating an enabling environment for economic growth and development through the establishment of a more transparent and predictable process through which land use rights can be acquired and maintained.

B *Authorization Process*

While the revised regulations which are to accompany the new land law will define more concretely how the formal titling process will proceed, the new land law establishes its broad parameters. This process, as well as the rights associated with provisional and definitive approval of land requests, will be different than the old law in two significant ways. First, "local communities" are to participate in the titling process. Second, the

⁴ For a discussion of how the new law will affect foreign individuals and collectivities see section III d below *Implications for Foreigners*

⁵ For a discussion of land use rights secured through occupation see section III a below *Implications for Smallholders*

responsibility of authorizing applications for formal land use rights at the provincial level is defined more clearly and grants provincial Governors the authority to approve larger land requests (up to 1000 hectares)

As with the old law, the formal titling process requires that paperwork be filed through the public cadastral service, DINAGECA [Article 10] Upon filing a land request (which must be accompanied by an exploitation plan {*plano de exploração*}), the applicant will receive provisional authorization for a period of five years [Article 22] Like the old law and its accompanying set of regulations, the titling process requires that the government confirm that the requested area is free and has no occupants before granting an applicant definitive title Unlike the old law, however, the new law requires that local administrative authorities submit an opinion (*parecer*) and that communities also be consulted regarding the land's occupancy status [Article 10(3)]⁶ If the land is occupied, the requesting entity will then presumably need to withdraw its request or negotiate with the land's occupants who, according to the new law, enjoy full land use rights even without written documentation of land use rights [Article 10(2), Article 11(2)] To receive definitive authorization and formal title, the applicant must also, upon receiving provisional authorization, carry out the *plano de exploração* submitted with the original request If the Mozambican applicant fails to successfully execute this plan within five years (two years for foreigners) or does not provide what the state perceives to be adequate justification for their failure to do so [Article 23], the state may revoke provisional land use rights and seize, without indemnification, non-removable assets [Article 24]

While paperwork will continue to be processed initially through the National Cadastral Service, the new law modifies the entities which will be responsible for definitively authorizing land use requests For those areas covered by urbanization plans and which have public cadastral services, Municipal Council presidents and district administrators will continue to authorize land use requests [Article 20]⁷ The responsibility of authorizing land requests in areas not covered by urbanization plans is split among three entities Provincial Governors are to authorize requests of between 0 and 1000 hectares [Article 19(1)]⁸ The Minister of Agriculture and Fisheries will authorize requests of between 1000 and 10,000 hectares but will partly base his/her decision on the provincial governor's opinion (*parecer*) The Minister has the authority to authorize special licenses in total protection zones [Article 19(2)] while the provincial Governors are authorized to issue special licenses in partial protection zones For requests of over 10,000 hectares, authorization must come from the Council of Ministers The Council also possesses the authority to create, modify, or extinguish total protection zones as well as to deliberate over the use of territorial water beds and the continental platform [Article 19(3)] Relying upon a single provincial institution--the Governor's office--to definitively approve formal land requests will hopefully diminish the

⁶ A critical ambiguity in the law centers on whether or not confirmation that a requested parcel of land is vacant or unoccupied must be done prior to receiving provisional authorization or only prior to definitive authorization [See Articles 10(3), 22 and 23] For a discussion on why this ambiguity should be clarified in a manner that requires confirmation prior to even provisional authorization see section IIIa below *Implications for Smallholders*

⁷ For purposes of clarification the Interministerial Land Commission as it writes the accompanying regulations should identify what cities and districts will be subject to Article 20's provisions

⁸ At the provincial level this contrasts with the current process in which 'the provincial government' can authorize land concessions for agricultural exploration for areas between 0-250 hectares for livestock production of 0-500 hectares and for forestry exploration requests of 0-1000 hectares (1987 Land Regulations Article 8)

confusion which is currently arising due to different provincial ministries granting concessions (or licenses which actors have thereupon treated essentially as a concession) for the same piece of land to actors engaged in different activities (e.g., agriculture, hunting, tourism, forestry, mining). On the other hand, the large number of requests which will need each provincial governor's formal approval could overburden already limited financial and human resources within Governors' offices and create frustrating bottlenecks.⁹

C *Revocation of Land Use Rights*

The provisions specifying how land use rights might be revoked differ little from the old law and the accompanying set of land regulations. Article 15 of the new law specifies that land use rights can be extinguished at the title bearer's own behest or if the title-bearer fails to complete, without adequate justification, its *plano de exploração* or investment plan within an established timetable as agreed to when the land request received definitive approval. In addition, the government can decide not to renew land use rights at the end of the initial leasehold period. Upon extinction of these land use rights for the aforementioned reasons, non-removable goods on the land will revert to the State {Article 15(2)}.

The government can also revoke land use rights if it deems it to be in the "public interest" (Article 14{1b}). Such a revocation would, however, require indemnification and/or compensation. On the face of it, this clause is not unreasonable and is present in a variety of forms in most countries' property rights regimes. To enhance predictability, transparency and to avoid arbitrary use of this potentially powerful tool, however, the criteria and the mechanisms for determining whether or not the revocation of land use rights will be in the "public interest" should be specified with precise detail in the accompanying regulations.

D *Taxes*

Land which is being used by state institutions, public utilities, small-scale agricultural cooperatives and associations, and local communities and the persons which constitute them (i.e., smallholders) is not subject to taxation [Article 25]. Title bearers not covered by these categories will be subject to an "authorization tax" as well as an annual tax, the progressivity or regressivity of which will depend upon the types of investments. The taxes themselves will be determined based on the location, size, and use of the lands.

In addition, the final approved version of the land law states that Mozambican individuals and collectivities should receive preferential tax rates vis-a-vis foreigners [Article 25 (c)]. This clause was not in the draft legislation submitted by the government but was approved as an amendment in the course of parliamentary debates.

⁹ In Zambezia province alone for example over 2000 requests for land concessions between 0 and 1000 hectares have been provisionally authorized under the old law and accompanying regulations. These will presumably all need the Governor's formal approval and signature under the new law.

E Licenses

Article 17 specifies that title-bearers must also secure licenses which correspond to the proposed land use activity (e.g., forestry, hunting, mining) and that receiving such licenses will depend in part on whether or not the proposed activity corresponds to the directives established by government-approved land use plans. Article 18 specifies further that the duration of a license is subject to applicable legislation governing that activity and is independent of the period of time granted for more general land use rights. For example, while one might be authorized leasehold rights to a particular parcel of land for fifty years, that does not necessarily mean that one can engage in mining for fifty years. The period of time one can mine the land will depend upon specific policies and legislation governing the licensing process in that sector and is not equivalent to the duration of the title-holder's more general land use rights.

F Mechanics of new land legislation

According to article 31, the new law will go into effect 90 days following its formal publication in the *Boletim da Republica*. Article 32 stipulates that when the new law goes into effect, the two land laws which define the current legal framework (law numbers 6/79 de 3 de Julho and 1/86 de 16 de Abril) will be revoked. For the time being, according to the Secretariat of the Interministerial Land Commission, the land regulations currently in force and which were originally designed to accompany laws 6/79 and 1/86 will remain in force under the new law until the Council of Ministers approves a new set of regulations. Specific articles within the regulations which violate the norms and principles established in the new land law will, however, no longer be in effect as article 32, in addition to revoking the two land laws cited above, also revokes other legislation which is contrary to the new law.¹⁰

It should be emphasized that the practical implications of interpreting and administering a new law through a set of regulations devised for an entirely different legal context (i.e. the 1979 land law) could create confusion. To preempt this problem in the short term, the Interministerial Land Commission and the Ministry of Agriculture should be encouraged to publish a formal circular prior to the new law going into effect (90 days after its publication in the *Boletim da Republica*) which identifies which articles of the old regulations will be formally revoked and which will continue to be in force for the period of time when the new land law is in effect but operating in conjunction with the old set of regulations. This would diminish the likelihood of multiple interpretations regarding whether or not a given regulation should still be relied upon and thereby ensure a greater degree of uniformity in the way the country's land regulations are interpreted and implemented during this interim period.

Regarding the new set of regulations, the Interministerial Land Commission has divided up into working groups that are formulating new regulations specifically tailored to the new land law. In drawing up these new regulations, the Land Commission will not begin from scratch but plans to instead go through the existing regulations article by article to make

¹⁰ At a July 30 Interministerial Land Commission meeting, some participants expressed concern that the language in Article 32 ['São revogadas a demais legislação anterior contrária a presente lei'] is ambiguous on the issue as the regulations were not subject to parliamentary approval as formal legislation and may or may not therefore fall under the rubric of "earlier legislation."

necessary modifications or deletions for purposes of streamlining the land titling and dispute adjudication processes as well as to eliminate regulations which contradict the spirit or specific clauses of the new law. When compared with the alternative of writing an entirely new set of regulations, there are two major advantages to a "revisions" approach. First, it may require less time. Second, implementing *revised* regulations may lower the costs associated with re-training the relevant bureaucracies as the revised regulations would signify a less radical departure from current rules and procedures to which state officials have presumably grown accustomed. On the other hand, this second advantage could be double-edged: the absence of a clear demarcation or break between the old and the new regulations might simply preserve some of the negative practices and ways of thinking associated with the old legal framework. In addition, one must recognize that the 1987 regulations were oriented towards a rather different political and economic context and do not fully correspond to the government's considerable movement in the direction of economic liberalization, democratic participation, and administrative decentralization. Merely revising the old regulations therefore risks burdening the administrative apparatus with rules and procedures which are an imperfect fit with current ideological and policy orientations.

The head of the technical secretariat of the Interministerial Land Commission said at a July 30 meeting that this process could take 6-12 months. The new land law, however, establishes no deadline for completing this task. Given that the new land law contains ambiguities which could potentially leave smallholders with weak land use rights until satisfactorily clarified in the regulations, it will be critical that donors and actors within Mozambican civil society encourage the government to finish revising the regulations within 12 months. The fact that eight years transpired between the passage of the 1979 law and the publication of its accompanying set of regulations underscores the need for this encouragement.

Two further pieces of legislation mandated by articles 27 and 28 will affect the legal and regulatory framework which governs access and rights to land. Article 27 requires that the parliament approve an additional law which specifies more clearly the meaning and responsibilities of "local communities" as well as the mechanisms for identifying their representatives with respect to issues surrounding land use rights. It is worth noting that Article 27 was not actually in the draft legislation which the government submitted to parliament July 8 but is instead an amendment which responds primarily to concerns expressed by the *Comissão dos Assuntos Jurídicos, Direitos Humanos e de Legalidade*. The Commission, in its assessment of the draft legislation, noted that the entity identified as "local community" is a new concept in Mozambican jurisprudence and that this entity, under the new land law, will enjoy specific legal rights and responsibilities. Given the lack of precedent with respect to this concept and the ambiguity surrounding its meaning, the Commission therefore suggested that the parliament should approve additional legislation which more formally and systematically defines and codifies the entity termed "local community". A parliamentary majority agreed with this suggestion and therefore affixed Article 27 as an amendment to the government proposal.

The Interministerial Land Commission is charged with drafting this new legislation. The Ministry of Agriculture and Fisheries is reported to want a completed draft of the legislation by December 1997. Participants at the Land Commission meeting July 30, however, thought this would be difficult to achieve given the complexity of the issue. It is true that establishing the criteria for defining local communities and ascertaining who speaks

on behalf of the community interest (to the extent that there is a singular community interest) must be carefully conceptualized. It should also be emphasized, however, that the key mechanism in the new law which will presumably improve smallholder tenure security is this entity, "local community". Thus, until the definition, rights, and responsibilities of that entity are clarified and legalized through appropriate legislation, a significant gap in terms of strengthening smallholder tenure rights will persist.

The second piece of legislation which the new land law will require regards the process of drawing up land use planning principles (Article 28). It is unclear, however, whether the Ministry of Planning and Finances or the Ministry for the Environment will be charged with the task of producing a draft law for parliamentary approval.

III Critical Analysis of the Law

A Implications for Smallholder Tenure Security

In general, the new land law, when compared with the land laws it replaces, creates a legal framework that could enhance smallholder tenure security. Obviously, as with any law, its actual effect on smallholder tenure security will depend largely on the capacity and willingness of government officials to implement and enforce the law and accompanying regulations. Just as important will be rural dwellers' (or more generally, civil society's) capacity to ensure the law's enforcement and that they have sufficient knowledge and resources to use specific provisions to defend their varied interests. Empowering rural dwellers to do so will also require the active involvement of Mozambican and international NGOs in disseminating information and providing resources for accessing the statutory legal system if necessary. In addition, as will be elaborated below, one must recognize that smallholder tenure security may remain tenuous unless the Interministerial Land Commission, as it draws up accompanying regulations, clarifies a number of ambiguities in a manner which strengthens smallholder interests.

These caveats in mind, it must be also emphasized that if one looks simply at the more general legal ramifications of the new legislation, it enhances smallholder tenure security by (a) explicitly recognizing that smallholders can secure land use rights through "occupation" and noting that those rights should not be prejudiced by, or inferior to, land use rights received through a written title document; (b) requiring that "local communities" be "consulted" in the titling process as to whether or not a piece of land is occupied and that they "participate" in the administration of natural resources within their communities; (c) permitting the use of non-written forms of evidence, such as oral testimony, to defend one's claims to an individual's or community's parcel of land, and (d) permitting land to be registered in the name of a "local community". Yet with respect to each of these potential advances in strengthening smallholder tenure security, ambiguities remain which must be clarified in the regulations process to ensure that the law does indeed provide protection for smallholders' interests.

Rights through occupation

Several articles in the new law appear to offer tenure security to individuals or groups who use land but have no formal title. Article 9, which addresses the issue of how land rights are acquired, specifies very clearly that individuals and communities can acquire secure land use rights through occupation and not simply by applying for, and receiving, written title. In contrast to its predecessor, the new law categorically states in articles 10(2) and 11(2) that land rights acquired through occupancy are equal to, and not inferior to those rights acquired through formal written title. This is an improvement over the previous legal framework in which the old law and accompanying set of regulations make reference to rights based on occupancy in the "family sector" but remain vague with regard to how occupancy rights are secured. In addition, the old law and accompanying set of regulations do not clearly state that such rights are equivalent to rights enjoyed by written title-bearers (*titulares*)¹¹. Presumably, therefore, when conflicts occur between title-holders and smallholders whose land is either untitled or not formally registered, the title bearer will not be assured an automatic victory.

Article 9 of the new law is perhaps the most important in terms of defending land use rights through occupation. In the draft law submitted for parliamentary consideration, the article dealing with acquisition of land rights had only two sub-clauses¹². The second specified that singular or collective individuals could acquire land rights through a formal request (*pedido*) which would be authorized through a titling process established by the law and revised regulations. The first clause, however, specified that land rights could be acquired through occupancy by individual Mozambicans or local communities which had been utilizing land for *at least ten years* in good faith.

During the parliamentary debate, some Renamo deputies expressed concern about this time requirement. Noting the large number of Mozambicans that had been internally displaced or refugees during the war and who have therefore not been utilizing their respective land parcels for the past ten consecutive years, the deputies warned that the time requirement could leave millions of smallholders vulnerable to having their lands expropriated. Responding to these concerns, the Minister of Agriculture and Fisheries, Carlos Agostinho de Rosario, said that the government recognized this potential problem and would accommodate those situations in a flexible manner and on a case-by-case basis. Illustrating how this would be done, the Minister said that one could identify two categories of people who have settled or resettled in a particular area but have not yet satisfied the ten year requirement. Those who had been living in the area *prior* to being displaced by the war would presumably secure rights to land through occupation, even though they have not been present on their land without interruption for the past ten years. Those individuals, however, who had *not* been occupying the land prior to the war and had instead decided to permanently resettle in their present site in the past ten years, would still have to satisfy the ten year requirement before securing land use rights through occupancy. The Minister argued further that an amendment which granted land rights through occupancy on the basis of "customary norms and practices" was not necessary for remedying this potential loophole.

Renamo deputies remained unsatisfied by the Minister's response and repeatedly approached the podium to warn that the ten year requirement could be used as a tool to

¹¹ See for example articles 47- 60 in the current set of land regulations regarding the family sector.

¹² In the version submitted by the Government these clauses appeared in Article 8.

dispossess smallholders from their land. They argued further that the only way one could ensure genuine and secure rights through occupancy would be through an amendment which would eliminate the time requirement and simply allow occupancy rights to be acquired through traditional authorities. After much debate and repeated Renamo attacks which attempted to portray Frelimo as hostile to the "customary" practices, norms, and practices of rural Mozambicans, Luis Vidreira, a Frelimo deputy, proposed an additional sub-clause which eventually received parliamentary approval. The clause states that individuals or local communities can secure land use rights through occupation "according to customary norms and practices which are not contrary to the Constitution" (Article 9a). This clause served a dual role of closing the loophole created by the ten year requirement as well as providing partial political cover for Frelimo amongst those rural residents who might look negatively on a party perceived to be hostile to "traditional" norms and practices. Thus, as long as local communities or individuals can demonstrate that they occupy the land according to "customary norms and practices which are not contrary to the Constitution," there is no minimum time requirement for achieving land use rights through occupancy.

This sub-clause is probably an improvement in terms of dealing with the millions who had been displaced during the war and are therefore unable to satisfy the ten year requirement at the present time. There are, nevertheless, four problematical issues which will need to be clarified through the regulations. First, what will be the criteria for classifying a set of norms and practices governing occupation as "customary" or "non-customary"? In short, what are "customary norms and practices"? Second, who or what institutions will determine whether or not the norms and practices used within a particular community or by an individual conform to the criteria, once established, for distinguishing "customary" from "non-customary" norms and practices? Three, what will be the process by which a given "customary" norm or practice will be judged contrary to the Constitution? Four, does the law still leave unprotected those groups or individuals that have settled or resettled in an area less than ten years ago and whose occupation is *not* governed by traditional norms and practices.¹³

Participation of local communities in administering natural resources

The second way in which the new land law could enhance smallholder tenure security is to require community participation and consultation for certain processes. Specifically, Articles 10 and 21 in the new law require local communities to *participate* in the administration of their natural resources and the resolution of conflicts. They must also be *consulted* in the titling process to ascertain whether or not a piece of land is vacant and is therefore available to individuals or other entities seeking provisional and ultimately definitive rights to it through a title. This is potentially a significant improvement over the previous law which permitted government officials to certify that a piece of land was unoccupied without actually consulting local communities.

¹³ For example, how would one treat people who do not meet the ten year requirement and have acquired their land through a *grupo dinamizador*? What about an individual who is not a natural born resident of a community along the Beira Corridor but who settled there twenty years ago to take advantage of a strong marketing and transport infrastructure? If this individual was absent for a few years during the war and has since returned, she/he might be left unprotected as the individual may not satisfy the ten year requirement and further, may not be able to prove that he/she is occupying land according to "traditional norms and practices."

Yet to ensure that local communities' participation in this process is meaningful, the Interministerial Land Commission should consider granting communities actual veto rights. It should also clarify at what stage in the titling process communities will be consulted. On the latter, the new law does not specify precisely when in the titling process communities and local administrative authorities need to be consulted. At minimum, it must be prior to definitive authorization of land use rights. But given that a provisional authorization allows Mozambicans five years, and non-Mozambicans two years, to begin exploiting the land--and thereby potentially compromise the interests of existing occupants--communities should be consulted regarding the land's occupancy status *prior to the granting of a provisional authorization*. If such consultations were to not take place prior to the granting of a provisional authorization, land conflicts would arise and tenure security would diminish as smallholders could potentially be dispossessed for two or five years.

The Land Commission should also consider enshrining community veto rights in the accompanying regulations. Mandating "consultation" and "participation" is a step in the right direction of empowering rural communities. Such language, however, does not actually grant local communities the power to veto or block proposed activities or requests for land which the communities perceive could harm their interests. Theoretically, a government official could "consult" with a community or elicit its "participation" and, for whatever reason, still disregard the community's expressed opinion. For example, a government official could declare a particular area unoccupied based upon his or her own set of criteria, even though the community may claim that the requested area is not vacant or unoccupied (e.g., a sacred forest).

Further, while communities are to participate in the "resolution of conflicts" and the titling process, whether that "participation" is meaningful will depend upon how the Interministerial Land Commission addresses the following sorts of issues as they revise the current set of regulations. What will be the mechanisms for choosing individuals within communities to resolve such disputes? Will these individuals be secretaries, traditional authorities, religious leaders, prominent women or teachers? Will authority be placed in the hands of an individual or a body constituted by the aforementioned categories? What will be the territorial space (administrative post, locality, *circulo*, *celula*) over which these individuals or bodies have partial authority *vis-a-vis* land and resource issues? Will such individuals or bodies merely resolve conflicts within the community or will they also be involved in adjudicating disputes between individuals or collectivities from two different communities? Will such individuals or bodies have authority to adjudicate disputes between individuals and/or local communities and larger outside interests? In short, what will be local communities' actual adjudicating authority and what will be their institutional and hierarchical relationship to formal state institutions?

As the Land Commission draws up land regulations, it will be critical to clarify these ambiguities surrounding the real power and authority of local communities in these processes. In particular, the Land Commission should strongly consider granting veto rights to local communities in the new regulations. While one might argue that veto rights could potentially grant communities a power which could be used in a manner contrary to the community's own, or broader regional or national, interests, *the presumption should remain with the community and its capacity to recognize and defend its own interests*. Obviously, cases will arise when a community veto might have deleterious consequences for broader regional, national and/or even the community's own interests. In such a situation, however

the government would not be without redress. It could evoke article 15(b), which permits a revocation of land use rights for purposes of securing "the public interest." Clearly, this would place a greater burden of proof on the government and increase the transaction costs of overriding the elicited community opinion. However, such a set-up, wherein communities have veto rights which can be overridden only if doing so can be shown to be in "the public interest", would strengthen the hand of local communities, diminish the autonomy of individual government officials, and place the burden of proof where it belongs--on the government.

Non-written forms of evidence

The third way in which the new land law could strengthen smallholder tenure security is by requiring community participation in conflict resolution and expanding the types of evidence which an individual smallholder or a local community can use to defend their land use rights, especially when they come into conflict with title holders. As noted above, Article 21 requires that communities participate in the resolution of conflict, using, among other mechanisms, customary norms and practices. In addition, Article 12 states explicitly that while providing proof of one's land use rights can be made through the presentation of a title document, those rights can also be defended on the basis of testimony of male and female members of local communities. Further, two other articles state explicitly that the fact that a parcel of land is not formally registered {Article 11(2)} or titled {Article 10(2)} does not prejudice the right to use and enjoyment which has been acquired through occupation.

To effectively ensure that such equality is maintained, non-written forms of evidence will necessarily be a key mechanism relied upon to resolve conflicts among smallholders as well as between smallholders and those who possess written documentation. Nevertheless, to ensure that these provisions provide real redress to those relying upon non-written evidentiary claims to defend their land use rights acquired through occupancy, the land regulations will need to clarify, for example, what actually constitutes "prova testemunhal" and when it can be relied upon. For example, what forms of social evidence can be drawn upon to defend an individual's or community's claims regarding the boundary of a parcel of land? Is this oral testimony valid only when determining whether or not land is vacant? When adjudicating disputes within communities according to "customary norms and practices"? Can oral evidence be relied upon in district or provincial courts of law when, for example, smallholders or local communities come into conflict with larger commercial interests? The new law's explicit acknowledgment that non-written oral forms of evidence will be a legitimate means of defending one's claims is a significant improvement. But unless such evidence can be introduced in fora which adjudicate conflicts between smallholders and more politically and/or economically powerful actors, the "social evidence" clauses will do little to remedy the existing situation in which smallholder individuals and communities are left relatively defenseless in statutory conflict resolution.

Titling land to Local Communities

The land law may expedite the process in which a group of smallholders can register land in its collective name, thereby avoiding the complicated and disproportionately costly process of registering land in the names of individual smallholders. Specifically, Article 7 states that local communities are "national subjects" which can receive co-titled land use rights. In addition, Article 10(4) states that titles can be issued in the name chosen by the local community. These may improve smallholder tenure security since under the old legal framework, it has not been cost effective--neither for the government nor for smallholders--to seek individual land titles due to factors such as the small size of plots, the multiple use rights associated with each piece of land, and the demands individual smallholder titling would place on an already overburdened cadastral service. Under the old legal framework, some communities have sought a form of community title but have primarily succeeded in doing this only through the formation of legal associations. This mechanism has proven to be an expensive and time-consuming process, often requiring the financial and legal assistance of international or Mozambican NGOs (Pereira & Alves 1994). Although offering other types of advantages, forming associations for purposes of registering land has not been a practical option for most communities. Allowing "local communities" to register land may therefore facilitate communal titling and thereby give smallholders added tenure security through written documentation of their land claims.

As discussed above, however, "local community" is a new entity in Mozambican jurisprudence and as of yet has no formal legal personality. Presumably the Local Community law required by Article 27 will define this entity as well as its legal personality, rights and responsibilities. If registering land to a "local community" is to provide secure tenure, however, the required legislation will need to ensure that the rights and status of such entities will be equivalent to those enjoyed by individuals, businesses, or associations. In addition, as the Interministerial Land Commission elaborates the Local Community legislation as well as the new regulations, it will need to specify the precise mechanisms by which communities can define themselves--or be defined by others--both in territorial terms as well as in working through a process to organize the community for purposes of registering land in its own, or a representative individual's, name.

B Implications for Women

The new land law, according to many observers, has made significant strides in strengthening women's land use rights in Mozambique. Specifically, women can acquire individualized titles {Article 10(5)} within the family sector. Further, Article 13 states clearly that land use rights can be inherited by both males and females. Finally, to the extent that the law bolsters smallholder tenure security in general, it certainly advances the interests of women who themselves are usually the most vulnerable members of society (widows, single women) as well as the primary cultivators in rural households and thus, the most seriously affected by land expropriation.

In addition, to the extent that the law allows "customary norms and practices" to play a role in the new legal framework, it also specifies that such norms and practices cannot violate women's equal rights as enshrined in the country's Constitution. Specifically, the law

states that while "customary norms and practices" can be relied upon to resolve conflict {Article 21 (1b)} or to influence how land use rights are acquired (Article 9a), those norms and practices cannot be "contrary to the Constitution " In implementing the law, this phrase may offer constitutional protection for a variety of groups In the context of the parliamentary debates, however, it was added primarily in relation to the issue of possible gender discrimination

As the Interministerial Land Commission drafts the Local Communities law mandated by Article 27 as well as the accompanying regulations to the new land law, special attention should be paid to ensuring that these gains in women's land use rights are not ultimately weakened by a naive idealization of local communities as entities with a homogenous set of interests When examining a situation in which a community confronts a potential threat from outside the community (for example, the granting of a land concession on land in the area), it *may* be justifiable to conceptualize a relative harmony of community interests and therefore seek out "representatives" who speak for "*the*" community But one must not forget that "local communities" in rural areas are themselves not social power vacuums but are themselves marked by power struggles and power differentials predicated on, among other things, personal jealousies, lineage rivalries, variable wealth status, natural-born residents/outside, party affiliation, generation, gender

During the parliamentary debate on the land law, a fairly vociferous but superficial debate emerged regarding women's rights and whether or not traditional authorities, norms and practices discriminate against women The debate emerged largely in response to Renamo's efforts to explicitly identify traditional authorities as local communities' primary legitimate representatives Frelimo deputies challenged this explicit recognition, stating that the Constitution grants *regulos* no recognized status within the state apparatus and that their explicit inclusion in the land law would thereby require a constitutional amendment In an argument which elicited a more heated response from the Renamo deputies, Frelimo deputies also argued that while some customary norms and practices could be relied upon to resolve conflicts, it should also be recognized that customary structures often discriminate against women, demoting them to secondary status In response, a stream of Renamo deputies (all male) approached the podium and claimed that there is no such discrimination As a fall-back position, some female Renamo deputies later argued in a newspaper interview (*Noticia*, July 12, 1997) that perhaps within patrilineal societies in southern Mozambique, customary structures may indeed discriminate against women They asserted, however, that in the matrilineal cultures of northern Mozambique, "where women control land," no such discrimination takes place

The debate itself was nonsensical Extensive investigation has demonstrated that customary structures engage in gender discrimination throughout Mozambique and Africa in both matrilineal and patrilineal societies (Lieberman 1993, Davison 1988) In the matrilineal societies of Maganja da Costa district in Zambezia, for example, land access has traditionally been secured through maternal relatives This has not meant, however, that women therefore control land It has simply meant that it is the maternal uncles, for example, who grant land and that once granted, the male head of the household is the primary decision maker regarding how the land will be used On the other hand, arguing that non-customary structures, norms and practice are not themselves rooted in their own discriminatory patriarchal logics which relegate women to a secondary status is similarly naive Indeed some evidence suggests that the imposition of "modern" economic or social forms can

handicap women's material interests even more than customary structures in some instances (Schroeder 1993, Coldham 1978)

As the Interministerial Land Commission draws up new regulations and a law on "local communities" it will be critical to move away from a debate on whether or not customary norms and practices discriminate against women or if customary norms and practices manifest the most egregious form of gender discrimination. Rather, it should simply be recognized that gender discrimination inserts itself into both "customary" and "non-customary" structures in obvious as well as subtle ways. The land regulations should therefore draw up criteria and a process for judging whether a customary *or* non-customary practice or norm discriminates on the basis of gender and should therefore be deemed invalid.

Likewise, in terms of the legislation on "local communities", it should be carefully thought out how the mechanisms for identifying representatives of local communities can best ensure that female perspectives are not silenced. While there may in some cases be a relative harmony of interests within a local community, female and male perspectives may not always coincide. For example, men in a community may be willing to cede community land to an agro-enterprise in return for wage jobs and the opportunity to earn cash income. On the other hand, women in the community may be concerned that ceding community land could impair household food security by decreasing the amount of land available for household food production and that men, rather than using the enhanced cash flow to purchase food or pay for school fees, will instead purchase alcohol or other consumer goods not critical to household survival. Yet if one were to approach "the community" in such a case without explicit attention to eliciting female perspectives, this concern for household food security could be ignored. One must not forget that "the" community may have more than one perspective and that those of its female members are perhaps the most likely to be silenced.

C *Implications for Land Requests (Pedidos) in the Pipeline*

The Land Tenure Center has been collecting data for several years on the number and type of land concessions applied for and actually granted, warning that the process was haphazard, non-transparent, and potentially riddled with corruption (Myers 1995). The new law could help to remedy this situation by requiring consultation with local communities regarding the occupancy status of requested land as well as by streamlining the bureaucratic procedures in the revised set of land regulations. However, a critical ambiguity in the law which needs to be clarified immediately is the status of land requests which have been given provisional but not final approval through the law and regulations currently in force. Article 32 of the new law revokes laws 6/79 and 1/86 as well as other legislation contrary to the present law. Yet it remains unclear how this revocation will affect *pedidos* already in the pipeline. Will they, because they were submitted according to a set of expectations and assumptions rooted in the current law and set of regulations, be grandfathered in and therefore be definitively authorized according to procedures established under the old set of laws and regulations? Or will they be subject to a definitive authorization process to be established in the new law and accompanying set of regulations which would, for example, require community involvement in the process of determining the occupancy status of the requested land?

Recent data on land *pedidos* (concessions) requested and received at the provincial level highlight the importance of making such a clarification. For example, based on an analysis of provincial records for Zambezia province, Land Tenure Center researchers discovered that between 1987 and 1997 nearly four million hectares of land--constituting 36% of the entire land area and 63% of arable and forested land--have been requested for concessions at the provincial level (Myers and Eliseu 1997). One should note that these figures do not even include concessions granted at the national level. 98% of the area requested at the provincial level was for larger commercial (non-smallholder interests) interests. Perhaps most significantly in terms of the new law and how it will affect those requests still in the pipeline, 84.9% of the 2554 requests for land recorded at the provincial level have not yet received final authorization. This corresponds to an area of nearly 3,800,000 hectares or almost 99% of the total area of the land requested at the provincial level in the past decade. It should be noted that preliminary Land Tenure Center data gathered in Nampula, Niassa, and Cabo Delgado provinces depict a similar, worrying phenomenon.

Given the very high percentage of land which has already received provisional authorization under the old land law and regulations, it will be critical that the new law and regulations specify the precise mechanisms which will be used to definitively authorize these land use rights which still have provisional status. It must be remembered that under the old legal framework, local communities have not been in any meaningful way consulted about these provisional concessions. Thus, their participation, and one would hope, veto power, should be a critical step in any process which *definitively* authorizes these provisional land use rights which have been granted under the old land law and accompanying set of regulations. Specifically, documents secured under the old law which certify that a given area is "unoccupied" should not be acceptable proof of land being "free" or "vacant" in the process of definitively authorizing land. Rather, the process of determining the occupancy status of requested land should be repeated but with, as the new law specifies, the participation of local communities.

If these provisional concessions somehow receive automatic authorization or are authorized without a meaningful participation of local communities, the new land law, while perhaps enhancing transparency and local input in the future, will essentially legitimize what has been up to this point a non-transparent and dubious land grab of at least 50% of some provinces' arable and forested lands.

D *Implications for Foreigners*

Although many foreign individuals and companies had hoped the new law would privatize land ownership as well as eliminate the need for state-approved investment plans, the new land law, in comparison with the current land law and accompanying regulations should facilitate the process by which foreign individuals or collectivities can secure land use rights in Mozambique. Under the old land law and accompanying regulations, foreign individuals are not clearly specified as "subjects" which can actually receive land use rights. Article 8a of the new land law specifies, however, that foreign individuals can, after residing in the Republic of Mozambique for at least five years, receive formalized land use rights as long as they also have an approved investment plan. This article eliminates the need to continue engaging in the current practice (although it is not necessarily required by law) for

foreign individuals to enter into a partnership with a Mozambican national for purposes of securing a land title. In addition, foreign collectivities, as long as they are duly registered or constituted within the Republic of Mozambique and have an approved investment plan, may also secure land use rights in a title document. This contrasts with current practices wherein foreign companies have felt that they must form joint venture companies with Mozambican entities, private or public, to secure definitive land use rights.

In terms of the process for acquiring land use rights and the responsibilities associated with those rights once acquired, qualifying foreign individuals and collectives will be treated in a similar fashion as Mozambicans except in three regards. First, foreign individuals, unlike Mozambicans, cannot receive land use rights simply through occupation but must formally apply for land through a written request (*pedido*). Second, the provisional authorization period for foreigners is 2 years rather than five years for Mozambicans. Foreigners hoping to receive a definitive authorization in the form of a title will therefore need to complete their "plano de exploração" within two years from when their provisional authorization is granted. Third, taxation rates for foreigners are likely to be higher as article 25(c) requires that tax rates should be established which are advantageous to Mozambican individuals and collectivities.¹⁴

IV Recommendations

- 1 The new land law represents a significant accomplishment and is an improvement over the 1979 land legislation. Nevertheless, donors, NGOs, and actors within Mozambican civil society must strongly encourage the Mozambican government to complete the task of revising or drafting new land regulations to accompany the 1997 land law within 12 months. Special attention will need to be paid to clarifying ambiguities in the new law in a manner which further strengthens smallholder tenure security.
- 2 Donors, NGOs, and actors within civil society must strongly encourage the Mozambican government to introduce the Local Community legislation as required by Article 27 of the new law to the Mozambican parliament within 12 months. It must be recognized that defining local communities and identifying their representatives will be a complex and problematic process. At the same time, given that "local community" is the entity which provides smallholders a key mechanism for strengthening their tenure rights, it must be recognized that until such Local Community legislation is promulgated, smallholder tenure security will not be maximized to the extent possible under the new land law.
- 3 The existing land regulations which do not violate the spirit or the letter of the new land law will continue to be used under the new law until a new set of land regulations is drawn up. Yet identifying which specific articles within the regulations remain in force and which should be ignored for being contrary to the new law will not always be self-evident. It will be subject to multiple interpretations. Therefore, the Interministerial Land Commission should identify which specific articles of the

¹⁴ This requirement for a differential tax rate was not in the legislation which the Government submitted to parliament on July 8 but is an amendment proposed in the course of the parliamentary debate.

existing land regulations are contrary to the norms, rules, and spirit of the new land law prior to the law going into effect. Information regarding which articles will continue to be in force and which articles must be revoked should then be distributed in a comprehensive manner to the governors, district administrators, and provincial and district directorates of agriculture and in particular, to provincial and, where applicable, district DINAGECA representatives. Such an action would hopefully diminish confusion arising from multiple interpretations and enhance uniformity and predictability.

- 4 The new land law mandates that local communities "participate" in the administration of natural resources and that they be "consulted" in the titling process. To ensure that this participation and consultation is meaningful, the government should consider granting actual veto rights to communities as it draws up the regulations. Doing this would devolve real power to local communities and place faith in local communities' capacity to recognize and defend their own interests. If cases arise where the government can demonstrate that such veto power would have deleterious consequences for the community's and/or national interests, it could then evoke article 15(b) which permits a revocation of land use rights for purposes of securing "the public interest". Such a set-up, wherein communities have veto rights which can be overridden only if doing so can be shown to be in "the public interest", would strengthen the hand of local communities, diminish the autonomy of individual government officials, and place the burden of proof on the government.
- 5 As the Interministerial Land Commission draws up new land regulations, it should clarify whether community consultation in the titling process must take place prior to the granting of provisional authorization or only prior to definitively authorizing a land request. Given that a provisional authorization allows Mozambicans five years (and non-Mozambicans two years) to begin exploiting the land to the possible detriment of its occupants, the regulations should require that local communities be consulted *prior to the granting of even a provisional authorization*.
- 6 Given the very high percentage of land which has already received provisional authorization under the old land law and regulations, it will be critical that the new law and regulations specify the precise mechanisms which will be used to definitively authorize these land use rights which still have provisional status. It must be remembered that under the old legal framework, local communities have not been in any meaningful way consulted about these provisional concessions. Thus, their participation, and one would hope, veto power, should be a critical step in any process which *definitively* authorizes these provisional land use rights which have been granted under the old land law and accompanying set of regulations. Specifically, documents secured under the old law which certify that a given area is "unoccupied" should not be acceptable proof of land being "free" or "vacant" in the process of definitively authorizing land once the new law goes into effect. Rather the process of determining the occupancy status of requested land should be repeated but with as the new law specifies, the participation of local communities.

- 7 The Government has stated that individuals who were displaced by the war and who have therefore not been able to establish occupancy for ten consecutive years can still acquire secure tenure rights through occupancy. In the land regulations, it should be clarified in more detail how this determination regarding justifiable absence from the land in the past ten years is to be made.
- 8 Requiring community participation in the resolution of conflicts is a positive development. As the government drafts the new land regulations, however, it will need to clarify with more precision what will be local communities' actual adjudicating authority and what will be their institutional and hierarchical relationship to formal state institutions.
- 9 The new land law states explicitly that oral testimony is a permissible evidentiary form in defending one's land rights. As the government drafts the new land regulations, however, it will need to clarify in explicit detail when, and in which fora (community, administrative post, district, provincial), such evidence is admissible.
- 10 Given that some articles make reference to "customary norms and practices" (e.g., Articles 9 and 21), the government will need to think carefully about criteria which can be used to classify a set of norms or practices as "customary" rather than "non-customary" and who or what institutions will make that determination. In addition, the government should establish a process for determining whether or not a specific customary norm or practice violates the Constitution.
- 11 Article 20 of the new land law specifies that municipal council presidents and district administrators must authorize land requests for areas covered by urbanization plans and which have cadastral services. To avoid confusion regarding the status of a particular district, the Interministerial Land Commission, in conjunction with the Ministry of State Administration, should identify what cities and districts will be subject to Article 20.
- 12 To enhance predictability and transparency, the Interministerial Land Commission should, as it drafts new regulations, specify the criteria and mechanisms for determining "the public interest" and when land use rights can be revoked for purposes of promoting "the public interest".
- 13 Given the large numbers of land requests which will need the formal approval of the respective provincial Governors, the government should carefully consider how the governors' offices can accommodate the thousands of claims to avoid bottlenecks in the process.
- 14 The issue of "preferential" tax or fee status for Mozambican individuals and collectivities *vis-a-vis* foreigners will need to be clarified in more detail as the Interministerial Land Commission drafts new regulations. The government should be careful not to establish rules or fees which act as a disincentive to much-needed foreign investment.

- 15 As the overarching legal framework related to the new land law is put into place, international donors and NGOs as well as actors in Mozambican civil society, will need to focus even more energies on ensuring land tenure security for smallholders Empowering rural dwellers to make use of the provisions which protect their interests as well as to ensure that the law is uniformly enforced and executed will require resources for dissemination of information as well as for aiding particular communities in accessing the statutory legal system if necessary

Sources Cited

- Coldham, Simon 1978 "The Effect of Registration of Title upon Customary Land Rights in Kenya " *Journal of African Law* 22(2) 91-111
- Davison, J, ed 1988 *Agriculture Women, and Land The African Experience* Boulder, CO Westview Press
- Goheen, M 1994 *Men Own the Fields, Women Own the Crops Gender and Power in the Cameroon Highlands* Madison University of Wisconsin Press
- Lieberman, Gloria 1993 *Mulher no desenvolvimento em Moçambique 'Bibliografia Anotada* Maputo Centro de Estudos Africanos, Departamento de Estudos da Mulher e do Genero
- Mackenzie, F 1986 "Local Initiatives and National Policy Gender and Agricultural Change in Murang'a District, Kenya " *Canadian Journal of African Studies* 20(3) 377-401
- Myers, Gregory W 1995 "Competitive Rights, Competitive Claims Land Access in the Post-War Period in Mozambique " *Journal of Southern African Studies*
- Myers, Gregory W & Julieta Eliseu June 1997 *Land Tenure Security in Zambesia Province A Report to the Zambesia Agricultural Development Project (ZADP)-World Vision International Mozambique* Maputo, Mozambique
- Pereira, Carlos Raposo & Rui Baltazar dos Santos Alves 1994 *Reflexões sobre o regime jurídico da terra* Maputo Helvetas--Associação Suiça para o Desenvolvimento e Cooperação

LAND LAW¹

LAW No. ___/97, (date)

INDEX

CHAPTER I - GENERAL DISPOSITIONS	2
Article 1 - Definitions	2
Article 2 - Scope	4
CHAPTER II - LAND OWNERSHIP AND PUBLIC DOMAIN	4
Article 3 - General Principle	4
Article 4 - State Land Fund	4
Article 5 - National Land Cadastre	5
Article 6 - Zones of total and partial protection	5
CHAPTER III - RIGHT OF LAND USE AND BENEFIT	6
Article 7 - National Subjects	6
Article 8 - Foreigner Subjects	7
Article 9 - Acquisition	7
Article 10 - Titling	7
Article 11 - Registration	8
Article 12 - Proof	8
Article 13 - Transfer	8
Article 14 - Term	9
Article 15 - Extinguishment of the land right	9
CHAPTER IV - EXERCISE OF ECONOMIC ACTIVITIES	10
Article 16 - Exploitation Plan	10
Article 17 - Licensing and the Right of Land Use and Benefit	10
Article 18 - Licence Period	10
CHAPTER V - RESPONSIBILITIES	11
Article 19 - Areas not covered by the urbanisation plan	11
Article 20 - Municipal and Settlement Councils and District Administrators	12
Article 21 - Local Communities	12
CHAPTER VI - LICENSING PROCESS OF APPLICATIONS FOR LAND USE AND BENEFIT	12
Article 22 - Provisional Use	12
Article 23 - Final Authorisation	13
Article 24 - Revocation of a Provisional Authorisation	13
CHAPTER VII - PAYMENTS	13
Article 25 - Fee	13
Article 26 - Gratuitous Land Use	13
CHAPTER VIII - FINAL AND TRANSITORY DISPOSITIONS	14
Article 27 - Representation and Exercise (of Rights) by Local Communities	14
Article 28 - Land Use Plans	14
Article 29 - Application of the Law	14
Article 30 - Regulamentation	14
Article 31 - Entry into Force	14
Article 32 - Prior Legislation	15

¹ Version written by the Commission on Agriculture Regional Development, Public Administration and Local Power of the Parliament of the Republic for final parliamentary approval on 31 07 97

THE REPUBLIC OF MOZAMBIQUE
THE ASSEMBLY OF THE REPUBLIC

LAW N° /97 of July _

As a universal means for the creation of wealth and social well-being, the use and benefit of the land is the right of all Mozambican people

The challenge that the country faces for its development, as well as the experience had in the application of the Land Law, Law No 6/79, of 3 July, demonstrates the need for its revision in order to bring it into conformity with the new political, economic and social situation and to ensure access and security of land tenure not only for Mozambican peasants but also for national and foreign investors

It is intended in this manner to encourage the use and benefit of land so that this resource, the most important resource that the country has, is valued and contributes in the development of the national economy

In these terms, and pursuant to article 135 1 of the Constitution, the Assembly of the Republic determines

CHAPTER I
GENERAL DISPOSITIONS

Article 1
Definitions

For the purpose of the present law, the following shall have the meaning indicated

- a) **Local Community** a group of families and individuals living within a geographical area at the territorial level of a locality or subdivision thereof and which seeks to safeguard its common interests through the protection of areas for habitation or agriculture including both fallow and cultivated areas, forests, areas of cultural importance, pasture land, water sources and areas for expansion

- b) **Right to Land Use and Benefit** the right that individuals or corporate persons and local communities can acquire over the land, within the requirements and limitations of the present law
- c) **Public Domain** areas destined for the satisfaction of public interest
- d) **Family Use** the use of the land to satisfy the needs of a family household, utilising predominantly the labour of the members of the household
- e) **Special Licence** a document that allows the realisation of any economic activity in total or partial protection zones
- f) **Land Use Map** a map that shows all land occupancy, including the location of human activities and the natural resources within a specific area
- g) **Occupancy** a method of acquiring the right of land use and benefit either by national individual persons who have, in good faith, been using the land for at least ten years or by local communities
- h) **National Corporate Persons** any corporation or institution established and registered in accordance with Mozambican law, with headquarters in the Republic of Mozambique and in which more than fifty per cent of the share capital belongs to citizens of Mozambique or to private or public Mozambican corporations or institutions
- i) **Foreign Corporate Persons** any corporation or institution established in accordance with either Mozambican or any foreign law that has more than fifty percent of its share capital held by foreign citizens, corporations or other entities
- j) **National Individual Person** any citizen of Mozambican nationality
- k) **Individual Foreign Person** any individual person who is not a Mozambican national
- l) **Exploitation Plan** a document presented by an applicant of a request for the use and benefit of land which describes the activities, works and building undertaken to be carried out within a defined schedule
- m) **Land Use Plan** a document approved by the Council of Ministers, which provides an integrated orientation for the overall and sectoral development of a specific geographical area
- n) **Urbanisation Plan** a document that establishes the layout, design, concept and boundaries of urban areas including occupancy and building parameters, patrimonial assets to be protected, areas destined for installation of equipment, open spaces as well as the schematic diagram of road networks and of principal infrastructures

- o) **Land Ownership** exclusive right of the State, established in the Constitution of the Republic of Mozambique, integrating, in addition to all ownership rights, the power to determine the terms of land use and benefit by individual and corporate persons
- p) **Applicant** an individual or corporate person who requests in writing, the authorisation for land use and benefit in accordance with the terms of this law
- q) **Title Holder** an individual or corporate person that holds the right of land use and benefit pursuant to an authorisation or by virtue of occupancy
- r) **Title** a document issued by the general or urban Cadastral Public Services which is proof of the right to land use and benefit
- s) **Nature Protection Zone** an public domain asset, to be used for the conservation or protection of certain animal or plant species, bio-diversity or historical, scenic and natural monuments which is subject to a specific, legislated management regime which preferably involves the participation of local communities

Article 2 Scope

The present law establishes the terms applicable to the establishment, exercise, modification, transfer and termination of the right to land use and benefit

CHAPTER II LAND OWNERSHIP AND PUBLIC DOMAIN

Article 3 General Principle

The land is the property of the State and cannot be sold, or in any other form be alienated, mortgaged or encumbered

Article 4 State Land Fund

In the Republic of Mozambique, all of the land makes up the State Land Fund

Article 5

National Land Cadastre

- 1 The National Land Cadastre includes all the necessary data
 - a) To know the legal and economic status of the land,
 - b) To know the types of occupancy, the use and benefit as well as an evaluation of the fertility of the soils, the forest areas, water reserves, plant and wildlife, mining and tourist zones
 - c) To organise efficiently land use, protection and conservation,
 - d) To determining appropriate zones for specialised production

- 2 The National Land Cadastre shall determine the economic qualification of this data, in order to provide a basis for the planning and distribution of the Nation's resources

Article 6

Zones of total and partial protection

- 1 Total and partial protection zones belong to the public domain
- 2 Zones of total protection are areas to be used for nature conservation and protection activities and areas for State defence and security
- 3 The following are considered zones of partial protection
 - a) the bed of interior waters, of the territorial sea and of the exclusive economic zone,
 - b) the continental platform,

- c) the strip along the maritime coast and along the coast of islands, bays and estuaries which is measured from the maximum high tide line to a mark 100 metres inland,
- d) the land strip of up to 100 metres surrounding a source of water,
- e) the land strip of up to 250 metres along the edge of dams and reservoirs,
- f) the land used by public interest railway lines and their respective stations including a strip of 50 metres bordering each side of the rail line,
- g) the land occupied by highways and four lane roads, aerial, surface, subterranean and under water installations and conductors of electricity, telecommunications, petroleum, gas and water including a strip of 50 metres of each side, as well as the land occupied by roads including a 30 metre strip for primary roads and a 15 metre strip for secondary and tertiary roads,
- h) a two kilometre strip along the territorial border,
- i) land occupied by airports and aerodromes with a surrounding strip of 100 metres, _____
- j) A 100 metre land strip surrounding military installations and other installations for State defence and security

4 No rights of land use and benefit can be acquired in total and partial protection zones, however special licences for specific activities may be issued

CHAPTER III RIGHT OF LAND USE AND BENEFIT

Article 7 National Subjects

- 1 National individual and corporate persons, men and women as well as local communities may hold the right of land use and benefit
- 2 National individual and corporate persons may acquire the right of land use and benefit individually or jointly, under a form of co-title, with other individuals or corporate persons
- 3 The right of land use and benefit by local communities shall observe the principles of co-title for all the purposes of this law

Article 8 Foreign Subjects

- Foreign individual or corporate persons may hold the right of land use and benefit, provided that they have a duly approved investment project and observe the following conditions
- a) In the case of individual persons, provided that they have lived in the Republic of Mozambique for at least five years,
 - b) In the case of corporate persons, provided that they are established or registered in the Republic of Mozambique

Article 9 Acquisition

The right of land use and benefit is acquired

- a) By occupation in the case of individual persons and local communities, in accordance with customary norms and practices provided that such norms and practices do not contradict the Constitution,
- b) By occupation by national individual persons who have, in good faith, been using the land for at least ten years
- c) By authorisation of an application submitted by individual or corporate persons in the format established by this law

Article 10 Titling

- 1 The title shall be issued by the general and urban Public Services of the Cadastre
- 2 The lack of a title shall not prejudice the right of land use and benefit acquired by occupancy in accordance with the terms of paragraphs a) and b) of the previous article

- 3 The titling process for the right of land use and benefit includes a statement by local administrative authorities, preceded by consultation with the respective communities in order to confirm that the area is free and without occupants
- 4 The title issued to a local community shall be issued in the name chosen by the local community
- 5 Individual persons, men and women, who are local community members may request an individual title upon partition of the particular land parcel from the area of the community

Article 11 Registration

- 1 The constitution, modification and extinction of the right of land use and benefit are subject to registration
- 2 The absence of registration shall not prejudice the right of land use and benefit acquired through occupancy, provided that it is duly proved in accordance with the terms of the present law

Article 12 Proof

The right of land use and benefit may be proved by means of

- a) the presentation of the respective title,
- b) testimonial proof presented by members, men and women, of local communities,
- c) expert testimony and other means permitted by law

Article 13 Transfer

- 1 The right to land use and benefit may be transferred by succession, without distinction by sex
- 2 Holders of the title of the right of land use and benefit, may transfer, inter vivos, the infrastructures, buildings and improvements in respect of the land by means of a public notarial deed. The right of land use and benefit is, however, not

automatically transferable and any transfer is subject to the prior authorisation of the entity that authorised the application for use and benefit

- 3 In the cases referred to in the previous number, the transfer will be recorded on the respective title
- 4 In the case of immovable assets excluding land used for agriculture², with the transfer of the immovable assets, the right of land use and benefit of the respective plot will also be transferred
- 5 The holder of the title of the right of land use and benefit may mortgage the immovable assets and improvements that the title holder has, with the necessary authorisation, constructed on the land plot, or, has legally acquired the right of ownership

Article 14

Term

- 1 The right of land use and benefit for the exercise of economic activities is subject to a maximum term of 50 years, which is renewable for the same period upon application by the interested party. At the end of the renewal period a new application must be submitted
- 2 The right of land use and benefit is not subject to any time limitation when
 - a) acquired through occupancy by a local community,
 - b) for use as a personal dwelling,
 - c) for family use by national individual persons

Article 15

Extinguishment of the land right

- 1 The right to land use and benefit is extinguished

² Translator's note: there is no single word or term in English which properly translates the concept of *predio urbano*. It is similar to an immovable, a tenement, an estate. It is the land joined together with the use to which the land is put with the exclusion of agriculture/crop land. The farm buildings themselves can also be a *predio urbano*. The term's application is not limited to urban areas.

- a) upon the failure, without just cause shown, to carry out the exploitation plan or investment project within the time schedule established in the application approval, irrespective of compliance with tax obligations,
 - b) upon the revocation of the right of land use and benefit in the public interest, subject to the prior payment of a just indemnification and / or compensation,
 - c) at the end of the term of the title or its renewal,
 - d) upon renunciation by the title holder
- 2 Upon extinction of the right of land use and benefit, the non-removable improvements shall revert to the favour of the State

CHAPTER IV EXERCISE OF ECONOMIC ACTIVITIES

Article 16 Exploitation Plan

The applicant for the right of land use and benefit must present an exploitation plan

Article 17 Licensing and the Right of Land Use and Benefit

The approval of an application for the right to land use and benefit does not exempt the acquisition of the licences or other authorisations required by

- a) the legislation applicable to the exercise of the economic activities intended to be carried out, including agriculture and stock-raising, agro-industry, industry, tourism, commerce, fishing and mining as well as environmental protection
- b) the land use plans

Article 18 Licence Period

The licences shall be valid for the period fixed in accordance with the applicable legislation from the authorised time scale for the exercise of the right to land use

CHAPTER V RESPONSIBILITIES

Article 19

Areas not covered by the urbanisation plan

In areas not covered by an urbanisation plan

1 Provincial Governors shall have the competency

- a) to authorise applications for land use and benefit for areas up to the maximum limit of 1000 hectares,
- b) to authorise special licences in partial protection zones,
- c) to issue an opinion on applications for land use and benefit in respect of areas that fall within the competency of the Minister of Agriculture and Fisheries

2 The Minister of Agriculture and Fisheries shall have the competency

- b) to authorise applications for land use and benefit for areas between 1000 and 10,000 hectares,
- c) to authorise special licences in total protection zones,
- d) to issue an opinion on applications for land use and benefit in respect of areas that fall outside his competency

3 The Council of Ministers shall have the competency

- c) to authorise applications for land use and benefit that are beyond the competency of the Minister of Agriculture and Fisheries, provided that they fall within a land use plan or could be included in a land use map,
- d) to create, modify or extinguish total protection zones,
- e) to decide on the use of the bed of the territorial waters and of the continental platform

Article 20

Municipal and Settlement Councils and District Administrators

The presidents of the Municipal and Settlement Councils and, where there is no municipal government structure, the District Administrators, shall, provided that there are cadastre public services, have the competency to authorise applications for land use and benefit in areas covered by urbanisation plans

Article 21

Local Communities

- 1 In rural areas, the communities shall participate in
 - a) the management of natural resources,
 - b) conflict resolution
 - c) titling procedures, in conformity with number 3 of article 9 of the present law,
 - d) identifying and defining the boundaries of land plots occupied by such communities
- 2 In the exercise of the competencies referred to in paragraphs a) and b) of number 1 of the present article, the communities shall, inter alia, rely upon customary norms and practices

CHAPTER VI

LICENSING PROCESS OF APPLICATIONS FOR LAND USE AND BENEFIT

Article 22

Provisional Use

- 1 Upon submission of an application for land use and benefit, a provisional authorisation shall be issued
- 2 The provisional authorisation shall have a maximum duration of five years for national persons and two years for foreigner persons

Article 23

Final Authorisation

Upon fulfilment of the exploitation plan within the period of the provisional authorisation, the final authorisation and respective title for land use and benefit will be issued

Article 24

Revocation of a Provisional Authorisation

If, at the expiration of the provisional authorisation, it is verified that the exploitation plan has not been fulfilled without good cause shown, the provisional authorisation may be revoked. Upon such revocation, there shall be no right to indemnification for the investments made which are not removable

CHAPTER VII

PAYMENTS

Article 25

Holders of the title for the right of land use and benefit shall pay a fee. The amount of these fees shall be established taking into account the location of the land areas, their dimension and the objective of their use and benefit

- a) An authorisation fee,
- b) An annual fee that may be progressive or regressive in accordance with investments realised,
- c) Preferential fees shall be established for national individual and corporate persons

Article 26

Gratuitous Land Use

The use and benefit of land is free when used by

- a) the State and its institutions,
- b) public interest associations recognised by the Council of Ministers,

- c) local communities and the individual persons who are part of it,
- d) small-scale national agricultural and stock raising co-operatives and associations

CHAPTER VIII FINAL AND TRANSITORY DISPOSITIONS

Article 27

Representation and Exercise (of Rights) by Local Communities

With regard to the right of land use and benefit, the mechanisms for representation (of the interests of) and for the exercise (of such rights) by a local community shall be established by the law

Article 28

Land Use Plans

Principles for the elaboration and approval of land use plans shall be defined by law

Article 29

Application of the Law

- 1 The right of land use and benefit whether acquired by occupancy or upon approval of an application for same, shall, subject to any acquired rights, be governed by the present law
- 2 The forum for the resolution of conflicts in respect of land is Mozambique

Article 30

Regulamentation

The Council of Ministers shall approve the regulamentation of the present law

Article 31
Entry into Force

The present law enters into force 90 days after its publication

Article 32
Prior Legislation

Law No 6/79 of 3 July and Law no 1/86 of 16 April as well as all other legislation which predates this law and is in contradiction with this law are revoked

Approved by the Assembly of the Republic, on of 1997

The President of the Assembly of the Republic, *Eduardo Joaquim Mulembwè*

Promulgated on of of 199_

Let it be Published

The President of the Republic, JOAQUIM ALBERTO CHISSANO



ASSEMBLEIA DA REPÚBLICA

___ Sessão

Data ___/___/___

Proveniência: Comissão de Agricultura, Desenvolvimento Regional,
Administração Pública e Poder Local

Assunto: Redacção final do texto da proposta de Lei de Terras

Observações _____

Resultado _____

AR- IV/045/30 07 97



ASSEMBLEIA DA REPÚBLICA

Lei n° 197,
de de

Como meio universal de criação de riqueza e do bem-estar social, o uso e aproveitamento da terra é direito de todo o povo moçambicano

O desafio que o País enfrenta para o seu desenvolvimento, bem como a experiência na aplicação da Lei n° 6/79, de 3 de Julho, Lei de Terras, mostram a necessidade da sua revisão, de forma a adequá-la à nova conjuntura política, económica e social e garantir o acesso e a segurança de posse da terra, tanto dos camponeses moçambicanos, como dos investidores nacionais e estrangeiros

Pretende-se, assim, incentivar o uso e aproveitamento da terra, de modo a que esse recurso, o mais importante de que o País dispõe, seja valorizado e contribua para o desenvolvimento da economia nacional

Nestes termos, e ao abrigo do preceituado no n° 1 do artigo 135 da Constituição, a Assembleia da República determina

CAPÍTULO I DISPOSIÇÕES GERAIS

Artigo 1 Definições

Para efeitos da presente lei, entende-se por

- a) Comunidade local agrupamento de famílias e indivíduos, vivendo numa circunscrição territorial de nível de localidade ou inferior, que visa a salvaguarda de interesses comuns através da protecção de áreas habitacionais, áreas agrícolas, sejam cultivadas ou em pousio, florestas, sítios de importância cultural, pastagens, fontes de água e áreas de expansão
- b) Direito de uso e aproveitamento da terra direito que as pessoas singulares ou colectivas e as comunidades locais adquirem sobre a terra, com as exigências e limitações da presente lei
- c) Domínio público áreas destinadas à satisfação do interesse público
- d) Exploração familiar actividade de exploração da terra, visando responder às necessidades do agregado familiar, utilizando predominantemente a capacidade de trabalho do mesmo
- e) Licença especial documento que autoriza a realização de quaisquer actividades económicas nas zonas de protecção total ou parcial
- f) Mapa de uso da terra carta que mostra toda a ocupação da terra, incluindo a localização da actividade humana e os recursos naturais existentes numa determinada area
- g) Ocupação forma de aquisição do direito de uso e aproveitamento da terra por pessoas singulares nacionais que, de boa fé, estejam a utilizar a terra há pelo menos dez anos, ou pelas comunidades locais

h) Pessoa colectiva nacional qualquer sociedade ou instituição constituída e registada nos termos da legislação moçambicana, com sede na Republica de Moçambique, e na qual o respectivo capital social pertença, pelo menos em cinquenta por cento, a cidadãos nacionais ou sociedades ou instituições moçambicanas, privadas ou públicas

1) Pessoa singular estrangeira qualquer pessoa singular cuja nacionalidade não seja moçambicana

1) Pessoa colectiva estrangeira qualquer sociedade ou instituição constituída nos termos de legislação moçambicana ou estrangeira, cujo capital social seja detido em mais de cinquenta por cento por cidadãos, sociedades ou instituições estrangeiras

j) Pessoa singular nacional qualquer cidadão de nacionalidade moçambicana

k) Pessoa singular estrangeira qualquer pessoa singular cuja nacionalidade não seja moçambicana

l) Plano de exploração documento apresentado pelo requerente do pedido de uso e aproveitamento da terra, descrevendo o conjunto das actividades, trabalhos e construções que se compromete a realizar, de acordo com um determinado calendário

m) Plano de uso da terra documento aprovado pelo Conselho de Ministros, que visa fornecer, de modo integrado, orientações para o desenvolvimento geral e sectorial de determinada área geográfica

n) Plano de urbanização documento que estabelece a organização de perímetros urbanos, a sua concepção e forma, parâmetros de ocupação, destino das construções, valores patrimoniais a proteger, locais destinados à instalação de equipamento, espaços livres e o traço esquemático da rede viária e das infraestruturas principais

o) Propriedade da terra direito exclusivo do Estado, consagrado na Constituição da República de Moçambique, integrando, para além de todos os direitos do proprietário, a faculdade de determinar as condições do seu uso e aproveitamento por pessoas singulares ou colectivas

p) Requerente pessoa singular ou colectiva que solicita, por escrito, autorização para o uso e aproveitamento da terra ao abrigo da presente lei

q) Titular pessoa singular ou colectiva que tem o direito de uso e aproveitamento da terra, ao abrigo duma autorização ou através de ocupação

r) Título documento emitido pelos Serviços Públicos de Cadastro, gerais ou urbanos, comprovativo do direito de uso e aproveitamento da terra

s) Zona de protecção da natureza bem do domínio público, destinado à conservação ou preservação de certas espécies animais ou vegetais, da biodiversidade, de monumentos históricos, paisagísticos e naturais, em regime de maneo preferencialmente com a participação das comunidades locais, determinado em legislação específica

Artigo 2 **Âmbito**

A presente lei estabelece os termos em que se opera a constituição, exercício, modificação, transmissão e extinção do direito de uso e aproveitamento da terra

CAPÍTULO II **PROPRIEDADE DA TERRA E DOMINIO PÚBLICO**

Artigo 3 **Principio geral**

A terra e propriedade do Estado e não pode ser vendida, ou por qualquer outra forma alienada, hipotecada ou penhorada

Artigo 4
Fundo Estatal de Terras

Na República de Moçambique, toda a terra constitui o Fundo Estatal de Terras

Artigo 5
Cadastro Nacional de Terras

1 O Cadastro Nacional de Terras compreende a totalidade dos dados necessários nomeadamente para

- a) Conhecer a situação económico-jurídica das terras,
- b) Conhecer os tipos de ocupação,- uso e aproveitamento, bem como a avaliação da fertilidade dos solos, manchas florestais, reservas hídricas, de fauna e de flora, zonas de exploração mineira e de aproveitamento turístico,
- c) Organizar eficazmente a utilização da terra, sua protecção e conservação,
- d) Determinar as regiões próprias para produções especializadas

2 O Cadastro Nacional de Terras procede à qualificação económica dos dados definidos no número anterior do presente artigo, de modo a permitir fundamentar a planificação e a distribuição dos recursos do País

Artigo 6
Zonas de protecção total e parcial

1 São do domínio público as zonas de protecção total e parcial

2 Consideram-se zonas de protecção total as áreas destinadas a actividades de conservação ou preservação da natureza e de defesa e segurança do Estado

3 Consideram-se zonas de protecção parcial

- a) O leito das águas interiores, do mar territorial e da zona económica exclusiva,
- b) A plataforma continental,
- c) A faixa da orla marítima e no contorno de ilhas, baías e estuários, medida da linha das máximas preia-mares até 100 metros para o interior do território,
- d) A faixa de terreno até 100 metros confinante com as nascentes de água,
- e) A faixa de terreno no contorno de barragens e albufeiras ate 250 metros,
- f) Os terrenos ocupados pelas linhas férreas de interesse público e pelas respectivas estações, com uma faixa confinante de 50 metros de cada lado do eixo da via,
- g) Os terrenos ocupados pelas auto-estradas e estradas de quatro faixas, instalações e condutores aéreos, superficiais, subterrâneos e submarinos de electricidade, de telecomunicações, petróleo, gás e água, com uma faixa confinante de 50 metros de cada lado, bem como os terrenos ocupados pelas estradas, com uma faixa confinante de 30 metros para as estradas primárias e de 15 metros para as estradas secundárias e terciárias,
- h) A faixa de dois quilómetros ao longo da fronteira terrestre,
- i) Os terrenos ocupados por aeroportos e aerodromos, com uma faixa confinante de 100 metros
- j) A faixa de terreno de 100 metros confinante com instalações militares e outras instalações de defesa e segurança do Estado

4 Nas zonas de protecção total e parcial não poderão ser adquiridos direitos de uso e aproveitamento da terra, podendo no entanto ser emitidas licenças especiais para o exercício de actividades determinadas

CAPITULO III

DIREITO DE USO E APROVEITAMENTO DA TERRA

Artigo 7

Sujeitos Nacionais

- 1 Podem ser sujeitos do direito de uso e aproveitamento da terra as pessoas nacionais, colectivas e singulares, homens e mulheres, bem como as comunidades locais
- 2 As pessoas singulares ou colectivas nacionais podem obter o direito de uso e aproveitamento da terra, individualmente ou em conjunto com outras pessoas singulares ou colectivas, sob a forma de co-titularidade
- 3 O direito de uso e aproveitamento da terra das comunidades locais obedecerá aos princípios da co-titularidade, para todos os efeitos desta lei

Artigo 8

Sujeitos Estrangeiros

As pessoas singulares e colectivas estrangeiras podem ser sujeitos do direito de uso e aproveitamento da terra, desde que tenham projecto de investimento devidamente aprovado e observem as seguintes condições

- a) Sendo pessoas singulares, desde que residam há pelos menos cinco anos na República de Moçambique
- b) Sendo pessoas colectivas, desde que estejam constituídas ou registadas na República de Moçambique

Artigo 9

Aquisição

O direito de uso e aproveitamento da terra é adquirido

- a) por ocupação por pessoas singulares e pelas comunidades locais, segundo as normas e práticas costumeiras no que não contrariem a Constituição
- b) Por ocupação por pessoas singulares nacionais que, de boa fé, estejam a utilizar a terra há pelo menos dez anos
- c) Por autorização de pedido apresentado por pessoas singulares ou colectivas na forma estabelecida na presente lei

Artigo 10

Titulação

- 1 O título será emitido pelos Serviços Públicos de Cadastro, gerais ou urbanos
- 2 A ausência de título não prejudica o direito de uso e aproveitamento da terra adquirido por ocupação nos termos das alíneas a) e b) do artigo anterior
- 3 O processo de titulação do direito de uso e aproveitamento da terra inclui o parecer das autoridades administrativas locais, precedido de consulta às respectivas comunidades, para efeitos de confirmação de que a área está livre e não tem ocupantes
- 4 Os títulos emitidos para as comunidades locais serão nominativos, conforme a denominação por elas adoptada
- 5 As pessoas singulares, homens e mulheres, membros de uma comunidade local poderão solicitar títulos individualizados, após desmembramento do respectivo terreno das áreas da comunidade

Artigo 11

Registo

1 A constituição, modificação, transmissão e extinção do direito de uso e aproveitamento da terra estão sujeitas a registo

2 A ausência de registo não prejudica o direito de uso e aproveitamento da terra adquirido por ocupação, nos termos das alíneas a) e b) do artigo 9, desde que devidamente comprovado nos termos da presente lei

Artigo 12

Prova

A comprovação do direito de uso e aproveitamento da terra pode ser feita mediante

a) Apresentação do respectivo título,

b) Prova testemunhal apresentada por membros, homens e mulheres, das comunidades locais,

c) Peritagem e outros meios permitidos por lei

Artigo 13

Transmissão

1 O direito de uso e aproveitamento da terra pode ser transmitido por herança, sem distinção de sexo

2 Os titulares do direito de uso e aproveitamento da terra podem transmitir, entre vivos, as infra-estruturas, construções e benfeitorias nela existentes, mediante escritura pública precedida de autorização da entidade estatal competente, não se transmitindo automaticamente o direito de uso e aproveitamento da terra

3 Nos casos referidos no número anterior, a transmissão será averbada no respectivo título

4 No caso de prédios urbanos, com a transmissão do imóvel transmite-se o direito de uso e aproveitamento do respectivo terreno

5 O titular do direito de uso e aproveitamento da terra pode constituir hipoteca sobre os bens imóveis e as benfeitorias que, devidamente autorizado, edificou no terreno ou sobre os quais legalmente tenha adquirido o direito de propriedade

Artigo 14

Prazo

1 O direito de uso e aproveitamento da terra para fins de actividades económicas está sujeito a um prazo máximo de 50 anos, renovável por igual período a pedido do interessado. Após o período de renovação, um novo pedido deverá ser apresentado

2 Não está sujeito a prazo o direito de uso e aproveitamento da terra

- a) Adquirido por ocupação pelas comunidades locais,
- b) Destinado à habitação própria,
- c) Destinado à exploração familiar exercida por pessoas singulares nacionais

Artigo 15

Extinção do direito de uso e aproveitamento da terra

1 O direito de uso e aproveitamento da terra extingue-se

- a) Pelo não cumprimento do plano de exploração ou do projecto de investimento, sem motivo justificado, no calendário estabelecido na aprovação do pedido, mesmo que as obrigações fiscais estejam a ser cumpridas,
- b) Por revogação do direito de uso e aproveitamento da terra por motivos de interesse público, precedida do pagamento de justa indemnização e/ou compensação,
- c) No termo do prazo ou da sua renovação,

d) Pela renúncia do titular

2 No caso de extinção do direito de uso e aproveitamento da terra, as benfeitorias não removíveis reverterem a favor do Estado

CAPÍTULO IV EXERCÍCIO DE ACTIVIDADES ECONOMICAS

Artigo 16 Plano de exploração

O requerente de um pedido de direito de uso e aproveitamento da terra deverá apresentar um plano de exploração

Artigo 17 Licenciamento e direito de uso e aproveitamento da terra

A aprovação do pedido do direito de uso e aproveitamento da terra não dispensa a obtenção de licenças ou outras autorizações exigidas

a) Pela legislação aplicável ao exercício das actividades económicas pretendidas, nomeadamente agro-pecuárias ou agro-industriais, industriais, turísticas, comerciais, pesqueiras e mineiras e à protecção do meio ambiente

b) Pelas directrizes dos planos de uso da terra

Artigo 18 Prazo das licenças

As licenças terão o seu prazo definido de acordo com a legislação aplicável, independentemente do prazo autorizado para o exercício do direito de uso e aproveitamento da terra

CAPÍTULO V COMPETÊNCIAS

Artigo 19

Áreas não cobertas por planos de urbanização

Em áreas não cobertas por planos de urbanização, compete

1 Aos Governadores Provinciais

- a) Autorizar pedidos de uso e aproveitamento da terra de áreas até ao limite máximo de 1 000 hectares,
- b) Autorizar licenças especiais nas zonas de protecção parcial,
- c) Dar parecer sobre os pedidos de uso e aproveitamento da terra relativos a áreas que correspondam à competência do Ministro da Agricultura e pescas

2 Ao Ministro da Agricultura e Pescas

- a) Autorizar os pedidos de uso e aproveitamento da terra de áreas entre 1 000 e 10 000 hectares,
- b) Autorizar licenças especiais nas zonas de protecção parcial e total,
- c) Dar parecer sobre os pedidos de uso e aproveitamento da terra relativos a áreas que ultrapassem a sua competência

3 Ao Conselho de Ministros

- a) Autorizar pedidos de uso e aproveitamento da terra de áreas que ultrapassem a competência do Ministro da Agricultura e Pescas, desde que

inseridos num plano de uso da terra ou cujo enquadramento seja possível num mapa de uso e aproveitamento da terra.

- b) Criar, modificar ou extinguir zonas de protecção total,
- c) Deliberar sobre a utilização do leito das águas territoriais e da plataforma continental

Artigo 20

Conselhos Municipais e de Povoação e Administradores de Distrito

Compete aos Presidentes dos Conselhos Municipais e de Povoação e aos Administradores de Distrito, nos locais onde não existam órgãos municipais, autorizar pedidos de uso e aproveitamento da terra nas áreas cobertas por planos de urbanização e desde que tenham serviços públicos de cadastro

Artigo 21

Comunidades locais

Nas áreas rurais, as comunidades locais participam

- a) Na gestão de recursos naturais,
- b) Na resolução de conflitos,
- c) No processo de titulação, conforme o estabelecido no numero 3 do artigo 10 da presente lei,
- d) Na identificação e definição dos limites dos terrenos por elas ocupados,

2 No exercício das competências referidas nas alíneas a) e b) do número 1 do presente artigo, as comunidades locais utilizam, entre outras, as normas e práticas costumeiras

CAPITULO VI
PROCESSO DE AUTORIZAÇÃO DE PEDIDOS DE USO E
APROVEITAMENTO DA TERRA

Artigo 22

Autorização provisória

- 1 Após a apresentação do pedido de uso e aproveitamento da terra, será emitida uma autorização provisória
- 2 A autorização provisória terá a duração máxima de cinco anos para as pessoas nacionais e de dois anos para as pessoas estrangeiras

Artigo 23

Autorização definitiva

Desde que cumprido o plano de exploração dentro do período de autorização provisória, será dada a autorização definitiva do uso e aproveitamento da terra e emitido o respectivo título

Artigo 24

Revogação da autorização provisória

Constatado o não cumprimento do plano de exploração no término da autorização provisória, sem motivos justificados, poderá a mesma ser revogada, sem direito a indemnização pelos investimentos não removíveis entretanto realizados

CAPÍTULO VII PAGAMENTOS

Artigo 25 Taxas

Os titulares do direito de uso e aproveitamento da terra estão sujeitos ao pagamento de taxas, cujo valor será determinado tendo em conta a localização dos terrenos, a sua dimensão e a finalidade do seu uso e aproveitamento

- a) Taxa de autorização,
- b) Taxa anual, a qual poderá ser progressiva ou regressiva, de acordo com os investimentos realizados,
- c) Deverão ser fixadas taxas preferenciais para os cidadãos nacionais

Artigo 26

Utilização gratuita da terra

O uso e aproveitamento da terra é gratuito quando se destina

- a) Ao Estado e suas instituições,
- b) Às associações de utilidade pública reconhecidas pelo Conselho de Ministros,
- c) Às explorações familiares, as comunidades locais e pessoas singulares que as integram,
- d) Às cooperativas e associações agro-pecuárias nacionais de pequena escala

CAPÍTULO VIII DISPOSIÇÕES FINAIS E TRANSITORIAS

Artigo 27

Representação e actuação das comunidades locais

Os mecanismos de representação e actuação próprios das comunidades locais, no que respeita aos direitos de uso e aproveitamento de terra serão fixados por lei

Artigo 28 **Planos de uso da terra**

Os princípios para elaboração e aprovação de planos de uso da terra serão definidos por lei

Artigo 29 **Aplicação da lei**

1 Os direitos de uso e aproveitamento da terra, sejam adquiridos por ocupação ou por aprovação de um pedido, passam a reger-se pela presente lei, salvaguardados os direitos adquiridos

2 A resolução de conflitos sobre a terra é feita em foro moçambicano

Artigo 30 **Regulamentação**

Compete ao Conselho de Ministros aprovar a regulamentação da presente lei

Artigo 31

Entrada em vigor

A presente lei entra em vigor noventa dias após a sua publicação

Artigo 32 **Legislação anterior**

São revogadas as Leis n.ºs 6/79, de 3 de Julho e 1/86, de 16 de Abril, e a demais legislação anterior contrária à presente lei

Aprovada pela Assembleia da República, aos de de 1997

O Presidente da Assembleia da República, *Eduardo Joaquim Mulémbwè*

Promulgada em de de 1997

Publique-se

O Presidente da República, *JOAQUIM ALBERTO CHISSANO*

