LAND REGISTRATION, AGRICULTURAL PRODUCTION AND FOOD SECURITY IN
MOZAMBIQUE

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ABSTRACT
Like in many other countries, the land debates in Mozambique have been varying, following the national and foreign political and economic conjuncture. The increase of population and migrations, the growing demand for land in developing and developed countries, the investments on infra-structures and the visibility of the land markets have been increasing the pressure on land, leading to the defense of the need of an individualization of the possession rights through their written formalization. In fact, due to its relation to food production and security, land registration has been considered to be an important issue on the land administration issues. Apart from the legal recognition of customary rights, land registration, together with land taxing constitutes a major element in the efforts different actors have been making in order to ensure land access and security by local communities, depending mainly on agriculture for their subsistence.

This study aims to understand what characterizes the requests, processing of requests and the grant of land titles in Mozambique, looking at different regions, gender and type of producers. It also looks at the advantages and disadvantages of registering the rights, considering different actors.

The study reveals that there are different perceptions and knowledge on the processes of granting land use rights’ document (Direito de Uso e Aproveitamento da Terra - DUAT). These differences vary according to the region, the type of producer (small farmer or big enterprises), and the authority in charge of the process (local or central). There are differences between the information provided and the knowledge of the processes between the authorities at the different levels, the producers and the companies interviewed. The differentiation seems to be related with areas of higher potential (agricultural or other); areas of interest to investors (national and foreign), normally coincident with zones of bigger accessibility to the market (national and external); the big scale commercial producer/investor and the small producer; the producer of food and of export products and the institutional fragility of the organization responsible for issuing the land use rights documents.

In general, the study concludes that land registration does not lead straighly, by its own, to land security. Communities’ rights protection also depends on using land and avoiding idleness, mainly in the current context of large scale land acquisition.

KEY WORDS: Land tenure; Land registration; food security; Mozambique.
METHODOLOGY

This paper results from a qualitative research which included a review of general and specialized literature on the subject, together with non-participant observation. The need to answer the questions raised by the literature review and to complement the information contained there led us to carry out a field work, during March and April 2016, in Nampula and Zambézia provinces. The choice of these provinces was based on the fact that these regions are known by their favorable agro-ecological conditions, they represent together more than 43% of small scale producers, and 38% of the cultivated area national wide. In addition, during the last decade they have become a privileged center of interest for (new) investors (national and foreign) and thus have experienced an increasing land conflicts.

Individual and focal group interviews were also conducted with key informants, such as researchers, community authorities, peasants (in associations and individually), administrative authorities, Civil Society Organizations, investors and men and women from the visited local communities. This procedure allowed us to identify the mechanisms of access, appropriation and guarantee of land tenure security at local level, to observe power relations in rural areas (population, local administrative and traditional authorities) and their influence on the attribution of DUAT titles. Despite some constraints related to accessing some important information, documents and places, this research allowed us to analyze the relationship between land registration and food security, to see how investors, State and local population relate with each other, and to identify the causes of the registered land conflicts.

LAND DEBATE IN THE POST-COLONIAL MOZAMBIQUE AND THE REGISTRATION OF LAND RIGHTS

After a long period of foreign domination, Mozambique managed to achieve its secular desideratum, the national independence, as a result of resistance struggles, culminating in the 10-year National Liberation War. With the conquest of independence, the State took to itself the destinies in the social, political, cultural and economic spheres, having outlined the strategies to guide the recovery of values for a long time retracted. It is in this context that land was nationalized and the county's first Constitution of 1975 enshrines that "land and natural resources located in the soil and subsoil, in the territorial waters and on the continental shelf of Mozambique are owned by the State. The State determines the conditions for its use and usufruct "(article 8). The Land Law 6/79 of July 3 assigns all property rights over land to
the State that determines the conditions of its use and exploitation, it prohibits the sale, alienation, lease or mortgage of land.

With independence and additional nationalizations announced on July 24, 1975, there was great evasion by Portuguese settlers and other land holders, and the abandoned properties were left to the management of the Mozambican state, according to the Decree-Law no. 16/75 of 13 February, which also provided for the reversion of abandoned assets to the State (Quadros, 2004).

However, this reversion of land to the Mozambican State did not result in an equitable redistribution of that resource among the local populations, who continued to enjoy limited access to land and limited security of tenure due to the State’s purpose of sending them to agricultural cooperatives or as labor to state-owned enterprises. Proof of land use rights required documentary evidence (titling). The costs associated with the formalization of the rights of use together with the low level of education served to put a large part of the local peasant communities in a position of losing their land, since they did not have a title formalizing their rights to use land (Galli, 2003). In this regard, Mosca (2011: 227) notes that the discrimination secondary of small-scale producers was similar both in the colonial period and after national independence. While the colonial economic policy aimed at the gradual integration of these economic agents into the market as important elements of accumulation and the mechanisms of reproduction of the modern sector, after independence, the small producers were politically marginalized, economically prevented from maintaining their mechanisms of progression between pre-capitalist forms and the market economy.

The 1979 Land Law conferred great privileges to the FRELIMO Party, the State and its institutions, and the Democratic Mass Organizations on the use and exploitation of land, which was free. The use and usufruct of land was also granted free of charge when it was intended for housing or family farming purposes.

The title of use and usufruct of land could be of a definitive or temporary nature, in the cases time limits were established for its validity. Requests for the use and usufruct of land for economic or investment purposes were subject to terms, ranging from five to fifteen years, renewable for an equal or shorter period. In this case, the land user had to present an exploitation plan, the unfulfillement of which could lead to the revocation of the right to use and exploit the land.
Bowen (2000) states that the policies in relation to the agrarian policies adopted by the ruling party in the post-independence period were a failure, economically and politically. This assessment is also defended by Mosca (2011: 447), noting that, during the period of socialist transition (1977-1983), peasants and the rural population in general were marginalized as the Party considered this class an obstacle to the modernization of agriculture understood as the technification and intensification in capital of the agricultural production systems only possible with state-owned enterprises and large cooperatives.

THE CURRENT LAND LAW AND THE RECOGNITION OF CUSTOMARY LAND RIGHTS

The current Land Law, approved in 1997 and in force since 1 January 1998, was the result of various national debates, with the participation of different actors (State, Civil Society, Private Sector, etc.). The preparation of this law was an inclusive process which was considered by some authors (Negrão, 2008; Serra, 2012) as having been one of the most democratic and participative yet in the country. In the debate that culminated with the approval of the new Land Law, factors of internal and external order also were involved. Internally, the country entered into a post-civil war, which allowed many rural families including those displaced to urban areas, to return to their homelands, and the privatization of state farms within the structural readjustment program framework. The external factors were the end of the apartheid regime in neighboring South Africa, and the precipitous change in the land tenure system in Zimbabwe. The combination of these internal and external factors attracted a considerable amount of capital to Mozambique, some of which accessed land, resulting in the emergence of land conflicts with rural populations (Negrão, 2008), even though some of these acquisitions were merely for future speculation or joint ventures.

The Land Law, like the previous one, retains as a general principle the state ownership of land, but allows the right to use and to obtain the DUAT through three ways:

- **Occupation according to customary practices**: based on the rules of organization and coexistence defined and shared locally by families, and transmitted from generation to generation. The land is considered not only by its productive value and its importance to the subsistence of families, but also for its sacredness conferred through the connection it creates with culture, history and identities.
• **Occupation by good faith:** this form of access to land assumes that national individuals are using the land for a period of at least ten years from which they acquire the right of use and occupation.

• **Authorization of an application for use and usufruct of the land:** the natural or legal persons (domestic or foreign) may be authorized by the State to use and exploit land upon submission of a formal request to the cadaster services and certification that the required area has no occupants. The process of granting areas to applicants external to a particular community requires a Community Consultation, in which community members are informed about the planned projects and they decide whether or not the outsider is granted the land.

Thus, the Land Law, in addition to recognizing the right to access land through customary occupation (community, association or individual), it ensures secure land use by the local communities. In the absence of a title, witness testimony can be used to prove someone’s rights of use and usufruct of the land [Negrão, 2008; Quadros, 2004].

However, our observation shows that in the current context of land rush led by large multinational corporations, financial institutions and governments of states affected by the food and financial crisis of 2007-2008 (Cotula et al., 2009; Deininger, et al., 2010), customary law, although legally recognized, has proved to be insufficient to guarantee the protection of the rights of use and usufruct of local peasant communities’ land, as evidenced by cases of dispossession occurring in different contexts and presented in several studies (UNAC and JA, 2011, OMR 2016). This has led to the emergence of several movements advocating for the formalization of the customary land rights considered a condition to avoid situations of encroachment and land conflicts, and ensuring greater protection of the communities’ land rights.

The prevailing perception in rural areas, according to which land is an inalienable common good left by the ancestors, has been transformed as a result of the new dynamics such as population growth and of the presence of foreign and national entities that intend to occupy large areas of land for the production of commodities, as seen in some highly productive areas of Nampula and Zambézia provinces. Therefore, within communities, it has been increasingly considered the need of reinforcing the recognition of customary land rights through a duly signed, stamped and dated written document issued by the Public Administration and with legal validity in all circumstances and places, national wide.
PROCEDURES FOR OBTAINING THE DUAT

The DUAT request is submitted to the respective provincial Cadaster Services. If the requested area is to be used for the pursuit of economic activities, the applicant shall submit a business plan outlining the activities, investments to be made, operating costs and deadlines for carrying out the activities. In addition to the exploration plan, it is mandatory to conduct consultations with local communities in order to: (i) provide information to the local community on the exploitation plan and the identification of DUAT’s boundaries; and (ii) pronouncement by the local community about the availability of the area intended for the activity. It is the responsibility of the District Administrator to guide the community consultation, who is accompanied by other relevant staff members of the Local Consultative Councils, members of the local community, bordering land holders or occupants and, the applicant. Expenses related with dislocation, demarcation and other work on the site made by the Cadaster Services technicians shall be borne by the applicant. The DUAT applicant should present the following documents:

a) DUAT request form duly completed and a photocopy of the ID;

c) Draft of the localization of the requested land;

d) Minutes of the consultation with Local Communities;

f) Proof of payment of the provisional authorization fee and of the annual fee.

The period legally established for the processing of the DUAT application is 90 days, although, in practice, it is longer and time-consuming, reaching a maximum of 12 months, as stated by some of our interviewees. Evidences shows that the social and political influences and the prestige of the applicant or Civil Society Organizations (CSO) that carries out the delimitation and demarcation of the communal lands can influence the time of processing the requests, reducing the waiting time.

If the request is accepted, a first provisional authorization is issued for a period of five years for nationals and two years for foreigners. At the end of this period, and upon request by the holder, the Cadaster Services shall carry out an evaluation of the degree of implementation of the activities and of the exploitation plan, on the basis of which it may issue a definitive authorization for the use and usufruct of the land. In case of non-fulfillment of the exploitation plan, the Cadaster Services may not issue the definitive authorization. However, our observation reveals that Cadaster Services do not succeed to tax
all DUAT applicants and fail to monitor the execution of the exploitation plans, resulting in large percentages of idle land.

TRANSMISSION AND EXTINCTION OF DUAT

The right to use and usufruct of land can be transmitted by inheritance without distinction of sex. The living can transmit among themselves the infrastructure, buildings and other improvements built on the land, and the transmission is registered in the respective title. Whilst customary land rights do not have a term of validity, the rights obtained through the administrative process are valid for a determined period of up to 50 years, and may be renewed for an equal period.

Extinction of the right to use and usufruct the land may occur in the following situations:

a) Failure to comply with the operating plan or the investment project within the time established by the authorities;

b) Revocation of the DUAT for reasons of public interest, preceded by the payment of just compensation;

c) End of the term;

d) Renunciation by the holder.

IMPORTANCE OF DUATs

There is a consensus among our respondents that the written registration of land use rights, including those acquired under customary rules, is an important step to ensure land tenure security for local peasant communities and other users. Interviewed small producers and local peasant communities consider the possession of a document registered by the cadaster services an important factor which helps to prove the legality of the occupation of a given area, facilitates access to bank credit and protects the holders against any situations of land grabbing that tend to be aggravated by the growing agri-business investment in high-potential agro-ecological areas such as, for example, the Lioma Administrative Post in the district of Gurué, Province of Zambézia. The conflicts that occurred in the context of the implantation of the AgroMoz and Hoyo-Hoyo companies in that region triggered a concern in the neighboring communities to register their areas as a form of resistance to the loss of the land and the protection of their own and future generations’ land rights.
Local administrations asserts that DUAT titles facilitates the delimitation of community areas and knowledge of the boundaries of each place, allowing the person to have full rights to explore the land at the required rates. While holders of a DUAT, small producers, individually or in associations, can apply for financing or microcredit projects to finance their production. Another important aspect, also considered by our interviewed, is that, in case of displacements for public utility purposes, holding a DUAT facilitates negotiation with the State, allows more fair compensations, corresponding to the real value of the tangible properties existing in the land, and considering the non-tangible factors related to the culture and tradition of Mozambican rural societies.

For the investors, the formalization of rights, in addition to facilitating investment, attests the legality of the occupation of a given area and reveals compliance with the procedures described above for obtaining a DUAT, in particular the conduct of community consultations. One of the main causes of conflicts between local communities and investor is the unfulfillement of the community consultation.

In urban and peri-urban contexts, there is a growing informal land market, which is accompanied by conflicts since land dealers, known by "mediators", may deliberately sell the same plot to different people. To deal with these situations, some local arrangements have been adopted, consisting in issuing a handwritten or typewritten declaration, signed by both the seller and the buyer. This procedure, while conferring security to the purchase and sale of space, has in many cases is not efficient to avoid cases of multiple sale of the same land, to ensure the security of tenure of new occupants and to prevent the emergence of land conflicts, as seen that transactions are made outside the law.

**CONSTRAINTS TO OBTAINING DUAT**

The constraints associated with the processing of DUAT applications in the visited areas can be grouped as follows: (i) related to the institutional fragility of the institutions that have to process DUAT; (ii) regarding operational and logistical issues; and, (iii) related to human resources. Concerning administrative matters, the above-described procedure is considered to be overly bureaucratic and therefore heavy and tiresome. In areas not covered by municipal development plans, the centralization of power to authorize requests to use and exploit land for areas up to 1,000 hectares makes it a time-consuming process, resulting in the accumulation of un-closed processes. It is considered that the
delegation of powers and competences to the district administrator would contribute to a faster processing of requests.

Small farmers and local peasant communities consider the costs associated with the formalization of their spaces (community consultation, relocation of technicians, personal travel to accompany processes, annual fees, etc.) high. The low literacy level, coupled with weak knowledge of the laws, leads to ignorance about the importance of registration of customary rights and the procedures to follow. These arguments explain why only 3% of all farmers nationwide have a DUAT (OMR, 2016). Unequal gender relations continue to place women in a subordinate position, and, hence more vulnerable to losing land. Except some cases of co-ownership, in most cases the DUAT is registered in the name of the man, even in matrilineal societies (Geffray, 1989). Many women do not have identification documents which makes it difficult for them to obtain a DUAT.

For the investors, the constraints relate with the imposed legal requirements, considered to be highly bureaucratic, leading to delays in processing the applications. For example, the approval of the investment project by the Investment Promotion Centre (CPI) can take up to two years, and some investors may end up giving up and leaving the country as result. In addition, resettlement and compensation processes, in case of displacements, are expensive, and companies are sometimes forced to reduce their plots to allow communities to continue to operate.

In the technological component, the computerization of the process helps control the various applications stages, avoiding the double allocation of same areas. However, there was not made a great investment yet, in this component, lengthening the processing time. Recently, the government has launched a program called Terra Segura (secure land), in order to expand access to DUAT by individuals and local communities. Only in Nampula and Zambézia, the number of requests for DUAT has encountered a considerable increase, under this program, creating a flood of work which is not supported by the staff assigned to the job. The job requires technical equipment and modern software, such as GPS and other surveying devices, maps, which are not available in some districts.

With regard to human resources, one of the verified constraints have to do with the lack of technicians to respond to the demand from all districts of the provinces. The Cadaster Service,s in both provinces face, in considerable times, problems of lack of transport undertake the fieldwork within the delimitation and demarcation processes.


LAND REGISTRATION, AGRICULTURAL PRODUCTION AND FOOD SECURITY

In most rural societies, such as the Mozambican, besides being the primary source of families’ subsistence, land has a sacred value and meaning determined, on the one hand, by the connection it creates with the ancestors and, on the other hand, by the power which it confers to those who are, legally or traditionally, responsible for its management. The norms of reciprocity rooted and shared by individuals involved in the relationship with the land, through cultivation, production, housing or worship of the ancestors, create a certain order and stability, which harmonize the coexistence in society and facilitate the acceptance of the norms and the configuration of power created by the organization of space.

Considered an individuals’ natural right, access to land in rural areas, as well as the sense of ownership, are relatively strong because land and all that it yields are considered to belong to the local families, who manage the land according to customary norms and practices, acquired, appropriate, reproduced among the community, thereby giving them greater acquiescence, relevance and security.

However, in the current context of land rush, led especially by large multinational corporations, financial institutions and governments of the states affected by the food and financial crisis of 2007-2008 (Cotula et al., 2009, Deininger, et al., 2010), although legally recognized, customary law has proved, in practice, to be insufficient to guarantee the protection of land use rights for local peasant communities, as evidenced by the cases of dispossession in different contexts, presented in several studies (UNAC and JA, 2011; Mandamule, 2016).

The prevailing perception in rural areas, according to which land is an inalienable common good, left by the ancestors, has been transformed as a result of the new dynamics such as population growth, the presence of foreign and national entities that intend to occupy large areas for the production of commodities, as seen in some highly productive areas of Zambezia and Nampula provinces. In this way, it is being largely reinforced the need to strengthen the recognition of customary rights through a written document duly signed, stamped and dated, issued by the Public Administration and with legal validity in all circumstances and space.

Particular attention is being given to women’s land rights, as there is a differentiated access to land by women when compared to men, with consequences in terms of food production and security. Although
women represent more than half of the national agro-livestock producers (53%), in most cases, men hold the land rights and decide on the management and intended finality of the production, even in matrilineal societies. In societies such as the Emácua and Elomué, in Nampula province, traditional and generally, land belongs to the woman’s family and marriages in this type of society are matrilocal, meaning that the couple sets up residence in, or near, the wife's family land. The transmission of power - over the lands and all the assets of the families - is also done by means of matrilineal succession, passing from maternal uncle to nephew or niece.

During the last years, the traditional norms of matrilineal societies are being transformed as a result of contact with other peoples and cultures, rural-urban migrations, and also of population growth leading to an inter-penetration and integration of new cultural aspects. In certain cases, although the society is matrilineal in nature, the practices that are now prevailing are typical of patrilineal societies.

It has been noted, in the visited areas, that there is a growing differentiation of work, with women continuing to engage in agricultural (food) production, whilst men, in addition to agricultural (cash crop) activity, engage in informal trade or labor market. On the coast, men are more engaged in fishing activities, while young males increasingly practice artisanal mining, especially in some of the visited regions, as Membá, Nacala-a-Velha and Nacala-Porto. Due to its strategic location, resources (mineral and fishing) and the peculiar landscape, these regions have attracted the attention of several investors interested mainly in tourism and manufacture activities. Only in Nacala Porto, between 2009 and 2015, 15 investment projects in the tourist area were, mainly by investors from Portugal, Italy, South Africa, United Arab Emirates, as well as local.

In areas located close to large manufacture companies and tourism facilities, people abandon activities related to agricultural production, and get employed at the companies; in other cases, peasants produce cash crops for companies (cotton, soybeans and tobacco) or engage in artisanal mining. Therefore, agriculture, the main activity of the communities in the past, is becoming more and more a secondary activity.

This shift from one economic activity to another has resulted, in one hand, in a significant improvement in the small holder’s standards of living, reflected in improved housing and fixed assets, such as motorcycles, solar energy appliances. But, on the other hand, this shift is having some non-negligible implications for the food security and sovereignty of families as they no longer produce what they consume, procuring products from third parties and / or what the market offers. The shift of young, male,
peasant laborers to artisanal mining is also of concern, not only because mines are exploited illegally, but also because mining is performed without any kind of care, posing a huge risk to health of those who practice the activity, damaging the environment and putting in risk the food production has the water sheet may be contaminated.

The rural observatory has been concerned about land registration and security issues. The question we have put in the current land rush is how to minimize the negative effects of these investments for the family sector and contribute to food production and security? To answer this question, several strategies can be considered but, the first, and possibly most important, is the subordination of an individual’s right to the community’s right and, therefore, associating the individual land use rights’ to the DUAT of the respective community. The process of recognizing individual land rights must be preceded by the recognition of community rights. Under these conditions, no transaction with an outsider can take place without the consent of community members.

The reasoning is based on the fact that the small farmers´ production systems are not only limited to farming. There is a complex multifunctional integration system between production and life modes where multiple objectives coexist (e.g. food security, monetary incomes, investments in productive assets and well-being), including risk-minimization (risk of crop losses, natural disasters, etc.). Concepts such as agroforestry systems, agro-pastoral systems and other reflect this integrated and sustainable-seeking exploitation of resources and the balance between man and nature.

**FORMS OF FARMERS´ RESISTANCE TO LAND TENURE INSECURITY**

To prevent land grabbing by the new occupants and ensure security of tenure, peasant communities go for associations and the exclusion of non-locals from accessing the land. By organizing themselves in associations, peasant communities are able to control their land in a more orderly manner, access credit and enhance the dialogue with the Government and Civil Society Organizations (CSOs). The organization in blocks of production allows them to better overcome the lack of production inputs and technologies, sharing efforts and benefits. In addition, with increasing competition for land, membership of an association allows them undertake actions to protect members' rights, such as the identification of new occupants or their exclusion, should the projects presented to them pose a risk to the security of land tenure, actions which would be ineffective if individually undertaken.

Factors such as the lack of knowledge of the law and of information necessary for people to defend their rights, and the corruption of some influential members of the communities themselves, led, in many
instances, to the fact that community’s land rights are not registered with the state administration, thus, placing the community in a situation of vulnerability and risk of losing their spaces. The lack of knowledge of the law and of information is greater in the hinterland regions, where access to roads and infrastructure networks is poorer, and advocacy for communities is limited. In the regions that are better served, in terms of social infrastructure, and closer to the coast, knowledge about land issues is better, whilst land insecurity is greater due to the expansion of tourism and manufacture projects and, therefore, entry of new occupants.

CONCLUSION

Land use rights registration constitutes, in the current context, an important precondition to secure access to this vital resource. This issue is at the center of different actors’ efforts - national and foreign, public and private entities.

This study, carried out in Nampula and Zambézia provinces, reveals that there are advantages in formalizing land use rights, amongst which the responsibility of local communities in the management of their resources, the identification of the boundaries of different land occupants, access to financing, and prevention of land conflicts. The registration of community lands also allows mapping producer associations (formal and informal), where there is a growing participatory trend of women, especially at leadership level.

However, the processing of DUATs applications experience constraints, being one of the most referenced the lack of qualified human resources, delays in processing applications and the costs associated. These constraints lead small farmers to give up the DUAT (or a written document) and left with no option to customary norms and practices related with land tenure.

It was found, in this study, that DUAT granting processes have been differentiated depending on the area, the producer and the authority in charge. The differentiation seems to be related to zones of high potential (agricultural or otherwise); areas of interest for investors, usually with greater accessibility to the market (domestic or foreign); type of producer (large scale commercial producer or small producer); the food producer and the export producer; and the institutional capacity related with processing the applications.
Overall, it is considered to be necessary to invest on decentralization policies, to improve the training of local staff, increase the flow of information between the Cadaster Services at all levels, and to provide technical means to process DUAT applications faster. It is important, however, to note that formal land use rights for small producers do not fundamentally alter the land rights and safety of tenure, but it increases the conditions for their protection. It is necessary to document the occupation of land in the rural environment and include this information into maps and land registries.

REFERENCES


**OFFICIAL DOCUMENTS**


Decreto n.º 66/98, de 8 de Dezembro. Aprova o Regulamento da Lei de Terras.

Lei n.º 6/79, de 3 de Julho, Determina as condições do uso e aproveitamento da Terra materializando o princípio constitucional de que a terra é propriedade do Estado.

Lei n.º 19/97, de 1 de Outubro. Aprova a Lei de Terras. Promulgada a 1 de Outubro de 1997.

Resolução do Conselho de Ministros nº 10/95, de 17 de Outubro, aprova a Política Nacional de Terras.