Policy, Legal and Institutional Assessment Framework

Large-Scale Land Acquisition for Agricultural Production

Mozambique

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ACRONYMS

ANE	National Roads Administration - Administração Nacional de Estradas
CBNRM	Community-Based Natural Resource Management
CENACARTA	National Centre of Mapping & Tele-Detection (Centro Nacional de Cartografia e Tele-Detecção)
CFJJ	Legal & Judicial Training Centre (Centro de Formação Jurídica e Judiciário)
CPI	Centre for Investment Promotion
DFID	Department for International Development
DINAGECA	National Directorate of Geography & Cadastre (Direcção Nacional de Geografia e Cadastro)
DINAT	National Directorate of Land (Direcção Nacional de Terras)
DNAC	National Directorate for Conservation Areas
DNTF	National Directorate of Land & Forestry (Direcção Nacional de Terras e Florestas)
DUAT	Right of Use and Benefit (Direito de Uso e Aproveitamento)
EIA	Environmental Impact Assessment
EMP	Environmental Management Plan
FAO	Food & Agriculture Organisation of the United Nations
GAJUTRA	Office of Social & Legal Affairs - Gabinete de Assuntos Sociais e Jurídicos
IPAJ	Institute for Legal Assistance and Representation
LOLE	Lei dos Órgãos Locais do Estado
MADER	Ministry of Agriculture & Rural Development (Ministério de Agricultura e Desenvolvimento Rural)
MCC	Millennium Challenge Corporation
MICOA	Ministry for Environmental Coordination (Ministério de Coordenação Ambiental)
MINAG	Ministry of Agriculture
MITUR	Ministry of Tourism
MT	Meticais
NGOs	Non Government Organisations
ORAM	Rural Association for Rural Mutual Assistance (Associação Rural de Ajuda Mutua)
PAF	Performance Assessment Framework
PAP	Programme Aid Partners
PARPA	Action Plan for the Reduction of Absolute Poverty
PDUT	Plano Distrital de Uso da Terra
PES	Economic & Social Plan (Plano Económico e Social)
PGR	Office of the Prosecutor of the Republic
SISA	Real Estate Transfer Tax
SPFFB	Provincial Services of Forestry & Wildlife (Serviços Provinciais de Florestas e Fauna Bravia)
SPGC	Provincial Services of Geography & cadastre (Serviços Provinciais de Geografia e Cadastro)
TFCA	Trans Frontier Conservation Area
WB	World Bank

Contents

1 Introduction

Mozambique only has one form of land right, referred to as a 'DUAT', or *Direito de Uso e Aproveitamento de Terra* (which translates as "right of use and benefit to land").

DUAT - The *direito de uso e aproveitamento da terra* (state-granted land right) is currently Mozambique's single form of land tenure right. It is exclusive, inheritable and transmittable (subject to state approval). Irrespective of the means through which it is acquired, the resulting DUAT right is exactly the same.

DUATs can be acquired by:

1 *recognition of long-standing occupancy*

a) customary (traditional) occupation:

the occupation of land by individual persons and by local communities, in accordance with customary norms and practices, so long as these do not contradict the Constitution;

b) good faith occupation:

the occupation of land by individual national persons who have been using the land in good faith for at least ten years;

2 *award on a concessionary basis*

c) award:

new rights to land, awarded with the authorization of an application submitted by an individual or corporate person (renewable 50-year state leasehold).

Figure 1 shows the different mechanisms throughout which DUAT rights are acquired/allocated and their eligibility for registration in the cadastre and the real property register (*registo predial*).

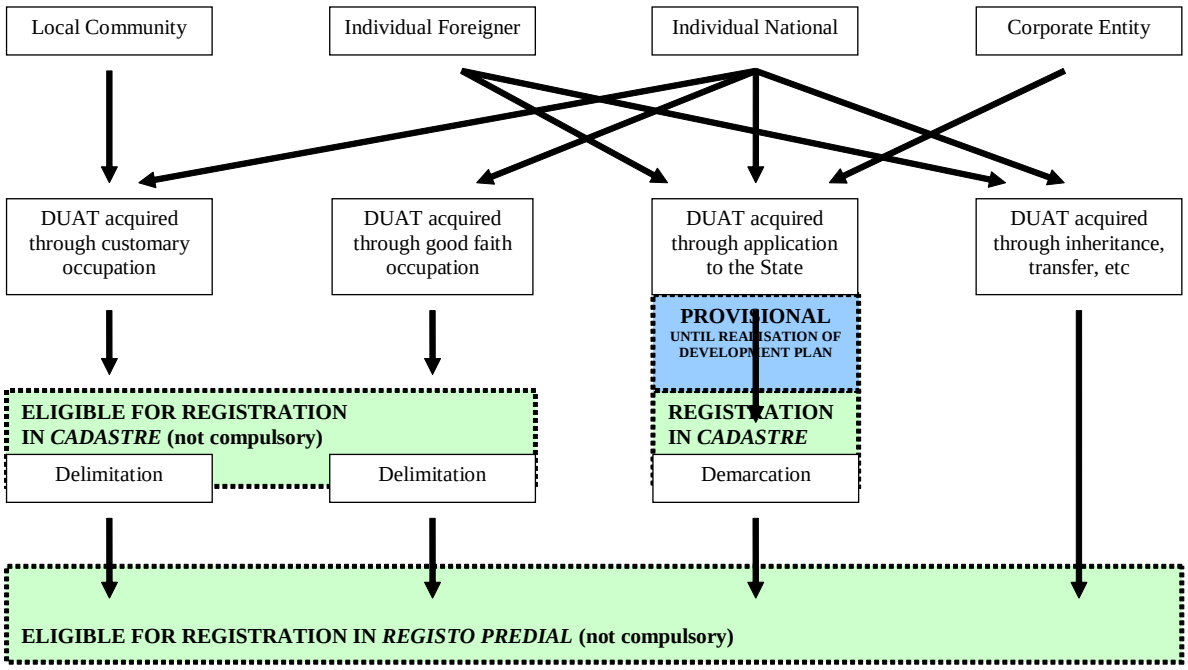

Figure 1 - Typology of means of accessing and recording land rights under Mozambican legislation (source: "Mozambique General Services Contract: Land Tenure Services - Final Report", Chemonics, Ocxt 2006)

2 Land

Overall impacts of large-scale investments in land are likely to be more favorable, and the compensation received by those losing out more adequate, in countries with good land governance. This can be facilitated by a legal framework that allows for sound practices regarding the recognition and inventory of land rights and uses, land use planning and management of public land, expropriation and conflict resolution. For instance, it is important that unused or underutilized land be clearly and unequivocally identified in order to minimize potential conflicts over land use, or that land be made available for investors according to a transparent procedure in order to minimize the possibility of side payments or squandering of land under adverse terms. From the investor's point of view, it is important to have access to information on land, to be dealing with institutions with clearly defined mandates, or to face reasonable speed of land use changes.

2.1 Ownership and use rights, transferability and excludability (PLI-1 to PLI-9)

a Land rights recognition

- If existing rights are not recognized or if they are not enforced, then right holders are more exposed to have their land taken away, or may not receive compensation or adequate compensation in case of expropriation (PLI-1, PLI-2):

PLI-1. Recognition of land tenure rights

The legal framework recognizes the land tenure rights of most of the rural population.	A – The existing legal framework recognizes the rights held by more than 90% of the rural population, either through customary or statutory tenure regimes. B – The existing legal framework recognizes the rights held by 70% - 90% of the rural population, either through customary or statutory tenure regimes. C – The existing legal framework recognizes the rights held by 50% -70% of the rural population, either through customary or statutory tenure regimes. D – The existing legal framework recognizes the rights held by less than 50% of the rural population, either through customary or statutory tenure regimes.

Comments:

The 1995 Land Policy recognises the legitimacy of customary land management systems. Subsequent legislation introduces a framework through which the usufruct rights of more than 90% of the rural population are recognised in law. The 1997 Land Law accords 'informal' and unrecognised customary rights, as well as 'informal' rights obtained through good faith occupation, the status of statutory rights. The 1998 Regulations and Technical Annex provide mechanisms for the registration of such rights, without imposing any obligation to do so.

The Land Law establishes a single land tenure right, the DUAT[i], which applies to customary, good faith and newly requested land occupation and use. The DUAT is a form of state leasehold, subject to conditions based upon how it is acquired.

A DUAT provides a private and exclusive right, inheritable and, subject to state approval, transmittable between third parties. However, it remains subsidiary to the state's ownership of land. The right of the state remains paramount, manifested through its control and regulation of rights acquisition by non-occupants, transmission and other forms of rights alienation.

Article 12 of the Land Law sets out three routes in which a DUAT may be acquired:

a) DUAT acquired by traditional occupation – the occupation of land by individual persons and by local communities, in accordance with customary norms and practices, so long as these do not contradict the Constitution;

b) DUAT acquired by occupation – the occupation of land by individual national persons who

have been using the land in good faith for at least ten years;

c) DUAT acquired by award – the authorization of an application submitted by an individual or corporate person.

Thus, DUAT rights are either acquired through the recognition of long-standing occupancy rights (a and b) or awarded on a concessionary basis through a form of long leasehold (c). In either case, the resulting DUAT is exactly the same.

DUATs awarded by the state are subject to a limit of 50 years, renewable for an equal period (except those that are registered for residential purposes, which have no limit). All DUATs acquired in law through the recognition of long-standing occupancy rights are awarded in perpetuity and are not subject to renewal.

Sources of data/information (name and function of contacted persons or institutions, author, title and publication year of report, etc.):

Resolution 10/95 of 17th October, 1995 (Land Policy) [Boletim da República No. 9 - Supp., Series I – 28th February 1996]

Law 19/97 of 7th October (Land Law) [Boletim da República No. 40 - 3rd Supp., Series I – 7th October 1997].

Decree 66/98 of 8th December (Rural Land Law Regulations) [Boletim da República No. 48 - Supp., Series I – 8th December 1998].Regulations

Ministry of Agriculture and Fishing, Ministerial Diploma no. 29-A/2000 signed 7th December 1999 (Land Law Regulations -Technical Annex for the Demarcation of land use and benefit areas) [Boletim da República No. 11 - Series I – 17th March 2000]

Quadros, M. (2002), *Country case study Mozambique*, Paper presented at the World Bank regional workshop for Africa and the Middle East, Kampala, Uganda, Apr. 29-2 May, 2002.

Tanner, C. 2002. Law Making in an African Context: the 1997 Mozambican Land Law. Rome, FAO, FAO Legal Papers Online No. 26.

Robustness and reliability of data/information provided (comment on reliability of sources, explain variations across data sources or opinions, etc.):

Robust & reliable

PLI-2. Recognition of group rights

The legal framework recognizes group rights in rural areas	A – The tenure of most groups in rural areas is formally recognized and clear regulations exist regarding groups' internal organization and legal representation. B – The tenure of most groups in rural areas is formally recognized but ways for them to gain legal representation or organize themselves are not regulated. C – The tenure of most groups in rural areas is not formally recognized but groups can gain legal representation under other laws (e.g. corporate law). D – The tenure of most groups in rural areas is not formally recognized.

Comments:

Group tenure is formally recognised within the existing legal framework, but there are different interpretations of the legal mechanisms for representation and inconsistencies in approach.

The Land Law introduces the legal concept of a 'local community'. The use of the term in the Land Law is dual.

One usage refers to a form of communal land holding entity or group tenure, and recognises the local community as an entity capable of holding a DUAT in its own right, with household and other more

individualised rights within the community (also acquired by customary occupation) allocated and managed by the community's customary structures. In this way, group tenure is formally recognised. The local community has the legal competence to allocate DUATs, on behalf of the State, through its role as a manager of land and resources and the law recognises the use of customary norms and practises for the resolution of disputes and the management of natural resources within the area under group tenure. The DUAT held by the 'local community' is regulated by the principle of co-titularity (see below).

The second use is as a form of social and economic organisation, which is recognised as a holder and manager of land use and benefit rights and which is accorded an important role within the broader administration and management of rights undertaken by institutions of the state. These include taking part in the allocation of new DUATs through the concession route and identifying the limits of the local community collectively-held DUAT (a process referred to as 'delimitation').

It is in this second use, concerning how a 'local community' interfaces with the state, where there are differing interpretations and inconsistencies. These are examined below:

Local community as an eligible land holding entity

The Land Law approach appears to have been a conscious attempt to incorporate a high level of flexibility in defining eligible 'local' entities, capable of holding DUATs and land management responsibilities. The definition of a local community (Article 1(1)), for example, allows for a wide range of potential groups or local institutions to be involved in land management and administration, with the defining element being the safeguarding of common interests in respect to land-based resources:

1. Local community: a grouping of families and individuals, living in a territorial area that is at the level of a locality or smaller, which seeks to safeguard their common interests through the protection of areas for habitation or agriculture, whether cultivated or lying fallow, forests, places of cultural importance, pastures, water sources and areas for expansion.

Local community as holders of co-title

Having accorded a DUAT over relevant land areas to any 'local community' that fits this definition (awarded through Article 9(1)), Article 10 of the Land Law then makes it clear that these collectively-held DUATs should be managed according to principles of co-title, meaning that all members of the group should have an equal voice and must participate in decisions over their common assets:

10(3). The right of land use and benefit of local communities adheres to the principles of joint title holding for all the purposes of this Law.

Article 12 of the Land Law Regulations then locates this within the legal regime relating to co-ownership provided by the Civil Code:

12. Joint holding of the right of land use and benefit by national, individual or corporate persons or by local communities is governed by the rules on co-ownership of property established in articles 1403 et seq. of the Civil Code.

The internal management of a local community (meaning the title holder of the state DUAT for a collective of households grouped within the 'territorial area'), is therefore governed by the rules of co-title as defined in the Civil Code. Essentially this says that all co-titleholders (in this case all men and women) in a local community have an equal say over how the assets are used or disposed of.

Within the context of this co-title principle, however, the Land Law also emphasises the use of existing local practise and institutions when addressing issues related to the internal management function of a local community[ii]. Article 13, which deals with titling, states that:

13(4). The title issued to local communities shall be issued in the name of the community, which name shall be decided upon by the community.

Local community as interlocutor with the state

Local communities have statutory rights to participate in decision-making, through the operation of article 24 of the Land Law:

24(1). In rural areas the local communities shall participate in:

a) The management of natural resources;

b) The resolution of conflicts;

c) The process of titling, as established in paragraph 3 of article 13 of this Law;

d) The identification and definition of boundaries of the land that the communities occupy.

(2). In exercising the competences listed in ***a) and b)*** *in paragraph 1 of the present article,* ***the local communities shall use, among others, customary norms and practices****.*

Note here that the use of customary norms and practises is limited to the internal management competencies described in sub-clauses a) and b), those of managing the natural resources within an area and resolving conflicts.

Sub-clause (d), which relates to the delimitation process, is regulated by the Technical Annex to the Land Law Regulations.

This leaves sub-clause c), which has to do with the participation of a local community in the decision-making process attendant to the award of a DUAT. The Land Law does not specifically deal with how this competency is to be exercised. The most relevant clause is article 30 of the Land Law, which states (emphasis added):

30. The mechanisms for representation of, and action by, local communities, with regard to the rights of land use and benefit, ***shall be established by law****.*

This appears to be the key area where interpretations diverge. The GoM interpretation appears to be that Decree 15/2000[iii], together with the regulations set out in Ministerial Diploma 107-A/2000[iv], has responded to the obligation in the Land Law to pass further legislation to regulate the forms of 'local community' representation. These two instruments define who are the representative 'authorities' for local communities and other social groupings of people, the methodology for recognising this authority, rights and obligations and the matters in which the local state organs (such as district administrators, etc.) must consult and act in co-ordination with such 'local community authorities'. Note that Decree 15/2000 specifically mentions 'use and benefit of land' as one of the areas subject to articulation between the State and the 'community authorities'.

The practical effect of this interpretation is that the formal land administration only works through 'community authorities' when allocating new DUATs, as opposed to following co-title rules and ensuring that all community members are consulted. Many conflicts then result when local people contest the subsequent occupation by the new DUAT holder, and the right of the chief or other 'representative' to make decisions on their behalf over what they consider to be 'their' land.

An opposing view is that Decree 15/2000 does not mention Article 30 of the Land Law, and is therefore not a response to it, and that the Land Law itself specifically regulates, in various instances, for how community representation must be framed, setting standards which do not appear in Decree 15/2000.

Article 27(2) of the Land Law Regulations, for example, contains a stipulation such that the agreements reached during the mandatory consultation process for the award of DUATs within a community area are "signed by a minimum of three and a maximum of nine representatives of the local community".

Concerns regarding the applicability of Decree 15/2000 arise because

a) the concept of 'local community' in the Decree is different to, and of wider reach, than that in the Land Law; and

b) the decree gives other roles to 'community authorities' which clearly underline their role more as a representative of the State than of local common interests.

These other roles include the dissemination of laws and policies among community members, collaboration with the government to keep peace and fight crime, mobilizing and organizing communities for local development activities, such as building and maintaining water supply infrastructure, etc., and, importantly, mobilizing and organizing people for tax payment. The community authorities are thus acting as agents of the administration, and as public representatives of a local

constituency.

These roles are incompatible with the role of representing the interests of a group of private co-title holders. Although they may have some role in land use issues, these 'Decree 15/2000 community authorities' do not represent the group of private individuals who collectively hold a local-community DUAT.

Various reports (CTC, 2003; Norfolk & Tanner, 2006) have noted that this confusion leads to incorrect practice, endowing individuals in communities with tasks not given them by the Land Law. "The Land Law is clear [that] the community is a private rights holding entity. […] For issues relating to the use and allocation of DUATs, co-title holders, not 'local authorities', must represent the 'Land Law local community'. … Where Article 4 of Decree 15/2000 refers to the 'use and benefit of land' as an 'area of articulation' … [this is] the public face of the customary land management system" (CTC, 2003).

If the 'Decree 15/2000 community authorities' - who may well also be customary land managers - can alone deal with government and investors when deciding over new land rights involving local land, this would be as if a formal public land administration were able legally to transfer or otherwise dispose of rights it has accorded to title holders without any participation on their part.

There are other mechanisms for group recognition, primarily through the Law of Associations. The state simplified the procedures for the formation of local agricultural producers associations, and decentralised the authorisations for such, through Decree 2/2006. This permits the legalisation of associations at district or administrative post level (previously required from provincial level), and reduced the costs of doing so to 200 MT. The associations have legal personality and can acquire DUAT rights in their name. If they are for non-lucrative purposes, associations can benefit from a reduction in the annual land taxes payable against DUATs awarded by the State; alternatively, associations may also be able to register and delimit the DUATs acquired over land that its members have been occupying.

Sources of data/information (name and function of contacted persons or institutions, author, title and publication year of report, etc.):

Decree 15/2000 of 20 June (Local Community – Forms of Participation in Public Administration) [Boletim da República (BR) № 24- Supp., Series I – 20 June 2000]

Ministry of State Administration Diploma 107-A/2000 of 25 August (Regulations of Decree 15/2000 – Local Community-Forms of Participation in Public Administration) [Boletim da República (BR) № 34- Supp., Series I – 25 August 2000]

CTC. 2003. Appraisal of the Potential for a Community Land Registration, Negotiation and Planning Support Programme in Mozambique. Maputo, Department for International Development and CTC Consulting, St Ives, Cambridge, UK.

Simon Norfolk & Christopher Tanner (2007), "Improving Tenure Security for the Rural Poor - Mozambique Case Study", LEP Working Paper #5, Support to the Legal Empowerment of the Poor, Food and Agriculture Organisation of the United Nations, Rome, 2007.

Robustness and reliability of data/information provided (comment on reliability of sources, explain variations across data sources or opinions, etc.):

Robust & reliable

- If property claims are not registered, or if properties are not registered with clearly delineated boundaries, this also weakens the enforcement of property rights and increases the risk of takings without compensation or adequate compensation (PLI-3, PLI-4, PLI-5):

PLI-3. Registration of individually held properties

Individually held properties in rural areas are formally registered.	**A –** More than 90% of individual properties in rural areas are formally registered. **B –** Between 70% and 90% of individual properties in rural areas are formally registered. **C –** Between 50% and 70% of individual properties in rural areas are formally registered. **D –** Less than 50% of individual properties in rural areas are formally registered.

Comments:

Registration and titling of properties in Mozambique is done on a sporadic basis, at the request of individual applicants for the allocation of use rights, or at the request of community groups and others who have acquired rights. The rights that are registered to date are, however, overwhelmingly those belonging to concession holders, rather than those requesting the registration of acquired rights. This is because the former group are obliged to register as part of the process of acquiring a new DUAT, whereas registration for the latter group (who already hold their right by law) is not mandatory.

In theory, this should not have an impact on the enforcement of rights acquired through customary or good faith occupation. The legislation specifically addresses the status of rights in the absence of titling and/or registration through the following articles:

13(2). The absence of title shall not prejudice the right of land use and benefit acquired through occupation in terms of sub-paragraphs a) and b) of the previous article.

14(2). The absence of registration does not prejudice the right of land use and benefit acquired through occupation in terms of sub-paragraphs a) and b) of article 12, provided that it has been duly proved in terms of this Law.

Articles 15 of the Land Law and 21(b) of the Regulations then provides rights holders through occupation with non-documentary ways of proving their rights if needed:

15. The right of land use and benefit can be proved by means of:

a) …

b) Testimonial proof presented by members, men and women of local communities;

c) Expert opinion and other means determined by law

21. The right of land use and benefit may be proved by:

a) …

(b) testimonial evidence submitted by someone who has knowledge of the acquisition of the right by occupancy;

Some commentators (see Norfolk & Tanner, 2006[v]; Chemonics, 2006[vi]) have noted that one consequence of this important decision in favour of rights acquired by local people, is that the state land administration system has no obligation to engage actively in the context of acquired rights, and has avoided .having to form an adequate cadre of government land officers to oversee the identification and registration of these rights. From the perspective of the DNTF, it appears sufficient to provide services to the relatively much smaller number of people and entities who *are* required by law to register their DUAT, that is, those who are applying for a new DUAT (one not already acquired through existing occupation)

Demand for the registration and titling of rights acquired by occupation – whether by communities or by individuals through ' good faith' - has historically always been low, and in spite of consistent criticism from NGOs and other observers since the Land Law was approved, the land administration has never

been seriously challenged to be more proactive and build its capacity to deal with these rights.

There are some good reasons for not adopting systematic titling processes in the rural areas. The smallholder sector in Mozambique is characterized by holdings of multiple small plots; many of the rural population have several plots of land and slash and burn shifting agriculture creates more plots each year, with abandoned areas left to be encroached upon by natural bush. Rural communities also use a variety of communally managed resources for other purposes (notably forest, but also grazing and water rights). Early experiments in the 1990s demonstrated some of the shortfalls. A Swedish-funded project[vii] attempted to use aerial photographs to identify individual plots, which cadastral teams would then measure, register and issue a land use title for. DINAGECA piloted the approach in a single district (Boane) and, at the end of a 5-year period, a mere 69 titles had been registered out of 800 in process (Nichols et al, 1997). The general conclusion was that systematic titling on a plot-by-plot basis for the rural poor was neither viable nor cost-effective for Mozambique

From a purely statistical perspective for this indicator, we can assume the following:

- there are about 3.9 million households in Mozambique, and about 80% of them have some form of small-scale agricultural holding (the rural population is about 65% of the total population, but many urban residents retain land holdings in rural areas)
- the 65% rural population probably own at least two discrete parcels of land apart from their rights over other community managed assets, whilst we can assume that 80% of the urban population retain a single land holding outside municipality areas
- the rural population therefore represents approximately 5,070,000 land holdings, with the urban population contributing a further 1,092,000 parcels, giving a total of 6,162,000
- latest DNTF figures suggest that a total of 28,105 land parcels outside of municipality areas are either registered or in process
- this means that approximately 0.45% of individual properties in rural areas are formally registered

Sources of data/information (name and function of contacted persons or institutions, author, title and publication year of report, etc.):

Simon Norfolk & Christopher Tanner (2007), "Improving Tenure Security for the Rural Poor - Mozambique Case Study", LEP Working Paper #5, Support to the Legal Empowerment of the Poor, Food and Agriculture Organisation of the United Nations, Rome, 2007.

Simon Norfolk, Mike Cheremshenskky & Sergiy Lizenko (2006), "Land Tenure Services: Final Report", Report for Millennium Challenge Corporation, International Land Systems/Chemonics, Maputo, Mozambique, 2006.

Population and household data sourced from National Statistics Institute, 2009.

Land parcel data (land parcels outside of municipality areas are either registered or in process) sourced from DNTF Land Information System in June 2009.

Robustness and reliability of data/information provided (comment on reliability of sources, explain variations across data sources or opinions, etc.):

Assumptions are made about the proportion of urban dwellers possessing land parcels outside of municipal boundaries. Figures are reasonably robust – errors in estimation are likely to be on the side of underestimating the true number of total land parcels.

PLI-4. Mapping and registration of claims on communal or indigenous lands

Most communal or indigenous land is mapped and rights are registered.	A – More than 70% of the area under communal or indigenous land (i.e., land owned by communities or indigenous people) has boundaries demarcated and surveyed and associated claims registered. B – 40-70% of the area under communal or indigenous land (i.e., land owned by communities or indigenous people) has boundaries demarcated and surveyed and associated claims registered. C – 10-40% of the area under communal or indigenous land (i.e., land owned by communities or indigenous people) has boundaries demarcated and surveyed and associated claims registered. D – Less than 10% of the area under communal or indigenous land (i.e., land owned by communities or indigenous people) has boundaries demarcated and surveyed and associated claims registered.

Comments:

The state has historically allocated only limited resources to the demarcation of communal land boundaries. This process is referred to as 'delimitation' in Mozambique, regulated through the Technical Annex to the Land Law. It is a low-cost process that does not demand high precision surveying and is based on a participatory rural appraisal done by a community with technical assistance, and includes the subsequent recording of its borders on cadastral maps. (Note that 'demarcation' also exists, but is technically only associated with the formal registration of DUATs and involves more rigorous and costly surveying and marking out of borders).

According to the first comprehensive assessment of delimitations carried out, carried out for DfID, apart from the Land Commission pilot delimitations and the Community-Based Natural Resources Management Programme (CBNRM) of the Forestry Directorate, virtually all delimitations to date have been supported by NGOs, funded by bilateral donors (CTC, 2003).

Although the delimitations should be registered, coordination between NGOs and the SPGC offices has been weak. Information on the number and extent of community delimitations in Mozambique has only recently become more reliable, and only in the last two years has an indicator on delimitations been included in official Performance Assessment Framework (PAF) agreed between donors and the government.

The CTC report further showed that public resource allocations have been 'inadequate from the beginning', with some US$50,000 allocated in 2001 and then the total declining in the period after the Technical Annex came into force. To quote the report, "the total spent on community land delimitation over the three years covers the costs of some 20 exercises (using the relatively low average cost of US$4 000). Over the last two years the state made available funds for only four delimitations per year. Some provinces with major land conflicts (Sofala, Gaza, Maputo and Inhambane) have very limited resources available" (CTC, 2003:63). None of the funds were actually spent on state-subsidized delimitation processes.

Moreover, it was clear in 2003 that many delimitation exercises were stalled at the point of being officially recorded and with Certificates of Delimitation issued. The report found that while there had been 180 delimitations in the country, only 74 of these had received the formal certificate at the end of this process. Data on the areas involved was subject to verification, and the CTC report did not attempt to estimate the total area covered.

In 2008, the Programme Aid Partners[viii] and the GoM agreed to include the number of completed community delimitations as an indicator within the Performance Assessment Framework (PAF) of the PRSP[ix]. This has led to some increase in the delimitations completed[x] and an improvement in the information available; the table below from DNTF represents official information regarding the status of all delimitations in the country up to December, 2009, including the areas in hectares. Note however that this is a cumulative indicator, and the PAP have pointed out that in the last year especially the number of delimitations completed has fallen to virtually zero. In 2009, the indicator will become

annual, with a target of 50 communities per year being sought by the PAP.

Delimited community areas as at December 2009 (source: DNTF)

Province	Data	Status			Grand Total
		No data	Pipeline	Provisional DUAT	
Gaza	No. of Communities		3	19	22
	Total Area		18,002	444,040	462,042
Inhambane	No. of Communities			11	11
	Total Area			588,509	588,509
Maputo	No. of Communities	7	1	11	19
	Total Area				
Nampula	No. of Communities	3	7	96	106
	Total Area	3,210	46,927	747,376	797,514
Niassa	No. of Communities			8	8
	Total Area			462,831	462,831
Sofala	No. of Communities		7	11	18
	Total Area		934,987	591,084	1,526,070
Tete	No. of Communities		27		27
	Total Area		3,928,911		3,928,911
Zambézia	No. of Communities		83		83
	Total Area		1,842,923		1,842,923
Total No. of Communities		**10**	**128**	**156**	**294**
Total Area		**3,210**	**6,771,751**	**2,833,839**	**9,608,800**

The percentage of all 'communal land' which the present data represent depends upon the interpretation given to this category of land, and how the community delimitation process in the Mozambican context is conceptualised.

If we adopt the position of the organisations which formed part of the Land Campaign, an umbrella organisation which provided a platform for civil society participation in the development of the law, then all rural land in Mozambique is subject to a community DUAT, in the name of one community or another. That is, the boundaries between different community areas are contiguous.

Irrespective of how many communities there may be (and note the process is self-defining), the total land area over which there are community held DUATs would, according to this approach, be somewhere in the order of 70 million hectares (total land area of 78,408,900 ha less estimated land area occupied by municipalities, etc). On this basis, the percentage of the total area held by communities with boundaries demarcated and surveyed and associated claims registered equals approximately 12%.

Sources of data/information (name and function of contacted persons or institutions, author, title and publication year of report, etc.):

CTC. 2003. Appraisal of the Potential for a Community Land Registration, Negotiation and Planning Support Programme in Mozambique. Maputo, Department for International Development and CTC Consulting, St Ives, Cambridge, UK.

DNTF information on community land delimitations (sourced from provincial offices)

Robustness and reliability of data/information provided (comment on reliability of sources, explain variations across data sources or opinions, etc.):

PLI-5. Mapping and registration of claims on forest lands

Most forest land is mapped and rights are registered.	A – More than 70% of the area under forest land has boundaries demarcated and surveyed and associated claims registered. B – 40-70% of the area under forest land has boundaries demarcated and surveyed and associated claims registered. C – 10-40% of the area under forest land has boundaries demarcated and surveyed and associated claims registered. D – Less than 10% of the area under forest land has boundaries demarcated and surveyed and associated claims registered.

Comments:

See above comments in respect to PLI-4 ('communal land').

Claims against forest land, where they arise as a result of a community which wishes to register customarily acquired rights, are treated in the same manner and through the same legal framework as any other land type. Thus the community delimitations completed to date will include forest areas, as well as areas for pasture, future expansion, etc. It is not known what proportion of these delimited areas are classified as forest areas, although the DNTF have recently completed an update to the forest inventory and a comparison of this data with the delimited areas should make it possible to arrive at a rough conclusion.

A proper analysis of the indicator also requires an understanding of elements of the Forestry & Wildlife legislation. Local communities are, for example, permitted to request the registration and declaration of certain forest areas as zones of historical/cultural importance; this is regulated by Article 7 of the Forestry & Wildlife Regulations:

7(1) The following are considered to be zones of historical cultural use or value, forests situated in rural cemeteries, cult worship areas, forestry comprising vegetation used by the local community for the extraction of traditional medicine, forests which are home to species of wildlife used in cults, assuming that the exploitation of such species is not prohibited by law

(2) It is within the competence of the Provincial Governor to declare, by despatch, such zones in terms of the law related to the present article. The provincial governor may declare such zones when they are very well known as such, or by method of the transference into writing of a verbal declaration signed by the representatives laid out in line a) of No. 3 of this article.

(3) The request for the declaration of a zone as laid out in this article may be made by the local community and should contain:

(a) A letter of request signed by not less than 10 members of the respective community, suitably identified

(b) The basis of the request, with an indication of the cultural value, historical and social facts, and other elements which justify the declaration in terms of the law

(c) Geographical limits of the area

(4) The absence of a declaration does not prejudice the rights defined in the law relative to the use of the area and the forestry and wildlife resources by the local communities for economic, social, cultural and historic ends in accordance with their customary norms and practices.

It is clear from anecdotal field evidence that very few communities know about this mechanism and their right to use it. It has not been possible to date to ascertain how many communities/size of forest areas that may have been registered in this way, although anecdotal evidence suggests that only one local community has ever made such a request (for the declaration of the Icuri Forest area in Nampula province).

In addition, local communities are eligible to receive a share of the state revenue generated through the award of commercial licenses for the exploration of timber and other forest products. This is regulated through Article 102 of the Forestry & Wildlife Regulations:

102(1) Twenty per cent of any tax levied for forestry or wildlife exploitation is destined to benefit the local communities

from the area where the resources have been extracted, in accordance with the terms of No. 5 of article 35 of law 10/99 of 7th July *(2) A joint ministerial diploma from the ministries of agriculture, tourism and finance will define the mechanisms for channelling and use of the value referred to in the previous number by the communities.* The relevant diploma has since been passed, and a process of allocating these public resources has begun. Thus the number of local community groups which are receiving such payments could also serve as a proxy for the indicator, to the extent that the state is recognising that particular groups do have valid claims to local forest areas. In this respect, the latest information available is from the Joint Review of progress on the PRSP in 2008; the Aide Memoire states the following: *"In relation to the management of natural resources, the MINAG carried out a forestry inventory, providing the Government with instruments with which to improve the management of these resources. […] There was progress in canalizing the amounts coming from the forestry and fauna tax to the local communities, with an increase of 39% compared to 2006; however, only 308 out of 1,062 were covered".*[xi] It therefore seems fair to state that, whichever means are used to assess the indicator, less than 50% of the area under forest land has boundaries demarcated and surveyed and associated claims registered.
Sources of data/information (name and function of contacted persons or institutions, author, title and publication year of report, etc.): GoM/Programme Aid Partners, "AIDE-MÉMOIRE of the 2008 Joint Review", Maputo, Mozambique.
Robustness and reliability of data/information provided (comment on reliability of sources, explain variations across data sources or opinions, etc.):

b Land conflicts

- Transfers of land are likely to generate conflicts, including at the local level. There cannot be a fair and equitable resolution of these conflicts unless there exist accessible and recognized institutions, in particular at the local level, with clearly defined competences and the possibility to appeal rulings (PLI-6, PLI-7 and PLI-8):

PLI-6. Frequency of conflicts over land generated by land acquisition

Land acquisition generates few conflicts and these are addressed expeditiously and transparently.	A – Conflicts related to use or ownership rights and directly or indirectly related to outside land acquisition are scarce (less than 5% of rural land area or holders affected) and emerging conflicts are addressed expeditiously and in a transparent manner. B – Conflicts related to use or ownership rights and directly or indirectly related to outside land acquisition are scarce (less than 5% of rural land area or holders affected) but the process for addressing conflicts is slow and lacks transparency. C – Conflicts related to use or ownership rights and directly or indirectly related to outside land acquisition are relatively frequent (more than 5% of rural land area or holders affected) but emerging conflicts are addressed expeditiously and in a transparent manner. D – Conflicts related to use or ownership rights and directly or indirectly related to outside land acquisition are relatively frequent (more than 5% of rural land area or holders affected) and the inability to address these conflicts expeditiously and in a transparent manner results in long pending disputes.
Comments on the answer provided (for the most common type of conflict, describe conflict type and involved parties—e.g. whether on customary land, if the conflict involves the transfer of ownership or	

long-term-lease to a foreign entity, whether it relates to large-scale investments, etc.; comment where it is not possible to disaggregate conflicts over land acquisition for food crops, biofuels, livestock, game farm/conservation, and forestry):

Conflict over land rights is a common feature throughout the national territory, although there is no systematic collection of data. As a WB Agricultural Development Strategy document for Mozambique notes, the country "has relatively low pressure on the cultivable portion of its abundant land resources, but has a troubled heritage of conflict over land use. Disputes over land use are mainly about access to fertile land located in favored climates and competing forms of land use."

The 2007 Annual Report from the DNTF refers to 76 land conflicts, most of which are reported from the provinces of Tete, Cabo Delgado and Zambézia. However, DNTF reporting on conflicts is inconsistent and incomplete and no breakdown of these conflicts according to type is provided. The report, however, points to several causes of conflicts; high demand for land for tourism investments in the coastal areas, poor dissemination of the legislation to local communities, weak community consultation processes, disputes over boundaries between communities and investors and the 'non-rigorous delimitation of areas' (giving applicants more land than authorized).

Conflicts arise in various contexts, most of which involve some element of 'outside land acquisition', although this is not always foreign:

a) Between neighbouring local communities, normally involving the identification of boundary areas during a delimitation process. These disputes are normally resolved through the application of the procedures from the Technical Annex and do not tend to result in long pending disputes.

b) Between local authorities and land occupants on land subject to urbanisation on the fringes of municipality areas. This may involve conflict between occupants and developers acting on behalf of local authority bodies.

c) Between local community groups and outside parties (not always foreign) in rural areas, usually as a result of disputed access to land or related resources (e.g. grazing or water). Failure to address such issues expeditiously is the norm and they often result in long standing conflict.

d) Between the state and land occupants in areas declared as national reserve areas or accorded some other form of protected status.

e) Between private parties, concerning boundaries, issues of access or authorised use.

Sources of data/information (name and function of contacted persons or institutions, author, title and publication year of report, etc.):

Annual Report 2007, DNTF

Robustness and reliability of data/information provided (comment on reliability of sources, explain variations across data sources or opinions, etc.):

PLI-7. Accessibility of conflict resolution mechanisms

Conflict resolution mechanisms are accessible to the public	A – Institutions for providing a first instance of conflict resolution are accessible at the local level in the majority of communities. B – Institutions for providing a first instance of conflict resolution are accessible at the local level in less than half of communities but where these are not available informal institutions perform this function in a way that is locally recognized. C – Institutions for providing a first instance of conflict resolution are accessible at the local level in less than half of communities, and where these are not available informal institutions do not exist or cannot perform this function that is locally recognized. D – Less than a quarter of communities have institutions formally empowered to resolve conflicts and a variety of informal institutions may be available in the rest.

Comments:

This is a difficult indicator to apply, hence the choice of both A and D.

Given that legal pluralism is a recognized Constitutional principle (Article 4 of the Constitution), there may be various formally-recognised institutions devoted to dispute resolution, including those conducted by traditional and religious leaders. On that measure, institutions with a formal mandate for providing a first instance of conflict resolution are accessible at the local level in the majority of communities. Indeed evidence shows that the majority of local conflicts between neighbours, etc. are dealt with by local structures of some sort.

These may be:

- Traditional Court presided over by paramount chief and elders
- Traditional Court presided over by subordinate chiefs & elders
- Popular Court presided over by locally-elected 'lay judges'
- Intervention ('arbitration') by 'Secretário do Bairro'/'President de Localidade'/District Administrator

Further explanation suggests however that formally recognized institutions for conflict resolution at the local level do not exist, or at least rarely get involved in land disputes.

Article 24(1)(b) of the Land Law (see above, page 5) gives local communities the specific right to participate in the resolution of conflicts, as well as underlining the importance of local customary systems in relation to land and natural resource management. This means that in many cases, the forum of first instance for the resolution of land-related conflicts is within the community itself; either the community courts or the traditional structures. The Law also, to a certain extent, provides a formal mandate to these institutions.

These local institutions are much less likely to be involved when conflicts arise with outsiders. The Centre for Legal and Judicial Training (CFJJ) carried out a study of 165 conflict cases, including a group of 37 more detailed case studies; the purpose of the CFJJ study was precisely to understand who was involved in each conflict and the role of the various judicial structures[xii].

The study found that whilst the majority of 'local' conflicts - between neighbours, for example - are resolved by local institutions - it was clear that the community courts (and other traditional conflict mechanisms) were marginalised when dealing with more complex cases. In other words, while local communities are "participating" in conflict resolution, they are only really participating in their own conflicts (Baleira et al, 2004). When it comes to disputes between ordinary rural citizens and the outside world, a different set of institutions come into play. Further findings of the study are as follows:

a) The judiciary is not exercising a significant role in the resolution of conflicts between distinct

interest groups such as communities and investors, nor are local or traditional institutions involved in any significant way.

b) When either the judiciary or the traditional structure does intervene, it is nearly always to deal with a criminal act that has taken place as a direct consequence of the land or natural resource conflict, and not to deal with the conflict itself.

c) The Office of the Prosecutor of the Republic (PGR) rarely gets involved, and almost never questions public agencies, which are often misapplying the law, or not giving due attention to the participatory and mediatory aspects of various instruments of natural resources legislation.

d) Most land and natural resource conflicts are resolved following administrative channels, which increasingly take on a quasi-judicial role and ultimately take decisions without adequate reference to the laws or basic legal principles (many cases are "resolved" by Commissions created by Provincial governors, which have no legal or judicial expertise).

e) Administrative structures are often compromised between responding to higher level orders to "find land" or facilitate an investment scheme, and trying to respond to local needs (the former nearly always predominating); since they are therefore 'part of the problem' they should not participate in the conflict resolution, apart from providing technical information when required.

f) Provincial governors, and the political power which they wield, are seen as the ultimate arbiters in this picture, where a long history of centralised political power conditions the way that most people – including outside investors – see the relative capacity of the judiciary to intervene and solve their problems.

g) In this context the "judiciary" is seen as an executive sector – the "crime sector" - alongside others like the Cadastral Services or the Forest and Wildlife Services, which are seen as being more competent (with the technical knowledge needed) to resolve natural resources cases (even if the law is being broken and rights put at risk, such cases are not seen as illegal in the same way as a theft or murder).

h) Local people certainly know very little about these laws, but their understanding of what their legal rights are, and how to use them effectively (to gain new income etc) or defend them (to avoid losing land and livelihoods) is even weaker still.

Turning to the formal courts, these are independent sovereign bodies that administer justice on behalf of the people. They guarantee and ensure compliance with the Constitution, laws and other legal provisions in force and safeguard the rights and legitimate interest of citizens and institutions (Article 212(1) of the Constitution).

Up until the mid 1990s, there were only approximately 200 trained legal professionals in the whole of Mozambique[xiii], the majority of whom held positions in the central government or the private sector in Maputo. This figure included those who held positions as judges, throughout the country. In terms of legal assistance, therefore, some entire provinces were without any lawyers or other legal professionals (excluding judges and the provincial attorney general). Many districts were without court houses, judges, or indeed any trained legal personnel.

So, although there should be one District Court (*Tribunal Judicial de Distrito)* for each of the 128 districts in Mozambique, many of them have not yet been created or adequately staffed. Poor physical access to the courts, particularly for citizens located in districts, far from urban areas or provincial capitals, is a real impediment to access to the formal justice system. A National Survey on Governance and Corruption showed that the physical location of courts is one of the top three obstacles to access to justice, the other two being the financial costs involved and corruption.

The recognition of legal pluralism in Mozambique was an important step towards the integration of the various co-existing normative and dispute resolution systems into the formal court structure. Yet there is still no clear understanding, even in principle, of what this recognition should mean in practice. Community Courts created under the old socialist regime were taken out of the formal judicial system in a 1992 Community Court Law; a new law that should deal with their status continues to be delayed and there is still no clarity on how community courts are supposed to be established and appointed in a

transparent and just way, how they will function, what their specific mandate will be, how they will be supported and monitored, and how district courts will relate to them. The Aide Memoire from the 2008 Joint Review process, states that this delay is because of "the observed need for, on the one hand, enlarging the social basis to be consulted in relation to the proposed law[s] in order to adjust them to the national reality, and, on the other hand, for taking into account the budgetary implications of the Law on Community Courts".

There are 11 Provincial Courts (*Tribunais Judiciais de Provincia);* they act as courts of first instance in cases above a certain monetary threshold. They also have a role as appeal courts for those who do not accept district level judgements.

The Administrative Court (*Tribunal Administrativo*) was created in 1992 as the superior court in the hierarchy of the administrative, fiscal and customs courts (Article 228(1) of the Constitution). The Administrative Court oversees the constitutionality and legality of administrative decisions issued by the public administration, and is therefore relevant when these bodies take decisions concerning land use, land rights allocation or indeed, decisions for resolving conflicts related to land access. In principle citizens who feel that the government has acted illegally or has abused their rights can take a case before this court. There is only one in the whole country however, in Maputo, and in practice this 'access to justice' is far beyond the means of the ordinary person, even if they knew the option existed.

On the positives side however there is evidence that formal courts are becoming more involved in these 'civil law' cases. A 2001-04 FAO project at the CFJJ has trained the majority of existing district and provincial judges and prosecutors in the land, environment and forest and wildlife laws, and the CFJJ has a module dealing with these issues as part of its core professional training for the judiciary. The current CFJJ-FAO programme is working with the district judiciary, district Administrators and police chiefs to clarify the role of each branch of the State in relation to these laws, the local development process (predicated on recognition of citizens rights) and in conflict resolution.

Sources of data/information (name and function of contacted persons or institutions, author, title and publication year of report, etc.):

Sergio Baleira and Christopher Tanner (2004), "Relatório final da pesquisa sobre os conflitos de terra, ambiente, e florestas e fauna bravia", Centro de Formação Juridica e Judiciária, FAO (Matola [Mozambique]), 2004

GoM/Programme Aid Partners, "AIDE-MÉMOIRE of the 2008 Joint Review", Maputo, Mozambique.

AfriMAP - Open Society Initiative for Southern Africa (2006), "Mozambique Justice Sector and the Rule of Law: Main Report", London 2006.

Robustness and reliability of data/information provided (comment on reliability of sources, explain variations across data sources or opinions, etc.):

PLI-8. Possibility of appeals

Rulings on land cases can be appealed.	**A –** A process and mechanism (e.g. appeals court) exist to appeal rulings on land cases at reasonable cost with disputes revolved impartially in a timely manner. B – A process and mechanism (e.g. appeals court) exist to appeal rulings on land cases at high cost with disputes revolved impartially in a timely manner. **C –** A process and mechanism (e.g. appeals court) exist to appeal rulings on land cases at high cost with disputes taking a long time to be heard and resolved **D –** A process and mechanism (e.g. appeals court) does not exist to appeal rulings on land cases.

Comments:

Appeals mechanisms exist in Mozambique, but the costs are high, the capacity of the judiciary to be impartial in cases involving the state is widely questioned and there are considerable backlogs throughout the court system.

The Provincial Courts act as courts of second instance for District Court decisions. Appeals from the decisions of the Provincial Courts go directly to the Court of Appeals. Article 223(3) of the Constitution of 2004 referred to the creation of *Tribunais Superiores de Recurso,* which was finally established in 2007 through the Organic Law of the Judicial Courts. These courts, established at regional level, will hear appeals from the Provincial Courts, thus reducing the Supreme Court's workload. By mid 2009 none have been formally set up.

The Supreme Court (*Tribunal Supremo*[xiv]) is located in Maputo and has national jurisdiction. It is composed of the Court President, Vice-President and a minimum of seven professional judges appointed by the National President, after consultation with the Superior Council of the Judiciary. The Supreme Court works as an appellate court for those decisions handed down by the Court of Appeals.

The Institute for Legal Assistance and Representation (IPAJ) is supposed to provide free legal services to the population but the new Law regulating the IPAJ is still to be approved. The most recent Joint Review noted that the Ministry of Justice has revitalised existing provincial and district branches of the IPAJ and established new ones; and the number of cases dealt with has indeed increased as new judicial assistants have also been appointed. The Review describes the progress as 'dynamic' and notes that 41 districts are now covered by the IPAJ, involving a total of 343 associated professionals. This leaves, however, 87 districts (67%) without the IPAJ services.

No data is available regarding the number of land-related cases dealt with by the courts. In all cases, there are considerable backlogs, but the Joint Review of 2008 notes that the courts processed an increase of 24,211 cases between 2006 and 2007.

Sources of data/information (name and function of contacted persons or institutions, author, title and publication year of report, etc.):

GoM/Programme Aid Partners, "AIDE-MÉMOIRE of the 2008 Joint Review", Maputo, Mozambique.

AfriMAP - Open Society Initiative for Southern Africa (2006), "Mozambique Justice Sector and the Rule of Law: Main Report", London 2006.

Robustness and reliability of data/information provided (comment on reliability of sources, explain variations across data sources or opinions, etc.):

Restrictions on land ownership, use and transferability

- Restrictions on land ownership, use, or transferability may temporarily be justified in specific contexts. But permanent restrictions may have adverse consequences (as they may lead to an inefficient allocation of land, or provide incentives to bribe those in charge of their enforcement). Restrictions may deter investments in land or constrain them in ways that are not necessarily justified or appropriate (PLI-9):

PLI-9. Land ownership restrictions

Restrictions regarding land use, ownership and transferability (for land that can be used for agricultural production) are justified.	*Please fill out following matrix for background information and use it to choose ranking below:* A – There are a series of regulations that are for the most part justified on the basis of overall public interest and that are enforced. B – There are a series of regulations that are for the most part justified on the basis of overall public interest but that are not enforced. C – There are a series of regulations that are generally not justified but are not enforced. D – There are a series of regulations that are generally not justified and are enforced.			
Restrictions on land ownership (for each one of the restrictions listed below, tick appropriate column and provide comment where relevant)	**Non-existent**	**Exists, but not enforced**	**Exist & enforced**	**Brief description of restriction and comments**
Land transactions			✓	Any form of transmission of rights in respect of *prédios rústicos*, namely rights in land, improvements, fixtures, buildings (without commercial autonomy), natural resources or the use of the foregoing requires the recording and approval of the authority that attributed the original, underlying land use and benefit rights (Article 15 Rural Land Law Regulations). Implicit within this provision is the restriction that rights acquired by occupancy cannot be transmitted to third parties prior to the formal recognition of those rights through demarcation and issuance of a title instrument.
land ownership			✓	All land in Mozambique is owned by the state.
owner type			✓	Leaseholds can only be held by the following: - a Mozambican national natural (as opposed to juristic) person, - - a local community who has acquired the right of land use and benefit in accordance with customary norms and practices; - a Mozambican national juristic person (e.g. company, association, etc.); - a foreign national natural person provided that they have been resident in the Republic of Mozambique for at least five years; - a foreign national juristic person (defined as being a company where less than 50% of the equity capital is owned by Mozambican nationals),

				provided that they are established or registered in Mozambique
land use		✓		Leaseholds are granted for specific purposes and unauthorised changes in this are not permitted.
size of transaction or holding	✓			
price		✓		Leaseholds are granted against payment of annual rentals to the state. Enforcement of these payments is very low.
rent			✓	Renting of use rights would be classed as a ceding of those rights and would therefore require permission as detailed in 'transactions' above
others (please specify) Sale of land		✓		Even though land belongs to the State and may not be sold, there is an informal market in land with relatively high prices. Anecdotal information suggests that parcels of land for house construction in the Triunfo area of Maputo are being sold for approximately USD $50.000.
Comments on the answers provided (please provide as much detail as possible on the restrictions including rights to engage in land transactions (e.g., selling land), etc.):				
Sources of data/information (name and function of contacted persons or institutions, author, title and publication year of report, etc.):				
Robustness and reliability of data/information provided (comment on reliability of sources, explain variations across data sources or opinions, etc.):				

2.2 Land-use planning and practices (PLI-10 to PLI-30)

a Planning

- Failure to inventory land or ambiguity in its classification can lead to unbalanced or controversial land acquisition deals. For instance, land inappropriately classified or considered "uncultivated" could be transferred to investors for some development that would be in conflict with the current use. Public land could be transferred to private parties for uses or under conditions that are not in the public's general interest (PLI-10, PLI-11 and PLI-12):

PLI-10. Recording of publicly held land

Publicly held land is identified or recorded.	A – More than 50% of public land is clearly identified (on the ground or on publicly available maps). B – Between 30% and 50% of public land is clearly identified (on the ground or on publicly available maps). C – Less than 30% of public land is clearly identified (on the ground or on publicly available maps). D – Public land is not clearly identified (on the ground or maps) and/or any existing data or maps of public land are not publicly available.

Comments:

There are six categories of protected areas in Mozambique. These cover a total of 147,345 km², which represents 18 % of the total country's surface area. The categories are:

- National Parks (Parques Nacionais)
- Game Reserves (Reservas Especiais)
- Partial Reserves (Reservas Parciais)
- Vigilance Areas (Regimes de Vigilância)
- Controlled hunting and photographic safari (Coutadas)
- Forest reserves (Reservas Florestais)

In total, there are 7 National Parks, 5 Game Reserves, 14 Controlled Hunting Areas, 3 Vigilance Areas, and 16 Forest Reserves.

Forest Reserves and Controlled Hunting Areas are administered by the National Directorate of Land & Forestry (DNTF) within the Ministry of Agriculture.

Other protected areas, including National Parks and Transfrontier Conservation Areas, are the responsibility of the Ministry of Tourism.

The Forest Reserves, although they are not explicitly defined, are classified within the land use category of "National Reserves" defined in the Forestry & Wildlife Law as "total protection zones, established for the protection of rare, or threatened, or endemic species of flora and fauna and fragile ecosystems such as humid zones, mangroves, dunes, and coral reefs" (Article 12).

National Reserves are one of three types of protected areas, defined by the Forestry & Wildlife Law (Article 10): (a) national parks; (b) national reserves; and (c) areas with historic and cultural value.

Summary of Protected areas (Public land) in Mozambique

Designation	**Number**	**Surface Area (km²)**	**Percent**
National Parks	7	37,476	4.68
National Reserves	5	47,700	5.95
Hunting Areas	14	52,717	6.58
Forest Reserves	16	9,452	1.18
Cultural Use	0	0	0
	Total	**147,345**	**18.38**

List of Gazetted Forest Reserve Areas in Mozambique

Reserve Name	**Type**	**Area (ha)**
Chirindzene		
Muehene		

Mapalue		
Baixo Pinda	Coastal	19,600
Derre	Coastal/Miombo	170,000
Inhamitanga	Coastal/Miombo	1,600
Licuáti	Tongoland-Pondoland/Coastal	3,700
M'palue	Miombo	5,100
Maronga	Miombo	8,300
Matibane	Coastal	51,200
Mecuburi	Miombo	230,000
Moribane	Miombo	5,300
Mucheve	Miombo	9,057
Nhampacue	Coastal/Miombo	17,000
Ribáuè	Miombo	5,200
Zomba	Miombo	2,850
TOTAL Area		**528,907**

List of Gazetted Protected Areas in Mozambique

	Conservation area	**Ecoregion**	**Area (Km²)**
National Parks	Limpopo National Park	Mopane	10,000
	Gorongosa National Park	Grassland/ Coastal	5,370
	Zinave National Park	Mopane	6,000
	Banhine National Park	Mopane	7,000
	Bazaruto National Park	Coastal/marine	1,600
	Quirimbas National Park	Coastal/marine	7,500
	Chimanimani National Park	Mountain	
Reserves	Maputo Special Reserve	Coastal: Tongoland-Pondoland	700
	Marromeu Special Reserve	Wetlands (Zambezi Delta)	1,500
	Niassa Reserve	Miombo	42,200
	Gilé Reserve	Miombo	2,100
	Pomene Reserve	Coastal	200
Vigilance Areas	Marracuene		
	Inhaca e Ilha dos Portugueses		
	Limpopo		
Controlled Hunting Areas	C.O. N3		
	C.O. N1		
	C.O. N12		
	C.O. N14		
	C.O. N10		
	C.O. N8		
	C.O. N4		
	C.O. N5		
	C.O. N7		
	C.O. N9		
	C.O. N13		
	C.O. N15		
	C.O. N6		
	C.O. N11		
TOTAL Area			**84,170**

The extent to which these areas are clearly identified on the ground, or on maps, as opposed to being simply listed, is contested. Note that the list already fails to project the size of the Controlled Hunting Areas.

There are also legally-reserved areas (margins of lakes and rivers, borders of roads and railway tracks, above the high-tide mark, etc) which are defined in law but not marked physically or on maps.

Forested areas can also be considered 'public' in the sense that the resource itself – the forest – is a public asset. However as noted above, the land rights over the forested area may or may not be held by a local community or other title holder. There is no clear data at this point on forested land which is public and not public in this context.

Looking at the 'public resource' of existing forests however, the area of forest land cover is estimated at 40.1 million ha. Of this, 26.9 million ha are potential areas for wood production and 13.2 million ha are for conservation purposes. According to the recent (2005) inventory, Mozambique's land cover is composed of 51 % forest cover, 19 % other woody cover, 12 % grasslands, 15 % agriculture, and 3 % other. The most common vegetation type is Miombo, occupying two thirds of the territory. Other important types of vegetation include savannas, coastal forest (mangrove), and acacia savannas in the south.

Other statistics:

Drylands Average Area (1950-1981)	30,000,000 ha
% of total land area	38%
Shrublands	4,173 km²
Savannas	283,000 km² (Woody 4,072 km² , Non-Woody 270,002 km²)
Herbaceous Grasslands	3,000 km²
Permanent pasture (2005)	44,000,000 ha

In the recently completed inventory process, ordered by the Cabinet, the areas in each province, designated as 'available' are as follows:

Province	**Area Available (ha)**
Maputo	11,000
Gaza	866,780
Inhambane	1,071,660
Manica	381,950
Sofala	408,650
Tete	661,730
Zambézia	1,365,300
Nampula	709,160
Niassa	1,220,400
Cabo Delgado	269,100
TOTAL	**6,965,730**

Sources of data/information (name and function of contacted persons or institutions, author, title and publication year of report, etc.):

No records exist for public land that does not fall under the six categories of protected areas.

Robustness and reliability of data/information provided (comment on reliability of sources, explain variations across data sources or opinions, etc.):

Ranking is only a very rough estimation. No relevant figures are available.

PLI-11. Conformity of actual and classified use on land set aside for specific purpose

Conformity of actual and classified use on land set aside for specific purpose.	A – The share of land set aside for specific use (forest, pastures, wetlands, protected areas etc.) that is used for a non-specified purpose in contravention of existing regulations is less than 10%. B – The share of land set aside for specific use (forest, pastures, wetlands, protected areas etc.) that is used for a non-specified purpose in contravention of existing regulations is between 10% and 30%. C – The share of land set aside for specific use (forest, pastures, wetlands, protected areas etc.) that is used for a non-specified purpose in contravention of existing regulations is between 30% and 50%. D – The share of land set aside for specific use (forest, pastures, wetlands, protected areas etc.) that is used for a non-specified purpose in contravention of existing regulations is greater than 50%.

Comments:

Considerable areas of protected lands are used for non-specified purposes, in contravention of existing regulations, but exact figures are not available.

An assessment of the Forest Reserve Network in Mozambique[xv] conducted in 2005 found that many of the reserve areas have been severely degraded as a result of encroachment. It notes that many forest reserve areas were abandoned during the armed conflict, turning some of them into areas of refuge for local communities or safe havens for the guerrilla fighters. As a consequence, population pressure within the forest reserves has increased. The assessment also notes, however, that there are some reserves that have not been subject to human settlement or encroachment. The assessment evaluates 11 of the 16 reserve areas, but no aggregate data is given for the extent of the reserve areas which may now be being used for a non-specified purpose. Importantly, the assessment notes that boundaries of the Forest Reserves are not always locally known.

In addition, *all* of the existing National Parks have resident populations living within their boundaries. There is much discussion over the precise nature of their rights, with several resettlement schemes underway, but what is clear is that most of them are practising agriculture or fishing in contravention of the rules pertaining to land use within these areas. Again, aggregate figures are not available for the extent of the land areas so affected.

Encroachment on other public domain is very serious in urban areas on the legally-reserved areas (e.g. borders of roads and railway tracks, etc.)

Sources of data/information (name and function of contacted persons or institutions, author, title and publication year of report, etc.):

Thomas Müller, Almeida Sitoe and Rito Mabunda (2005), "Assessment of the Forest Reserve Network in Mozambique", WWF Mozambique, Maputo, Mozambique, 2005.

Robustness and reliability of data/information provided (comment on reliability of sources, explain variations across data sources or opinions, etc.):

Ranking is only a very rough estimation. No relevant figures are available.

PLI-12. Identification of rural land use restrictions

Land use restrictions on rural land parcels can generally be identified.	A – The land use restrictions applying to any given plot of rural land can be unambiguously determined on site for land occupied by more than 70% of the population. B – The land use restrictions applying to any given plot of rural land can be unambiguously determined on site for land occupied by 40 – 70 % of the population. C – The land use restrictions applying to any given plot of rural land can be unambiguously determined site for land occupied by 10 – 40 % of the population. D – The land use restrictions applying to any given plot of rural land can be unambiguously determined on site for land occupied by less than 10% of the population.
Comments: The Territorial Planning Law (Law Nr 19/2007) requires all land use planning to respect the use of natural resources. The Regulations to the Territorial Planning Law (Decree 23/2008 of 1st July) introduce District Land Use Plans (Plano Distrital de Uso da Terra -PDUT), which, inter alia, "define the norms and rules to be observed in the occupation and use of land and the utilisation of natural resources" in a district area. The Regulations also indicate that a general instrument of territorial planning is 'zoning', which is described as qualifying and dividing the territory into areas preferentially suited to certain economic, social and environmental activities. Since these regulations were only gazetted in the middle of last year, no land use plans have yet been approved.	
Sources of data/information (name and function of contacted persons or institutions, author, title and publication year of report, etc.):	
Robustness and reliability of data/information provided (comment on reliability of sources, explain variations across data sources or opinions, etc.):	

- Ambiguities concerning the responsibility for the management of land can result in poor planning with adverse consequences. For instance, land openly accessed could be transferred to an investor for exclusive use without considering the loss incurred by its present users (PLI-13, PLI-14 and PLI-15):

PLI-13. Separation of institutional roles

There is a clear separation between the institutions involved in land acquisition, management and dispute arbitration.	A – There is a clear separation between the institutions that acquire and manage land, implement land policies and establish land use restrictions, and arbitrate any disputes that arise in this context. B – There is some separation between the institutions that acquire and manage land, implement land policies and establish land use restrictions, and arbitrate any disputes that arise in this context, but there are overlapping and conflicting responsibilities that lead to occasional problems. C – There is some separation between the institutions that acquire and manage land, implement land policies and establish land use restrictions, and arbitrate any disputes that arise in this context but there are overlapping and conflicting responsibilities that lead to frequent problems. D – There is no clear separation between the institutions that acquire and manage land, implement land policies and establish land use restrictions, and arbitrate any disputes that arise in this context.

Comments:

Currently, there is a two-track system of decentralization in Mozambique; the de-concentration of central government powers and offices to provinces and districts, and the devolution of responsibilities and resources to autonomous municipalities. It could also be argued that the Land Law also decentralises land administration functions, insofar as local communities are given clear rights (and obligations) to manage local resources, and allocate and administer DUATs within their boundaries according to local custom and practice.

Rural land, including forests, is allocated on a concession basis through the provincial and district offices of the DNTF; and at local level through local community structures. At national level, the directorate contains both the departments of Land and that of Forestry & Wildlife, but at provincial level the situation may vary. With the passage of the Local Government Bodies Law (Lei dos Órgãos Locais do Estado - LOLE) in May 2003, the trend toward decentralization was reinforced, since this legislation gives powers to the Provincial Governor and the District Administrator to merge sectoral directorates into multi-sectoral teams. Some provincial land and forestry services have therefore been merged, whilst others remain separate. Governance in general remains centralised, however, and district competencies may often be overlooked or overridden by provincial, or at times national, institutions.

The Ministry of Agriculture, which develops policy, is also responsible for the administration of all rural land falling outside of certain categories of protected areas. MINAG, for example, remains responsible for the forest reserves and *coutadas*, whilst the Ministry of Tourism (MITUR) has taken over responsibility for management of the national parks and special reserves. The MITUR is currently developing mechanisms to create autonomous management agencies for some of these areas.

Urban land administration is managed by the municipalities, where these exist, or by the district administration, in situations where the cadastral responsibilities have been de-concentrated. Both these institutions will also be responsible for overseeing land allocation processes, although final decision-making powers lie with the provincial governor.

Land use restrictions in most rural areas do not yet exist. These will be introduced as the District Land Use Plans are compiled, after which the responsibility for ensuring adherence to any land use restrictions will pass to the district, provincial or municipal administrations. Policy-making in this area has been overseen by the MICOA.

Sources of data/information (name and function of contacted persons or institutions, author, title and publication year of report, etc.):

Robustness and reliability of data/information provided (comment on reliability of sources, explain

variations across data sources or opinions, etc.):

PLI-14. Institutional overlap

There is little overlap of responsibilities regarding land between institutions from different sectors.	A – Responsibilities exercised by the authorities dealing with land administration issues from different sectors (e.g. land administration, agriculture, forestry, mining, water/irrigation, natural resources, etc.) are clearly defined and non-overlapping. B – The mandated responsibilities of the various authorities dealing with land, water and natural resources are defined but there is a limited amount of overlap. C – The mandated responsibilities of the various authorities dealing with land, water and natural resources are defined but institutional overlap and inconsistency is a problem. D – The mandated responsibilities of the various authorities dealing with land, water and natural resources are defined poorly, if at all, and institutional overlap and inconsistency is a problem.

Comments:

See comments above in PLI-16 Separation of institutional roles.

The National Directorate of Geography and Cadastre (DINAGECA) is one of the oldest public services, established in the 1920s and existing in its original structure until 2004. It has traditionally always been seen as serving minority interests (colonial land users, and subsequently the state and more recently private sector interests seeking land). Since 2004 there has been a turbulent process of institutional reform; first all responsibilities for mapping were transferred (to the National Centre of Mapping & Tele-Detection - Centro Nacional de Cartografia e Tele-Detecção - CENACARTA) and the institution became the National Directorate for Lands (DINAT) and then, in early 2006, the National Directorate of Land and Forestry (DNTF) was formed through DINAT's merger with the National Directorate of Forestry and Wildlife.

This merger process is still ongoing and officials at all levels have not yet had time to adapt to the demands of the new institutional setup and develop new operational strategies. In the meantime, the provincial services (the SPGC offices) continue to respond to the National Directorate on the one hand and the Provincial Government on the other. In some areas (11 of 127?) there are District Services of Geography & Cadastre, and expanding this coverage is a declared objective of the DNTF programme.

The Water Law (No 16/91) created a National Council of Water, which is charged with *inter alia*, the task of informing the Council of Ministers regarding any "…critical and recurrent aspects that affect the development and conservation of water resources in the country…". There are regional Water Administration Authorities (South, Centre, Zambezi and North), which are responsible for approving water concessions and licenses for water use rights and the discharge of effluents, for managing water allocation and minimizing conflicts over use. There have been institutional conflicts between these regional authorities and other bodies; an example is the tussle over control of the water resources in the Massingir Dam, between the ARA Sul and the Ministry of Tourism (the dam lake forms the southern border of the Limpopo Transfrontier Park and new lodges want to use it for sports fishing and cruises).

The Local Government Bodies Law of 2003 sets out new functions, responsibilities and organisation for government bodies at the provincial, district, administrative post and locality level. This provides some legislative basis for the district governments to engage in the preparation, budgeting and implementation of district development plans. It also includes major responsibilities for district administrations to approve land use and territorial plans, including the identification of protected areas. District governments are also given the responsibility to establish 'land reserves'. It is not clear what this means, but it seems that these reserves may be land identified as 'unoccupied' and kept in reserve for

future urban expansion and subdivision. Another important feature of the law is that it introduces the concept of "district services" to allow for more flexible and multi-sectoral structures at the district administration level. One result of this is that the old District Directorates for Agriculture, responsible for land issues, now also have a more general development role as District Directorates for Economic Activities.
Sources of data/information (name and function of contacted persons or institutions, author, title and publication year of report, etc.):
Robustness and reliability of data/information provided (comment on reliability of sources, explain variations across data sources or opinions, etc.):

PLI-15. Administrative overlap

The responsibilities of different levels of government regarding land do not overlap.	A – Assignment of land-related responsibilities between the different levels of government (central, regional, and local) is clear with no overlaps. B – Division of land-related responsibilities between the different levels of government (central, regional, and local) is clear with minor overlaps. C – Division of land-related responsibilities between the different levels of government (central, regional, and local) is characterized by large overlaps. D – Division of land-related responsibilities between the different levels of government (central, regional, and local) is unclear.
Comments on the answer provided (please describe relevant overlaps and their implications): Although there are occasions where the system is circumvented for political reasons, the Land Law clearly stipulates that land applications must start 'from the ground' and involve a consultation with the 'local community'. The division of responsibilities between different levels of government is also clear in the legislation; the Provincial Government can authorise allocations of up to 1,000 hectares, the Minister of Agriculture of up to 10,000 hectares and the Council of Ministers for anything in excess of this area. District administrations are only involved to the extent that they must certify that the procedures of the law in respect to consultations, public notice, etc. have been duly followed and they are permitted to provide an opinion for consideration by authorities higher up the hierarchy. Accessibility would undoubtedly be improved, however, if the district administrations were permitted to authorise land allocations at a lower scale.	
Sources of data/information (name and function of contacted persons or institutions, author, title and publication year of report, etc.):	
Robustness and reliability of data/information provided (comment on reliability of sources, explain variations across data sources or opinions, etc.):	

- The lack of capacity of land institutions or failure to integrate and maintain land information across institutions can make it difficult to adequately assess the land component of policies. Investment authorities for instance may not adequately evaluate or fail to consider the opportunity cost of land use for the investments they wish to attract (PLI-16 and PLI-17):

PLI-16. Information sharing

Land information is shared with interested institutions.	A – Information related to land is readily accessible by interested institutions beyond the land sector proper largely due to the fact that land information is maintained in a uniform way across the different domains (e.g. parcel IDs) and integrated into a national system. B – Information related to land is accessible by interested institutions beyond the land sector proper with some effort (cost) because land information is not maintained in a uniform way across the different domains (e.g. parcel IDs) or integrated into a national system. C – Information related to land is not readily accessible by interested institutions beyond the land sector proper even though land information is maintained in a uniform way across the different domains (e.g. parcel IDs). D – Information related to land is not accessible by interested institutions beyond the land sector proper and land information is not maintained in a uniform way across the different domains (e.g. parcel IDs).

Comments:

The management of land information is still extremely weak in Mozambique, despite many and considerable efforts to improve the situation over at least the last decade, with the failure to date to develop a workable system undermining the potentially high benefits to society of having access to reliable cadastral information. As a general statement, up-to-date compilations of basic spatial data and maps may be available in Maputo to different institutions but are not available to the provincial offices and municipalities in most provinces.

The country is completely covered by topographic maps at a scale of 1:250,000 and most of the country (except some northern parts of Niassa and Cabo Delgado provinces) is covered by maps at a scale of 1:50,000. The maps of scale 1:50,000 are selected as the cartographic basis for the cadastral map. These map sheets are assembled into Cadastral Atlases and are available in all SPGC offices.

The Cadastral Atlases are used for land allocation, as well as for depicting the cadastral parcels that have been allocated (these representations are done either through using the sketch map prepared in office or from the field survey results). They also show the number of the application process; in this sense the atlases perform the function of a cadastral index map, showing the delineated parcels where provisional or definitive DUATs have been issued. This appears to be a reasonable solution under the existing circumstances and it is a helpful instrument in the processing of the title applications.

However, there are some major limitations. Firstly, the majority of the maps at a scale of 1:50,000 are outdated by many years and do not correctly reflect the situation on the ground. Of the complete set of 1,261 maps, the vast majority (1,129) were compiled on the basis of aerial photography completed between 1958 and 1960. Only 54 of the maps are based on images from 1990 and there are a total of 68 maps which do not exist at all at a scale of 1:50,000.

Secondly, maps at this scale are not adequate for the allocation of land parcels, and particularly not for small parcels. The majority of land parcels being requested for registration in the cadastre are less than 10 hectares in size. The SPGC offices use the (outdated) topographic maps for rural land parcel allocations and the same maps are supposed to be used in the municipal areas. This creates significant difficulties and has a negative impact on the capacity of the municipal offices to carry out the cadastral procedures.

Thirdly, although almost all of the maps at a scale of 1:50,000 are scanned, geo-referenced and available as raster images of the maps in *tiff* format, this important and useful format of spatial information is hardly used in the SPGC offices. No proper instructions and often none of the required software to use

these maps are available at these offices.

Satellite imagery at different levels of resolution[1] and thematic databases for some parts of the territory exist in the National Centre for Cartography and Tele-Detection (CENACARTA). According to information from CENACARTA digital data at different resolutions was obtained as a result of a number of projects including:

- Inventory of National Parks – southern part of the country carried out in 1990-92. The database was established using the information obtained from the satellite imagery SPOT.
- Inventory and mapping of the plantations zones of cashew trees, carried out in 1992-94. This mapping was concentrated along the littoral zone with extension of up to approximately 200 kms into the interior. The satellite imagery of Landsat and SPOT were used for data acquisition.
- Mapping of land use and coverage and proper statistical data. This project was carried out in 1997-99 and the digital map of the land coverage produced for all the territory at a scale of 1:250,000 and for 8 selected districts at a scale of 1:50,000. The land coverage information was obtained from interpretation of satellite imagery SPOT and Landsat and the toponimical data from existing maps.
- Digital Terrain Model for the river basin areas of the R. Incomati and R. Limpopo in the southern part of the country. The model was created through digitising topographic maps at a scale of 1:50,000 in 2001-2002, for the purpose of floods simulation.
- Mapping of the northern part of the provinces of Niassa and Cabo Delgado at a scale of 1:50,000 where no such maps existed.

Other digital land information exists in CENACARTA and should be used for land administration purposes at national as well as provincial levels.

The DNTF were only able to aggregate spatial information from different institutions (as they are required to do by law) after a number of years, largely because land information was not being maintained in a uniform way. Recently, however, this situation has begun to change and the multi-functional cadastre housed in DNTF now holds information from various government institutions. There remains much room for improvement.

Sources of data/information (name and function of contacted persons or institutions, author, title and publication year of report, etc.):

Robustness and reliability of data/information provided (comment on reliability of sources, explain variations across data sources or opinions, etc.):

[1] High-resolution imagery means satellite or other imagery with a ground pixel size of about 0.6 m. A middle level resolution means a ground pixel size of 2-3 m.

PLI-17. Capacity of institutions to engage in land-use planning

Sufficient resources are available to manage public land.	A – There are adequate budgets and human resources assigned and appropriate systems to manage these resources to ensure responsible management of public lands. B – There are some constraints in the budget and/or human resource capacity to meet all institutional responsibilities of managing public lands. C – There is either a significantly inadequate budget or insufficient capacity to ensure responsibility for managing public lands however the lack of human capacity renders management ineffective. D – There are inadequate resources available to institutions to manage public lands in their jurisdiction.
Comments: Land use planning is not presently being undertaken, since regulations to the Territorial Planning Law were only passed in mid-2008. MICOA has trialled some local experiments to produce land use and spatial planning maps, but these were expensive and difficult to replicate with present human and material resources. Present budgetary and technological resources available to the responsible institutions are certainly inadequate, and there are concerns about human capacities at the important 'lower' levels of the land use planning instruments. While much is said about participatory approaches involving local communities, there is also little being done to bring communities into the land use planning process. The community delimitation methodology, if explicitly used as a tool in this context, can intersect well with the Territorial Planning Law and contribute greatly to a more participatory and bottom-up planning process.	
Sources of data/information (name and function of contacted persons or institutions, author, title and publication year of report, etc.):	
Robustness and reliability of data/information provided (comment on reliability of sources, explain variations across data sources or opinions, etc.):	

b Public land management

- Ambiguities in the responsibilities for public land (i.e. state-owned land) management or inadequate practices regarding the transfer of public land can result in the squandering of public assets under adverse conditions that are not in the general interest of the public (PLI-18, PLI-19, PLI-20, PLI-21 and PLI-22):

PLI-18. Assignment of management responsibility for different types of public land

The management responsibility for public land is unambiguously assigned.	**A –** The management responsibility for different types of public land is unambiguously assigned. **B –** The level of ambiguity in the assignment of different types of public land does not impact significantly in the management of land. **C –** The level of ambiguity in the assignment of different types of public land significantly impacts the management of land. **D –** Public land management is ambiguously assigned.

Comments:

Through Presidential Decree 9/2000 of 23rd of May, control over certain public lands (conservation areas) was transferred from the Ministry of Agriculture to the Ministry of Tourism. A subsequent Joint Ministerial Diploma (17/2001 of 7th February) provided further details for this transfer of responsibilities. As a report (SADC, 2006) produced from a recent national consultative meeting on land issues points out, there are a series of difficulties arising from this division of land management responsibilities. Although the obtaining of a DUAT within these conservation areas is not permitted in the Land law, various different approaches have been adopted in relation to the authorisation and licensing of economic activities within and around these areas. The national report refers to the fact that "at this time, coordination is functionally sporadically and depends on the capacity and willingness of officials in each region, and on the presence of a particular project that demands better local coordination". This lack of coordination is having a negative impact in respect to land management issues in the newly-declared Quirimbas National Park, where applicants for land use rights in the area are now being told to deal with the Park Administration and no longer with the SPGC offices.

Local community rights within these areas are also a major problem, with differences in opinion over whether or not pre-existing DUATs remain in place. In some areas Inter-Ministerial Diplomas are being used to give communities some right to make agreements with tourism investors; it is not clear how these are working and what the legal basis is for these procedures.

Institutions with management responsibilities include the following:

- DNTF within the MINAG – control over rural land and forest areas
- DNAC within the MITUR – control over conservation areas
- Municipalities – control over land within the municipal jurisdiction
- Local communities - Article 24 of the Land Law specifies that local communities must also participate in natural resource management and the allocation and titling of new DUATs. They do this through the consultation process and by using customary norms and practices as an integral part of the formal natural resources management system, including conflict resolution and defining the limits of their own DUATs. In other words, communities are also formally recognized actors within the institutional environment.

In spite of the upheavals that Mozambique has witnessed in the past decades, local traditional structures and land management systems have remained intact in most areas, although new structures have emerged in many areas which may not be 'traditional' but are certainly community based and may even compete with or challenge traditional orthodoxy (through many years of community level capacity building and 'Committee' creation by NGOs and others (see Tanner, 2007[xvi]). Nevertheless the continuing role of 'customary land management' as the de facto land management system of Mozambique has been well documented, and in fact underpinned the principles introduced by the 1995 Land Policy and 1997 law.

The PARPA, which provides a high level of political guidance on the priorities for the GoM in respect to land and natural resource management issues, admits the existence of severe constraints and limitations in formal resource management (including land resources) and in the processes of decision-making in this area.

Sources of data/information (name and function of contacted persons or institutions, author, title and publication year of report, etc.):

Robustness and reliability of data/information provided (comment on reliability of sources, explain variations across data sources or opinions, etc.):

PLI-19. Public institutions involved in land acquisition operate in a clear and consistent manner

Public institutions involved in land acquisition operate in a clear and consistent manner	A – Institutions that promote, channel or acquire land for purposes of interest to this study operate following clear guidelines and have high standards of ethical performance that are consistently implemented. Their accounts are regularly audited with results being made available publicly (e.g. for parliamentary debate). B – Institutions that promote, channel or acquire land for purposes of interest to this study have high standards of ethical performance that are consistently implemented and have their accounts regularly audited although results are not available publicly. C – Institutions that promote, channel or acquire land for purposes of interest to this study have clear standards of ethical performance but implementation is variable and accounts are not subject to regular audits. D – Standards of ethical performance for institutions that promote, channel or acquire land for purposes of interest to this study are not clearly defined and accounts are not regularly audited.
Comments on the answer provided (please describe the frequency of audits and measures taken when audit reveals inappropriate practices): No public institutions are involved in the promotion, channelling or acquisition of land for purposes of interest to this study. Although the Investment Promotion Centre (CPI) mentions in its publicity materials that it can assist putative investors to acquire land, in reality it does not/cannot do this. Land has apparently been acquired by the Ministry of Tourism, with assistance from the IFC, in three strategic areas for future investment (the MOZAMBIQUE ANCHOR INVESTMENT PROGRAM). There appear to be no standards of ethical performance for this process and no transparency in respect to how land has been acquired and from whom.	
Sources of data/information (name and function of contacted persons or institutions, author, title and publication year of report, etc.):	
Robustness and reliability of data/information provided (comment on reliability of sources, explain variations across data sources or opinions, etc.):	

PLI-20. Openness of public land transactions

Public land transactions are conducted in an open transparent manner.	A – The share of state owned land disposed of in the past 3 years through sale or lease through public auction or open tender process is greater than 90%. B – The share of state owned land disposed of in the past 3 years through sale or lease through public auction or open tender process is between 70% and 90%. C – The share of state owned land disposed of in the past 3 years through sale or lease through public auction or open tender process is between 50% and 70%. D – The share of state owned land disposed of in the past 3 years through sale or lease through public auction or open tender process is less than 50%.

Destined use of allocated land	Area leased out/sold in last 3 years (ha)	Transparent process	Consideration compared to market values	Percentage of allocated lands that were sold
Residential	Not available	2	Not available	0
Agriculture & NR	Not available	3	Not available	0
Manufacturing	Not available	2	Not available	0
Commerce/building	Not available	2	Not available	0

Tourism	Not available	2	Not available	0
Codes:		1 = All open tender or auction; 2 = Most by open tender or auction; 3 = Most other than open tender or auction.	1 = At market prices for similar land; 2 = A greater than 50% market prices; 3 = Less than 50% market prices.	

Comments:

The only areas subject to public auction or tender processes are those that are awarded as part of tourism concessions within conservation areas; land and forest concessions, by contrast, are adjudicated on a first-come, first-serve basis, despite considerable pressure, particularly within the forest sector, to introduce more transparent and competitive systems for allocation. This does not mean that no consideration is given to economic, environmental and social considerations, which form part of the decision-making process. It does mean, however, that the state is not maximising the resource rent which it could receive from these adjudications.

Note however that the new Urban Land Regulations (approved in 2007) foresee a system of auctions for land that is subdivided within the context of new urban plans. The legality of this *de facto* sale of land has however been questioned and remains to be clarified.

Sources of data/information (name and function of contacted persons or institutions, author, title and publication year of report, etc.):

Robustness and reliability of data/information provided (comment on reliability of sources, explain variations across data sources or opinions, etc.):

PLI-21. Public land is leased and/or sold at market prices.

Public land is leased and/or sold at market prices.	A – All types of public land are generally divested at market prices in a transparent process irrespective of the investor's status (e.g. domestic or foreign). B – Only some types of public land are generally divested at market prices in a transparent process irrespective of the investor's status (e.g. domestic or foreign). C – All types or some types of public land can be divested at market prices in a transparent process, but this only applies to a particular type of investor (e.g. domestic only or foreign only). D – Public land is rarely or never divested at market prices in a transparent process.

Comments on the answer provided (comment on whether the situation varies depending on the type of public land , the status of the investor, or the level of government that manages the public land):

Sources of data/information (name and function of contacted persons or institutions, author, title and publication year of report, etc.):
Robustness and reliability of data/information provided (comment on reliability of sources, explain variations across data sources or opinions, etc.):

PLI-22. Payments for public leases are collected.

Payments for public leases are collected.	A – The totality or the bulk of agreed payments (above 90%) are collected on the lease of public lands. B – A large portion of agreed payments (between 70% and 90%) are collected on the lease of public lands. C – A significant portion of agreed payments (between 50% and 70%) are collected on the lease of public lands. D – A marginal portion of agreed payments (less than 50%) if any at all are collected on the lease of public lands.
Comments on the answer provided: Accurate figures at national level are not available from DNTF. Provincial data from Zambézia indicates that the level of rental collection is less than 30%.	
Sources of data/information (name and function of contacted persons or institutions, author, title and publication year of report, etc.):	
Robustness and reliability of data/information provided (comment on reliability of sources, explain variations across data sources or opinions, etc.):	

c Changes in land use

- If land uses changes do not involve public input or are implemented in a discretionary manner, this can leave room for arbitrary practices benefiting speculators in land at the detriment of existing users (PLI-23 and PLI-24):

PLI-23. Consideration of public input for changes in land use

Changes in land use are based on public input.	A – Public input is sought in preparing changes in land use plans and the public responses are explicitly referenced in the report prepared by the public body responsible for preparing the new public plans. This report is publicly available. B – Public input is sought in preparing changes in land use plans and the public responses are used by the public body responsible for finalizing the new public plans, but the process for doing this is unclear or the report is not publicly available. C – Public input is sought in preparing changes in land use plans but the public comments are largely ignored in the finalization of the land use plans. D – Public input is not sought in preparing changes in land use plans.

Changes in land use	**Public input**	**Responses explicitly referenced**	**Report publicly available**	**Comments**
Urban				
Rural				
Major developments (tourism, mining, investors, etc)				
Other (please specify :-)				
Codes:	1 = Sought; 2= Not sought; N/A = Not applicable.	1 = Referenced; 2 = Not referenced; N/A = Not applicable.	1 = Publicly available; 2 = Not publicly available; N/A = Not applicable.	

Comments:

From a purely legislative point of view, the Regulations to the Territorial Planning Law, in Article 8, provide strong guarantees for public participation in the land use planning process. The right to participate is guaranteed for all citizens (individuals and public or private collectives, as well as 'local communities'), throughout the process of elaboration, execution, alteration or revision of the land use planning instruments. 'Decentralised' public meetings are envisaged by the legislation, at administrative levels and frequencies considered appropriate to the scale of the land use planning process in case (i.e. at administrative post level, district level, etc); these must be adequately publicised and properly recorded in formal minutes. The supervising entity is required to justify its acceptance or otherwise of any suggestions or comments made as part of the public consultation process.

In reality, the effectiveness of these provisions in safeguarding the rights of local people to intervene in land use planning processes remains to be seen.

Sources of data/information (name and function of contacted persons or institutions, author, title and publication year of report, etc.):

Robustness and reliability of data/information provided (comment on reliability of sources, explain variations across data sources or opinions, etc.):

PLI-24. Public notice of land use changes

There is sufficient public notice of land use changes.	A – Changes to land use plans are publicized more than 6 months in advance of the implementation of the changes. B – Changes to land use plans are publicized 6 months in advance of the implementation of the changes. C – Changes to land use plans are publicized 3 months in advance of the implementation of the plans. D – Changes to land use plans are not publicized in advance of implementation.
Comments: The Regulations to the Territorial Planning Law contain guarantees relating to public notice and access to information. Article 9 stipulates that 'all necessary documentation' should be available to interested parties. During the formal period of 'public participation' in the development of the plans (regulated by Article 8 – see above), the authorities are charged with ensuring that the principal aspects of the plans are publicised in ways appropriate to the context. The legislation contains a specific guarantee for the rights of all citizens to access information about the contents of the land use plans and any eventual changes to these. There are also corresponding duties placed upon the state to respond fully to requests for information and clarifications within a 15 day period (Article 9(4)). Given that these regulations and the land use planning processes envisaged have not yet been implemented, it is not possible to state a choice for this indicator. There is also a requirement from the Land Law and Regulations that during the process for considering the award of a new DUAT to an investor, local people must be informed of the application through the posting of a public notice in the area affected, and at provincial level. Logistical problems and bureaucratic inertia mean that this is rarely done; the value of written notices in the context of a largely illiterate rural population is also questionable.	
Sources of data/information (name and function of contacted persons or institutions, author, title and publication year of report, etc.):	
Robustness and reliability of data/information provided (comment on reliability of sources, explain variations across data sources or opinions, etc.):	

d Expropriation practices

- Land acquisitions for large-scale agricultural investments may involve the expropriation of present occupants. If the law does not have provisions for the compensation of both registered and unregistered users and if there are no accessible avenues for complaint, these investments can have a negative social impact (PLI-25, PLI-26, PLI-27, PLI-28, PLI-29 and PLI-30):

PLI-25. Transfer of expropriated land to private interests

There is minimal transfer of expropriated land to private interests.	**A –** Less than 10% of land expropriated in the past 3 years is used for private purposes. **B –** Between 10% and 30% of land expropriated in the past 3 years is used for private purposes. **C –** Between 30% and 50% of land expropriated in the past 3 years is used for private purposes. **D –** More than 50% of land expropriated in the past 3 years is used for private purposes.
Comments: See comments in PLI-6 **Error! Reference source not found.** From one perspective, all land acquisitions by outsiders through the award of state DUATs can be seen as a process of expropriation of the present occupants, given the definition of a local community and the rights which it can acquire. The mandatory consultation process in the Land Law is designed to ensure that there are opportunities for compensation to be negotiated where the award of land use rights in an area would impinge on the rights of the existing occupants; indeed, there is also space for the existing rights holders to decline permission for the award. In real terms the amounts agreed are derisory and certainly cannot replace lost livelihoods or help to alleviate local poverty. Therefore even land where some form of payment is made can be seen as expropriated land. Nearly all land allocated to private investors in the past three years is 'expropriated' in this sense, and used for private purposes. Exceptions are where the GoM has declared land as a reserve area, thereby effectively extinguishing acquired, existing land rights (although there is debate about the exact legal impact). This is especially the case with new national parks such as the Limpopo Transfrontier Park and the Quirimbas National Park.	
Sources of data/information (name and function of contacted persons or institutions, author, title and publication year of report, etc.):	
Robustness and reliability of data/information provided (comment on reliability of sources, explain variations across data sources or opinions, etc.):	

PLI-26. Speed of use of expropriated land

Expropriated land is transferred to destined use in a timely manner.	A – More than 70% of the land that has been expropriated in the past 3 years has been transferred to its destined use. B – Between 50% and 70% of the land that has been expropriated in the past 3 years has been transferred to its destined use. C – Between 30% and 50% of the land that has been expropriated in the past 3 years has been transferred to its destined use. **D –** Less than 30% of the land that has been expropriated in the past 3 years has been transferred to its destined use.

Comments: GoM and other data consistently point to expropriated land or land where private interests have acquired the DUAT, being underused (a figure of 5-10 percent of the area is used is widely quoted). This is frequently given by GoM as a reason for stronger implementation of the Land Law (in the sense of those given DUATs for new projects being expropriated if the project is not implemented, as opposed to stronger implementation of the acquired rights aspects).
Sources of data/information (name and function of contacted persons or institutions, author, title and publication year of report, etc.): DNTF data from SPGC offices on 'enforcement inspections' from last three years (unpublished)
Robustness and reliability of data/information provided (comment on reliability of sources, explain variations across data sources or opinions, etc.):

PLI-27. Speed of land use change

Actual land use changes to the assigned land use in a timely manner.	A – More than 70% of the land that has had a change in land use assignment in the past 3 years has changed to the destined use. B – Between 50% and 70% of the land that has had a change in land use assignment in the past 3 years has changed to the destined use. C – Between 30% and 50% of the land that has had a change in land use assignment in the past 3 years has changed to the destined use. **D –** Less than 30% of the land that has had a change in land use assignment in the past 3 years has changed to the destined use.
Comments: Available data do not allow any realistic assessment of this indicator. Anecdotal evidence suggests that situation D is the most likely scenario at the present time, due to a wide range of reasons: the continuing difficulties with doing business in Mozambique (see the World Bank 'Doing Business' Reports, where Mozambique has slipped down since the early 2000s); lack of internal demand; corruption, and; a lack of real intent to do something more serious with the land.	

PLI-28. Compensation for expropriation of ownership

Fair compensation is paid for the expropriation of registered property	*Please fill out following matrix for background information and use it to choose ranking below:* A – Where property is expropriated, fair compensation of all rights (ownership, use, access rights etc.), in kind or in cash, is paid so that the displaced households have comparable assets and can continue to maintain prior social and economic status. B – Where property is expropriated, compensation of some rights only (e.g. ownership only), in kind or in cash, is paid so that the displaced households have comparable assets and can continue to maintain prior social and economic status. C – Where property is expropriated, compensation, in kind or in cash, is paid at least for some rights but the displaced households do not have comparable assets and cannot maintain prior social and economic status. D – Compensation is not paid to those whose rights are expropriated

Status	Fairness of compensation	Compensated rights	Timeliness of compensation	Implementation	Comments
Registered urban property	1	1	1	1	
Registered rural property	1	2	1	1	
Codes:	1 = Compensation enabling comparable assets and maintenance of social and economic status; 2 = Compensation enabling comparable assets but not maintenance of social and economic status; 3 = little or no compensation paid	1 = All secondary rights recognized for compensation; 2 = Some secondary rights recognized for compensation; 3 = No secondary rights recognized for compensation.	1 = Most receive compensation within 1 year; 2 = About half receive compensation within 1 year; 3 = Most do not receive compensation within 1 year.	1 = Consistently implemented; 2 = Implemented with some discretion; 3 = Implemented in highly discretionary manner	

Comments on the answer provided (please specify what rights can be compensated for the expropriation of registered property, how compensation is calculated and if this is standardized, which party is required to make the payment, and whether compensation is implemented consistently or with discretion):

Mozambique still has no specific resettlement and compensation law, although MICOA have prepared Guidelines on the Criteria for Resettlement of Populations in Rural Areas (in 2000), and in June 2007 ANE published a Draft Framework for Resettlement Policy for the Road Sector. The Land Law allows for 'just compensation' where DUATs (including those acquired by occupation) are revoked by the State in the public interest. In practice compensation in these cases is based only on the market value of standing crops, and in no way gives the ex-DUAT holder the means to re-establish a livelihood or break out of poverty.

Article 18 of the Land Law deals with the termination of the right of land use and benefit and states that it may be extinguished:

> *a) …;*
>
> *b) By revocation of the right of land use and benefit for reasons of public interest, preceded by payment of fair indemnification and/or compensation;*

Article 19(3) of the Land Law Regulations further state:

19(3). The procedure for termination of the right of land use and benefit in the public interest shall follow the procedures for expropriation and shall be preceded by the payment of fair indemnification and/or compensation.

Usually – and legally - there is no compensation paid for land itself, but rather for any built structures, trees or crops farmed. Compensation for cultivated land usually involves compensating the loss on standing crops, although the Territorial Planning Law does introduce the concept of loss of future use and how this should be included when '*indenização'* is contemplated.

Meanwhile most actual compensation sums tend to be determined by local authorities, in collaboration with the Provincial Departments of Agriculture. In some private sector cases, resettlement has provided comparable assets to the affected populations, who have been able to maintain prior social and economic activity. These include most of the so-called 'mega projects', such as Mozal aluminium smelter project, the Corridor Sands project in Gaza Province, Kenmare's heavy sand mine project in Nampula and the more recent coal investments in Tete Province, where the Vale do Rio Doce multinational has supported an extensive community relocation and compensation package. By contrast, the Vilanculos Wildlife Sanctuary is notable for its failings in this area.

Less well-regarded are a number of road-building and rehabilitation projects funded by the government and implemented by contractors. Although payments for the loss of roadside fruit trees and infrastructures have been made, these have often been regarded as insufficient and have left affected

people less capacity to maintain prior social and economic activity. At the end of the scale are the cases in which land has been expropriated from local people for the purposes of establishing new protected areas; here the compensation issues are considered secondary, on the grounds that 'land belongs to the State' anyway. The individuals displaced do not have comparable assets, and they cannot maintain prior social and economic activity. Communities affected by the establishment of the Limpopo National Park, for example, were supposed to be settled in an area that offered opportunities for developing community tourism activities, as well as for grazing. The affected communities have, however, been leading insecure lives since the declaration of the Park, and have been subjected to successive consultations regarding the issues of resettlement, the identification of suitable areas to carry on their traditional activities, as well as accommodating the interests of the 'host' communities. According to the TFCA authorities the negotiation of the resettlement has taken over 4 years (Nhantumbo, 2009). Meanwhile large areas of the land allocated for the resettlement programme has since been awarded to a large biofuel firm.
Sources of data/information (name and function of contacted persons or institutions, author, title and publication year of report, etc.):
Robustness and reliability of data/information provided (comment on reliability of sources, explain variations across data sources or opinions, etc.):

PLI-29. Compensation for expropriation of all rights

Fair compensation is paid for the expropriation of unregistered property	*Please fill out following matrix for background information and use it to choose ranking below:* A – Fair compensation, in kind or in cash, is paid to all those with rights in expropriated land (ownership, use, access rights etc.) regardless of the registration status. B – Compensation, in kind or in cash, is paid to all those with rights in expropriated land (ownership, use, access rights etc.), however the level of compensation where rights are not registered does not allow for maintenance of social and economic status. C – Compensation, in kind or in cash, is paid for some unregistered rights (such as possession, occupation etc.), however those with other unregistered rights (which may include grazing, access, gathering forest products etc.) are usually not paid compensation. D – No compensation is paid to those with unregistered rights of use, occupancy or otherwise.

Status	**Fairness of compensation**	**Compensated rights**	**Timeliness of compensation**	**Implementation**	**Comments**
Unregistered urban property	1	2	1	3	
Unregistered rural property	1	2	1	3	
Codes:	1 = Compensation enabling comparable assets and maintenance of social and economic status; 2 = Compensation enabling comparable assets	1 = All secondary rights recognized; 2 = Some secondary rights recognized; 3 = No secondary rights recognized.	1 = Most receive compensation within 1 year; 2 = About half receive compensation within 1 year; 3 = Most do not receive	1 = Consistently implemented; 2 = Implemented with some discretion; 3 = Implemented in highly discretionary manner	

	but not maintenance of social and economic status; 3 = little or no compensation paid		compensation within 1 year.		

Comments on the answer provided (please specify what types of rights are compensated, how compensation is calculated and if this is standardized; which party is required to make the payment, and whether compensation is implemented consistently or with discretion):

See above comments in PLI-30 Compensation for expropriation of ownership

Regulations to the Territorial Planning Law, in Article 81, also refer to expropriation, in the furthering of 'public interest, necessity or utility'. The article states that expropriation is permitted in cases where it is "indispensable for the furtherance of collective interests, foreseen in [any of] the land use planning instruments."

Article 81 defines the terms 'public interest', 'public necessity' and 'public utility' as follows:

- 'public interest' – when the final objective of the expropriation is to safeguard a common interest of the entire community; can be declared in cases involving the acquisition of areas for the establishment of economic or social infrastructure with a 'large positive social impact' and in cases where it is necessary to preserve soils, water courses or biodiversity, or to preserve public interest or military infrastructure.
- 'public necessity' – when the final objective is to assist the public administration in addressing emergency situations arising from natural disasters or similar.
- 'public utility' – when the final objective is to advance the interests of the public administration whilst acting as the guarantor of state security, the maintainer of public order and the satisfier of all societal needs.

Article 83 refers to compensation and states that an expropriation of property in any of the above-mentioned situations gives rise to the payment of 'just compensation' in terms of the law. This is defined as the 'real and actual value' of the expropriated assets, as well as damages arising and lost profits (Article 83(2)). It also stipulates that any compensation must be paid before taking possession of the expropriated assets (Article 83(3)).

Land may be treated differently, depending on whether it is an unregistered right, a right registered within the cadastral services as a DUAT, or a real property right registered also in the Real Property Register (*Registo Predial*). It is likely that the greater the degree of registration, the greater the chance of obtaining a fair and market-related compensation in the case of expropriation. Note however that legally there is no distinction between these "lesser" rights and the DUAT acquired by occupation, with or without appropriate documentation but supported by verbal evidence or other testimony. Note also that there is no distinction between 'urban' and 'rural' rights; rights in both *predios rusticos* and *predios urbanos* are subject to registration.

Sources of data/information (name and function of contacted persons or institutions, author, title and publication year of report, etc.):

Robustness and reliability of data/information provided (comment on reliability of sources, explain variations across data sources or opinions, etc.):

PLI-30. Avenues for appeal on expropriation decisions and associated compensation

There are independent and accessible avenues for appeal against expropriation.	A – Independent avenues to launch a complaint on expropriation decisions and associated compensation exist and are easily accessible. B – Independent avenues to launch a complaint on expropriation decisions and associated compensation exist but there are access restrictions (i.e. only accessible by the mid-income and the wealthy). C – Avenues to launch a complaint on expropriation decisions and associated compensation exist but are somewhat independent and these may or may not be accessible to those affected. D – Avenues to launch a complaint on expropriation decisions and associated compensation are not independent and not accessible to all.

Comments:

Article 77 of the Regulations to the Territorial Planning Law spell out the various 'guarantees' available to individuals in respect to the application of land use planning processes, and including possible expropriation; these include:

- The right to subject administrative decisions to judicial review;
- The rights to petition, complain or lodge a complaint;
- The right to present a complaint to the Public Ministry (*Ministério Público*);
- The right to present a complaint to the Judicial Ombudsman (*Provedor de Justiça*);
- Other rights foreseen in the law.

All of these rights are normally available to citizens and any expropriation/compensation in terms of any legislation would be subject to these forms of review or appeal. They are all, however, avenues which are only accessible to the middle-income groups and the wealthy, given the high costs involved. No empirical information on costs is available but most of these processes would require retaining of a lawyer.

Sources of data/information (name and function of contacted persons or institutions, author, title and publication year of report, etc.):

Robustness and reliability of data/information provided (comment on reliability of sources, explain variations across data sources or opinions, etc.):

3 Investments

Countries seldom have in place a sound policy that comprehensively covers all the steps involved regarding investments in land. The benefit of such a policy would ideally be to ensure that the projects most beneficial for the country get selected (and in particular those that have a high employment generation per ha and unit of investment or generate significant revenues for the country). In general, policies regarding investments may have several deficiencies. As countries tend to propose many forms of incentives to attract investors (from tax rebates to free access to land) there is the risk that these may disproportionately favor investors and involve limited sharing of benefits between the investor and the host country, although, in some cases, host country incentives may be met by some forms of compensation like the provision of social or productive infrastructure by the investor. Another issue ould be the high transaction costs associated with the acquisition of land rights, which may create temptations to take shortcuts that may negatively affect sector governance. These transaction costs may be particularly high when the process is excessively centralized since centralization can delay project implementation. Another potential risk is that financial and economic analyses are not adequately considered in the procedure for government decisions on project approval. This can be regrettable to the extent that rigorous economic and financial analyses can not only provide an indication of the likely direct and indirect benefits of the project, but can also point towards key risks and provide a basis for structuring contracts in a way that maximizes the probability of success and the joint benefits to be obtained from the investment. It is thus important to have procedures in place that provide clearly specified and adequate incentives for investors, obtain adequate information from investors, limit transaction costs, and provide avenues for risk and benefit sharing (e.g. through flexible contracts to face uncertainty).

3.1 Incentives (PLI-31 and PLI-32)

- Countries may provide incentives in order to attract investments. But these incentives may be arbitrary or inconsistently applied (PLI-31), which can result in a bias in favour of large-scale foreign projects to the detriment of smaller-scale project or domestic projects:

PLI-31. Incentives for investors

Incentives for investors are clear, transparent and consistent.	**A –** Incentives for investors are clearly specified in law or regulations, uniform and stable over time, and applied in an equitable and transparent fashion. **B –** There are written provisions in law or regulations regarding incentives for investors but frequent changes (i.e. limited predictability) do not ensure their consistent application in the future. **C –** There are written but unclear provisions in law or regulations regarding incentives for investors and their applicability has to be negotiated on a case by case basis in a way that is often discretionary. **D –** There are no written provisions in law or regulations regarding incentives for investors.
Comments: A legal framework to regulate the process of both national and foreign private investment undertakings in Mozambique was first established in the late 1980s. The Law was passed in 1984 (Law 4/84 of 18th August) but corresponding Regulations on Direct Foreign Investment were only approved in 1987 (Decree 8/87 of 30th January). Law No. 5/87 of 19th of January and Decree 7/87 of 30th of January, approve the corresponding Regulations on the Procedures for National Investments. Decree 10/87, also of the 30th of January, establishes the tax and customs incentives applicable to private national investments. These instruments were then revoked by the passing of a new Investment Law in 1993 (Law 3/93 of 24th of June) and Regulations (Decree 14/93 of 21st July, amended subsequently in 1995 by Decree 36/95 of 8th August).	

The Law sets out the basic guiding principles for investments in the country (that they should contribute to the sustainable economic and social development of the country, meet the principles and objectives of national economic policy and satisfy the provisions of any applicable legislation) and guarantees equality of treatment. Article 13 deals with the protection of property rights resulting from the investment:

13(1). The Government of Mozambique shall guarantee the security and legal protection of property on goods and rights, including industrial property rights, comprised in the approved investments carried out in accordance with this Law and its Regulations.

Article 23 imposes a limitation on the transfer of positions, rights or equity in investments without authorisation from the Minister of Planning and Finance.

The Investment Law also permits the remittance of funds abroad in Article 14:

14(1). The Government of Mozambique, in accordance with the conditions set down in the authorisation or other relevant legal instruments to the investment, shall guarantee the remittance of funds abroad in connection with:

a) exportable profits resulting from investments eligible for export of profits under the provisions of the Regulations of this Law;

b) royalties or other payments for remuneration of indirect investments associated to the granting and transfer of technology;

c) amortization of loans and payment of interest on loans contracted in the international financial market and applied in investment projects in the country;

d) the proceeds of any compensation paid in conformity with the provisions of paragraph 2 of Article 13;

e) invested and re-exportable foreign capital, independently of eligibility (or not) of the investment project to export profits under the Regulations of this Law.

Thus foreign investors, with approved investments are entitled to transfer abroad up to the whole amount of the profits accrued to them in each financial year (Article 15). In addition, the state also guarantees the concession of tax and customs incentives, granted in the Code of Fiscal Benefits for investments made in Mozambique (see below).

The Investment Law Regulations establish the Investment Promotion Centre, which is charged with "coordinating the promotion, analysis, follow-up and verification of investments carried out under the Law". It is an autonomous body under the aegis of the (then) Ministry of Planning & Finance.

Eligibility for investment incentives is regulated by Article 6 of the Investment Law Regulations, which establishes that the minimum value of direct national investment is $5,000. For the specific purpose of remitting profits abroad, the minimum value of direct foreign investment resulting from the inflow of capital belonging to foreign investors is fixed at $50,000 (Article 6(2)).

Fiscal benefits for investors are detailed in Decree 16/02 of 27th June. They comprise a range of fiscal and customs incentives, including deductions from taxable income, abatements, accelerated depreciations and reintegrations, tax credits, exemptions and reductions in tax rates and contributions, and the deferred payment of taxes. They are available to those investments duly authorised under the Investment Law and Regulations and are transferable on the same conditions (i.e. authorisation from the Ministry of Finance).

A summary of the benefits follows:

Article 13 – investors enjoy an exemption from payment of Import Duties on equipment goods classified under class K of the Tariffs Code.

Article 15 – investments carried out under the Investment Law shall enjoy a tax credit for investments, over a period of 5 years, of 5% of the entire investment, deducted from the Corporate Income Tax assessment, up to the amount of the assessment. In the case of investment projects carried out in Gaza, Sofala, Tete and Zambézia Provinces, the percentage is 10%; in Cabo Delgado, Inhambane and Niassa, it increases to 15%. Limitations on this are as follows:

- only investments in physical fixed assets dedicated to the operation of the firm in

national territory and acquired when new are considered

- does not apply when the investment in physical fixed assets is the result of:
- a) Construction, acquisition, repair or enlargement of any buildings;
- b) Light vehicles;
- c) Furniture and articles for comfort or decoration;
- d) Social equipment;
- e) Specialised equipment considered as advanced technology
- f) Other investment assets not directly linked with productive activity

Article 16 – provides for Accelerated Depreciation and Reintegration for new immovables at double the normal rates prescribed by law.

Article 17 – permits deduction from taxable income (for the purposes of assessing Corporate Income Tax), up to a maximum limit of 15% of taxable income, the amounts invested in specialised equipment.

Article 18 – permits deduction from taxable income (for the purposes of assessing Corporate Income Tax), up to a maximum limit of 5% of taxable income, the amounts invested in providing professional training to Mozambican workers.

Article 19 – permits, for a period of 10 years, an investor to consider the following amounts as costs for the purposes of determining taxable income for Corporate Income Tax:

- In Maputo: 120% of any expenses incurred in the construction and rehabilitation of roads, railways, airports, postal systems, telecommunications, water supply, power supply, schools, hospitals and other works considered to be of public utility.
- In other provinces: 150% of the same expenses.

Article 20 – provides exemption from Stamp Duty on any acts for the formation of companies or changes to their share capital and articles of association during the first five years.

Article 21 – provides for the 50% reduction of the rate of Real Estate Transfer Tax (SISA) on the acquisition by investors of immovable property destined for industry, agro-industry and the hotel industry, provided that the acquisition takes place during the first 3 (three) years.

Specific benefits for agricultural undertakings:

Article 23 – provides for a 80% reduction in the rate of Income Tax up until year 2012 (applicable to corporate profits that are attributable to agricultural activity)

Section III of Sub Chapter II of the Fiscal Benefits Decree deals with large scale projects and allows exceptional benefits to be negotiated. Article 29 states that:

29(1) Undertakings whose investment exceeds the equivalent of five hundred million United States Dollars, as well as undertakings in public infrastructure, carried out under a concession regime, may benefit from exceptional incentives within the framework of import duties, Corporate Income Tax, Real Estate Transfer Tax (SISA) and Stamp Duty, granted on a contractual basis by the Council of Ministers on the proposal of the Minister of Planning and Finance.

In order to qualify, the proposed investments must also demonstrate that:

a) They are relevant to the promotion of the development of the national economy;

b) They are relevant to the reduction of regional asymmetries;

c) They will create 500 jobs or lead to the creation of 1,000 jobs within a 3 year period.

Sources of data/information (name and function of contacted persons or institutions, author, title and publication year of report, etc.):

Robustness and reliability of data/information provided (comment on reliability of sources, explain variations across data sources or opinions, etc.):

- Mechanisms that ensure that the public benefits from large-scale investments in agriculture may not exist so that, in practice, there may be no safeguards to ensure that the share of benefits does not disproportionately favour investors (PLI-32):

PLI-32. Benefit sharing

Benefit sharing mechanisms for investments in agriculture (food crops, biofuels, forestry, game farm/conservation) are regularly used and transparently applied.	**A –** Mechanisms to allow the public to obtain benefits from the investment (or investing party) other than compensation (e.g., schools, roads, etc.) are regularly used and applied transparently based on clear regulation. **B –** Mechanisms to allow the public to obtain benefits from the investment (or investing party) other than compensation (e.g., schools, roads, etc.) are applied transparently but not always used. **C –** Mechanisms to allow the public to obtain benefits from the investment (or investing party) other than compensation (e.g., schools, roads, etc.) are rarely used or applied in a discretionary manner. **D –** Mechanisms to allow the public to obtain benefits from the investment (or investing party) other than compensation (e.g., schools, roads, etc.) are not used or not applied transparently.

Comments (please detail benefit sharing provisions in the law):

See above comments in respect to PLI-6 **Error! Reference source not found.**

As noted above (PLI-33 Incentives for investors), Article 19 of the Fiscal Benefits Code provides incentives for investors which incur costs related to the provision of schools, roads, etc.

Studies of agreements made during consultation processes reveal that public benefits in the form of social infrastructure are quite rare. In Zambézia, they constituted only 2.35% of the sample of 85 cases (ZADP, 2001).

Agreements regarding public benefits for local communities – Zambézia

Nature of undertaking	**Number of cases**	**% of Total**
Employment of locals	48	56,47
No undertaking	16	18,85
Sale of products to community	7	8,23
Provision of mill	5	5,88
Compensation	4	4,70
Good realtionship	2	2,35
School, health post or shop construction	2	2,35
Use of livestock for ploughing	1	1,17
Total	**85**	**100.00**

Findings in the national CFJJ study on consultations (Tanner et al, 2006) were similar, although a greater percentage of undertakings involved the construction of social infrastructure. After 'no undertaking', the most common item was for employment for local people (91 cases, or 35 percent).

Nature of undertaking	**Number of cases**	**% of Total**
Nothing declared	99	38
Employment	91	35
Good relations	82	32

Build school or shop	39	15
Compensation	29	11
Giving diverse items	17	7
Sale of products	15	6
Flour/rice mill	9	3
Veterinary assistance	6	2
More access	5	2
Financial participation	4	1
Community animals/ploughs	2	1
Collect crops	2	1
New markets	1	0
Population moves with compensation	0	0
Total	**260**	**100**

In describing the overall nature of the consultation process, the CFJJ report states "There is no sense in which [the community] are 'participating' in a process that will decide what kind of development will take place in their area, and what their role in this process will be if it goes ahead. The focus is on securing the land right for the investor, in line with clearly stated Government policy to fast-track land claims as part of a wider belief that new private investment will bring growth and jobs, and thus contribute to ending poverty."

There are also problems with the mechanism of the *Acta* (the minutes of the consultation process) as a form of capturing the agreement. These documents, which are a formal part of the cadastral process, are not written as contracts. They have very little quantitative detail, no time scales for implementation, and are not legally recognised. Such documents would be difficult to use, both in any subsequent inspection visit, or in a court of law. The importance of having a legally binding document is underlined by the fact that non-adherence to agreements (by both sides) is a a frequent source of conflict related to land agreements.

Sources of data/information (name and function of contacted persons or institutions, author, title and publication year of report, etc.):

Robustness and reliability of data/information provided (comment on reliability of sources, explain variations across data sources or opinions, etc.):

3.2 Procedures and requirements (PLI-33 to PLI-37)

- The way investors access land can have implications on whether agreements are balanced (i.e. whether local rights holder benefit sufficiently from these) or on the relevance for the host country of the investments that get approved and implemented. If access is through governments exclusively, the latter may have incentives to abusively expropriate local rights holders and engage in suboptimal land transfers (because of the centralization of land management). This may also favour opaque transactions with little accountability to the public and involve bribes paid by investors to government officials or government agencies (PLI-33):

PLI-33. Direct and Transparent Negotiations

There are direct and transparent negotiations between right holders and investors.	A – Final decisions on land acquisition for large scale investment are made between the concerned right holders and investors; government's role is limited to checking compliance with applicable regulations which is done in a transparent manner and with clear time limits. B – Final decisions are made in direct negotiations but a non-transparent and often discretionary process for obtaining approval is required. C – Transfer of land use or ownership rights for large scale investment requires previous acquisition of these rights by the state which follows a clear, transparent, and time-bound process with decision-making authority clearly assigned. D – Expropriation of land by the state is required and the process is murky.
Comments on the answer provided (detail approval process and whether situations differ for public and private land, or according to size of investment or type of investor)	
Sources of data/information (name and function of contacted persons or institutions, author, title and publication year of report, etc.):	
Robustness and reliability of data/information provided (comment on reliability of sources, explain variations across data sources or opinions, etc.):	

- Large-scale investments may involve a procedure for application, selection and approval. The procedure can require investors to provide information or impose requirements for contractual arrangements. If relevant information is not required or assessed, this can result and the approval of projects that are not economically or socially viable or not in the public's general interest (PLI-34, PLI 35 and PLI-36):

PLI-34. Sufficient information is required from investors

Sufficient information is required from investors to assess the desirability of projects on public/community land	A – Investors are consistently required to provide exhaustive information on company background and financial/technical analyses that is sufficient to assess viability and benefits from the project. ; B –Investors are consistently required to provide exhaustive information on either company background or financial/technical analyses (but not both) that is sufficient to assess viability and benefits from the project. Investors are required to provide meaningful information but this is not always sufficient to assess the desirability of the project. C –Investors are consistently required to provide information on company background or financial/technical analyses but this information is not sufficient to assess viability and benefits from the project. D –Information required from investors is not consistently and generally insufficient to assess viability and benefits from the project.
Comment on the answer provided (detail the information requirements asked from investors and whether this depends on investment size and investor type and if these requirements are consistently	

implemented or with some discretion):

Information requirements of investment proposals, submitted to the CPI for approval, according to Articles 10 & 11 of the Investment Law, are the following:

10(1). The submission of investment proposals must be accompanied by the following documentation:

a) bank references for each prospective investor;

b) documents proving the legal existence of the prospective corporate investors;

c) reports and accounts of the previous financial year as well as any existing catalogues, brochures and other publications which illustrate the activities of the proponents

d) the "curriculum vitae" and certificate of the criminal record of the main persons responsible for the implementation and operation of the project;

e) the proposed articles of association of the company to be formed and registered in Mozambique for carrying out the proposed project and its activity in cases the envisaged implementing company doesn't yet exist;

f) any proposed alterations to be introduced in the articles of association, if the company is one which already exists;

g) the agreement or contract of association between the partners of the company, if applicable;

h) an evaluation study of the environmental impact of the project.

2.The submission of proposals which involve indirect investments shall include, additionally, the following elements:

a) the title deed or title to exclusive access or use of the specific form of indirect investment under consideration, indicating the respective period of validity of the deed;

b) the contract proposal or other valid document that establishes the forms and conditions applicable to the utilisation or application of the form of indirect investment in question.

3.Foreign corporate proponents intending to invest through establishment of a branch in Mozambique shall present, in addition to the relevant elements referred to above, the following:

a) the legal document that proves the existence and the field of the firm or institution intending to establish a branch in Mozambique;

b) an indication of the own equity capital of the branch to be opened and operated in Mozambique, indicating explicitly the form of its realisation;

c) the minutes of the general meeting convened to deliberate on creating a branch, duly translated into Portuguese and authenticated.

Article 11 - Investments with share capital expansion and/or share offers:

11(1). Investment proposals which involve an increase in share capital or the offer or acquisition of shares shall be accompanied by the following supplementary documents:

a) the project or information which demonstrates the economic or legal need for the increase of share capital and the participation of foreign direct investment;

b) a photocopy of the minutes of the general meeting or other body deemed competent under the respective articles of association, which contains the decision taken to proceed with the expansion of share capital envisaged;

c) a copy of the certificate of the commercial and fiscal registration of the firm in which the investment shall take place;

d) Financial statements and accounts for the last two financial years, except in cases where the company has existed for a shorter period of time; and

2. Proponents which are public limited companies shall, in addition, indicate:

a) the face value and the number of shares to be issued, the forms of their subscription, their issue price and conditions of purchase;

b) any rights and privileges envisaged which may be conferred upon new shares to be issued and benefit the shareholders participating in the expansion of capital; and likewise, the number of shares to be subscribed and the forms and dates of their realisation;

3. Proponents which are private limited companies shall, in addition, identify the shareholders who will participate in the expansion of share capital as well as the values, forms and time periods for realising their respective participations.

These stipulations effectively only apply to applications from foreigners, since national investors are not required to have a duly approved investment project. Instead, national entities can apply for land on the strength of an 'exploitation plan', described in the Land law as "a document presented by an applicant for the use and benefit of land describing activities, works and building which the applicant undertakes to realise in accordance with a determined schedule".

The land legislation provides no further details on the nature or form of these exploitation plans; they vary in format and detail, and a single pro-forma does not exist. They are often characterised by a significant deficiency of detail.

Resolution 70/2008 of 30th December provides further requirements in the case of investment proposals that are accompanied by land use requests for areas of greater than 10,000 hectares:

Part A relates to general information required regarding the proponents:

1. Name
2. Nationality & Place of registration
3. Principal Activity
4. Other Activities
5. Experience in the area
6. Sources of complementary information
    a) Website
    b) Balance Sheet
    c) Bank References
    d) Other
7. Curriculum Vitae of Managers
8. Other relevant information

Part B deals with investment information:

A) Proof of availability of financial resources necessary for execution of the project
B) Proof of capacity, entrepreneurial and/or technical capacity of the proponents
C) Positive profitability and cash flow proposed in the project document
D) Employment Impact
    i. Employment of nationals
    ii. Employment of foreigners
E) Political, economic, financial, environmental or other implications
F) Adherence to laws and the political economy and national strategies
G) Existing Infrastructures
    i. Roads
    ii. Bridges
    iii. Railway Lines
    iv. Schools
    v. Health Posts

Part C relates to land. It contains an important stipulation which requires prospective investors to detail the terms of any partnership agreement reached with the holders of the rights to use and benefit of land, acquired through occupation:

A) Sketch Map, with incorporation into a land use plan or map of land use/agricultural zoning
B) Nature and extent of project
C) Minutes of Community Consultation process
D) Formal opinion of the District Administrator
E) Formal opinion of the Provincial Governor
F) Development Plan and Technical Opinions
G) Terms of partnership agreement between holders of the rights to use and benefit of land, acquired through occupation, and the investor
H) Formal opinion of Minister of Agriculture for projects to be submitted to the Council of Ministers

Part D requires the submission of a formal opinion of the Ministry for Environmental Coordination, in terms of Law 20/97 and respective regulations, regarding environmental viability of the project.

Part E requires applicants to detail the expected socio-economic aspects:

a) Demographic information related to existing population in the region
b) Resettlement programme of affected populations
c) social infrastructure to be provided by the project

i. Education;
ii. Health
iii. Roads
iv. Electricity
v. Water
vi. Other

d) Impact on food production
e) Involvement of local producers
i. Technical assistance
ii. Provision of inputs
iii. Provision of means of production
iv. Market access

Part F requires the submission of more detailed information regarding the development plan:

A. Technical information
1. Principal activity
2. Complementary activities
3. Incorporation of the area in terms of agricultural zoning
4. Proposed area (ha)
5. Soil characteristics
a) Arenosos
b) Argilesos
6. Crops
7. Water resources
a) Nearest capture source
b) Distance from source to agricultural activities
c) Annual water requirements
8. Irrigation Technologies
a) Canal
b) Aspersion
e) Drip
9. 10 year production plan – agricultural
a) Planted area (ha)
b) Production (tonne/ha) – by crop
c) Total production (tonne)
10. 10 year production plan – industrial
a) Raw material consumption (tonne)
b) Total production (tonne/litres) - per product

B. Investment & Finance
1. Total value of investment (US$) - per year
a) Agricultural activities
b) Industrial activities
c) Infrastructure or other improvements (indicate nature)
2. Sources of finance (US$)
a) Own capital
b) Loans
c) Other (specify)
3. Proof of availability of finances

C. Market
1. Target markets for final products, in % separating agricultural and industrial production
a) Internal
b) Regional
c) International
2. Expected prices (US$/unit)
a) Internal
b) Regional

c) International *D. 10 year Business Plan* *1. Expected receipts* *2. Total costs, including depreciation* *3. Gross profits* *4. Internal rate of return* *5. Sensitivity analysis (indicate variable used)* Neither the investment proposals, nor the development plans are made publically available. Details on the extent of implementation of this decree are not available, although throughout 2009 the CEPAGRI has been building a capacity to conduct more thorough reviews of investor applications and has received donor assistance in this regard.
Sources of data/information (name and function of contacted persons or institutions, author, title and publication year of report, etc.):
Robustness and reliability of data/information provided (comment on reliability of sources, explain variations across data sources or opinions, etc.):

PLI-35. Sufficient information is publicly available

For cases of land acquisition on public/community land, investors provide the required information and this information is publicly available.	A – Investors provide all the information required from them and - subject to reasonable limits on confidentiality - this information is publicly available. B – Investors provide some information required from them and - subject to reasonable limits on confidentiality - this information is publicly available C – Investors provide some or all the information required from them but this information is not publicly available D – Investors do not provide the information required from them.
Comment on the answer provided (detail the information requirements asked from investors and whether this depends on investment size and investor type and if these requirements are consistently implemented or with some discretion):	
Sources of data/information (name and function of contacted persons or institutions, author, title and publication year of report, etc.):	
Robustness and reliability of data/information provided (comment on reliability of sources, explain variations across data sources or opinions, etc.):	

PLI-36. Contractual provisions regarding acquisition of land from communities

Contractual provisions regarding acquisition of land from communities or the public are required by law to explicitly mention of the way in which benefits and risks will be shared.	A – Contracts must specify risk sharing and benefit sharing arrangement that are understood and agreed to by all parties. B – Contracts must specify arrangement regarding sharing of benefits or risk (but not both) that are understood and agreed to by all parties. C – Contracts must specify arrangement regarding sharing of benefits or risks but are poorly understood or agreed to by all parties. D – Contracts do not have to specify either risk sharing or benefit sharing arrangement.
Comments on the answer provided (detail the legal requirements for contractual arrangements using the matrix below):	
Sources of data/information (name and function of contacted persons or institutions, author, title and publication year of report, etc.):	
Robustness and reliability of data/information provided (comment on reliability of sources, explain variations across data sources or opinions, etc.):	

- If it takes too long to review applications or if the different institutions do not coordinate properly or do not have sufficient capacity to monitor investments, this can result in excessive transactions costs, biases in the selection of investments, possibly exacerbated by bribes (PLI-37):

PLI-37. Speed of approval

The procedure to obtain approval for a project where it is required is reasonably short.	A – In most cases, investment application related documents are reviewed and receive a response within 3 months of date of submission. B – In most cases, investment application related documents are reviewed and receive a response within 6 months of date of submission. C – In most cases, investment application related documents are reviewed and receive a response within 9 months of date submission. D – In most cases, investment application related documents are reviewed and receive a response within greater than 9 months from date of submission.
Comments on the answer provided: Unknown - requires information from CPI/CEPAGRI	
Sources of data/information (name and function of contacted persons or institutions, author, title and publication year of report, etc.):	
Robustness and reliability of data/information provided (comment on reliability of sources, explain variations across data sources or opinions, etc.):	

4 Environmental and social safeguards

Large-scale investments in land are likely to have important social and economic impacts for the host country. The adequate design and implementation of procedures for vetting investment proposals on social and environmental grounds, as well as compensation for existing resource rights, are thus key to ensure that land use rights of traditional users are adequately protected, or that externalities beyond the immediate project area (specifically on forests and other natural resources) are accounted for. These do not only require analytical capacities for assessing externalities (including the assessment of indirect effects on other land uses and sectors), but also the involvement of affected parties or the public at the large, and the political will and bureaucratic capacity to implement protection laws and legal provisions.

4.1 Directives and requirements regarding environmental and social safeguards (PLI-38 to PLI-39)

- The existence of directives regarding environmental and social safeguards helps understand the requirements for investment proposals and provides an indication of the process that investors have to go through. Knowing how clearly the legal requirements are articulated and whether they are consistently implemented or implemented with some discretion helps assess whether all investments are subject to these requirements or not (PLI-38):

PLI-38. Clarity of regulations regarding social safeguards

Social requirements for large scale investments in agriculture are clearly defined and implemented.	A – Social safeguard requirements for investors are clearly documented and defined (i.e., with details regarding specific processes and elements in the assessment), include provisions for assessment and mitigation of direct and indirect effects, and consistently implemented. B – Social safeguard requirements for investors are clearly documented and defined (i.e., with details regarding specific processes and elements in the assessment) and consistently implemented but do not include provisions for assessment and mitigation of direct and indirect effects. C – Social safeguard requirements for investors are clearly documented and defined (i.e., with details regarding specific processes and elements in the assessment) but implemented with discretion. D – Social safeguard requirements for investors are not clearly documented and defined.

Comments on the answer provided (please provide details on the requirements—e.g. , strategic environmental and social assessment, environmental and social impact assessment, etc.—and please specify what investment is subject to the requirements, and at what stage of the process the requirements have to be fulfilled):

Mozambique still has no specific resettlement and compensation law, although MICOA have prepared Guidelines on the Criteria for Resettlement of Populations in Rural Areas (in 2000), and in June 2007 ANE published a Draft Framework for Resettlement Policy for the Road Sector.

Resettlement and compensation in various projects are guided by the Land Law and acceptable practices that have already been applied in Mozambique and accepted by international funding agencies.

Large projects will usually establish a Resettlement and Compensation Plan, based on World Bank guidelines (OP 4.12 Operational Policies – Involuntary Resettlement), Mozambican and South African law/procedures and precedents established for other projects in Mozambique. The procedures will normally incorporate objective assessment (pre-resettlement and/or compensation investigation and analysis to determine the nature of each particular case), community-based decisions (consultation with affected person and communities) and post-disruption support (post-resettlement and/or compensation support to ensure sustainability of actions).

Investors must also elaborate Environmental Impact Assessments and Environmental Management

Plans (see below), including social aspects.
Sources of data/information (name and function of contacted persons or institutions, author, title and publication year of report, etc.):
Robustness and reliability of data/information provided (comment on reliability of sources, explain variations across data sources or opinions, etc.):

- The specific details associated with each directive helps understand the strength of the legal requirement and how comprehensively environmental and social impacts are assessed (PLI-39):

PLI-39. Clarity of regulations regarding environmental safeguards

Environmental requirements for large scale investments in agriculture are clearly defined and implemented.	A –Environmental safeguard requirements for investors are clearly documented and defined (i.e., with details regarding specific processes and elements in the assessment) , include provisions for assessment and mitigation of direct and indirect effects, and consistently implemented. B – Environmental safeguard requirements for investors are clearly documented and defined (i.e., with details regarding specific processes and elements in the assessment) and consistently implemented but do not include provisions for assessment and mitigation of direct and indirect effects. C – Environmental safeguard requirements for investors are clearly documented and defined (i.e., with details regarding specific processes and elements in the assessment) but implemented with discretion. D- Environmental safeguard requirements for investors are not clearly documented and defined.
Comments: The Land Law at Article 20 stipulates that: *20. The approval of an application for the right of land use and benefit does not dispense with the need for licences or other authorisations that are required by:* *a) The legislation applicable to the exercise of the intended economic activities, namely agriculture and livestock, agro-industrial, industrial, tourism, commercial, fishery and mining and environmental protection;* *b)…* Article 10(1) (h) of the Investment Law requires investors seeking investment proposal approval to submit an environmental impact assessment. The Environment Law (Law No. 20/97, of 7 October 1997) defines the legal basis for the sound use and management of the environment as a means to safeguard sustainable development in the country. It applies "to all public and private activities which could directly or indirectly influence environmental elements" (Article 3), and stipulates that the issuance of an environmental licence shall be based upon an environmental impact assessment of a proposed activity (Article 15(2)). It also makes clear that this environmental licence is a prerequisite to the issuance of any other licence which may be legally required in each case. The GoM has defined a set of tools for ensuring that economic activities adhere to guaranteed minimums regarding the environmental sustainability of their businesses: • Decree 45/2004 (substituting Decree 76 of 1998), regulates the process of Environmental Impact	

Assessments

- Decree 130/2006 regulates the public participation in the evaluation of EIAs and monitoring of their implementation
- Decree 129/2006 provides general guidelines for the EIA studies
- Decree 32/2003 regulates how Environmental Auditing processes should be undertaken

The environmental legal framework therefore offers a reasonably comprehensive set of processes and opportunities for ensuring adherence to acceptable environmental standards and for monitoring the implementation of environmental management plans.

According to the Environment Law, the Environmental Impact Assessment (EIA) is an instrument to assist GoM in decision making regarding the issuing of environmental licenses for development projects. The following minimum information is to be included in an Environmental Impact Assessment (Article 17 of the Environment Law):

17.

a) a non-technical summary of the project;
b) a description of the activity to be carried out;
c) the environmental status of the site where the activity is to be carried out;
d) any consequential alteration of the different environmental elements which exist in the site;
e) measures to be taken to eliminate or reduce the negative impacts of the activity on environmental quality;
f) systems to be implemented to control and monitor the activity.

An important step in the EIA process is environmental screening, which defines the extent and type of environmental assessment required for any given project.

Article 3 of the Regulations for Environmental Impact Assessments (Decree 45/2004) categorises projects into three categories - A, B & C depending on the nature and scale of the proposed undertakings.

Category A activities are projects that could have significant impacts due to the nature of the proposed activities or the sensitivity of the area, requiring a full EIA (including EMP). Importantly, these include forestry and agricultural projects with the following characteristics (Annex 1; Category A Activities, sections 2 & 3):

2. Forestry

a) Clearing, parcelling and exploitation of native vegetation cover in areas of greater than 100ha
b) All deforestation activities of greater than 50 ha and forestation or reforestation of areas greater than 250 ha

3. Agriculture

a) Parcelling of land for agriculture on areas greater than 350 hectares with irrigation or of greater than 1,000 hectares without
b) Conversion of agricultural land to commercial, urban or industrial uses
c) Conversion of areas of 100 hectares or more to intensive agriculture where the land has not been cultivated for more than 5 years
d) The introduction of new crops or exotic species
e) Irrigation systems for areas of greater than 350 hectares
f) Aquaculture or mariculture involving greater than 100 tons of production annually or covering an area equal to or greater than 5 hectares
g) Intensive livestock rearing of more than:
- 100,000 smallstock
- 3,000 pigs or 100 breeding sows
- 500 cattle if area is 4ha/livestock unit
h) Aerial or terrestrial spraying of areas greater than 100 hectares

Category B activities are those which are adjudged to have less potential for negative environmental impacts and are only required to submit a Simplified Environmental Impact Assessment. The realisation of a Simplified Environmental Impact Assessment falls under the full responsibility of the proponent

and will begins only after the ToRs have been submitted to the National Directorate for EIA. The ToRs for the Study must contain, at least (Article 13(2)):

13(2)

1. *Identification and address of the proponent;*
2. *Localisation on a map, using the appropriate scale, of the area of direct and indirect influence, as well as the current land uses;*
3. *Framing of the plans in the existing land use plans;*
4. *Description of the activity and related actions, the respective alternatives, in all phases of action, including closure if relevant;*
5. *Description of the Public Participation Process to be conducted;*
6. *Identification of the environmental components on which the Study will focus;*
7. *Description of the methodology of identification, classification and evaluation of the potential environmental impacts of the activity and its alternative;*
8. *Identification of the team which will conduct the Study.*

The report, resulting from the consequent Simplified Environmental Study, must contain at least (Article 13(3)):

13(3)

a) Non technical summary with the main issues discussed, conclusions and proposals;
b) Localisation and description of the activity;
c) The legal framework of all activities and its insertion in the land use plan for the directly influenced areas;
d) Environmental analysis with a short description of the environmental situation;
e) Identification and evaluation of the environmental impacts of the activity;
f) Environmental Management Plan for the activity, including impact monitoring, environmental education programme and contingency plans for accidents;
g) Identification of the team who realised the Study;
h) The Public Participation Report as per S. 14(9).

Public Participation in the EIA process is compulsory for Category A Activities and in any case when (i) permanent or temporary relocation of people/communities is required or (ii) there will be a relocation of assets or a restriction of natural resource use (Article 14(5)).

Article 14 of the EIA Regulations defines the Public Participation Process as an activity which involves public auscultation and consultation; it implies delivery of information regarding projects to all directly and indirectly affected and interested parties, responding to public requests for explanations on the project and the formulation of suggestions regarding the project.

Ministerial Diploma 130/2006 provides further details on the Public Participation process, stipulating that it consists, inter alia, of the identification of Interested and Affected Parties, through field research and survey and of the dissemination of information (as per S. 14(6) of EIA Regulations) and by the deposition of documents in public places, using simple and clear writing, possibly in a local language and the facilitation of access to information.

The Environmental Audit (EAUD) Regulations, approved by Decree No. 32/2003 of 20 August 2003, define the environmental audit as both a management instrument and a systematic and objective assessment of the functionality control and protection of the environment.

Despite the comprehensiveness of the framework, implementation remains weak as a result of the limited resources available to the government environmental services. It appears to be the case that only a very low number of land applications are subject to an EIA., even when they fall within the Category A Agricultural activities.

Sources of data/information (name and function of contacted persons or institutions, author, title and publication year of report, etc.):

Robustness and reliability of data/information provided (comment on reliability of sources, explain

variations across data sources or opinions, etc.):

4.2 Institutional capacity and coordination (PLI-40 to PLI-42)

- Institutional capacity in implementation of the safeguards and ensuring compliance will influence the effectiveness with which the investment proposal will be reviewed, monitored and enforced. (PLI-40, PLI 41 and PLI-42):

PLI-40. Procedures in place to identify and select economically, environmentally, and socially beneficial investments

For transfers of public/community lands, public institutions have procedures in place to identify and select economically, environmentally, and socially beneficial investments and implement these effectively.	A – Procedures to fully cover economic, social, and environmental issues are in place and implemented effectively. B – Procedures to partly cover economic, social, and environmental issues are in place and implemented effectively. C – Procedures to fully cover economic, social, and environmental issues are in place but not implemented effectively. D – Procedures provide at best partial coverage of economic, social, and environmental issues and are not implemented effectively.
Comments on the answer provided (describe capacity and where it is located—which ministry/agency/private entity):	
Sources of data/information (name and function of contacted persons or institutions, author, title and publication year of report, etc.):	
Robustness and reliability of data/information provided (comment on reliability of sources, explain variations across data sources or opinions, etc.):	

PLI-41. Compliance with safeguards related to investment in agriculture

Compliance with safeguards related to investment in agriculture is checked	A – The responsible government agencies follow up on the agreements to check for compliance and consistently take reasonable action in cases of non-compliance. B – Responsible government agencies follow up on the agreements to check for compliance and, on a discretionary basis, take reasonable action in cases of non-compliance. C – Responsible government agencies follow up on the agreements to check for compliance and but do not take reasonable actions in cases of non-compliance. D – Responsible government agencies do not follow up on the agreements to check for compliance.

Comments on the answer provided (please describe which agencies follow up on compliance and what actions are taken for non-compliance):

Capacity within the GoM to follow up on compliance issues is generally weak across the board. The MICOA is the agency charged with following up on agreements in respect to environmental safeguards. This includes the auditing of Environmental Management Plans, where these are established. Although MICOA appear to be following up on these plans in relation to the high-profile mega projects (such as the Kenmare Heavy Sands Mine in Moma and Mozal), the extremely low number of other land-related projects which are instituting environmental safeguards means that there is a very low level of monitoring overall. Sanctions include fines (regulated) and the withdrawal of licences.

The DNTF is responsible for checking on the implementation of development plans, payment of lease rentals and compliance with other elements of the lease contracts. Theoretically this ought to include the checking of compliance with agreements (if any) reached during the community consultation process but this is not part of standard practise at the moment.

It is not possible to conclude that there is any systematic follow-up on the agreements by the DNTF. The results of checks into the extent of land use on existing DUATs, over the period 2002-2008, are shown in the table below. These figures show that, in comparison to the global number of land applications which ought to be checked, the SPGC offices are only able to maintain a very low rate of checking and enforcement (less than 10% of applications which should be checked). Recent government statements nevertheless underline the concern to ensure that land is being used in accordance with the approved agreements, with clear implications for revoking or confirming rights that have been allocated. Recent changes to the Land Law regulations also imply that communities which do not have a plan or project for all the land they 'claim' run the risk of losing their DUATs acquired by occupation under the 1997 law.

Results Land Use Audit 2002 – 2008

Province	Number of Parcels and Corresponding Areas						Measures Taken			
	DUAT Not Used		DUAT Partially Used		DUAT Fully Used		DUAT Cancellation		DUAT Re-dimensioning	
	Nº.	Area (ha)	Nº	Area (ha)	Nº	Area (ha)	Nº	Area (ha)	Nº	Area (ha)
Maputo	316	128.179	142	161.278	400	166.111	233	45.184	142	62.925
Gaza	100	176.167	32	73.418	137	391.009	107	66.952	32	39.530
Inhambane	94	32.070	52	6.880	116	10.790	82	27.527	25	2.819
Sofala	119	49.318	37	25.327	159	78.742	154	55.773	37	25.327
Manica	26	8.806	78	14.661	175	17.063	27	1.232	78	4.990
Tete	27	4.094	79	6.590	72	4.289	27	3.115	79	2.480
Zambézia	77	34.413	77	34.493	135	46.837	98	22.251	64	11.636
Nampula	174	39.220	79	35.894	196	45.897	88	16.361	79	32.189
C. Delgado	114	6.923	91	6.313	75	6.038	115	15.095	6	6.011
Niassa	15	8.861	14	1.886	31	3.963	15	7.230	14	225
Total	**1.062**	**488.056**	**681**	**366.744**	**1.496**	**770.743**	**946**	**260.724**	**556**	**188.134**

Sanctions in the Land Law for non-compliance with the development plan include the cancellation of the lease or a reduction in the area ceded. Sanctions for the non-payment of the rental, or for the non-demarcation of the boundaries, include cancellation of the lease.

In the roads sector, there may be a higher level of checking. The ANE (Administração Nacional de Estradas) has a distinct Social and Environmental Unit (Unidade de Assuntos Sociais e Meio Ambiente – UASMA, now known as GAJUTRA – Gabinete de Assuntos Sociais e Jurídicos), staffed by 3 people. It is a support unit to ensure environmental and social safeguards in the projects undertaken by ANE. The GAJUTRA was initially created in 2000 with the aim of generating and increasing awareness regarding social and environmental safeguard issues and ensuring compliance with contract specifications. The objectives of GAJUTRA are to ensure that the issues of environment, gender, poverty alleviation and HIV/AIDS mitigation are incorporated into all phases of project

implementation, from road planning to the operational stage (feasibility, design, supervision of civil works and post-construction activities). Indications are that this institution has very little capacity and that responsibilities are delegated to provincial level staff with no training or orientation regarding these issues.
Sources of data/information (name and function of contacted persons or institutions, author, title and publication year of report, etc.):
Robustness and reliability of data/information provided (comment on reliability of sources, explain variations across data sources or opinions, etc.):

PLI-42. Avenues to lodge complaints

There are avenues to lodge complaints if agricultural investors do not comply with requirements.	A – There is a clear process by which affected parties or the public at large can lodge complaints regarding investor compliance with safeguards. Mechanisms to deal with these fairly and expeditiously are in place and consistently implemented. B – There is a clear process by which affected parties or the public at large can lodge complaints regarding investor compliance with safeguards. Mechanisms to deal with these fairly and expeditiously are in place but not consistently implemented. C – There is a process by which affected parties or the public at large can lodge complaints regarding investor compliance with safeguards but mechanisms to deal with these fairly and expeditiously are not in place. D – There is no clear process by which affected parties or the public at large can lodge complaints regarding investor compliance with safeguards.
Comments on the answer provided:	
Sources of data/information (name and function of contacted persons or institutions, author, title and publication year of report, etc.):	
Robustness and reliability of data/information provided (comment on reliability of sources, explain variations across data sources or opinions, etc.):	

PLIAF dimensions and corresponding descriptions

PLIAF dimension	Description
1	The legal framework recognizes the land tenure rights of most of the rural population.
2	The legal framework recognizes group rights in rural areas.
3	Individually held properties in rural areas are formally registered.
4	Most communal or indigenous land is mapped and rights are registered.
5	Most forest land is mapped and rights are registered
6	Land acquisition generates few conflicts and these are addressed expeditiously and transparently.
7	Conflict resolution mechanisms are accessible to the public.
8	Rulings on land cases can be appealed.
9	Restrictions regarding land use, ownership and transferability (for land that can be used for agricultural production) are justified.
10	Publicly held land is identified or recorded.
11	Conformity of actual and classified use on land set aside for specific purpose.
12	Land use restrictions on rural land parcels can generally be identified
13	There is a clear separation between the institutions involved in land acquisition, management and dispute arbitration.
14	There is little overlap of responsibilities regarding land between institutions from different sectors.
15	The responsibilities of different levels of government regarding land do not overlap.
16	Land information is shared with interested institutions.
17	Sufficient resources are available to manage public land.
18	The management responsibility for public land is unambiguously assigned.
19	Public institutions involved in land acquisition operate in a clear and consistent manner
20	Public land transactions are conducted in an open transparent manner.
21	Public land is leased and/or sold at market prices.
22	Payments for public leases are collected.
23	Changes in land use are based on public input.
24	There is sufficient public notice of land use changes.
25	There is minimal transfer of expropriated land to private interests.
26	Expropriated land is transferred to destined use in a timely manner.
27	Actual land use changes to the assigned land use in a timely manner.
28	Fair compensation is paid for the expropriation of registered property.
29	Fair compensation is paid for the expropriation of unregistered property.
30	There are independent and accessible avenues for appeal against expropriation.
31	Incentives for investors are clear, transparent and consistent
32	Benefit sharing mechanisms regarding investments in agriculture (food crops, biofuels, forestry, livestock, game farm/conservation) are regularly used and transparently applied
33	There are direct and transparent negotiations between right holders and investors
34	Sufficient information is required from investors to assess the desirability of projects on public/communal land
35	For cases of land acquisition on public/community land, investors provide the required information and this information is publicly available
36	Contractual provisions regarding acquisition of land from communities or the public are

	required by law to explicitly mention the way in which benefits and risks will be shared.
37	The procedure to obtain approval for a project where it is required is reasonably short
38	Social requirements for large scale investments in agriculture are clearly defined and implemented
39	Environmental requirements for large scale investments in agriculture are clearly defined and implemented
40	For transfers of public/community lands, public institutions have procedures in place to identify and select economically, environmentally, and socially beneficial investments and implement these effectively.
41	Compliance with safeguards related to investment in agriculture is checked
42	There are avenues to lodge complaints if agricultural investors do not comply with requirements

Endnotes

[i] Direito de Uso e Aproveitamento de Terra – translates as "right of use and benefit to land".

[ii] The Land Commission Delimitation Training Manual (Land Commission, 2000), although of no legal status, underlines the intended flexibility of the policy approach, stating that *the local community is that which functions in reality as a community in terms of the use and management of land and natural resources; the local community has its own customary institutions and rules regulating land access, and; the management institutions and their representatives are those which the community recognizes as existing and functioning.*

[iii] Decree 15/2000 of 20 June (Local Community – Forms of Participation in Public Administration) [Boletim da República (BR) № 24- Supp., Series I – 20 June 2000]

[iv] Ministry of State Administration Diploma 107-A/2000 of 25 August (Regulations of Decree 15/2000 – Local Community-Forms of Participation in Public Administration) [Boletim da República (BR) № 34- Supp., Series I – 25 August 2000]

[v] Simon Norfolk & Christopher Tanner (2007), "Improving Tenure Security for the Rural Poor - Mozambique Case Study", LEP Working Paper #5, Support to the Legal Empowerment of the Poor, Food and Agriculture Organisation of the United Nations, Rome, 2007.

[vi] Simon Norfolk, Mike Cheremshenskky & Sergiy Lizenko (2006), "Land Tenure Services: Final Report", Report for Millennium Challenge Corporation, International Land Systems/Chemonics, Maputo, Mozambique, 2006.

[vii] Implemented by the then DINAGECA (Direcção Nacional de Geografia e Cadastro - National Directorate of Geography and Cadastre - now DNTF).

[viii] The name accorded to those donors which have signed a MoU with the GoM regarding direct budget support.

[ix] The indicator (#34) was an absolute number ("No. of local communities delimited and registered in the Cadastral Atlas (REL)") and replaced a % indicator which instead measured the proportion of DUAT applications which were processed within a 90 day period.

[x] In the Memorandum of the first half-yearly review after the adoption of this new indicator, the parties noted: "Existe a necessidade de reformular o indicador de modo a estar em conformidade com artigo 35 do regulamento da Lei de Terras que foi recentemente aprovado. Em relação ao progresso este ano, foram delimitadas 31 áreas comunitárias, das quais 4 foram lançadas no atlas cadastral (correspondente a 66,570.91 ha) e as restantes 27 áreas estão a seguir os tramites legais. De referir que a meta de áreas comunitárias para o ano 2008 era de 242. Esta meta não é realística uma vez que desde o início do processo em 1998, até 2007 foram delimitados 246 comunidades em todo o País."

[xi] GoM/Programme Aid Partners, "AIDE-MÉMOIRE of the 2008 Joint Review" (para 107), Maputo, Mozambique.

[xii] Sergio Baleira and Christopher Tanner (2004), "Relatório final da pesquisa sobre os conflitos de terra, ambiente, e florestas e fauna bravia", Centro de Formação Juridica e Judiciária, FAO (Matola [Mozambique]), 2004

[xiii] Individual, private practice in the legal profession was prohibited for a period of time and the Law Faculty at Eduardo Mondlane University was closed between 1983 and 1987.

[xiv] See Articles 225 to 227 of the Constitution, 2004

[xv] Thomas Müller, Almeida Sitoe and Rito Mabunda (2005), "Assessment of the Forest Reserve Network in Mozambique", WWF Mozambique, Maputo, Mozambique, 2005.

[xvi] Christopher Tanner (2007), "Comments on the Implications of the Decentralisation Conference, CFJJ May 2005", in Kyed, Helene, Lars Buur and Terzinha da Silva (eds) (2007): State Recognition of Local Authorities and Public Participation: Experiences, Obstacles and Possibilities in Mozambique. Maputo, Centre for Legal and Judicial Training (CFJJ) and Uppsala, Nordic Africa Institute.