

Housing, Land and Property Mapping Project

Mozambique

Background

The following fact sheet and research memo have been developed to provide quick and key information of the legal and procedural context relating to Housing, Land and Property ("HLP") within the target country. They are intended to inform programming and emergency responses, especially those involving shelter interventions. A rapid understanding of the tenure landscape in each country context can assist in delivering stronger and more equitable responses. However these documents are not intended to be legal advice.

The HLP mapping project has been undertaken by the international law firm Webber Wentzel for the International Organization for Migration (IOM), using templates developed by the Australian Red Cross and the International Federation of the Red Cross and Red Crescent Societies (IFRC). All of the research has gone through a verification process with in-country lawyers and/or country experts.

Document Change Management

These documents are intended to be used and updated as necessary to ensure that they are always providing the most current and relevant information. We would appreciate ongoing feedback and updates from those working in country, in response or preparedness.

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Housing, Land and Property Law in Mozambique

2. KEY LAWS AND ACTORS

Laws	The Constitution of the Republic of Mozambique, 2004 (as amended in 2018) Land Act, no 19 of 1997 Land Law Regulations, Decree 66 of 1998 (as amended) The Technical Annex to the Regulations, 2000 Law No 19/2007 on Land Use Management Land Use Management Regulation approved by Decree no. 23/2008, dated 01 July, The Organic Status of Ministry of Land and Environment Resolution 30/2020 dated 06 May Decree no. 2/2020 dated 08 January (establishes the rules of organisation, competences and functioning of executive bodies of provincial decentralized governance) Urban Land Regulations, Decree no 60/2006 Civil Code approved by Decree-Law no. 47344, of 25 November 1966, which came into effect in Mozambique by Ordinance no. 22869, of 4 September. Updated by Decree-Law no. 3/2006, of 23 August Tenancy Law approved by Decree 43 525, dated 7 March 1961 Presidential Decree 1/2020 of 17 January Decree Law 2/2018 of 23 August Regulations for the Resettlement Process Resulting from Economic Activities, Decree 31/2012 of 8 August Ministerial Order No. 181/2010 regulating land expropriation procedures Law 15/2014 of 20 June, which establishes the management of natural disaster
Key government actors	The Ministry of Land and Environment ("MTA") is the competent authority responsible for land administration and land management. The National Directorate of Land and Territorial Development carries out many of MTA's functions in relation to land administration. The following government actors are involved in the registration of land rights: • Land and Environment Minister • Provincial Governor • Council of Ministers • Municipal councils It must also be noted that local community authorities and village chiefs, as well as local communities also play a key role in providing for land rights.
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3. COMMON TYPES OF TENURE

Land ownership is the exclusive right of the State. No one in Mozambique can own land. Local persons, communities, foreign individuals, and entities can hold a long term right of land use. Such right does not have to be registered to be recognised where it is acquired by occupancy by local communities and good-faith occupiers for 10 years. The fact that land rights do not have to be registered in these instances has resulted in the problem of the existence of "invisible rights." This is where a land right exists over land but because it has not been formally registered land administration authorities make the incorrect assumption that land is available when that is not the case. Such land will then be formally allocated to someone else, and often to foreign investors, which results in a dispute over the land.

The table below summarises the most common types of tenure in Mozambique.

Tenure	Commonly Registered?	Key Features	Title document
Ownership of land	No	Exclusive right of the state, established by the Constitution of the Republic of Mozambique incorporating all rights of ownership, as well as the power and the ability to determine the conditions of its use and benefit by individual or corporate persons ¹	N/A
Ownership of , infrastructures, structures and improvements	Yes	Immoveable possessions and benefits, i.e. structures and buildings, that are erected on land can be privately owned	Notarial Deed
Occupation	No	Form of acquisition of the right to land use and benefit ("DUAT") by national individual persons who have been using the land in good faith for at least ten years, or by local communities ²	N/A
Right to land use and benefit	Yes (authorisation) No (occupancy)	Individual or corporate person who holds the right to land use and benefit ("DUAT") under an authorisation or through occupancy ³	DUAT Certificate
Leasehold	No	A form of land or property tenure where one party to an agreement buys the right to occupy the land or building for a set duration A public deed is not required for the lease agreement to be valid	Lease agreement & public deed

¹ Defined as such in the Land Law.

² Defined as such in the Land Law.

³ Defined as such in the Land Law.

4. SECURITY OF TENURE OF VULNERABLE GROUPS

Women	By law, women are guaranteed the same degree of security of tenure as men. These rights are guaranteed under the Constitution, the Land Law and the Family Act, all of which have provisions which specifically refer to women to ensure their equal access to the provision of property and land rights. In practice, however, women are often still denied such land rights because of customary structures and inadequate oversight mechanisms over customary authorities.
Minority groups	Ethnic minorities (who are Mozambican citizens) enjoy a high security of tenure as they have a right to land use and benefit by occupation or by authorisation. Immigrants and stateless people do not enjoy similar rights to ethnic minorities as they cannot acquire land by good faith occupation. Immigrants and stateless people can only acquire a right to use and benefit of the land by way of application for state authorisation of such right. In order to apply for such right they must have an investment project that is duly approved and must have been resident in Mozambique for at least five years. These are high barriers to entry for immigrants and stateless people. Furthermore, the barriers to entry in the rental market are high due to its volatile and unregulated nature.
Informal settlements	Informal settlements are often situated on the urban fringe or in environmentally unsuitable locations. Informal settlements are characterised by a high degree of tenure insecurity. This is due to the fact that only the formal urban sectors have been regulated by the Urban Land Regulations and such regulations fail to take into account the characteristics of the informal sector. Many low-income persons who live in informal settlements are unaware of their rights and face barriers to entry such as unclear administrative processes, expensive applications and corruption within the land administrative entities.
Landless people	Landless persons who have occupied a territory in good faith for more than 10 years enjoy some security of tenure as they have a right to land use and benefit by occupation. This right to land use and benefit through occupation enjoys the same protection as a right to land use and benefit through occupation by a local community or through authorisation from the State to an individual or corporation. Under the Constitution all citizens are guaranteed the right to a suitable home.

5. EVICTION, EXPROPRIATION AND RELOCATION

Eviction	With regard to land, the State does not provide for eviction, only expropriation and resettlement. The Civil Code (provisions 1116 to 1053) and the Tenancy Law govern evictions in the real estate context, i.e. leased land or property. A lessee is offered significant protection under the Civil Code from being evicted from a house or land that they lease. A lessor does not have an automatic right to terminate a lease contract. A lessor can only initiate an eviction if the lessor wishes to live on the property or expand the property. If the lessor initiates the eviction then the lessee has to be compensated. Expiration of a lease can include where land has been expropriated for public benefit. The lessee has to be given sufficient notice in these circumstances and cannot be expected to leave immediately.
Expropriation	Expropriation of property and land is permitted by the Constitution, Law No 19/2007 on Land Use Management, the Land Law and its Regulations, the Land Use Management Law and the Civil Code. The manner in which expropriation takes place is governed by Ministerial Order No. 181/2010 regulating land expropriation procedures. Expropriation is only permitted for reasons of public interest, public need or public utility and is subject to prior and fair compensation to the owner of the property or land right. In order for the Government to

	expropriate land or property it must make a formal declaration with a motivation for the expropriation and documentary evidence of the assets to be expropriated.
Relocation	There are two sets of laws governing relocation (referred to as resettlement). The first relates to resettlement to make way for development projects and the second relates to resettlement as a result of national disasters or conflicts. Resettlement for economic purposes is regulated by the Resettlement Regulations, whereas resettlement due to disasters is governed by the government's disaster management policies and law 15 / 2014 of June 20 which provides for the management of natural and man-made disasters.

6. SHELTER CLUSTER KEY CONTACTS

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**HOUSING, LAND AND
PROPERTY MAPPING PROJECT
MOZAMBIQUE**

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Disclaimer

This report is the result of a desktop review of publicly available information. This report is not legal advice.

1. INTRODUCTION

1.1 Overview

The International Organization for Migration ("IOM") and its partners are first responders to humanitarian emergencies caused by conflict or natural disasters. Humanitarian assistance falls within IOM's mandate to support governments in addressing the needs of internally displaced persons ("IDPs").

The Australian Red Cross, with technical support from the International Federation of Red Cross and Red Crescent Societies, has provided the research template to which this memorandum responds. This memorandum comprises three main sections:

- The first section, entitled 'Common types of tenure', provides an overview of the different types of housing and land tenure in Mozambique. It outlines the methods used to create and transfer tenure, and analyses the degree of security of tenure afforded by each form of tenure.
- The second section, entitled 'Security of tenure of vulnerable groups', considers whether, and to what extent, certain groups face legal barriers to accessing land and housing.
- The third section, entitled 'Eviction, expropriation and relocation', considers Mozambican law which governs, or is applicable to, forced evictions, compulsory acquisition of land and relocations. This section also considers whether compensation is available in these situations.

1.2 Background information on Mozambique

Mozambique is located in Southern-East Africa with an estimated population of over 30 million.⁴ Mozambique's eastern coastline separates the borders of South Africa and Tanzania, while its western borderline is shared with a number of countries including Malawi, Zambia, Zimbabwe and eSwatini.⁵



⁴ National Statistics Institute, <http://www.ine.gov.mz/iv-rqph-2017/projeccoes-da-populacao-2017-2050/mocambique.xls/view>.

⁵ Penvenne J "Mozambique" < <https://www.britannica.com/place/Mozambique> > accessed June 19, 2020, at page 1.

Source: World Magazine https://world.wng.org/2020/06/brutal_and_brazen (accessed 7 July 2020)

Mozambique has a turbulent history marred by destructive colonialism and civil war. After gaining independence from Portugal in 1975, the Front for the Liberation of Mozambique ("**Frelimo**") took central control of the country, founding its government on the principles of Marxism and Socialism.⁶ During the government of Samora Machel, Mozambique's first president and leader of Frelimo, civil war broke out between Frelimo and the Mozambican National Resistance ("**Renamo**").⁷

International tensions at the time fuelled Mozambique's civil war, as the former Soviet Union and Cuba lay down financial and other support for Frelimo, while the United States of America, South Africa and the former Rhodesia lay down financial and other support for Renamo.⁸ Since the signing of the General Peace Agreement in 1992, which brought an end to the civil war, Mozambique's economy has struggled to revive itself, and the country remains one of the poorest in the world.⁹

The discovery of natural gas in Mozambique has, however, increased the countries prospective economic growth, and there is hope that this will contribute positively to the Mozambican economy.¹⁰ Mozambique's economy is primarily dependent on the agricultural sector, in terms of which sugar, cashews, cotton and timber are their main agricultural exports.¹¹

Mozambique's population is ethnically diverse, and the majority of the population falls into one of three main ethnic groups; being the Macua, the Tsonga and the Shona.¹² The remainder of the population is made up of a number of other smaller ethnicities and the ethnicity of most persons is largely characterised by the geographical area to which they were born. In some rural areas, there is also Islamic influence and certain villages subscribe to the precepts of Islamic law.¹³

The majority of Mozambique's population is of African origin and speak a range of languages including Portuguese (as its official language), Emakhuwa, Xichangana, Cinyanja, Cisená, Elomwe, Echuwabo, Cindau, and Xitswa.¹⁴ Mozambique has 10 provinces; and Maputo, the capital city, is the financial, corporate and commercial epicentre of Mozambique's formal economy.

Mozambique's legal system is based on Portuguese civil law and customary law. In 1990, Mozambique's current Constitution came into force, and has been amended since to allow for the decentralisation of power and for elected provincial assemblies.¹⁵ As Mozambique's legal system is largely civil based, with legislation deemed the primary source of law, case law does not have binding authority and is not considered a source of law.¹⁶

⁶ Penvenne J "Mozambique" < <https://www.britannica.com/place/Mozambique> > accessed June 19, 2020, as at page 1.

⁷ Penvenne J "Mozambique" < <https://www.britannica.com/place/Mozambique> > accessed June 19, 2020, as at page 1.

⁸ Momodu S "The Mozambican Civil War (1977 - 1992)" < <https://www.blackpast.org/global-african-history/the-mozambican-civil-war-1977-1992/> > accessed June 19, 2020.

⁹ "The World FactBook: Mozambique" < <https://www.cia.gov/library/publications/the-world-factbook/geos/mz.html> > accessed June 19, 2020.

¹⁰ Maritz J "Why Mozambique's gas discovery is a big deal" < <https://www.howwemadeitinafrica.com/why-mozambique%E2%80%99s-gas-discovery-is-a-big-deal/15603/> > accessed June 19, 2020.

¹¹ "City Profile: Mozambique" < <https://www.urban-pathways.org/maputo.html> > accessed June 19, 2020.

¹² USAID, "USAID Country profile: Property rights and resource governance: Mozambique," (2011) at page 5.

¹³ The World FactBook: Mozambique" < <https://www.cia.gov/library/publications/the-world-factbook/geos/mz.html> > accessed June 19, 2020.

¹⁴ The World FactBook: Mozambique" < <https://www.cia.gov/library/publications/the-world-factbook/geos/mz.html> > accessed June 19, 2020.

¹⁵ African Democracy Encyclopaedia Project "Mozambique: Constitution" < <https://www.eisa.org.za/wep/moz5.htm> > accessed June 23, 2020.

¹⁶ Rainha P "Republic of Mozambique - Legal System and Research" < https://www.nyulawglobal.org/globalex/Mozambique.html#_2.1.1_Legislation > accessed June 19, 2020.

2. Common types of tenure

2.1 Tenure typologies

(a) What are the key pieces of legislation governing housing, land, building and planning? Please provide links to copies of the legislation.

The key pieces of legislation governing land, housing, building and planning are:

- The Constitution of the Republic of Mozambique, 1990 (as amended in 2004) (the "**Constitution**")
- Land Act, no 19 of 1997 ("**Land Law**")¹⁷
- Land Law Regulations, Decree 66 of 1998 (as amended) ("**Regulations**")¹⁸
- The Technical Annex to the Regulations, 2000 ("**Technical Annex**")
- Law No 19/2007 on Land Use Management ("**Land Use Management Law**")
- Land Use Management Regulation, approved by Decree no. 23/2008, of 1 July ("**Regulations to the Land Use Management Law**")
- Decree no. 2/2020 dated 08 January (establishes the rules of organisation, competences and functioning of executive bodies of provincial decentralized governance)
- Urban Land Regulations, Decree no 60/2006 ("**Urban Regulations**")¹⁹
- Civil Code approved by Decree-Law no. 47344, of 25 November 1966, which came into effect in Mozambique by Ordinance no. 22869, of 04 September. Updated by Decree-Law no. 3/2006, of 23 August ("**Civil Code**")²⁰
- Tenancy Law approved by Decree 43 525, dated 7 March 1961 ("**Tenancy Law**")
- Presidential Decree 1/2020 of 17 January²¹ ("**Decree establishing MTA**")²²
- The Organic Status of Ministry of Land and Environment Resolution 30/2020 dated 06 May ("**MTA Decree**")
- Decree Law 2/2018 of 23 August ("**Land Registry Code**")
- Regulations for the Resettlement Process Resulting from Economic Activities, Decree 31/2012 of 8 August ("**Resettlement Regulations**")
- Ministerial Order No. 181/2010 regulating land expropriation procedures ("**Expropriation Law**")

¹⁷ We note that the Land Law is in Portuguese and we have been unable to access any formal government translation of the Act. Therefore we have relied on translations of the Act. For this reason, we have not provided any direct quotations of what the provisions provide. We have relied on the translations in Frey, A "Land Law Legislation" (MozLegal, 2004) at page 84.

¹⁸ We note that the Land Law Regulations is in Portuguese and we have been unable to access any formal government translation of them. Therefore we have relied on translations of the Act. For this reason, we have not provided any direct quotations of what the provisions provide. We have relied on the translations in Frey, A "Land Law Legislation" (MozLegal, 2004) at page 84.

¹⁹ Please note that we have been unable to access an English translation of these regulations and so all analysis of them is taken from secondary sources.

²⁰ Please note that we were not able to course a formal translation of the Civil Code and so have relied on google translate.

²¹ The researchers were unable to source this law.

²² The researchers were unable to source this law.

- Law 15/2014 of 20 June, which establishes the management of natural disaster ("**Disaster Management Law**")

(b) **What types of tenure exist?**

The table below provides the types of tenure in Mozambique:

Tenure Type	Description
Ownership of land	Exclusive right of the state, established by the Constitution of the Republic of Mozambique incorporating all rights of ownership, as well as the power and the ability to determine the conditions of its use and benefit by individual or corporate persons. ²³
Right to land use and benefit	Individual or corporate person who holds the right to land use and benefit (DUAT) under an authorisation or through occupancy. ²⁴
Occupation	Form of acquisition of the right to land use and benefit (DUAT) by national individual persons who have been using the land in good faith for at least ten years, or by local communities. ²⁵
Ownership of , infrastructures, structures and improvements	Immoveable property and benefits, i.e. structures and buildings that are erected on land can be privately owned.
Leasehold	A form of land or property tenure where one party to an agreement buys the right to occupy the land or building for a set duration.

(iii) Ownership of land

There is no ownership of land by private persons or private entities in Mozambique. Land and its associated resources are the property of the State. Such ownership by the State is provided for in the Constitution. Article 109 provides that all ownership of land shall vest in the State. Land may not be sold or otherwise disposed of, nor may it be mortgaged or subject to attachment.

The Land Law, at article 3, reinforces article 109 of the Constitution by stating that land is owned by the State and cannot be sold or otherwise alienated, mortgaged or encumbered.

(iv) The right to the use and benefit of the land

Article 109(2) of the Constitution importantly provides that as a universal means for the creation of wealth and of social wellbeing, the use and enjoyment of land shall be the right of all the Mozambican people. Article 110 of the Constitution provides for the use and enjoyment of land. Article 110(1) provides that the State shall determine the conditions under which land may be used and enjoyed and article 110(2) further provides that the right

²³ Defined as such in the Land Law.

²⁴ Defined as such in the Land Law.

²⁵ Defined as such in the Land Law.

to use and benefit from land shall be granted to individual or corporate persons, taking into account its social or economic purpose. Article 111 of the Constitution provides that when the State grants titles for the use and enjoyment of the land, it shall recognise and protect rights acquired through inheritance or by occupation, unless there is a legal reservation of the land has been lawfully granted to another person or entity.

While there is no ownership of land, the Land Law grants private persons, communities and entities long term or perpetual rights to use and benefit from the land known as *Direito do Uso e Aproveitamento da Terra* (also referred to as a "**DUAT**"). DUAT for the purpose of economic activities is subject to a maximum period of 50 years renewable for equal period at the request of the interested party. However, the DUAT is not subject to a term for own housing purposes, intended for family use exercised by national natural persons and when acquired by occupation by local communities.

This right of land use and benefit is acquired by one of three ways, under article 12 of the Land Law:

- occupation by individual persons and by local communities,²⁶ according to the customary norms and practices that do not conflict with the Constitution;
- occupation by individual national persons that, in good faith, have been using the land for at least ten years. This is only for Mozambican citizens, and it gives a definitive right only if there is no third party manifestation of a declared and legally recognized interest over the land in question; or
- authorisation of an application submitted by an individual or corporate person in the manner established by the Land Law. An application is made to government land administrators, which may then allocate 50-year leasehold rights, after consultation and approval by the community within which the land requested is located. This mechanism is the only route open to foreigners and to national and international companies.

The land right has the same legal status, regardless of whether it is acquired under customary terms, good faith occupancy, or public application and consultation. In all of the above three cases, it is a private right and holders can exclude third parties.²⁷

The Land Law provides both national (article 10) and foreign persons (article 11) the right of use and benefit of land. Article 17 of the Land Law provides that the duration of a right of use and benefit of land for purposes of economic activities is subject to a maximum term of 50 years, renewable for another 50 years at the request of the interested party. Once the 100 years has run its course, a new application for the right will have to be submitted.

There is no time limit for the right of use and benefit of land that is:

- where the right was acquired by local communities through occupancy;
- where it is intended for personal residential purposes;
- where national individual persons intend it for family use.

Accordingly, national individual and corporate persons, men and women, as well as local communities may be holders of a DUAT. Such right can be obtained individually or jointly. The right of use and benefit of land belonging to local communities adheres to the principles of joint title holding, for all purposes of the Land Law.

²⁶ Local community is described in the Land Law as a group of families and individuals, living in a circumscribed territorial area at the level of locality or below, which aims to safeguard the common interests through the protection of areas of habitation, agricultural areas, whether cultivated or fallow, forests, sites of cultural importance, pastures, water sources and areas of expansion.

²⁷ Knight, R "Statutory recognition of customary land rights in Africa: An investigation into best practices for lawmaking and implementation" (2010) at page 108.

In terms of article 11 of the Land Law both individual and corporate foreign persons can be holders of land use and benefit, provided that they have an investment project that is duly approved. Foreign individuals must have resided in the Republic of Mozambique for at least five years and corporate foreign persons must be established and registered in the Republic of Mozambique.

Under the Land Law the right of use and benefit of the land may be lost in four circumstances:

- failure to carry out the investment plan in connection with the DUAT that was issued;
- revocation for reasons of public interest;
- expiration of the term of use; or
- renunciation by the titleholder.

(v) Ownership of constructions on land

Article 91 of the Constitution provides the following:

1. *All citizens shall have the right to a suitable home, and it shall be the duty of the State, in accordance with national economic development, to create the appropriate institutional, normative and infra-structural conditions.*
2. *The State shall also be responsible for funding and supporting the initiatives of the local communities, the local authorities and the people, in order to promote private and co-operative construction as well the accessibility of home ownership.*

Although the land itself cannot be sold, mortgaged or alienated in any way, buildings, infrastructure and benefits built on land may be mortgaged and sold.²⁸

Private individuals are entitled to own the structures or buildings that exist on land. Article 82(1) of the Constitution provides that the State shall recognise and guarantee the right of ownership of property. Article 82(2) further provides that expropriation may take place only for reasons of public necessity, utility, or interest, as defined in the terms of the law, and subject to payment of fair compensation.

Ownership of a house in the formal sector exists as a freehold right to the house. The freehold right to the house exists concurrently to the leasehold right that the owner has over the land on which the house is situated.²⁹

In the case of urban housing, where ownership of a building is transmitted between individuals or entities, the right to the use and benefit of the land is transmitted automatically (article 16(4) of the Land Law). Furthermore, the titleholder of the right of land use and benefit may mortgage the immovable assets and improvements which he / she has duly been authorised to make on the land or which he / she has legally acquired a right of ownership over (article 16(5) of the Land Law).

In the case of rural housing, where a sale takes place, the right to the use and benefit of the land does not transmit automatically and authorisation by the State is required.

Where a benefit or construction exists that cannot be removed at the termination of the right of use and benefit of land, such benefits revert to the State (article 18(2) of the Land Law).

²⁸ Kathrada, Z "Acquiring land rights in Mozambique," (26 August 2014)

<<https://www.financialinstitutionslegalsnapshot.com/2014/08/acquiring-land-rights-in-mozambique/>> accessed 18 June 2020.

²⁹ United Nations Human Settlements Programme "Land Tenure, Housing Rights and Gender in Mozambique" [2005] <https://issuu.com/unhabitat/docs/2138_alt> accessed June 19, 2020, as at page 44.

(vi) Leasehold

Under Mozambican law land cannot be leased. However, immovable assets (buildings, infrastructure and other constructions improving the relevant land) can be leased. When leasing an immovable asset, the land on which it is built and which is not directly leased is also under the lease and follows the lease.

The Civil Code provides for the laws that must be adhered to between lessors and lessees. It provides for general provisions of leases, as well as leasing of rural and urban property specifically.

General provisions

Article 1023 provides that leasing is called leasing in relation to immovable property and renting in relation to moveable property. Article 1025 provides that a lease cannot be concluded for more than 30 years. If a lease is stipulated for a longer period, or as a perpetual contract, it is considered reduced to that limit.

The lessor's obligations, according to the civil code, include, to:

- deliver the leased thing and assure the lessee that it is fit for the intended purpose (article 1031);
- ensure that the leased thing does not have a defect that does not allow the lessee full enjoyment out of the thing (articles 1032 and 1033); and
- make the necessary repairs timeously (article 1036).

The lessee's obligations are set out in article 1038 of the civil code:

- pay the rent;
- give the lessor access when he needs to examine the leased thing;
- use the leased thing for the purpose for which it is intended;
- allow urgent repairs as well as works ordered by public authority on the leased thing;
- not sub-let, unless allowed for in the lease agreement;
- notify the landlord within 15 days of becoming aware of any defects to the thing or of any known threat by third parties;
- maintain and return the leased thing in the state in which it was received, except for fair wear and tear.

Payment of rent must be made on the last day of the contract period (article 1039). If the lessee suffers deprivation or reduced enjoyment of the rented thing, due to no fault of the lessor or the lessor's family, there will be a reduction in rent or rent proportional to the time of deprivation. If the reduced enjoyment is not the fault of the lessor or the lessor's family, the reduction will only take place in the event that one or the other exceeds one sixth of the duration of the contract (article 1040).

If the lessee is in default, the lessor has the right to demand, in addition to rent or arrears, compensation equal to double what is due, unless the contract is terminated on the basis of a lack of payment. The right to compensation or termination of the contract ceases if the tenant terminates the delay within eight days from the beginning (article 1041). A deposit can be used to cover rental arrears (article 1042). The termination of the contract based on the tenant's failure to comply must be ordered by the court (article 1047). The lessee can terminate the contract if he/she is deprived of his enjoyment of the thing, not due to the fault of the lessee or his/her family, even if only temporarily or if a defect exists in the leased thing that endangers the life or health of the lessee or his/her relatives.

A lease expires in the following circumstances (article 1051):

- after the period stipulated or established by law;
- in the event of the dissolution of the lessor's marriage or judicial separation of persons and property, if the thing leased is of (endowment) dotal nature, even if there is a grant or consent from the woman;
- upon the death of the lessee or, in the case of a legal person, by its extinction, unless written agreement to the contrary;
- in the event of expropriation for public benefit, unless the expropriation is compatible with subsistence of the contract.

Rural rental

Technically, the land itself cannot be leased, but in practice there is an assignment of exploitation (transfer of land to develop a specific activity) which can be compared with lease of land.

A rural lease, in terms of the Civil Code, is the leasing of rustic buildings for agricultural, livestock or forestry purposes. The following provisions specifically provide for these types of leases and where they contradict the general provisions above, the specific rural provisions will prevail (article 1064).

Rural leases cannot be concluded for less than six years unless a shorter period is explicitly agreed to. If neither party ends the lease then it will be renewed three years' at a time. Leases for forestry purposes may be entered into for a maximum period of 99 years; if longer terms are agreed, they will be reduced to that limit (article 1065).

Rent does not have to be paid in money. Rent can be, for example, a share of the fruits produced by the tenant (article 1067). When, for unforeseeable or fortuitous causes, such as floods, extraordinary droughts, cyclones and natural pests, the rented property produces no fruits or only half of what it would normally produce, the tenant is entitled up to a 50% reduction in rent. However, the lessor has the right to terminate or modify the contract if the productive capacity is permanently affected. (article 1069).

The lessor and lessee may both make temporary improvements to the building, which are not detrimental to its intended use; and failure to maintain a building is a ground for terminating the lease (articles 1073 to 1075).

A rural lease does not expire upon the death of the tenant, if he leaves a spouse or descendants who, inhabiting or cultivating the leased building, want to keep the contract, or if the lease is intended for forestry. Lease expiry, in the absence of the above

circumstances, depends on the termination of the contract by the lessor within three months of the tenant's death (article 1076).

Total subleasing of rural leases is prohibited but partial subleasing is allowed, when authorised by the lessor (article 1078).

Rental of urban buildings

This section applies to the rental of urban buildings and rustic buildings not included in the rural rental provisions. The general provisions apply where they do not conflict with the below provisions (article 1083).

If the contract involves an urban part and a rustic part, the lease is only considered urban if the urban part is of superior value to the rustic (article 1084).

If a contract is based on an urban building, a tenant can only use it for the purpose of housing (article 1086). Where no agreement is in place, the lease term will be six months (article 1087).

If a lease validly exists but not have a written title, the lessee can only prove the existence of a contract with an income receipt (article 1088).

The lessor can terminate the lease under various circumstances, including (article 1093):

- if the tenant does not pay the rent at the proper time or place;
- If the tenant uses or allow others to use the building for a purpose other than what is intended;
- if the building is used, repeatedly or habitually, for illicit, immoral or dishonest practices;
- if substantial alterations have been made without the lessor's written consent; and
- If the building is uninhabited for more than one year, consecutively; or, if the building is intended for housing, but does not have a permanent resident in it.

If the lessee dies, and there is a spouse and/or direct blood relatives who lived with him for at least a year and/or direct blood relatives who lived with him for at least a year, the lease does not expire.

(c) **Which, if any, of these types of tenure provide a high degree of security of tenure?**

(i) The right to the use and benefit of the land ("DUAT")

As land cannot be owned by anyone but the State, the highest form of security of tenure that a person can have in Mozambique is by way of a right of land use and benefit.

By law, whether such right is acquired by occupation (by way of good faith occupation for more than 10 years or by a local community practicing customary laws) or by authorisation from the state, it enjoys the same legal status.

The DUAT has no deadline when it is granted for housing, family exploitation and community occupation and thus has a high degree of security of tenure. On the other hand, when investors meet for the benefits under the terms of the Investment Law, the State offers special protection. Where a DUAT is granted by the State for economic

purpose, the duration of that right is 50 years, renewable for a further 50 years, after which a new request must be submitted.

(ii) Ownership of constructions on land

In relation to ownership of constructions and benefits on land, the degree of security of this type of tenure is somewhat limited because when the right of land use and benefit expires; the immovable property attached to the land will revert to the State.

(iii) Leasehold

The laws relating to lease agreements are generally fair and provide for reasonable security of tenure. However, the security of tenure for the lessee in a lease agreement is never particularly high.

It is noteworthy, though, that in terms of rural lease agreements that are entered into for commercial purposes, such as farming crops of fruit, the civil code provides for instances of natural disaster and offers protection to the lease in the form of compensated for his / her loss.

(d) **How does tenure differ between urban and rural areas? If possible, please provide statistics about the prevalence of each type of tenure in urban and rural areas.**

(i) The transfer of the DUAT according to urban and rural tenements

The concept of rural and urban is formally incorporated into the Land Law and associated regulations in relation not to areas, but to the type of building or as it is referred to, "tenement".

The Regulations make a distinction between the type of structures on land and whether they are urban tenements or rural tenements:

- The Regulations describe an urban tenement as a building incorporated on the land, with the grounds that serve it, where the source of income depends principally on the existing structures and not on the land itself.
- The Regulations describe a rural tenement as a demarcated portion of land and the structures on it that have no independent economic use or value, where the source of income depends principally on the land itself, while the structures are there to support the exploitation of the land.

The purchase and sale of infrastructure and improvements located on rural tenements does not imply the automatic transfer of the right of land use and benefit. The transfer of a rural tenement is subject to approval by the same entity that authorised the application for the right to use and benefit of the land. An application for transfer shall be submitted beforehand to the cadastre services, together with proof of payment of annual fees and proof of fulfilment of the exploitation plan, where applicable (article 15 of the Regulations).

Conversely, when an urban tenement is transferred, the right of ownership of the property implies the automatic transfer of the right to use and benefit of the land (article 16 of the Regulations). The transfer of an urban tenement owned by an individual or corporate person does not require prior authorisation by the State.

(ii) Property laws specific to rural areas

No formal distinction is made in the Land Law regarding rural and urban areas. However the Regulations and the Technical Annex were created to apply to rural land. Urban areas are generally governed by the land laws in the municipalities in which they are located, whereas rural areas are governed by land laws in the Regulations.

In the context of communities who acquire a right to the use and benefit of the land by practising local customs, a process for demarcating their land is necessary. Such process

only applies in terms of rural, and not urban, land. Community delimitation is the titling and registration process whereby a local community proactively defines itself. Such a process is important especially where there are competing claims between neighbouring communities over certain land and natural resources or where the state and / or investors intend to initiate new economic projects or development projects in an area in which a local community resides. The delimitation process relies heavily on testimonial evidence provided by community members and neighbouring communities. The Technical Annex sets out the necessary procedures a community must complete before receiving an official delimitation certificate (article 5(1) of the Technical Annex). Delimitation, which is the identification of the areas occupied by the local communities that includes the record of information in the land cadastre delimitation process, is discussed in detail at section 2.2(a)(iv) below.

In reality, the majority of people living in rural areas do not own a registered DUAT, as the application for applying for such a right is long and expensive (as will be explored further below).

(iii) Property laws specific to urban areas

The overall urban land market is not an organised market with a focal point for buying and selling, but the aggregation of numerous transactions that involve many different types of land plots and constructions. The market is unregulated, lacks free competition and encourages speculation.³⁰

The Urban Regulations were introduced in order to strengthen and encourage regularisation of land occupation in urban areas. The Regulations established that urbanisation is a pre-requisite for attributing land use rights in cities and towns. Urbanisation in this sense does not translate very clearly from Portuguese but refers to "upgrading, and demarcation and planning". In urban areas with an organised land cadastre, access to land is regulated by municipal ordinance (posture) or a DUAT conceded by the district administration.

In respect of the Urban Regulations, a DUAT will only be issued for an area which has been identified as an urbanisation area and has a territorial plan (structure plan) which sets out urban facilities and roads. There are three plans that need to be in place before a DUAT can be registered under the Urban Regulations:

- structuring plan / master plan;
- partial / adjusted urbanisation plan; and
- a detailed plan.³¹

The Urban Regulations have been developed from a technical standpoint in that they only recognise areas with an urban plan, i.e. formal urban areas and require the intervention of formal survey and planning before rights of occupation can be acknowledged.

The Urban Regulations seem to miss a key fact about the urban property and land markets - they ignore current practices in informal urban areas.³² This is despite the fact that access

³⁰ Development Workshop & Forjaz Associate Architects "Chapter 6: Urban Land Management and Low Income Housing Study" in *Urbanization and Municipal Development in Mozambique* for the World Bank & Development Planning Unit (2008), at section 4.3.

³¹ Urban LandMark "Tenure Security Facility Southern Africa Project: Incrementally securing tenure in urban and peri-urban Mozambique: an exploration of the evidence base and strategy proposals" (2013) at page 13 and 14.

³² Development Workshop & Forjaz Associate Architects "Chapter 6: Urban Land Management and Low Income Housing Study" in *Urbanization and Municipal Development in Mozambique* for the World Bank & Development Planning Unit (2008), at section 4.2.

to land is usually achieved through informal mechanisms such as allocation by local levels of the city administration, inheritance, ceding within families, swapping, or outright sale.³³

Relatively few people transfer land use rights on the formal land market. In urban areas many people are unaware of the requirement that land transactions have to be registered. The cost of registering transactions is also high and the process is cumbersome. In formal urban areas, only the elite and business people have the knowledge and finances to register land in both formal and informal urban areas but the same is not true of low-income groups.

The informal market in land use rights is active in urban and peri-urban areas. Individuals with DUAT's or informal rights evidenced by sales agreements transfer all or some portion of their rights through rental agreements, loans and subdivisions. Those with assets buy plots, secure their rights through construction of a substandard house or building and then sell the plot for a higher price. An informal market to the same extent does not exist in agricultural land.³⁴

Allocation of land by the state only happens in very limited areas of urban expansion (or as an emergency response, such as for flood victims). Thus, such land allocation is usually reserved for rural areas. Simple occupation and customary land allocation are frequent around the smaller cities, while the market in land is important in the suburban areas and green belts around the major urban centres such as Maputo and Matola.³⁵

(e) **What are the main government and non-government bodies (e.g. representative bodies) that administer or deal with housing, land and property?**

In Mozambique a distinction is made between land administration and land management functions:

- land administration concerns the recognition and allocation of DUATs and the maintenance of information about rights to land, land use and the value of land; and;
- land management concerns guidance on uses of land as a resource from environmental, social and economic perspectives. This includes land use and urban planning and territorial planning.

These two land governance functions are distributed across a range of government entities, which forms a complex governance framework with overlapping responsibilities which often results in contradictory decision-making creating haphazard implementation of land policy and legislation.³⁶

In 2020 the Ministry of Land and Environment ("MTA") was established by the MTA Decree, with the purpose of coordinating, controlling and ensuring the implementation of policies for the administration and management of Earth and Geomatics, Forests and Wildlife, Environment, and Conservation Areas.

Land administration and management is specifically mentioned as one of MTA's functions in article 2 of the MTA Decree. Article 3 provides for MTA's authority in terms of land administration and management, as follows:

³³ Development Workshop & Forjaz Associate Architects "Chapter 6: Urban Land Management and Low Income Housing Study" in *Urbanization and Municipal Development in Mozambique* for the World Bank & Development Planning Unit (2008), executive summary para 4.

³⁴ USAID, "USAID Country profile: Property rights and resource governance: Mozambique," (2011) at page 10.

³⁵ Development Workshop & Forjaz Associate Architects "Chapter 6: Urban Land Management and Low Income Housing Study" in *Urbanization and Municipal Development in Mozambique* for the World Bank & Development Planning Unit (July 2008), at section 4.3.

³⁶ Cabral, L and Norfold, S, "Inclusive Land Governance in Mozambique: Good Law, Bad Politics?" (2016) at page 18.

- Propose the approval of legislation, policies and development strategies in the land area;
- Ensure the preparation, implementation and inspection of spatial planning instruments;
- Establish and implement the rules and procedures for administration, licensing, inspection and monitoring of land use and exploitation;
- Regulate and coordinate geometric engineering activities and areas for purposes;
- elaborate, manage, update and disseminate information and geo-cartographic standards;
- Propose policies, legislation and standards for land administration, geomatics and land use planning;
- Develop and implement the national land registry and the land information system including the rights of occupation in good faith and community land;
- Propose and implement norms and procedures for the exercise of sworn surveying activities.

Land administration

Within MTA, the National Directorate of Land and Territorial Development ("DNTDT") is one of the key departments for land policy and is responsible for the national cadastral system. It also performs land management functions by liaising with other sectors and stakeholders on land use issues.

Chapter V of the Land Law provides for powers and responsibilities of land administration. Article 22 provides for the persons who exercise powers in areas not covered by urbanisation plans, which include the following:

- The Provincial Governor, who is authorised to:
 - Authorise applications for land use and benefit for areas that do not exceed 1 000 hectares;
 - Authorise special licences in partial protection zones;
 - Issue opinions regarding applications for land use and benefit in areas that fall within the competence of MTA.
- MTA Minister,³⁷ who is authorised to:
 - Authorise applications for land use and benefit for areas that are between 1 000 and 10 000 hectares;
 - Authorise special licences in total protection zones;
 - Issue opinions regarding applications for land use and benefit regarding applications that exceed his competence for approval.
- The Council of Ministers, who are authorised to:
 - Authorise applications for land use and benefit in areas which exceed the competence of MTA (above 10 000 hectares) provided they are within a land use plan or could be integrated in a land use map;
 - Create, modify or extinguish total or partial protection zones;
 - Decide on the use of the bed of territorial waters and the continental platform.

Article 23 of the Land Law provides that in areas that are covered by urbanisation plans, Presidents of Municipal Councils and Settlement Councils and, where there are no municipal structures, District Administrators, have the competence to authorise applications for land use and benefit, provided they have public cadastre services.

Rural communities also play a key role in land administration processes. Article 24 of the Land Law provides that in rural areas the local communities participate in the following:

³⁷ We note that in the land law this refers to the Ministry of Agriculture and Fisheries. However, as explained above, this role was taken over by MTA.

- the management of resources;
- the resolution of conflicts;
- the process of titling (as established in article 13(3) of the Land Law) - communities have a role in the no-objection to DUAT requests and in negotiating terms and conditions with DUAT applicants; and
- the identification and definition of boundaries of the land that the communities occupy, i.e. the land delimitation process.

Over and above the Land Law, Decree 35/2012 recognises the powers vested in local community authorities and the rules of collaboration between these and local state bodies.³⁸

Land Management

Other key land management entities, involved in land use planning for investments in economic activities, include:

- the Ministry of the Economy and Finance;
- the Investment and Export Promotion Agency (APIEX);
- the Ministry of Agriculture and Food Security (MASA);
- the Ministry of Natural Resources and Energy; and
- the Ministry of Public Works and Housing and Water Resources.³⁹

Local communities also play a role in land management. They are entitled to funds to support local development initiatives, including the earmarked allocation of taxes from forestry and mining concessions. Decree 35/2012 reiterates the right of participation by local communities in the preparation and approval of any economic projects and plans which may affect their rights.⁴⁰

The Judiciary and paralegal actors

The land administration authorities deal with DUAT concessions and land conflicts. Community courts, staffed by elected community members, are separate from the formal judiciary system and deal with local land disputes by applying a mix of formal law and customary law and other principles. In many areas traditional authorities are also called upon to mediate or resolve land conflicts. Only in extreme circumstances are disputes referred to the formal courts.⁴¹

2.2 Documenting tenure

(a) What statutory instruments or legal documents (e.g. title deeds or leases) are used to create or transfer tenure?

The table below identifies various statutory instruments which are required for the application and creation of interests in land.

Statutory Instrument	Description
Public Property register	Register of rights held over property, including leasehold rights and ownership rights. The land register is intended as a public record of ownership rights and real estate rights' transactions.

³⁸ Cabral, L and Norfold, S, "Inclusive Land Governance in Mozambique: Good Law, Bad Politics?" (2016) at page 19.

³⁹ Cabral, L and Norfold, S, "Inclusive Land Governance in Mozambique: Good Law, Bad Politics?" (2016) at page 18 - 19.

⁴⁰ Cabral, L and Norfold, S, "Inclusive Land Governance in Mozambique: Good Law, Bad Politics?" (2016) at page 19.

⁴¹ Cabral, L and Norfold, S, "Inclusive Land Governance in Mozambique: Good Law, Bad Politics?" (2016) at page 19.

	Registration in the register is applicable to a number of situations, including the DUAT.
Title	Document issued by the relevant cadastre services confirming the right to use and benefit the land (DUAT). The title will include any transfer of the DUAT.
Public notarial deed	Used for titleholders of a DUAT to transfer, between living people, infrastructures, structures and improvements existing on the land.
Servitude	A right of way through the land to which another person holds the right of use and benefit.
Permanent Land Registration Certificate	An electronic certificate which provides the registrations in force and the pending filings relating to the property described on the electronic platform.
Special license	Document that authorises the fulfilment of any economic activities in the zones of total or partial protection.
Urbanisation Plan	Document which establishes the organisation, design, concept and boundaries of urban perimeters, as well as occupancy parameters and building plans, properties to be protected, areas destined for installation of equipment, open spaces and schematic diagrams for road networks and principal infrastructure.
Land Use Plan	Document which is approved by the Council of Ministers, with the purpose of providing in an integrated manner, the general and sectoral development guidelines for a specific geographical area.
Exploitation plan	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.
Participatory Map	A map drawing designed by an interest group of the community, namely men, women, young people, elders and others, which shows in an informal way the permanent natural or man-made landmarks used as boundaries, the identification and location of natural resources, reference points where conflicts regarding natural resources take place or any other boundaries or relevant features.
Cartogram	An approximate graphic representation regarding the location of the area, containing topological information and other details indicated on the participatory maps, which is a result of consensus being reached by the community on all the various participatory maps drawn.
Sketch	The diagram on a conventional scale representing the configuration of a parcel of land containing drawn or written

	references enabling it to be located in the Cadastral Atlas including, when necessary, the geo-referencing of points and/or boundary lines that are not visible on existing topographical maps. The sketch is always accompanied by a descriptive report.
Descriptive report	Written information regarding the description of the boundary points; boundary lines and existing servitudes. The descriptive report is always accompanied by a sketch.
Delimitation certificate	A certificate that specifies the parameters of the land to which a local community has the right of use and benefit.
Lease agreement	A contract by which one party undertakes to provide the other with the temporary enjoyment of a thing, in exchange for payment. ⁴²
Public deed	A document formally registering a lease agreement.
Contract of assignment of exploitation	The contract that governs the assignment of exploitation of rural land. The contract will include the area covered by the assignment contract, including geographical coordinates, the duration of the contract, the respective value, if determined, the rights of the transferee and the obligations of the right of use over the land, as well as any restriction or charge.

The Integrated Land Registry System under the Land Registry Code

In 2018 a new the Land Registry Code was passed to modernise and increase the efficiency and effectiveness of land registration. It implemented an electronic platform in the registries and notarial offices, as a way of providing services that are closer to citizens and businesses.⁴³ As the computerisation of all notarial and registration information will be gradual (which is specifically provided for in article 4 of the Land Registry Code), the physical log book system remains in place until full computerisation has taken place (article 5 of the Land Registry Code).⁴⁴ The Land Registry Code provides detailed instructions as to how entries should be made in these log books.

The Land Registry Code has created an electronic form of a land registration certificate called the Permanent Land Registration Certificate, which can be requested by an interested party. The Permanent Land Registration Certificate, which is valid for 6 months, one year or two years, as requested by the interested party, and is made available upon the payment of a fee⁴⁵, is proof of the rights registered on the land..

Title for the right to land use and benefit

(i) What is a title?

⁴² This is the description provided for leasing in Article 1022 of the Civil Code.

⁴³ Abdala, A and Chirindza, N, "The New Mozambique Land Registry Code," (2019) at page 1.

⁴⁴ Abdala, A and Chirindza, N, "The New Mozambique Land Registry Code," (2019) at page 2.

⁴⁵ Abdala, A and Chirindza, N, "The New Mozambique Land Registry Code," (2019) at page 3.

A title confirms a person, community or entity's right of use and benefit of land. A title will be granted by the general (rural) or urban Public Cadastre Services.

In terms of titles granted to local communities, the titles shall be issued in the name of the community, which name shall be decided upon by the Community. The community will receive a certificate of such title. Individuals belonging to a local community may request individual titles, after the particular plot of land has been partitioned from the relevant community land (articles 13(4) and 13(5) of the Land Law, respectively).

(ii) Registration requirements of a DUAT

Article 13 of the Land Law provides for a title to be granted for the use and enjoyment of the land. Article 14 of the Land Law provides that the formation, modification, transmission and termination of the right of use and benefit of land is subject to registration.

Rights to land use and benefit that are authorised by the State are registered through the application process (discussed below). However, it is not compulsory to register occupancy-based DUATS. Interestingly, the absence of title or lack of registration does not prejudice the right of use and benefit of land acquired by occupation by individual persons and by local communities, according to the customary norms and practices and occupation by national individual persons that, in good faith, have been using the land for at least ten years (article 13(2) and 14(2) of the Land Law).

The Land Registry Code provides for a new way for registration to take place. Applications for registration can be made in person, by post or electronically on the centralised website. In-person registration applications must be submitted in the registry office either orally or by filling in a form. The application must be accompanied by the necessary supporting documentation (expanded on below) and the immediate payment of any fees that are due. The Land Registry Code sets out the procedure for online applications.⁴⁶

If the occupation is challenged, the occupant must provide proof of customary or long-term occupancy. Such proof may be in documentary form or introduced by the oral testimony of other community members. Registration can be done on the initiative of the titleholders.

Article 20 of the Regulations was amended by Decree no 1 of 2003 of 18 February. This provides for the registration of a DUAT, which are subject to registration with the Conservatories of the Land Registry and at the initiative of the holder.

It is advisable that such registration does take place where a DUAT by occupancy exists. Although unregistered rights obtained by custom are legally recognised, unregistered land rights acquired by occupation are "invisible" on official maps and government officials may then be unaware of the existence or the extent of the rights held by a communities and individuals. The increasing demand for land by investors makes these "invisible" rights vulnerable to allocation to third parties by the State.⁴⁷

(iii) Application procedure for the right to land use and benefit

The Regulations govern the procedure that must be followed for an application for the right of land use and benefit by way of authorisation, occupancy in good faith or occupancy by a community. It must be noted that the Regulations apply to the areas outside those that are under the jurisdiction of Municipalities with Municipal Cadastre Services (article 2 of the Regulations).

(a) *Procedure in respect of an application for a right to land use and benefit acquired by way of State authorisation*

The authorisation process of applications for land use and benefit is as follows:

⁴⁶ Abdala, A and Chirindza, N, "The New Mozambique Land Registry Code," (2019) at page 2.

⁴⁷ USAID, "USAID Country profile: Property rights and resource governance: Mozambique," (2011) at page 8.

- An application for a state grant of land use and benefit right must be submitted to the local, provincial or national government authority, depending on the size and location of the land. Please refer to section 2.1(e) in this regard.
- The applicant must submit a land development plan and participate in a community consultation process to determine if the land is occupied. If the land is occupied the applicant must consult with the local community regarding the planned land development as part of the application. A statement based on the consultation with the local community must be included in the application (article 13(3) of the Land Law).
- Such application must contain the following (article 24 of the Regulations):
 - in the case of an individual person, the identification document of the applicant and, in the case of a corporate person, the articles of association;
 - a sketch of the location of the land;
 - the descriptive report;
 - an indication of the nature and dimension of the undertaking that the applicant proposes to carry out;
 - the opinion of the District Administrator, after consultations with the local community;
 - a public notice and proof that such notice has been displayed in the headquarters of the district in question and at the location itself, for a 30-day period;
 - receipt as proof of deposit of the payment of the provisional authorisation fee; and
 - where the land is intended to be used for economic activities, an exploitation plan and a technical opinion in respect thereof issued by the Services that supervise the economic activity in question
- A provisional authorisation for the DUAT will first be issued. The DUAT application must be processed by the State in 90 days. Such provisional authorisation is valid for a maximum of five years for national persons and two years for foreign persons.⁴⁸ Once the application process is completed, the Cadastre Services shall submit the proposal to the Governor of the Province for decision, in cases within the competency of the Governor. In all other cases, after review by the Governor of the Province, the application process shall be sent to the Central Cadastre Services, who shall submit it to the competent authority for decision.⁴⁹
- On the expiry of the provisional authorisation, it may be revoked without compensation for non-removable investments that have been made if it is verified that the use plan has not been fulfilled without justification.⁵⁰
- Under the Land Registry Code, the registration of provisional authorisation of the DUAT will remain in force until the end of the period established in the provisional authorisation. However, there is an exception if an administrative document or certificate of judicial decision declaring the extinction of the right in question is submitted for registration.⁵¹

⁴⁸ Article 25(2) of the Land Law.

⁴⁹ Article 28 of the Regulations.

⁵⁰ Article 27 of the Land Law.

⁵¹ Abdala, A and Chirindza, N, "The New Mozambique Land Registry Code," (2019) at page 2.

- Final authorisation for land use and benefit shall be given and the relevant title issued upon fulfilment of the use plan within the period of the provisional authorisation.⁵²

(b) *Procedure in respect of an application for the right of land use and benefit acquired by occupancy in good faith*

The application in respect of the right of land use and benefit acquired by individual national persons by occupancy in good faith includes the technical demarcation file⁵³ and the same documents that are required by an applicant for the right in terms of authorisation (except for a sketch and a descriptive report as those are part of the demarcation file) (article 34 of the Regulations).

Furthermore, there is no provisional authorisation process that has to take place before final authorisation.

When a local community or national individual person who has a right of land use and benefit through occupancy decide to have a title issued, the rules on demarcation as governed by Chapter IV of the Technical Annex will apply. The following requirements must be adhered to:

- The boundaries must be identified in the presence of a land surveyor and the title holder, or applicant or the neighbours; and in the case of a discrepancy between those measures and the boundaries of the community areas established through customary practice, the boundaries established by customary practices shall prevail (article 16(1) and (2) of the Technical Annex);
- The boundaries of areas identified in the delimitation shall not be altered in the demarcation in such a way that it would be detrimental to the communities or good faith occupiers (article 16(3) of the Technical Annex);

The procedure for titling of areas shall include (article 20 and 21 of the Technical Annex):⁵⁴

- Information and dissemination;
- Participatory appraisal;
- The sketch and its descriptive report;
- Feedback; and
- All documents relating to demarcation, which include
 - Technical reconnaissance;
 - Staking-out of markers;
 - Measurements;
 - Preparation of a technical file which will include technical and descriptive details. The descriptive section shall contain the demarcation notice and the technical section shall include the topographic map; a diagram of the links to the geodetic network; details of the measurements; calculation of the area of the parcel; and the list of the co-ordinates.

⁵² Article 26 of the Land Law.

⁵³ The technical demarcation file is explained in the Technical Annex.

⁵⁴ Section IV below on delimitation will provide a further explanation of these phases.

(c) *Procedure in respect of an application for the right of land use and benefit acquired by occupancy by local communities*

The application for the right of land use and benefit acquired by local communities must contain the following (regulation 35 of the Regulations):

- the name of the community;
- the technical file in respect of demarcation;
- the opinion of the District Administrator;
- the decision of the competent entity depending on the area, i.e. the Provincial Governor for areas less than 1000 hectares, MTA Minister for areas between 1000 and 10 000 hectares, and the Council of Ministers for areas over 10 000 hectares;⁵⁵ and
- a receipt as proof of deposit of the payment of the costs of the application.

The content relating to demarcation in the section above relating to occupancy in good faith applies equally to the application procedure to be followed by occupancy by a local community.

(iv) Delimitation

Delimitation is defined in the Technical Annex as the identification of the boundaries of the areas occupied by local communities or national individual persons, who are, and for at least 10 years, have been using the land in good faith, including the entry of the information into the National Land Cadastre.

Delimitation will take place, and be prioritised, in the following circumstances (article 7 of the Technical Annex):

- where there are conflicts regarding the use of the land and / or natural resources;
- in local community areas where the State and / or other investors intend to initiate new economic and / or development projects or plans; or
- on request from local communities.

Where delimitation is required for a development project or plan, it will be paid for by the investor.

The phases of the delimitation process are set out in article 5 of the Technical Annex (and further expanded upon in the subsequent articles in Chapter II). The first four phases are completed under the direction of an advisory working group with specific training on the prescribed procedures:

Phase 1 (article 8): information and dissemination: Delimitation is initiated by completing Form 1 to the Technical Annex which asks for the reasons for the process, the relevant provisions of the Land Law and Regulations, objectives and methodology of the delimitation and the advantages and implications of the delimitation. Form 2 to the Technical Annex must be signed by the local community representatives and the District Administrator and his/her representatives.

Phase 2 (article 10): participatory appraisal: Based on the information provided to the community, the community shall produce a minimum of two participatory maps, which indicate the boundaries between a local community and its neighbours. The maps, which

⁵⁵ as defined in paragraph a) of no 1, paragraph a) of no 2 and paragraph a) of no. 3 of article 22 of the Land Law. Article 22 relates to areas that are not covered by urbanisation plans and provides for the relevant authority based on area.. Please refer to 2.1(e) in this regard. We note that such decision used to be made by the Governor of the province but this law was amended by Decree 50 of 2007 of 16 October.

will include natural and man-made boundaries and/or other physical markers, will be the basis for a cartogram. The outcome of this phase is a report on Form 3 to the Technical Annex.

Phase 3 (article 11): the sketch and descriptive report: It is mandatory for a technician (an employee of the Cadastre Services or someone in private practice) with basic knowledge of topography to participate. Field work must be carried out and must involve the local community, the working group and the neighbours of the local community. The details represented in the cartogram shall be specified and completed in the sketch, and its descriptive report must conform to Form 4 to the Technical Annex.

Phase 4 (article 12): feedback: It is mandatory for a similar technician to participate. Mandatory feedback is given to the local community and its neighbours, and the minutes of the feedback session shall be signed by community representatives, neighbours and the District Administrator or his/her representative. The phase accords to Form 5 to the Technical Annex.

Phase 5: entry into the National Land Cadastre: This phase is completed by the Cadastre Services and the registration comprises of:

- the reference to the projection in the Cadastral Atlas;
- number of the Cadastral process;
- identification of the parcel by its number, an indication of its area and its location;
- name of the local community and its neighbouring communities; and the date.

After registration, Cadastre Services shall officially submit, within 60 days of the delivery of the documentation, a delimitation certificate that shall contain the registration details which is then delivered to the local community.

(v) Registration of rural rights

Regulation 20 of the Regulations provides for registration. This section was amended by Decree 1 of 2003 of February 18. A DUAT will be registered in the Land Registry

Where a DUAT is transferred by inheritance, the heirs of the deceased must provide documents proving qualification for it to be registered.

Local communities can register a DUAT with the Land Registry Authority of the respective area in respect of community access routes and cattle passages, as well as other rights recognized by law.

Information on the withdrawal of provisional authorisation and on the extinction of the DUAT, as well as any relevant changes under the Land Law must be transmitted by the Rural Registry of the Land Registry of the respective area. When the provision of registration services becomes fully computerised/integrated, in terms of the Land Registry Code, the registration rules regarding territorial jurisdiction will lose their effect as the registration process will be administered online.

Registration of infrastructures, structures and improvements by way of notarial deed

While individuals, communities and non-state entities cannot own land, they can own the infrastructures, structures and improvements on land.

The titleholders of the DUAT may transfer, between living people, infrastructures, structures and improvements existing on the land. Any transmission will be noted in a title (article 16(3) of the Land Law).

It is necessary to again highlight the difference between rural and urban tenements. Whereas, the purchase and sale of infrastructure and improvements located on rural tenements does not imply the automatic transfer of the right of land use and benefit, the

purchase and sale of an urban tenement results in the automatic transfer of the right to use and benefit of the land.

Transfers and sales of infrastructures, structures and improvements must be formally registered. While it is not necessary to register a land use and benefit right acquired under customary law or good faith occupancy, it is mandatory to register any changes to or transfers of that right that the holder may seek to make (article 14(1) of the Land Law). This registration must be done by means of a notarial deed at the Real Estates Register Office (Conservatórias do Registo Predial) and only after both "authorization from the competent state entity" (article 16(2) of the Land Law) as well as "consent by the community members in the case of local communities" (article 15(4) of the Regulations) have been received.

Ownership of a house can take place via the formal or the informal sector. In the formal sector for ownership to take place, the building is legalised by the relevant municipality or provincial authority.⁵⁶ The building will only be legalised if it complies with the relevant building regulations and land use planning or zoning.⁵⁷

Informal ownership of a house takes place where the building has not been formalised. Informal ownership is evident mainly in rural areas, and ownership is determined by the relevant community authority or *bairro* secretary who furnishes the house owner with a written declaration upon purchase of the house. The written declaration exists as proof of ownership of the house.⁵⁸

Importantly, while the law provides that a community must consent to all land transfers that occur within its bounds, it does not clarify what kind of approval is necessary, by whom, or establish a mechanism through which such community consent is to be achieved.

It should be noted that because land cannot be owned but the infrastructure, structure or improvement on it can be, this has led to a growing informal land market existing in Mozambique wherein trees, huts, crops and other structures are transacted at distorted prices that in actuality reflect the value of the land they sit upon.

Registration of servitudes

The Land Law provides for public interest servitudes as under custom in Mozambique one must allow neighbours to cross through one's land to access necessary water sources, natural resources or infrastructure. Under article 13(1)(b) and 14(b) of the Regulations, title holders must allow access through their parcel of land to neighbours - even if this means creating the servitudes necessary for access.

Articles 14(c) and 17(2) of the Regulations further ensure that rights holders must respect the servitudes that have been created and registered in respect of public community ways of access for livestock, which have been established by customary practice.⁵⁹

Registration of leasehold rights

⁵⁶ United Nations Human Settlements Programme "Land Tenure, Housing Rights and Gender in Mozambique" [2005] < https://issuu.com/unhabitat/docs/2138_alt > accessed June 19, 2020, as at page 44.

⁵⁷ United Nations Human Settlements Programme "Land Tenure, Housing Rights and Gender in Mozambique" [2005] < https://issuu.com/unhabitat/docs/2138_alt > accessed June 19, 2020 at page 44.

⁵⁸ United Nations Human Settlements Programme "Land Tenure, Housing Rights and Gender in Mozambique" [2005] < https://issuu.com/unhabitat/docs/2138_alt > accessed June 19, 2020 at page 44.

⁵⁹ Knight, R "Statutory recognition of customary land rights in Africa: An investigation into best practices for lawmaking and implementation" (2010) at page 119.

The leasehold right that the owner has over immoveable property must be registered in the property register.⁶⁰

Article 1029 of the Civil Code provides for a public deed requirement. It states that the public deed must be reduced to:

- leases subject to registration. It must be noted that the lack of public deed or registration does not prevent the contract from being validly concluded and fully effective for the maximum period as it could be without the requirement of deed and registration;
- leases for commerce, industry or the exercise of a profession.

Article 10 in the Tenancy Code also provides that the following are subject to public deed:

- Leases subject to registration;
- Leases for commerce or industry;
- Leases for the exercise of a profession;
- Leases taken by any legally organized corporations, foundations, associations or society of public or private utility.

As aforementioned, in rural areas an assignment of exploitation can exist (which functions similarly to a lease of land even though land cannot legally be leased in Mozambique). For the registration of assignment of exploitation, the area covered by the assignment contract, including geographical coordinates, the duration of the contract, the respective value, if determined, the rights of the transferee and the obligations of the right of use over the land, as well as any restriction or charge must be registered.

The registration of the assignment of partial or total exploitation of rustic or urban buildings, when legally permitted, is made based on the contract of assignment of exploitation.

For leases of immovable property of more than six years, their transmissions and subleases must be registered. The lease registration must mention the modality of the lease, the term and any special restriction on the right of subletting. The transfer of the registered leases and sub-leasing must be register in the margin of the registration

(b) What non-legal documents or actions (e.g. verbal agreements or handshakes) are used to create or transfer tenure?

In the case of a community or good-faith occupier who has been living on the land for 10 years, formal legal documents are not required. Thus, mere occupation (under certain circumstances) creates tenure and if there is no conflict for the person or community on the

⁶⁰ United Nations Human Settlements Programme "Land Tenure, Housing Rights and Gender in Mozambique" [2005] <https://issuu.com/unhabitat/docs/2138_alt> accessed June 19, 2020, as at page 44.

land then this is good enough for them to exercise their right to the use and benefit of the land without any legal document or action.

Where such tenure has to be formally registered, the creation of the tenure is based on statements by the occupiers and their neighbours. While such agreements were previously oral they have been formalised and regularised under the Land Law.

In urban areas, some rights to property are created by verbal agreement. However, such agreements often form part of the informal market and would not pass legal scrutiny if challenged.⁶¹

2.3 Customary ownership

(a) Is customary ownership of land legally recognised? If so, what is the basis for legal recognition (e.g., constitution, national legislation?)

Customary ownership of land is legally recognised by the Land Law and the accompanying Regulations. The Land Law turned *de facto* customary rights into *de jure* tenure by recognising customary norms and practices as one way of acquiring the right of use benefit or DUAT (as has been discussed above).⁶²

The Land Law does not establish any rules by which communities should govern themselves or call for the creation of any new local land administration structures. Its intention is to ground local land and natural resource administration and management in pre-existing community practices. It does, however, mandate that local community land claims are to be managed according to principles of "joint titling" as set out in the Civil Code (article 10(3) of the Land law and article 12 of the Regulations).

Article 1403 of the Civil Code defines "co-ownership" of property as when two or more people simultaneously hold property rights over the same item of either moveable or immovable property. In the context of community title, this means that all community members - both men and women - have equal rights to community property, must participate in all decisions concerning community lands, and must have an equal say in land and natural resource management decisions.

The Land Law legally recognises the "local community." The local community is defined as 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. This definition is thus founded on community occupation and use of land (based on the prevailing land use, kinship and internal management systems of each community) and can be used in the wide variety of cultural and ecological contexts of Mozambique.⁶³

Article 12(a) of the Land Law, discussed above, ensure communities who occupy land according to customary practices shall acquire the right of land use and benefit. Article 9(1) of the Regulations further solidifies this by stating that such communities automatically acquire the right. Article 13(2) and 14(2) of the Land Law further guarantees local communities' access to this right, without a formal application procedure taking place.

Such a right excludes cases in which such occupancy takes place in areas that are subject to legal reservation for any purpose or occurs in partial protection zones. Areas over which a right of land use and benefit has been acquired by occupancy according to customary

⁶¹ Urban LandMark "Tenure Security Facility Southern Africa Project: Incrementally securing tenure in urban and peri-urban Mozambique: an exploration of the evidence base and strategy proposals" (2013) at page 21.

⁶² Knight, R "Statutory recognition of customary land rights in Africa: An investigation into best practices for lawmaking and implementation" (2010) at page 107.

⁶³ Knight, R "Statutory recognition of customary land rights in Africa: An investigation into best practices for lawmaking and implementation" (2010) at page 110.

practices may, when necessary or at the request of the local communities, be identified and recorded in the National Land Cadastre, in accordance with requirements that are defined in the Technical Annex (article 9(3) of the Regulations).

Anyone who has been granted land rights in accordance with customary norms and practices which do not contradict the Constitution before the Land Law was passed (or who had been living on land for ten years in good faith), thereafter automatically held a formal right to land use and benefit. This right holds the same status as any paper title granted to an investor. None of these customary rights need to be proactively, formally registered. Land rights exist and are enforceable regardless of whether any administrative action or formalisation procedure has been taken. Such rights are secure, inheritable, and can be transferred to third parties, either internally within the community or to outsiders through a formal consultation process.⁶⁴

The primary innovations concerning statutory recognition of customary land rights established by the Land Law and accompanying legislation include:⁶⁵

- Customarily-held land rights are equal in weight and validity to administratively-granted land rights;
- Local communities are the lowest level of land and natural resource management and administration;
- The local community may choose and create the leadership structures and rules by which it will administrate and manage its lands (customary or otherwise);
- Customary principles of land management (including land transfer, dispute resolution, inheritance, and demarcation) govern community land use and allocation with the "local community";
- Women have equal rights to hold, access and derive benefits from land independent of any male relatives: this principle overrides any contrary customary rule;
- No written proof of customary rights is necessary; the oral testimony of an individual's neighbours that he or she has been occupying land in good faith for more than ten years is proof equivalent to and as enforceable as a paper title;
- Processes for delimitation and registration of local community lands as a whole are established, after which the community becomes a legal entity, capable of transacting with outsiders;
- Communities must be consulted before an investor or outsider application for land within that community can be granted, and are empowered to negotiate for mutual benefits in exchange for the use of their land;
- Customary rights of way and other communal areas are explicitly reserved and protected; and
- The decisions of community-level (customary) dispute resolution bodies are appealable directly up to the highest court of Mozambique.

(b) What are the sources of customary rules?

⁶⁴ Knight, R "Statutory recognition of customary land rights in Africa: An investigation into best practices for law-making and implementation" (2010) at page 108.

⁶⁵ Knight, R "Statutory recognition of customary land rights in Africa: An investigation into best practices for lawmaking and implementation" (2010) at page 102.

As Mozambique does not have a majority or dominant tribal group, customary law is not one set of rules or practices and therefore lawmakers have not attempted to establish one single definition of tradition or custom.^{66 67}

Customary law finds its recognition in the Constitution. Article 4 of the Constitution recognises the role of different normative and dispute resolution systems that exist in Mozambique.

As customary law is a living law, typified by the lived experiences and customs of different communities, its application by community courts which are tasked with resolving conflicts between parties according to the precepts of the relevant custom or tradition, is often inconsistent and vague.^{68 69}

Nevertheless, all traditions and customs must abide by the Constitution. Any tradition or custom that conflicts with the rights as entrenched in the Constitution is invalid and illegal.⁷⁰ An example is the practice whereby female widowers were evicted from their houses by their deceased husbands' relatives. Such a custom contradicts the principle of equality as provided for in Article 36 of the Constitution, and is therefore illegal.⁷¹

(c) **What are the customary rules governing housing, land and property?**

As stated above in 2.3 (b), customary law differs in its application according to the relevant community's traditions and customs and it is therefore difficult to summarise the relevant customary rules that govern housing, land and property. However, the application of customary law in Mozambique generally regulates the law applicable to marriages, family, inheritance and the right of access to use and control land.⁷² It should be noted that customary law is the form of law most applied in rural areas, and since the Land Law does not require the registration of occupancy-based DUATS, the procedures attached to customary law are utilised in most land related disputes in rural areas.

Broadly, in terms of customary law, parties to a dispute will generally attempt to reach a consensus at a family level.⁷³ Should the issue extend beyond the boundaries of family, or should the family not resolve the dispute, the matter will be addressed by the relevant community leader, and failing resolution, by the community court.⁷⁴ The community court has the power to refer the dispute to a District Court, or a court of superior authority.⁷⁵

⁶⁶ Knight, R "Statutory recognition of customary land rights in Africa: An investigation into best practices for lawmaking and implementation" (2010) at page 101.

⁶⁷ Knight, R "Statutory recognition of customary land rights in Africa: An investigation into best practices for lawmaking and implementation" (2010) at page 109.

⁶⁸ Bicchieri, M "Legal Pluralism, women's land rights and gender equality in Mozambique" *Food and Agricultural Organisation of the United Nations* [2017] <<http://www.fao.org/3/a-i7825e.pdf>> accessed June 22, 2020 at page 21.

⁶⁹ Bicchieri, M "Legal Pluralism, women's land rights and gender equality in Mozambique" *Food and Agricultural Organisation of the United Nations* [2017] <<http://www.fao.org/3/a-i7825e.pdf>> accessed June 22, 2020. at page 21.

⁷⁰ Bicchieri, M "Legal Pluralism, women's land rights and gender equality in Mozambique" *Food and Agricultural Organisation of the United Nations* [2017] <<http://www.fao.org/3/a-i7825e.pdf>> accessed June 22, 2020. at page 15.

⁷¹ Bicchieri, M "Legal Pluralism, women's land rights and gender equality in Mozambique" *Food and Agricultural Organisation of the United Nations* [2017] <<http://www.fao.org/3/a-i7825e.pdf>> accessed June 22, 2020. at page 14.

⁷² Bicchieri, M "Legal Pluralism, women's land rights and gender equality in Mozambique" *Food and Agricultural Organisation of the United Nations* [2017] <<http://www.fao.org/3/a-i7825e.pdf>> accessed June 22, 2020. at page 15.

⁷³ Bicchieri, M "Legal Pluralism, women's land rights and gender equality in Mozambique" *Food and Agricultural Organisation of the United Nations* [2017] <<http://www.fao.org/3/a-i7825e.pdf>> accessed June 22, 2020. at page 21.

⁷⁴ Bicchieri, M "Legal Pluralism, women's land rights and gender equality in Mozambique" *Food and Agricultural Organisation of the United Nations* [2017] <<http://www.fao.org/3/a-i7825e.pdf>> accessed June 22, 2020. at page 21.

⁷⁵ Bicchieri, M "Legal Pluralism, women's land rights and gender equality in Mozambique" *Food and Agricultural Organisation of the United Nations* [2017] <<http://www.fao.org/3/a-i7825e.pdf>> accessed June 22, 2020. at page 14.

(d) **What is the relationship between traditional legal ownership and customary ownership of land? Does the former override the latter?**

The Land Law elevates custom and customary land claims up into formal law, giving weight and legal validity to the land claims of the rural and urban poor without the need for formal documentation.⁷⁶

Under the Land Law, what the specific laws and customs are, are left undefined. This was done purposely so as to make the legislation wide enough to encompass Mozambique's myriad of customary systems.⁷⁷

Accordingly, traditional legal ownership of land does not override customary ownership of land, in theory. As seen in section 2.2 above, the application procedures for the right to land use and benefit is similar for communities practicing customary law on the land as it is for individuals or companies acquiring the right by way of an authorisation from the State. In practice, however, the registration of private land rights applications are often prioritised by the public land services.⁷⁸ Please refer to section 3.2(c) below.

In principle, the only way for a community to lose its right to the use and benefit of the land is if the State compulsorily acquires the land "in the public interest," for which the community will be fairly compensated. Communities can also share their land with investors. Such leases can be granted for 50 years, with the option to extend for another 50 years and so in practice it is possible that someone who has a right to the use and benefit of the land, as part of a community, will not be able to assert their rights over their land in their life time.⁷⁹

Under the terms of article 1065 of the Civil Code, leases cannot be concluded for less than six years and for more than 99 years when they are intended for private/economic purposes.

2.4 Informal settlements

(a) **What are the locations and boundaries of informal settlements?**

There is a tendency for informal settlements to occupy environmentally sensitive areas. Lower income residents move from higher value land in larger cities which is close to the urban core to the urban fringe or to environmentally unsuitable locations. This happens both officially or through market mechanisms. Lower income residents tend to be pushed towards high risk land that is more susceptible to flooding and erosion.⁸⁰

According to UN-Habitat, more than one million people live in Maputo, 75% of which are in informal neighbourhoods with precarious or non-existent urban infrastructure and services.⁸¹

⁷⁶ Knight, R "Statutory recognition of customary land rights in Africa: An investigation into best practices for lawmaking and implementation" (2010) at page 101.

⁷⁷ Knight, R "Statutory recognition of customary land rights in Africa: An investigation into best practices for lawmaking and implementation" (2010) at page 109.

⁷⁸ Tanner, C "Chapter 6: Land rights and enclosure: implementing the Mozambican Land Law in Practice" in Ward Anseeuw, Chris Alden (eds) *The Struggle over Land in Africa: Conflicts, Politics & Change* (2010) at page 115.

⁷⁹ Knight, R "Statutory recognition of customary land rights in Africa: An investigation into best practices for lawmaking and implementation" (2010) at page 110 to 111.

⁸⁰ Development Workshop & Forjaz Associate Architects "Chapter 6: Urban Land Management and Low Income Housing Study" in *Urbanization and Municipal Development in Mozambique* for the World Bank & Development Planning Unit (July 2008), at section 5.

⁸¹ South-South World "Urbanization of Informal Settlements: requalification in Maputo, Mozambique" (6 March 2018) <
<http://www.southsouthworld.org/blog/39-directory/1600/urbanization-of-informal-settlements-requalification-in-maputo-mozambique>>
(accessed 23 June 2020).

There appears to be four major informal settlements in Mozambique, which have existed for at least the last 15 years: Luis Cabral and Hulene B in Maputo and Mayundo and Sansao Muthemba in Tete.⁸²

(b) What kind of tenure arrangements are in place in informal settlements?

Informal settlements (particularly in informal urban areas) are increasingly characterised by a high degree of insecurity in the rights of occupation and land-use.

As a result, the illegal markets in the informal areas thrive.⁸³

There are no written rules for land access in informally settled areas and the Urban Regulations appear not to materially change this. The Urban Regulations avoids legitimising practices in informal urban areas and try to regularise informal areas by the same processes used in formal areas of towns and cities.⁸⁴ As mentioned in the section on the differences between urban and rural areas, in order for a right to be registered in urban areas, three urbanisation plans need to be in place. This is a huge barrier to entry for persons living in informal settlements.⁸⁵

Furthermore, the legal system for administering land is slow, expensive and affected by corruption. Accordingly, an informal and unregulated system of tenure exists in informal settlements.

3. Security of tenure of vulnerable groups

3.1 Women

(a) Can women legally own, rent or inherit land and housing?

By law, women are able to own housing and rent and inherit land and housing in Mozambique. As aforementioned, all land in Mozambique is owned by the State but individuals and groups have a right of use and benefit of land.

The Land law specifically includes equal rights for women:

- Article 10 refers to "men and women" in the granting of the right to use and benefit of land;
- Article 13(5) includes that "men and women" who are members of a local community may request individual titles, after the particular plot of land has been partitioned from the relevant community land; and
- Article 16(1) provides for women to have a right to land use and benefit by inheritance, by including the phrase "without gender distinction."

These provisions are backed up by the Constitution which establishes, under article 36 that *"men and women shall be equal before the law in all spheres of political, economic, social and cultural affairs."*

⁸² Urban LandMark "Tenure Security Facility Southern Africa Project: Incrementally securing tenure in urban and peri-urban Mozambique: an exploration of the evidence base and strategy proposals" (2013) at page 20.

⁸³ Development Workshop & Forjaz Associate Architects "Chapter 6: Urban Land Management and Low Income Housing Study" in *Urbanization and Municipal Development in Mozambique* for the World Bank & Development Planning Unit (July 2008), at section 4.3.

⁸⁴ Development Workshop & Forjaz Associate Architects "Chapter 6: Urban Land Management and Low Income Housing Study" in *Urbanization and Municipal Development in Mozambique* for the World Bank & Development Planning Unit (July 2008), at section 4.2.

⁸⁵ Urban LandMark "Tenure Security Facility Southern Africa Project: Incrementally securing tenure in urban and peri-urban Mozambique: an exploration of the evidence base and strategy proposals" (2013) at page 14.

Women's rights to land and property are further recognised in the Family Law Act, 22 of 2019 ("**Family Act**").⁸⁶ The Family Act regulates transfers of property between spouses and their families at marriage and at death. The Family Act recognizes not only civil marriages but also customary marriages and informal unions between men and women. It holds that all women who have lived with their partners for more than three years are entitled to inherit the property of their partners. The Family Act also explicitly gives either spouse responsibility over the family as well as family decisions regarding assets and property. Together, the Land Law and the Family Act provide strong protections for women's land and property rights, both during marriage and in widowhood.

The Land Law includes women in every component of community land-related procedures. Where a community is defined or community input is deemed necessary, the law mandates that women and disenfranchised groups are to be included. Women's active participation in the community delimitation process is specifically required in the Technical Annex (see articles 2(8), 5(2) and 6 (3) of the Technical Annex to the Regulations, for example). The sign-off by the applicant community in Forms 1 and 3 of the Technical Annex must include signatures from both men and women.⁸⁷

(b) In practice, do they? If not, why not?

Despite the legal rights granted to women in respect of property and land ownership afforded to them by the Constitution, the Land Law and the Family Act, in practice, women are often unable to realise these rights.

This is, in part, due to a lack of knowledge of their rights and because administrative practices are not yet aligned with the law.

Furthermore, both the Norwegian Agency for Development Cooperation ("**NORAD**") and the Food and Agricultural Organisation of the UN report that, while the law provides women equal rights to land, it also formally recognises customary systems of land tenure in which male relatives regulate women's access to land.⁸⁸ The Land Law attempts to remedy this with article 12 which limits the applicability of customary rules and practices as they cannot "*contradict the constitution*"; yet the Land Law provides very limited oversight mechanisms or formal checks on abuses of customary power, and women's rights can be and have been ignored.⁸⁹

3.2 Indigenous groups

(a) Is indigenous customary ownership (or custodianship) of land legally recognised?

As aforementioned, land cannot be owned by anyone but the State in Mozambique.

However, indigenous customary ownership of a right to the use and benefit of land has been formally incorporated into the Land Law and so is legally recognised.

Please refer to section 2.3 above.

(b) Does customary ownership provide indigenous people with a high degree of security of tenure?

The right that is provided through customary use of land is given the same degree of security as any other right to the use and benefit of the land. As land cannot be owned by

⁸⁶ The researchers were unable to source this law.

⁸⁷ Knight, R "Statutory recognition of customary land rights in Africa: An investigation into best practices for lawmaking and implementation" (2010) at page 124.

⁸⁸ OECD Development Centre & Social Institutions and Gender Index, "Mozambique", at page 4 < <https://www.genderindex.org/wp-content/uploads/files/datasheets/MZ.pdf> > (accessed 22 June 2002)

⁸⁹ Knight, R "Statutory recognition of customary land rights in Africa: An investigation into best practices for lawmaking and implementation" (2010) at page 124.

anyone but the State, a DUAT is the highest degree of security of tenure that any individual or entity can obtain with regard to property rights in Mozambique.

(c) If not, what are the barriers to indigenous people living on or owning their land?

Legally there are no barriers. However, while customary rights to land have legally been given the same status as any other rights to land, government's search for "available" land for large-scale investors is restricting community rights. A more narrowly defined interpretation of 'occupation' is emerging, focusing on actual use - existing plots and housing - rather than the extensive definition afforded to what a local community is in the Land Law.⁹⁰

It is further noteworthy that compared to the struggle that communities face with regard to their land rights, applications for land rights by the private sector has been fast tracked. Tanner notes that by mid-2003 only 180 community delimitations had been registered, whereas there were reportedly thousands of private sector land claims processed by public land services since the Land Law came into effect.⁹¹

Other than a lack of commitment by the State to delimitation, another major reason for this imbalance is because of the fact that it is legally mandatory for a DUAT acquired by way of state authorisation to be registered, whereas community rights do not have to be registered to be valid. The result is an official land map of Mozambique that provides for all the private rights that have been granted by the state and large masses of land which are seen as "free" land but where community rights actually exist.⁹²

Lastly, a further barrier to indigenous people's rights to their land is the cost of delimitation and registration of a right to land use and benefit. This stops local communities from electing to have their DUAT registered. In 2003, the average cost of delimitation and registration of community land was USD 8 000.⁹³

(d) Is there conflict between indigenous groups regarding land ownership?

Conflict between indigenous groups regarding land ownership is common. Such conflicts between different communities or indigenous groups often emerge in the process of community delimitation or as part of community consultations for the purpose of DUAT attribution to new applicants.⁹⁴

Conflicts also exist within one community or indigenous group, such as inter-family conflicts and intra-family conflicts. Conflicts between different families in the same community often arise when the limits of areas held by a family under good faith or customary occupancy are not observed, often in cases where these areas are not demarcated, are not being used and are therefore perceived as available. Disputes between members of the same family usually arise in relation to inheritance and how the land of the deceased should be distributed.⁹⁵

Conflicts between indigenous groups or local communities and investors are also very common, particularly given the conflicts discussed in subsection (c) above.

⁹⁰ Tanner, C "Chapter 6: Land rights and enclosure: implementing the Mozambican Land Law in Practice" in Ward Anseeuw, Chris Alden (eds) *The Struggle over Land in Africa: Conflicts, Politics & Change* (2010) at page 114.

⁹¹ Tanner, C "Chapter 6: Land rights and enclosure: implementing the Mozambican Land Law in Practice" in Ward Anseeuw, Chris Alden (eds) *The Struggle over Land in Africa: Conflicts, Politics & Change* (2010) at page 115.

⁹² Tanner, C "Chapter 6: Land rights and enclosure: implementing the Mozambican Land Law in Practice" in Ward Anseeuw, Chris Alden (eds) *The Struggle over Land in Africa: Conflicts, Politics & Change* (2010) at page 115.

⁹³ USAID, "USAID Country profile: Property rights and resource governance: Mozambique," (2011) at page 8.

⁹⁴ Cabral, L and Norfold, S, "Inclusive Land Governance in Mozambique: Good Law, Bad Politics?" (2016) at page 38.

⁹⁵ Cabral, L and Norfold, S, "Inclusive Land Governance in Mozambique: Good Law, Bad Politics?" (2016) at page 38.

(e) **If so, to what degree? Are there mechanisms for resolving these conflicts?**

Disputes between indigenous groups over competing land rights claims (and between indigenous groups and investors) are fairly common and are about boundaries, inheritance and intra-family rights and land transactions.⁹⁶

The delimitation process could, in theory, offer a preventative remedy to these types of conflict. Where delimitation has taken place, there is proof and a decision by the State as to the parameters of a right to land and to whom that right belongs. Please refer to the discussion on delimitation at section 2.1(d) above.

However, in relation to disputes that may arise over land rights claims, the Land Law is unfortunately quite weak. Article 32(2) provides that "*conflicts over land shall be resolved in a Mozambican forum.*" Local communities are empowered to use customary norms and practices to resolve conflicts, in terms of article 24(1)(b) of the Land Law.

Article 13(1)(a) of the Regulations provides that holders of rights to land use and benefit have the right to "*defend their rights in accordance with the law against any encroachment by another person.*" Article 40 of the Regulations allows for an appeals process, however, no further provisions exist in the Regulations or the Technical Annex which provides for guidelines on how conflicts over land are to be solved. This is left entirely up to customary authorities, which may differ between communities and would create an obvious problem where conflicts between indigenous groups over land claims exist.⁹⁷

It is noteworthy that the Land Law makes sure that there is adequate supervision of land speculation by investors such as the infractions and penalties section under article 39 of the Regulations, but there are very few provisions to address intra-community injustices. The Land Law and Regulations fail to include any penalties for any activities that take place within communities that may contravene the Constitution or otherwise infringe on human rights or create internal community conflict. By giving customary authorities the authority to decide on the processes that should be followed when disputes arise, the Land Law has failed to put in place adequate checks and balances to ensure that local communities are following fair procedure.⁹⁸

3.3 **Minority groups**

(a) **Can minority groups (i.e. ethnic minorities, immigrants, stateless people) legally own and/or rent land and housing?**

As aforementioned, neither local nor foreign persons can own land in Mozambique.

Minority groups who are Mozambican nationals, have the same rights to land as any other Mozambican national.

In terms of article 11 of the Land Law, immigrants or stateless people can only obtain a right of land use and benefit in Mozambique, if they have an investment project that has been duly approved and have local residence, i.e. have lived in Mozambique for five years.

Article 91 of the Constitution only guarantees a right to a suitable home to all citizens and not all people or residents of Mozambique. This excludes immigrants and stateless citizens.

Immigrants are legally allowed to rent property, but there are often significant barriers to entry because the market is not regularised.

(b) **If so, are they subject to special conditions or restrictions?**

⁹⁶ USAID, "USAID Country profile: Property rights and resource governance: Mozambique," (2011) at page 11.

⁹⁷ Knight, R "Statutory recognition of customary land rights in Africa: An investigation into best practices for lawmaking and implementation" (2010) at page 129.

⁹⁸ Knight, R "Statutory recognition of customary land rights in Africa: An investigation into best practices for lawmaking and implementation" (2010) at page 129.

See section (a) above.

- (c) **In practice, do minority groups legally own and/or rent land and housing? If not, why not?**

The researchers have been unable to find a definitive answer to this question.

3.4 **Landless people/squatters**

- (a) **Do landless people/squatters have rights to land and/or housing (e.g. adverse possession)? If so, are those rights respected?**

Where a landless person, who is a Mozambican citizen, has occupied land in good faith for a period of 10 years, they will have acquired a right to the use and benefit of the land through occupancy, under the Land Law. This has been dealt with above. Such occupancy rights are respected.

Where a person has unlawfully occupied land, i.e. not in good faith, they do not have a right to land or housing.

However, article 91 of the Constitution must be noted as it guarantees all citizens the right to a suitable home.

3.5 **General questions**

- (a) **Are there any other persons or groups that face difficulties in accessing or maintaining secure tenure (for example, due to internal displacement)?**

The Land Law has been lauded internationally as one of the most progressive laws in relation to land rights. Despite the rights that the Land Law provides for, the reality is that the poor in general still do not have secure tenure. This is for various reasons including, a lack of knowledge by the public that they have these rights; a focus by cadastre services on foreign investments rather than local rights to land; the bureaucratic, lengthy and expensive application process; and corruption.

4. **Eviction, Expropriation and Relocation**

4.1 **Evictions**

- (a) **Are there laws or regulations prohibiting forced evictions?**

The Constitution does not guarantee that a person cannot be forcibly evicted from the property or land over which they have a right.

However, the Constitution does provide for a right to property so any eviction, not relating to leased land, would be unconstitutional.

With regard to land, the State does not provide for eviction, only expropriation and resettlement. The Civil Code (provisions 1116 to 1053) governs evictions in the real estate context, i.e. leased land or property, and the Tenancy Law.

The provisions in the Civil Code provide for the instances when a lessee may be evicted from a leased building or premises, and the procedures that must be followed for the eviction to comply with the law.

Article 1095 of the Civil Code stipulates that a lessor does not have an automatic right to terminate a lease contract; unless the lease contract has been terminated by the lessee by having given the requisite notice in terms of article 1055, the notice period depending on the length of the lease contract.

Other than notice for the termination of a lease contract, a lease may expire which may lead to the eviction of a lessee. Article 1051 provides for the instances where a lease is deemed to have expired, which include:

- when the building or land has been expropriated for public benefit;

- with the dissolution of the landlord's marriage or legal separation of persons and property, if the leased property is of a dotal nature, even if there is execution or consent of the woman;
- death of the lessee or, in the case of a legal person, upon the extinction of the legal person, unless otherwise agreed in writing; or
- in the case of expropriation for public utility, unless the expropriation is commenced with the subsistence of the contract.

Should the lease expire in terms of article 1051, article 1053 guards against the instant eviction of the lessee. Article 1053 states that a lessee may only be evicted from a leased building or premises in terms of article 1051 upon expiration of three months after which it has been verified that the lease had in fact lapsed in terms of article 1051. If, however, the leased building or premises falls on agricultural land, the lessee may only be evicted in terms of article 1051 at the end of the current agricultural year.

It follows that according to article 1095, if a lease has not been terminated in accordance with article 1055 or if a lease has not lapsed in terms of article 1051, a lessor has no right to terminate and evict a lessee. However, article 1096 provides for the exceptions to the general rule that a lessor does not have a right to terminate and evict a lessee. It is in this regard that article 1096(1) states that a lessor does have a right to terminate a lease in the following instances:

- When the lessor requires the leased building for his/her own dwelling or to build his/her own residence on the leased building or premises; or
- When the lessor wishes to expand on the leased premises, in order to increase the number of sites rentable to potential lessees.

Article 1096(2) contains a restriction on the right to terminate a lease in terms of article 1096(1) as it states that article 1096(1) does not apply to nursing homes or educational establishments.

The power granted to landlords to evict lessees in terms of article 1096 is limited by articles 1098 and 1099, as these articles provide certain safeguards and remedies to persons evicted in terms of article 1096. Article 1098(1) provides that a lessor may only rely upon article 1096 if he/she:

- has been the owner, co-owner or usufructuary of the leased building for a period of more than five years; or
- acquired the building through succession; and
- does not own a house in that city or in any of its neighbours; and
- has not relied upon article 1098 before.

Article 1098(2) provides that a lessor who has several leased buildings can only terminate the contract in relation to that one house, for his own needs and for family housing and that has been rented for the least time.

Alongside article 1098, article 1099 presents one of the more important remedies available to lessees evicted from the leased premises in terms of article 1096. Article 1099 encompasses the provision of compensation, and in certain cases, reoccupation of the premises when the lessee has been evicted from the leased premises. Article 1099 entitles the lessee to compensation that is calculated according to two and ½ years' rental income, at the time of eviction, if the lessee is evicted in order for the lessor to take occupation of the leased building. Furthermore, the lessee is entitled to such compensation alongside a right to reoccupy the leased premises in instances where the lessor has either:

- failed to occupy the vacated building within 60 days; or

- left the vacated building vacant for longer than one year without reason or due to a force majeure; or
- failed to undertake the planned work on the vacated building which originally caused the lessee to be evicted from the building.

Article 1114 refers to article 1099, and states that in instances where a lease ceases due to the forfeiture or termination of the lease by the lessor; the lessee is entitled to the compensation referred to in article 1099.

The final article dealing with evictions in the Civil Code is article 1116. Article 1116(1) states that if a lease has lasted longer than one year, and ceases due to the forfeiture or termination of the lease by the lessor, the lessee is only required to vacate the building one year after the termination or forfeiture of the lease contract. Article 1116(2) supplements article 1116(1) and increases the period in which the lessee is entitled to remain in occupation of the leased premises to two years, if the lease has lasted 10 years or more and is terminated or forfeited by the lessor.

The Tenancy Code also deals with different aspects of evictions, for example when it may take place, possible claims for compensation and counter claims, and when the tenancy is linked to the provision of services by the lessee.

(b) In practice, are those laws adhered to?

There is no evidence to the contrary that the provisions on evictions in the Civil Code are not adhered to. While the Civil Code prevents arbitrary evictions of lessees who have concluded a contract of lease with a lessor, we are aware that forced evictions of entire communities have taken place in Mozambique. However these are framed as resettlements under the Resettlement Regulations that are discussed in section 4.3(a) below.

4.2 Expropriation

(a) Are there laws or regulations permitting the government to expropriate land?

The Constitution, the Land Law, the Regulations and the Land Use Management Law all contain provisions that allow for expropriation to take place subject to the payment of fair and prior indemnification. The Expropriation Law is, however, the most extensive source of law in Mozambique that deals with the expropriation of property.

The Expropriation Law establishes a set of rules and procedures for expropriation to take place for the purposes of spatial planning, allowing for the expropriation of private property, subject to certain safeguards, which are set out in articles 2 - 4.

According to Article 2 of the Expropriation Law, expropriation may only take place if it is in the public interest, or for a public need or public utility, and it explains each:

- Expropriation is in the public interest when its ultimate objective is to safeguard a common interest of the community, such as to acquire space for the establishment of economic or social infrastructure; or for the preservation of soil, water sources; or for the preservation of infrastructures of military or public interest.
- Expropriation is a public need when its ultimate objective is to make it possible for the State to deal with emergencies caused by the occurrence or possibility of natural and similar disasters. .
- Expropriation is understood to further a public utility when its ultimate objective is the provision of state security or public order.

Article 2 of the Expropriation Law requires that expropriation must be preceded by a fully motivated formal declaration in the *bulletin of the Republic*, together with relevant documentary evidence and legal documents; and prior and fair compensation must be paid (dealt with in more detail in section 0 below);

Article 3 of the Expropriation Law details the expropriation process and the details of the notice by the expropriator to the rights holder of the property

Additionally, the following provisions of other relevant legislation apply:

- Article 82(2) of the Constitution limits the instances at which expropriation of property may take place, providing that the expropriation of property is permitted only for reasons of public necessity, utility or interest, as defined in terms of the law, and subject to payment of fair compensation;
- Article 18(1)(b) of the Land Law, while not addressing the term 'expropriation' directly, provides that in instances where the right of land use and benefit is terminated in the public interest, termination of such right should be preceded by the payment of fair indemnification and/or compensation;
- Article 19(3) of the Regulations allows specifically for the expropriation of land, when the termination of a person's or corporate person's right to use and benefit from the land is in the public interest. Article 19(3) of the Regulations requires expropriation in the public interest to follow the procedures for expropriation whereby expropriation must be preceded by the payment of fair indemnification and/or compensation;⁹⁹
- Article 20 of the Land Use Management Law refers to expropriation, and specifically deals with expropriation when it is in the public interest, public necessity and / or public utility. The Land Use Management Law requires the payment of just and fair compensation to be calculated in order to offset among others i) the loss of tangible and intangible assets; ii) rupture of social cohesion; iii) loss of production goods;
- Article 68 of the Regulations to the Land Use Management Law refers to expropriation, and specifically deals with expropriation when it is in the public interest, public necessity and/or public utility.¹⁰⁰ Article 70 of the Regulations to the Land Use Management Law requires the payment of just and fair compensation where land is expropriated in terms of Article 68;¹⁰¹
- The Civil Code specifically provides for expropriation of rural leases. Article 1077 of the Civil Code provides that if the contract expires as a result of expropriation for public utility, the expropriator is required to compensate the lessee. Such

⁹⁹. Frey, A "Land Law Legislation" [2004] <http://www.impacto.co.mz/impacto-en/wp-content/themes/Arpora2_1_0/pdf/Lei%20de%20Terras/Ing/Mozambique-Land-Law-Legislation.pdf> accessed June 19, 2020.

¹⁰⁰ Norfolk, S "Policy, Legal and Institutional Assessment Framework: Large-Scale Land Acquisition for Agricultural Production" [2009] <<https://www.open.ac.uk/technology/mozambique/sites/www.open.ac.uk.technology.mozambique/files/pics/d128186.pdf>> accessed June 19, 2020.

¹⁰¹ Norfolk, S "Policy, Legal and Institutional Assessment Framework: Large-Scale Land Acquisition for Agricultural Production" [2009] <<https://www.open.ac.uk/technology/mozambique/sites/www.open.ac.uk.technology.mozambique/files/pics/d128186.pdf>> accessed June 19, 2020, as at page 41.

compensation must at the least include the value of outstanding fruits or unused crops and the amounts due for improvements; and

- A similar clause is specifically included in relation to urban leases in the Civil Code. Article 1115 of the Civil Code provides that If the contract expires as a result of expropriation for public utility, the lessee must be compensated by the expropriator.

Accordingly, expropriation is heavily regulated in Mozambique and cannot be arbitrary or contrary to law.

(b) If so, are those laws or regulations applicable in the event of a disaster?

Yes, this is clear from both article 2 of the Expropriation Law and article 68 of the Regulations to the Land Use Management Law.¹⁰²

Neither the Constitution nor the Land Law applies when expropriation is in the event of a disaster.

4.3 Relocation

(a) Are there laws or regulations governing relocations?

There have been various mass resettlements due to natural disasters in Mozambique, some as recent as 2019, due to Cyclone Idai.¹⁰³ The Mozambican government has a long standing policy of relocation, both after disasters as well as for development projects.

Given the natural resources boom since the discovery of large amounts of natural gas reserves off the coast of Mozambique in 2011 and 2012,¹⁰⁴ along with large investments in mining, forestry and agribusiness, the Resettlement Regulations were passed to cater for the large scale displacement of land-users from land to be zoned for economic use.¹⁰⁵

The Resettlement Regulations apply to the entire country and to national or foreign, public or private, natural or legal persons; and they provide for the rights of those relocated, the stages of the resettlement plan, and environmental and license considerations.

The Resettlement Regulations do not, however, provide for the relocation of persons displaced in the event of a conflict or natural disasters - these are managed under Mozambique's Disaster Management Policy, which was first adopted in 1999 under the National Disaster Management Institute ("INGC") under the Ministry of Foreign Affairs. The INGC was authorised in 2006 to create a National Emergency Operations Centre ("CENOE") to coordinate overall humanitarian support. CENOE functions at four alert levels: green, yellow, orange and red; and at the orange level prepares a contingency plan for the impending disaster together with other government institutions and alerts communities to move to safety.¹⁰⁶

¹⁰² Norfolk, S "Policy, Legal and Institutional Assessment Framework: Large-Scale Land Acquisition for Agricultural Production" [2009] < <https://www.open.ac.uk/technology/mozambique/sites/www.open.ac.uk.technology.mozambique/files/pics/d128186.pdf> > accessed June 19, 2020, as at page 41.

¹⁰³ Almeida, B & Jacobs, C, "Resettlement after disaster in Mozambique" (11 May 2020) <<https://leidenlawblog.nl/articles/resettlement-after-disaster-in-mozambique>> (Accessed 23 June 2020).

¹⁰⁴ Beek, B "The curse of natural gas in Mozambique" <<https://downtoearthmagazine.nl/the-curse-of-natural-gas-in-mozambique/#:~:text=In%202011%20and%202012%2C%20gas,fourth%20largest%20offshore%20gas%20project.>> accessed June 22, 2020.

¹⁰⁵ Human Rights Watch "Human Rights Watch Recommendations for Mozambique's Resettlement Decree" < <https://www.hrw.org/news/2012/09/17/human-rights-watch-recommendations-mozambiques-resettlement-decree> > accessed June 20, 2020.

¹⁰⁶ Recovery Framework Case Study, " Mozambique: Recovery from Recurrent Floods 2000 - 2013," (2014) at pages 6 and 7.

The first National Relocation and Reconstruction Plan¹⁰⁷ was drafted in 2007 and government's main strategy was to resettle populations to areas less prone to flooding and with potential for economic growth.¹⁰⁸

Relocation policy, as currently implemented through INGC, represents a government initiative to reduce vulnerability to natural disasters among rural populations, through provision of plots of land, construction of resilient housing for vulnerable population groups, provision of basic social services, and an effort to increase income generation opportunities. The guiding principles for relocation are to:

- Engage the affected population to return to "normal" life, with government and civil society facilitating this process;
- Mobilize national capacity to support this process, through the use of military personnel, volunteers, students and civil society;
- Protect the vulnerable, by according the elderly, disabled, chronically ill, and orphaned children priority in housing.¹⁰⁹

The Disaster Management Law established the legal basis for managing natural disasters as well as manmade disasters, including prevention, mitigation, relief, reconstruction and recovery in affected areas (article 1). The Disaster Management Law directs that disaster management actions must be carried out in a decentralised manner, while observing the duties of the public administration bodies of the territorial areas covered, without prejudice to the principle of mutual aid between the central state agencies. The Disaster Management Law is based on the principles of solidarity, justice, effectiveness, participation and cooperation. In the event of an imminent disaster, the Council of Ministers may establish certain measures to try to prevent and manage the disaster. These measures include the following:

- Limit the movement of persons or vehicles;
- Limit the use of public services such as water supply, energy, fuels and lubricants;
- Occupy facilities and any other places of any kind, nature or destination, with the exception of those used as housing;
- Allocate financial resources to support the different public and private entities involved in the mitigation of the disaster; and
- Determine civil mobilisation for certain time periods, by territorial zones or sectors of activity.

Civil Defence services participate in the execution of emergency plans, particularly in search and rescue of people and property as well as in humanitarian action. In the event of an imminent or serious accident or calamity, provincial governors and district administrators determine preventive or aid measures, mobilizing and instructing defence services, in particular military and paramilitary. International emergency aid is regulated by the Government and includes the authorisation of entry of people and goods for humanitarian aid of the affected populations.

According to the Disaster Management Law, disaster management structures must ensure assistance to people in an emergency situation in the form of food, medical assistance, education, evacuation from the high risk zone, resettlement, and promotion of activities such as food production and economic-social and cultural development. Assistance

¹⁰⁷ We have been unable to source this plan.

¹⁰⁸ Recovery Framework Case Study, " Mozambique: Recovery from Recurrent Floods 2000 - 2013," (2014) at page 5.

¹⁰⁹ Recovery Framework Case Study, " Mozambique: Recovery from Recurrent Floods 2000 - 2013," (2014) at page 19.

programs must ensure the mobilization of and organization of beneficiary participation, transparency and accountability for disaster management structures.

The Disaster Management Law provides that the Council of Ministers determines compulsory evacuation, temporary or permanent settlement, of persons and property located in high risk areas. In situations of imminent danger, compulsive evacuation of people and goods can be determined by the province governor, district administrator or president of the competent municipal council on grounds of territory.

It must be noted that the Disaster Management Law needs to be harmonized with the Resettlement Regulations to ensure consistency in the safe and sustainable handling of resettlement in Mozambique.¹¹⁰ The difference between disaster-related and development-related resettlement is not clear to the general public and even within government. Public opinion on the issue is that the distinction ought to be defined and regulated.¹¹¹

Accordingly, regulations governing relocation in the face of a national disaster do not fall under the land law legislation but under the disaster management policies of the Mozambican Government. Such policies provide the government with wide reaching powers to carry out relocations for the safety of the communities being relocated, without the specificity of the rules regarding that relocation as with relocations for development.

(b) **Are there any other laws or regulations (i.e. human rights instruments) that are applicable to relocations?**

Mozambique signed the 2009 African Union Convention for the Protection and Assistance of Internally Displaced Persons in Africa ("**Kampala Convention**").¹¹² Mozambique has yet to ratify the Kampala Convention.

As a signatory, however, Mozambique has indicated its willingness to become a State Party to the Kampala Convention and has undertaken to respect and observe its provisions until such a time that it becomes a State Party.¹¹³ The Kampala Convention has a number of objectives, aiming to prevent internal displacement occurring due to conflict or other disasters, and to protect and assist people who have been internally displaced in Africa. The Kampala Convention holds both State Parties as well as international organisations accountable in the provision of aid to internally displaced persons. There are a number of obligations placed on international organisations by the Kampala Convention, should they carry out aid missions in the jurisdiction of State Parties to the Kampala Convention. In this regard, article 6 requires international organisations and humanitarian agencies to comply with international law and the domestic law of the relevant State Party; all the while binding them to the principles of humanity, neutrality and impartiality. Article 3 and 5 contain a number of obligations for State Parties, the most notable being:

Article 3(1)(j) which requires State Parties to "ensure assistance to internally displaced persons by meeting their basic needs as well as allowing and facilitating rapid and unimpeded access by humanitarian organisation and personnel"; and

Article 5(1) which provides that "State Parties shall bear the primary duty and responsibility for providing protection of and humanitarian assistance to internally displaced persons within their territory or jurisdiction without discrimination of any kind."

¹¹⁰ Recovery Framework Case Study, " Mozambique: Recovery from Recurrent Floods 2000 - 2013," (2014) at page 24.

¹¹¹ Recovery Framework Case Study, " Mozambique: Recovery from Recurrent Floods 2000 - 2013," (2014) at page 24.

¹¹² Protection Cluster: Mozambique "Protection Monitoring Report #16 - Resettlement Exercise" [2019] < https://www.humanitarianresponse.info/sites/www.humanitarianresponse.info/files/documents/files/protection_monitoring_report_no_16_mutua_and_savane_resettlement_sites_english_20190709.pdf > accessed June 20, 2020.

¹¹³ Protection Cluster: Mozambique "Protection Monitoring Report #16 - Resettlement Exercise" [2019] < https://www.humanitarianresponse.info/sites/www.humanitarianresponse.info/files/documents/files/protection_monitoring_report_no_16_mutua_and_savane_resettlement_sites_english_20190709.pdf > accessed June 20, 2020, as at page 1.

In the context of relocations, Article 11 of the Kampala Convention is extremely important as it requires State Parties among others to:

promote conditions for the relocation of internally displaced persons on a sustainable basis; enable internally displaced persons to make informed decisions regarding their relocation, return and/or integration; and

take appropriate measures to restore the lands of communities who have a special dependency or attachment to the land from which they were displaced, upon their return to such land.

Article 12 requires State Parties to provide appropriate remedies to persons affected by displacement. While Article 12(1) does not elaborate on the form of remedy that should be provided, Article 12(2) requires State Parties to establish a legal framework that provides for just and fair compensation and similar reparations to internally displaced persons. Article 12(2) qualifies the calculation of compensation, requiring the calculation to conform to international standards. In respect of displacements caused by natural disasters, Article 12(3) evokes a quasi-penalty clause. Article 12(3) establishes a positive duty on State Parties to assist IDPs affected by natural disasters, failing which State Parties become liable for damages.

4.4 Compensation for Expropriation and Relocation

(a) **Are there laws or regulations providing compensation for people who are relocated, forcibly evicted, or whose land is expropriated?**

As stated in (a) above, article 18(1)(b) of the Land Law, article 19(3) of the Regulations, article 70 of the Regulations to the Land Use Management Law and the Expropriation Law require fair indemnification and / or compensation to be paid when land or property is expropriated.

While the Land Law and the Regulations are silent on the means of calculating compensation, the Land Use Management Law and the Expropriation Law provide guidelines on how compensation is calculated in instances where a person is deprived of their property due to expropriation.

Article 2.2 of the Expropriation Law and article 70(2) of the Regulations to the Land Use Management Law require the payment of compensation to be calculated according to the real and actual value of the expropriated assets, alongside the addition of any damages that may have arisen due to the loss of profits as a result of the expropriation.¹¹⁴

Article 4 of the Expropriation Law takes the calculation of compensation one step further, and provides for the manner in which compensation should be calculated according to the asset expropriated.

Article 4.2.1 of the Expropriation Law deals with the calculation of compensation in cases where real estate property has been expropriated starting by pointing out that in order to calculate the indemnity, the category of the property must first be identified (residential property; property for commercial / industrial / service purposes; beach and countryside properties), and requires the following elements to be taken into account:

- The type of property;
- The location of the property;
- The age of the property;
- The value of the property at the date of its construction; and

¹¹⁴ Norfolk, S "Policy, Legal and Institutional Assessment Framework: Large-Scale Land Acquisition for Agricultural Production" [2009] < <https://www.open.ac.uk/technology/mozambique/sites/www.open.ac.uk/technology/mozambique/files/pics/d128186.pdf> > accessed June 19, 2020, as at page 41.

- The current value of the property.

Article 4.2.1 of the Expropriation Law then provides the equations that should be utilised to calculate the compensation payable, based on the aforementioned elements.

According to the quality of housing, housing properties are classified as:

Luxury houses: those that have at least two of the following conditions:

- More than 400 square meters of covered area;
- More than 35 square meters, per person, planned;
- Pool;
- Garden;
- Interior or exterior coatings of high cost materials.

Houses above the normal: those that have cumulatively:

- A minimum of two full bathrooms for three bedrooms;
- More than 35 square meters per person scheduled.

Apartments above normal: those that have cumulatively:

- A minimum of two full bathrooms for three bedrooms;
- More than 20 square meters of useful covered area, per person, programmed.

Normal apartments: those that have cumulatively:

- A minimum of one full bathroom for three bedrooms;
- More than 20 square meters of useful covered area, per person, programmed

The number of programmed people is obtained by multiplying the number of existing rooms by two. Complete bathroom refers to the one that is equipped to perform the functions required by personal hygiene, having a bath or shower, washbasin and toilet.

Social habitation: are those that do not have at least one of the following conditions:

- Bathroom inside the property conventionally equipped;
- Kitchen equipped with at least one sink with wash basin and tap, inside the property.

The value of the residential property will be calculated using the following formula:

$$V_n = A \times P \times K_1 \times K_2 \times K_3 \times K_4$$

Where:

V_n – is the value of the immovable property (new)

P – price of construction of the immovable property (per square meter) – the market price per square meter will be estimated at:

- Luxury housing (MZN 37,500.00 per square meter);
- Houses above the normal (MZN 22,500.00 per square meter);
- Apartments above normal (MZN 15 000.00 per square meter);
- Social housing (MZN 7 500.00 per square meter)

These values correspond to the average of the prices practiced in the different housing standards, and can be reassessed, whenever necessary, according to the cost of the construction material, by means of a joint Ministerial Diploma from the Ministers for Environmental Coordination, Finance and Justice.

K₁ – typology – coefficient that translates the habitational typology:

Normal house 1.00

House above normal 1.10

Apartment 1.00

Social housing..... 1.70

Garage 0.45

K2 –house importance – house importance coefficient:

- House or apartment with living room, bedrooms, kitchen and bathroom 1.00
- Dependence with rooms and toilets 0.90
- Social housing 0.90

K3 –house construction quality – house quality coefficient:

- Luxury houses 1.20
- Houses above normal..... 1.10
- Apartment above normal.... 1.00
- Normal house.... 0.80
- Normal apartment 0.75
- Social housing 0.60

K4 –location of the property – location coefficient:

In level A cities:

- Area with a plan 1.20
- Area without plan 0.75

In city level B:

- Area with a plan 1.20
- Area without plan 0.95

In level C urban agglomerate:

- Area with a plan 1.20
- Area without plan 0.95

In level D urban agglomerate and classified villages:

- Area with a plan 1.20
- Area without plan 1.00

In the countryside:

- Area with a plan 1.10
- Area without plan 1.00

The depreciation value (D) of a property must also be taken into account. For this purpose, this value is calculated using the following formula:

$$D = d \times I \times C \times M \times Vn$$

Where:

D – is the depreciation of the immovable property

d – annual percentage of depreciation of the immovable property

I – age of the immovable property

C - state of conservation of the property

- very well maintained immovable properties 0,10
- well maintained immovable properties 0,40
- moderately maintained immovable properties 0,60
- poorly maintained properties 1,0
- very poorly maintained properties 1,50

M – seniority margin of the immovable property

Vn – is the immovable property value (new). The state of conservation of an immovable property is a factor that depends on the aging of a construction. For the determination of an immovable property, the correct position of the degraded or non-degrading parts that constitute it should be established, namely:

- structural part; and
- secondary parts.

The structural part comprises:

- in simple or reinforced concrete, comprising foundations, pillars, beams, slabs and stairs;
- in wood or metal, comprising support elements: trusses, pillars, beams, stairs, and floorboards.

The secondary parts include wall coverings, floors and ceilings, sanitary appliances, electrical installation, etc. When assessing the state of conservation, the appraiser should not be limited only by the aspects of lesser relevance, such as distinguished paintings, simple cracks and dirt, but by the detailed observation of the parts described above.

Summary table of the weighted classification of properties

Degradation		State of conservation of the property
Structural part	Secondary parts	
Null	Null	Very well maintained
Null	Regular	Well maintained
Regular	Regular	Moderately maintained
Regular	Advanced	Badly maintained
Advanced	Advanced	Very poorly maintained

It is considered:

Null degradation: when there are no features or signs of ruin of the elements that compose it.

Regular degradation: when less pronounced degradation characteristics are present, for example: simple cracks, corrosion, absolute of sanitary and electrical appliances, water infiltrations, etc.

Advanced degradation: when the immovable property is in a state of disrepair, especially settlements, deformations, corrosion of construction materials, obsolescence of sanitary and electrical appliances, water infiltration, etc.

However, the value of the property will be obtained by applying the following formula:

$$V = V_n - D$$

$$V = A \times P \times K_1 \times K_2 \times K_3 \times K_4 \times (1 - d \times I \times C \times M)$$

Where:

V – is the value of the property

V_n – is the value of the immovable property (new)

D – is the depreciation value of the property

Real estate for commercial, industrial and service purposes

The value of these immovable properties is determined by applying the following formula:

$$V = P \times A \times K_a \times (1 - d \times M \times C \times I) \times a$$

Where:

V – immovable property value in Meticaís¹¹⁵

A – pavement area of the immovable property

P – price per square meter of construction, in Meticaís

K_a – property location coefficient

d – annual percentage of deterioration of the property

M – coefficient that reflects the immovable property's seniority margin

C – coefficient that reflects the state of conservation of the immovable property

I – age of the immovable property in years

a – coefficient of the importance of the right foot

The price per square meter of the construction is fixed in MZN 10 000.00, for immovable properties intended for trade and services, and at MZN 12,500.00 for immovable properties intended for industry (factories and warehouses). Commercial properties, which are located in rural areas, are governed by Ministerial Diploma no. 119/94 dated 14 September, relating to the transfer and sale of stores or warehouses located in rural areas.

The K_a coefficient, location of the immovable property, varies from 0.80 to 1,10 and as follows:

- Zone A – 1,10
- Zone B – 1,00
- Zone C – 0,80

¹¹⁵ Local currency.

The "d" and "M" coefficients are:

d = 0,02

M = 0,80

Beach and countryside properties:

The same criteria and methodologies are used as for residential properties, plus 20% corresponding to the privileged location, in a tourist, leisure or field area.

Factors to calculate depreciation

designation	lifespan	residual value	Seniority margin (%)	Depreciation (%)
Social habitation	30	20	80	3,33
Reed house and zinc coating	5	20	80	20,0
Wooden and zinc house without concrete foundation	20	30	70	5,00
Immovable property of a floor in self-construction of masonry in an area without drainage	30	20	80	3,33
Immovable property of a floor in self-construction of masonry in area with drainage	40	20	80	2,50
Masonry immovable property up to two floors	50	20	80	0,02
Well-built floors property	60	25	75	1,65
Facilities for isolated services	40	15	85	2,50
Dependence and garages	40	15	45	2,50
Masonry installations for animals	30	10	90	3,33

Hennerly and other badly finished facilities	5	-	100	20,00
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Article 4.2.2 of the Expropriation Law deals with the calculation of compensation when crops are expropriated. The calculation of compensation for the purposes of article 4.2.2 takes into account the following elements:

- The age of the crop;
- The growth period of the crop;
- The average annual production of the crop; and
- The sales price of the crop's final product (i.e. the sales price of the fruits grown from the crop).

Article 4.2.2 of the Expropriation Law then provides the equations that should be utilised to calculate the compensation payable, based on the aforementioned elements.

Calculation terms for crops:

The calculation is made based on the useful life, age of the plant, growth period, average annual production and the K factor whose value ranges from 0 to 1. The K value is assigned based on the state of the plant, terrain, spacing, treatment and other factors that may interfere with the yield of the plant.

The compensation amount for a plant will be calculated using the following formula:

$$(VU - (I - X) P_m * PV * K = \text{Plant value}$$

Where:

VU – Lifetime

I – Age

X – period of growth

P_m – Average annual production

PV – selling price (fruits)

K – Factor

The amount of compensation for an annual crop will be calculated using the following formula:

$$\text{Prod./ha} * A * P_r / K_g * a = \text{Amount of compensation.}$$

Where:

yield / ha – yield per hectare;

At – total area per hectares

Pr / Kg – price of culture in Meticaís

A – factor of compression of intangible assets

VI – amount of compensation

See 4.3(b) for a discussion on compensation as required by the Kampala Convention in the context of relocations.

(b) In practice, are these laws or regulations adhered to?

In practice, the calculation of compensation is often agreed to by the relevant parties to the expropriation.

In urban areas, the compensation paid is often based on the market value of the structures erected on the land, since the land is 'valueless' as it is owned by the State.¹¹⁶

In rural areas, compensation has been made in the form of replacement land that is either equal or larger in size than that of the expropriated land.¹¹⁷

The researchers are unable to give a definitive answer as to whether the abovementioned laws and regulations are adhered to.

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Ministerial Order No. 181/2010 regulating land expropriation procedures

Law 15/2014 of 20 June, which establishes the management of natural disaster

Family Law Act, 22 of 2019

5.2 International conventions

African Union Convention for the protection and assistance of internally displaced persons in Africa

5.3 Case law

No case law is referred to in this research

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6. Glossary of abbreviated and defined terms

(DUAT-	Direito do Uso e Aproveitamento da Terra
(DNTDT)	National Directorate of Land and Territorial Development
(Frelimo)	Front for the Liberation of Mozambique
(Renamo)	Mozambican National Resistance
(NORAD)	Norwegian Agency for Development Cooperation
(INGC)	National Disaster Management Institute

(CENOE) National Emergency Operations Centre
(MTA) Ministry of Land and Environment
(SIRP) Integrated Land Registration System