

# 'Só para o Inglês ver' – The Policy and Practice of Tenure Reform in Mozambique

Simon Norfolk  
Isilda Nhantumbo  
João Pereira



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### *Sustainable Livelihoods in Southern Africa: Institutions, Governance and Policy Processes*

Through work in southern Africa this research programme has explored the challenges of institutional, organisational and policy reform around land, water and wild resources. The case study sites have been in Zambezia Province, Mozambique, the Eastern Cape Wild Coast in South Africa and the lowveld area of southeastern Zimbabwe. Three broad themes have been explored:

- How do poor people gain access to and control over land, water and wild resources and through what institutional mechanisms?
- How do emerging institutional arrangements in the context of decentralisation affect poor people's access to land, water and wild resources? What institutional overlaps, complementarities and conflicts enable or limit access? What new governance arrangements are required to encourage a livelihoods approach?
- How do the livelihood concerns and contexts of poor people get represented in policy processes concerning land, water and wild resources in local, national and international arenas? What are the challenges for participation in the policy process?

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## **Summary**

The paper examines the fundamentals of Mozambican land policy from a livelihoods perspective and identifies considerable potential for improving the sustainability of rural livelihoods and the flexibility and cost-effectiveness of policy instruments aimed at increasing security of tenure. The impact of the cancellation of private land applications in one province is examined, and the paper argues that, notwithstanding the apparent official reluctance to implement this element of the policy, the impact has been almost wholly beneficial for local community groups. The uneven implementation of the law, the absence of official resources for community land delimitations, and the cursory manner in which local consultations are conducted are identified as the major blockages to realization of pro-poor policy objectives.



## Introduction

**T**he intention of this paper is to look at the issue of tenure security over land resources as a component of livelihoods in the rural areas of Mozambique and to examine the experiences and results of a particular programme of tenure reform being undertaken in the central province of Zambézia. It is written at a time when there has been significant impetus given to the discussion regarding the ‘privatisation’ of land in Mozambique, with Ministerial statements in the national press and discussions in donor and government meetings, indicating an official desire to review the existing policy framework regarding access to land.<sup>1</sup>

The motivating factors behind such a policy review by government are expressed in various ways. They include a need to develop a market in land and encourage land transactions, the existence of an untaxed informal market in peri-urban lands, a need to identify areas that are available for investment through a land zoning process, and the inability of the private sector to raise investment finance on the basis of long term use rights to agricultural land holdings rather than ownership.

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<sup>1</sup> See, for example, ‘It is time to argue for land privatisation’ (Domingo, 8 July 2001), where the Minister of Agriculture and Rural Development is quoted as saying: ‘The land law we have today in Mozambique, that protects the peasants, was conceived by consensus. It was thought that it was the best way to protect peasants, but I think that the time has come to start selling land’. (Translated and quoted in Kanji et al. 2002).



For the supporters of the present approach to land allocation and rights (which was ushered in by the land policy of 1995), this kind of review is premature. Many believe that if it results in a ‘rolling-back’ of the rights and the concepts in the new law it will almost certainly reduce the realisation of poverty alleviation goals and sustainable development in rural areas.<sup>2</sup> After a policy development process in the mid 1990s that was praised for its depth of consultation and commitment to consensus building, there are also worrying signals that any future ‘debate’ regarding land markets and privatisation will be ‘*só para o Inglês ver*’ (‘just for the English to see’)<sup>3</sup> and that decisions have already been made.

As well as the recent statements from the Minister about the need to debate the issue of privatisation, the Government of Mozambique has identified both a new National Land Management Policy and a National Land Use Plan as necessary additions to the existing policy framework. Although these are important instruments for managing and encouraging development, there is a tendency to return to an idea – that existing rights can be identified by encircling the cultivated plots of rural dwellers, leaving the rest ‘free for investors’ – that is evident in the arguments used to support their introduction (Tanner 2002).

The 1995 policy was built upon a set of principles that highlighted the need for greater protection of existing use rights to land and the establishment of an environment within which the rural poor could increase the benefits from the most common form of natural capital available to them: land. The policy was consciously designed to have a positive impact on the livelihoods of the rural poor.<sup>4</sup> It resulted in the legal recognition of local community groups and of their land use rights, the incorporation of community representatives into formal institutional processes of land adjudication and the establishment of legislated participatory methodologies that permitted community members to register their rights in the national cadastre, either as individuals or groups of co-title holders.

The policy framework contained new mechanisms for land registration and new legal concepts that were widely recognised as being flexible and that had been developed through consensus. Implementation of these concepts and mechanisms, though, has been haphazard and extremely limited (ibid.), with the vast majority of government resources directed towards making provision for the private sector uptake of land rights in rural areas, rather than on implementation of the newly introduced

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<sup>2</sup> See, e.g., Tanner (2002: 54-55).

<sup>3</sup> A colloquial saying in Portuguese meaning a perfunctory attempt to do something merely in order to appease critics.

<sup>4</sup> As one of the technical assistants involved in the policy development process states ‘... this law is also an important development tool, and was explicitly designed as such. Indeed equitable and sustainable development is its major underlying objective. It is not a law that simply defines and protects land rights; it does not assume that once its work is done, things will remain as they are’ (Tanner 2002).

concepts of land delimitation and formal registration of community rights.<sup>5</sup> Undoubtedly, the needs of the private sector are legitimate concerns to a government that recognises the importance of direct investment for development. But in a country where the vast majority of land users are rural peasants, the almost total absence of resources for the implementation of the reformist elements of the land programme shows that these too may have been adopted ‘just for the English to see.’<sup>6</sup>

Many of the NGOs that had been involved in the ‘land campaign’ and in discussions regarding the policy were also more circumspect in their approach to implementing programmes of tenure reform, preferring to focus on the dissemination of information to rural communities. In part, it has been this absence of implementation initiatives and a lack of creative attention towards making the law work that has led to some of the present calls for revision.

An important element of land tenure security is the confidence with which land rights can be transacted. This importance increases as market economies develop and penetrate into the rural areas of hitherto pre-capitalist systems (Adams 2001). However, the potential for distress sales and loss of land-based livelihoods in times of drought, floods, or crop failure also increases, and it was this potential that was one of the major reasons for the exclusion of ‘freehold’ rights from the 1995 Mozambican land policy. There was widespread concern that the privatisation of land and the introduction of freehold rights could lead to the rapid and long-term loss of land rights by the rural poor.

The fact that the recent statements and discussions have largely centred on the issue of whether freehold rights should be introduced, so that land can be bought and sold, ignores the fact that freehold rights are not a pre-condition for the development of a land market. Market transactions can also include leasing and rental arrangements, which do not hold the prospect of a permanent loss of land rights. Indeed, much of the 1995 land policy was designed with precisely this in mind: community land rights, once registered and secured, were also designed to be transferable to private investors on the basis of formal agreements that would bring some form of benefits to the community.

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<sup>5</sup> Despite commitments in the Basic Principles of the public sector agricultural investment programme, PROAGRI, there has been no spending to date within this programme's budget that relates to securing community land rights (except for some national level activities of the Land Commission related to materials development and training).

<sup>6</sup> The key socio-economic issue in Mozambique is poverty. It is one of the world's poorest countries. Gross National Product in 1997 was US \$128 per capita and over 90% of Mozambicans live on less than US\$1 per day. Although economic growth has been encouraging (averaging around 8% for the last three years and currently 10%) the DfID estimates that at current population growth rates of 2.6% and 5% annual growth rates, it will take 60 years for average incomes to reach US\$1 per day. Almost 80% of rural households are poor.

Despite the absence of a government-led programme of tenure reform directed at the rural poor, there have, however, been some isolated initiatives to pilot the implementation of some of the new concepts of the land policy. The aim of this paper is to examine the policy and practise of tenure reform from a livelihoods perspective and to look particularly at the impact of the cancellation of many of the private applications to land and the institution of new rules regarding the allocation of land use rights.

The paper argues, in conclusion, that the policy framework for access to land does hold considerable potential for improving the sustainability of rural livelihoods and that moves to radically alter the rules of the game now may be prejudicial to this. Rather, what is needed is a continual focus upon the implementation of the broad policy and a much greater concentration on, and provision of resources for, the implementation of the poverty-relevant elements of the policy, including investment in and engagement with the new community institutions, and the development of further mechanisms that will translate the newly-registered natural capital into realisable benefits for the rural poor.

## The policy: a livelihoods ‘assessment’

The process of developing the national land policy and the main elements that emerged in the 1995 Land Policy and subsequent legal instruments have been well described elsewhere (see particularly Tanner 2002; Nhantumbo et al. 2001a). This section concentrates on trying to answer a series of questions, based on and adapted from the work of Ben Cousins and Martin Adams, that are designed to elicit some of the ‘livelihoods’ aspects of the land tenure policy and reform programme.<sup>7</sup>

1. *Given the inherent complexity of land tenure systems, the limited capacity of the State, and the costs of tenure reform, is reform necessary for reducing poverty and securing sustainable livelihoods? Is the kind of reform envisaged appropriate? Has it been phased in an appropriate manner?*

Some reform to the system of land tenure was certainly necessary, given the wider political changes taking place in Mozambique. The move from a socialist to market economy required a system of land rights that offered a sufficient level of independent security for land users and investors. Regulations passed in 1987 had introduced private land use rights on a concession basis once again and only limited rights of existing users were protected. Plots of family sector agricultural land fell under legal protection, but not the more extensive communal areas of use (that included the important areas used for grazing, collection of forest

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<sup>7</sup> The questions are based on those quoted in Adams (2001).

products, hunting, fishing and cultural, protected areas). There were also no mechanisms available to the rural poor to enable them to register their rights.

Reform then became a constitutional obligation after the amendments in 1990 requiring the recognition of customary occupational rights to land. One of the few things known about the various customary tenure systems throughout the country was that they were extremely complex. The limitations in terms of the low capacity of the state and the costs of reform were also explicitly recognised by policy-makers at this time, who attempted to deal with the problem through initiating a long term evolutionary process rather than a 'big bang'.

The phasing of reform can be roughly summarised as follows:

- i. the introduction in law of legal protection for occupancy rights acquired (again through operation of the law) by local communities occupying land according to customary norms and practises and individuals whose occupation of land had been for at least 10 years and in good faith. These rights were protected without need for registration and could be proved through oral testimony;
- ii. the introduction of legal mechanisms requiring consultations between land applicants and local communities before the award of private use rights;
- iii. the recognition of the role of local communities in the resolution of conflicts regarding land;
- iv. the introduction of an annual rental for land use, payable by private land use rights holders but not community groups or good faith occupants;
- v. a mechanism for registration;
- vi. the introduction of the delimitation process, enabling local community groups to register communal land rights;
- vii. the creation of a mechanism for the registration of individual land rights acquired through occupation.

In this way the high costs of attempting to register land rights in order to protect them was avoided. Most people occupying or using land in good faith were recognised as having a legal right to do so by operation of the law. Those who wished to acquire rights to an area where they had no history of occupation had a legal obligation to consult locally and obtain authority from local level community institutions. Similarly, the apparent problem posed as a result of the inherent complexity of the tenure systems in operation was dealt with in policy through 'blanket' recognition of this complexity, rather than an attempt to engineer or regulate the systems to fit the needs of a 'one-dimensional' cadastral system. Registration has been approached conservatively, in the sense that the policy allows for it on demand, rather than requiring it across the board. Challenges in this respect lay ahead, but the initial phase has



provided broad and strong protection of rights, whilst avoiding the stagnation and paralysis common to many policies that attempt far-reaching and deep reforms from the outset and that attempt a registration process that is beyond existing administrative capacities.

2. *How is tenure reform linked to governance and pro-poor economic and social policy reform in the wider sense?*

Relevant governance systems and policies include the restructuring of the public sector, the evolving policy in respect to the role of local organs of the state (decree 15/2000 and related legislation) and the recognition of 'community leaders' as agents of the state, the agricultural sector investment programme (PROAGRI), and the Poverty Reduction Strategy and Plan (PARPA).

Linkages between social reform policy regarding the recognition of community leaders and the reform of land tenure are still confused. Whilst the procedures in the tenure reform policy for the registration of group rights are autonomous from the wider policy relating to local organs of the state, there appears to be some areas of overlap. The government position taken by DINAGECA is that the representatives recognised by the state, in terms of Decree 15/2000, will be those that will participate in the consultation processes in private land adjudications. Whether this would preclude the participation of group representatives, as elected by communities that have registered their rights, or not, is not clear from this position.

The PROAGRI and the PARPA both tend to stress the neo-liberal elements of the development approach in rural areas (those of maximising foreign exchange earnings, encouraging public-private partnerships, economic growth, the creation of rural employment opportunities, and other aspects of the 'trickle down' approach). Very little attention in either of these policy instruments is paid to the issue of tenure reform at community level and the emphasis has been strongly upon the need to streamline access for the private sector uptake of land rights in the rural areas. To the extent that this represents a strategy for growth, it would appear that the poor majority have little of a role to play and the potential of the land law has not been fully appreciated, neither by the authors of the PARPA, nor the managers of the PROAGRI process.

3. *Do the proposed reforms build on the basis of existing institutions of land management or have they introduced new and unfamiliar institutions?*

Generally, the reforms to tenure administration systems have been geared towards reinforcement of local practise and institutions. The broadly defined 'local community' is allocated a role in the resolution of conflicts

and in decisions regarding land allocation, roles that are performed according to ‘customary norms and practises’. The rules relating to the identification of group representatives (as part of the registration process) do not prescribe the formation of new institutions, but rather the recognition of existing ones. The Land Commission Delimitation Training Manual underlines the flexibility of the approach to the definition of a local community in terms of the law, stating:

- i. the local community is that which functions in reality as a community in terms of the use and management of land and natural resources [*a comunidade local é aquilo que funciona na realidade como uma comunidade em termos de uso e gestão de terras e recursos naturais*];
- ii. the local community has its own customary institutions and rules that regulate access to land [*a comunidade local têm suas próprias instituições e regras costumeiras que regulam o acesso a terra*],
- iii. the management institutions and their representatives are those that the community recognises as existing and functioning [*as instituições de gestão e seus representantes são aqueles que a comunidade reconhece que existem e funcionam*].

To a large extent, therefore, the basis for the future evolution of land management institutions has been grounded in what exists presently, rather than on something new and unfamiliar. This contrasts with, for example, the introduction of communal property associations in South Africa. These were new legislated forms of association that were to be adopted by rural communities which were obtaining co-title to land as a result of the South African government’s land reform programme. The Legal Entity Assessment Project, a research process that examined the effectiveness of some of these new institutions, discovered that most communities did not understand the new arrangements. There were also instances of reversion by communities to earlier practise and existing authorities, competition between the old and the new structures, and development of hybrid systems of management that lead to uncertainty about rights and processes (LEAP 2002).

4. *How is land tenure administered at national, regional and local levels and how appropriate and effective is it? How are land tenure and land administration linked to local government?*

The hierarchy of decision-making regarding private land rights allocation penetrates no lower than the level of provincial governor, who has powers to approve areas for private use of up to 1000 hectares (ha). Areas larger than this require the approval of the Minister of Agriculture and Rural Development, or, in cases involving more than 10,000 ha, the Council of Ministers. There are no powers allocated to district, administrative post, or locality levels of government, although these structures are consulted to a greater or lesser extent. Recent streamlining

of the approval processes in response to private sector pressure have meant that the opinion of district authorities can be dispensed with if it is not provided to the provincial authorities within 30 days.

There is confusion as to the decision-making hierarchy as it applies to the registration of community group rights. The policy instruments implicitly suggest that the district administrator must approve the process, although nowhere does this appear in the actual legislation. Once delimited, the links between a representative group of the community and district level authorities are unspecified.

The administration of the cadastre takes place at provincial level through the SPGC offices, except in cases of approved municipality areas that possess the technical and human resources to manage a cadastral system.<sup>8</sup> The system nationally is managed by DINAGECA and is generally recognised to be weak, inaccurate, and opaque, causing many conflicts as a result of multiple allocations of overlapping rights. Despite considerable pressure from donors and extensive support in recent years to improve the information management systems relating to the registration and mapping of rights, there remain many problems with its effectiveness.

### *5. What forms of economic activity take place using common property resources?*

The vast majority of the rural population in Mozambique depend on common property resources for subsistence purposes and for the collection and sale of forest products, for hunting, fishing, etc. Rules regarding the use of these areas are complex and varied throughout the country, and are also little known. Agriculture, however, is largely practised on individual family plots.

This raises an important issue, which relates to the application of common property models to community-based tenure regimes and the need to distinguish between property rights on the one hand and management regimes on the other. Although these are different things, they are treated as being the same by the present policy – the tenure and the management regime (the rules that the community applies in allocating land, controlling access and resolving disputes) are recognised but not differentiated. Customary systems in Mozambique exhibit elements of both common and individual property on a community-wide scale, as is common with other tenure systems in Africa. Farming land is normally held by families and inherited over generations, with the lineage a more important player than the larger community. The delimitation process, however, treats these tenure relationships in the same way as

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<sup>8</sup> In Zambézia, only one of the five recognised municipality areas possesses a system of cadastral records.

land and resources that are more truly ‘common’ property, such as grazing and forest resources.

6. *How are rights to land embedded within wider social and cultural relationships? What is the impact of the structure of land rights on gender inequality? Are tenure systems associated with class, racial, ethnic and/or other forms of inequality?*

Land tenure rights as they operate in customary systems in Mozambique are, as in many other areas, highly dynamic and complex. They intersect with other forms of relationships in myriad ways. The implication of their recognition in formal law is that inequalities, where these exist in the ‘customary’ systems, can be reinforced. Some, such as gender inequalities, are nominally excluded from this reinforcement since they are contrary to the constitution. However, in the absence of legislated state support for the new institutions, that steers them towards practises that do not unfairly discriminate against any group, this counts for little. The recognition of customary tenure must undoubtedly be done in such a manner that ensures that there is a choice available beyond narrow definitions of ‘traditional authority’ mechanisms. In Mozambique this has been provided for through the very broad definition allowed to groups that wish to call themselves a ‘local community’ (see above). In this way, the customary tenure that is being recognised is nothing more than a set of rules and institutions that derive their legitimacy from within the community. That said, the space and freedom that exists for people to break out of existing systems is constrained by unequal power relations, unequal access to information, and the potential loss of social capital that flows as a result of membership of a particular group. This capital may well bind people to continued membership of a ‘traditional grouping’ and, as Bingen (2000) puts it, ‘the ties that bind are also the ties that exclude’. In other words, those ‘excluded’ as a result of familial institutions are likely to remain so even where governments have devolved authority to local levels.

Community rights as recognised in the law are possibly stronger than the rights acquired through application to the government. The permanency of community rights, in contrast to the time-bound right awarded by the state to private applicants, and their exemption from tax obligations for land use, would seem to indicate this.

7. *Are rights to land an important source of asset-based security for the poor?*

Land rights in Mozambique do provide security for the poor. The increase in formally recognised natural capital, arising from the recognition of land rights at community or individual level, means greater protection and security from arbitrary dispossession, particularly by the state. The possibility of registration, which brings with it the potential to

transact with these rights, turns this capital into something fungible within formal economic systems and extends the range of livelihood options that are available.

Social capital is also increased as the institutions at community level are enforced with formal roles in conflict resolution, land adjudication and land use planning processes. The last of these only applies in respect of communities that go through the registration process but the other roles (recognised formally in the law) apply equally to all communities, in whatever form they manifest themselves.

*8. How does the policy interact with informal evolutionary processes?*

Land policy interacts reasonably well with the informal evolutionary process, in the sense that it does not try to capture a snapshot through a registration process of contemporary land holdings, but concentrates instead on the identification of the institutions of land access and reinforces these. The limitations here relate far more to the weak integration of the land policy with wider social policies relating to community representation and participation in local development processes.

*9. Do constitutional and legal frameworks affect tenure?*

Article 35 of the 1990 Constitution deals with the public domain of the State and entrenches the concept that the State is the paramount owner of natural resources occurring within its territorial limits. The constitution therefore awards the State ownership of the resources, leaving all others with access only to interests or rights in these.<sup>9</sup>

Regarding land, the constitution is unequivocal in its stipulation that the right of ownership is vested in the State and that no land may be sold, mortgaged, or otherwise encumbered or alienated.<sup>10</sup> However, the same provision also stipulates that the use and enjoyment of land shall be the right of all the Mozambican people.<sup>11</sup> The exact conditions under which citizens may exercise this constitutional right of use and enjoyment of land are the prerogative of the State, which is constitutionally obliged to develop specific laws governing these conditions.

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<sup>9</sup> Article 36 recognises the obligation of the State, in the national interest, to develop the natural resources of which it is the paramount owner and to determine the conditions under which citizens (and others) may access these resources for their use and enjoyment. Thus the constitution makes provision for the owner of the resources (the State) to develop mechanisms that enable it to grant other forms of rights to these resources to its citizens.

<sup>10</sup> Article 46 (i) and (ii) [Constitution].

<sup>11</sup> Article 46 (iii) [Constitution].

However, the constitution also introduces qualifications and limitations on the eventual content and nature of these conditions (or mechanisms of access):

- i. rights of use and enjoyment may be granted to individual or collective persons, taking into account its social purpose;
- ii. users and producers must be afforded priority and the laws developed by the State may not permit use and benefit rights of land to be used to favour situations of economic domination or privilege to the detriment of the majority of citizens.<sup>12</sup>

Most importantly, however, the 1990 constitution obliges the State to recognise rights acquired through inheritance or occupation.<sup>13</sup> It was this amendment that heralded the subsequent revision of the land law and led to the legal recognition of customary and other rights to land. Mozambicans had, through this amendment, finally ceased to be squatters in their own country.

*10. Are there appropriate and legally secure options for rural and urban situations? What is the legal basis in the policy of common property arrangements?*

Given the absence of a strong independent system that can enforce rights when necessary, the security offered by land titles issued by the government, in rural and urban areas, remains in doubt.<sup>14</sup> All land parcels, whether rural or urban, can be attributed titles after completion of a ‘probationary’ period, during which payment of annual taxes and compliance with original development plans will be monitored. These in turn can be registered with the *registo predial*, sufficient to enable their use as loan collateral.

The legal basis for common property arrangements comes from the recognition of the new concept of a ‘local community’ contained within the 1997 land law, combined with provisions that awarded legally acquired rights over common property resources to these institutions. The definition of this new legal entity is:

*a group of families and individuals living within a geographical area at the territorial level of a locality or subdivision thereof and which seeks to safeguard its common interests through the protection of areas for habitation, agriculture,*

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<sup>12</sup> Article 47 (iii) [Constitution].

<sup>13</sup> Article 48 [Constitution].

<sup>14</sup> The PARPA recognises this fragility: ‘... the justice, court, and public order systems are seen as extremely fragile. For example, according to the Africa Competitiveness Report 2000, the business sector in Mozambique view this system as: non-operational, that it suffers from delays in the resolution of commercial disputes; it fails to enforce decisions that may be taken in commercial disputes; suffers from a legal code that is less than clear and susceptible to multiple interpretations...’ (Government of Mozambique 2001: para 179).

*including both fallow and cultivated areas, forests, areas of cultural importance, pasture land, water sources and areas for expansion.*

Further provisions in the law stipulate that 'local communities' acquire a legal land use right merely by virtue of their occupation of the same according to customary norms and practises. These legal entities may register the acquired rights in the national land register but may benefit from the protective mechanisms of the law even without this registration.

*11. When and where are titling and registration programmes deemed appropriate by the policy?*

Article 9(3) of the regulations permits a community to request the delimitation and registration of their land rights or for it to happen 'where necessary'. Guidance as to what 'where necessary' may mean can be found in Article 6 of the Technical Annex which identifies three priority situations for delimitation:

- i. where there are conflicts regarding land use or natural resources;
- ii. where the State or others intend to establish new economic activities and/or projects and development plans;
- iii. at the request of the community.

The policy therefore defines appropriateness in a way that allows both the state and a community to invoke the registration mechanisms. For the state, the situation must be one where there exists a threat to peaceful development as a result of conflict over user rights, or a need to define and negotiate land holdings as a result of an intended development. However, the costs of registration remain the most important factor: neither the government nor the private sector have been willing to support these in situations where investment projects contain the potential to impact up existing use rights. For community groups that wish to invoke article 6(3) and request that a delimitation of their land be completed, the costs must be borne by them.

*12. Do group forms of ownership require titling and registration?*

The answer is both yes and no. The titling and registration of community delimited land areas is, in fact, necessary to enable the community to transact these acquired rights. Much was made during the information dissemination campaign of the fact that the registration of rights was an unnecessary step, since the law has already recognised the use right; subsequent registration of this right by the State therefore added no additional legal force to it. This, however, was an approach that concentrated on the *defence* of rights, rather than on the integration of these into a more formal system of assets.

The rights, unregistered, *cannot* be transmitted. In the Regulations there are provisions that state that any form of transmission of rights in respect of *predios rústicos*, (namely rights in land, improvements, fixtures, buildings, natural *resources*) requires the recording and approval of the state entity that recognised the original, underlying land use and benefit rights.<sup>15</sup> Implicit within this provision is the fact that rights acquired by occupancy cannot be transmitted to third parties unless they have been previously recognised and certified through demarcation and the issuing of a title deed (for a local community or any of its members this means the need to invoke the procedures in the technical annex in order to delimit their land and register their title).

## The practise, processes, actors and institutions

The rapid adjudication of private applications for land that had been made under the previous land law and that were still outstanding was one of the mechanisms in the new land law through which the customary, everyday use rights that had been enjoyed by the vast majority of the rural population were to be afforded some protection. These pipeline applications were made under the old 1987 regulations, which were not considered to offer sufficient safeguards for existing land users. The possibility of obtaining private use rights to land were first introduced by these regulations and the ensuing initial rush for these new rights was matched by another rush in the mid 1990s, when the prospect of long-term stability came with the signing of the Peace Accord between FRELIMO and RENAMO. Research had shown that this 'land grab', if formalised under the old regulatory framework, would represent a considerable loss of land access for the rural poor.

A disorganised administrative system for managing the national cadastre, inefficient and bureaucratic procedures, and petty corruption by underpaid officials helped to ensure that the majority of the applications were still somewhere in the pipeline. Representatives of a private sector, which was facing stalled investment projects as a result of long delays, were therefore also allies in the push for rapid processing by the state. Stipulations in the new regulations, therefore, required the applicants to renew their 'pipeline' applications (at no additional cost) within a 12-month period (after which these would be processed according to the new regulations or, failing which, they would be legally cancelled). Nothing would prevent a re-application for the land after the cut-off date but this would be subject to the new, more protective provisions and

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<sup>15</sup> Article 15 [RLT].



would require the payment of a new application fee – an attempt to weed out at least some of the spurious and speculative applicants.<sup>16</sup>

The way in which this process of adjudication unfolded in Zambézia demonstrated the influential role that can be played by various actors, even in the implementation of something as cogent as a national law. Largely as a result of the angry reactions from local land applicants, but also mindful that there were a large number of applications that, if cancelled, would remain as *de facto*, informal and untaxed use of land, the SPGC in Zambézia were able to extend the legal deadline for renewal or cancellation for a period of almost two years.

An extremely high proportion of land applications in the province were still in the pipeline at the passing of the legislation in December 1998. In fact, less than 80,000 ha of the total area of 3,500,000 ha that were under application had been formally approved for the use and benefit of the applicants (ZADP 2002). A total of 2,767 applications were still in the pipeline. The requirement that these applications (representing 2,920,000 ha of land) be renewed or face cancellation was broadly publicised in an official notice (*aviso*) published on the 14 May 1999, and in newspaper and radio campaigns.

The low rate of renewal did not cause concern within the SPGC office in Zambézia until towards the end of 1999, when the deadline was approaching.<sup>17</sup> Faced with the prospect of the cancellation of a huge number of the 'pipeline' applications, the national department, DINAGECA, then decided to extend the deadline for a further three months. This deadline also passed, but there remained resistance within the SPGC office and DINAGECA to the outright cancellation of the applications. The official motivation for this was that there were many applicants who were still unaware of the need to renew; they would continue to use land notwithstanding the absence of a legal right and that these represented lost revenue to the state.

However, even the small number that had been renewed, combined with an average of six new applications monthly, were proving difficult for the SPGC to manage, particularly with the new stipulations requiring direct consultations with communities and the political pressure to process applications within 90 days. Both the donor group within PROAGRI and the private sector had helped to bring this pressure to bear, the former group wanting to see the backlog cancelled and the latter group interested in seeing streamlined approval mechanisms.

This continued through to June 2000 when, nine months after the initial legal deadline for renewal, an information campaign was undertaken by

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<sup>16</sup> The equivalent of about US\$40 at that time, irrespective of the extent of the land requested.

<sup>17</sup> A mere 82 applications were renewed by the cut-off date of 8 December 1999.

the SPGC to advise applicants of the requirement.<sup>18</sup> Following increasing donor pressure to ‘resolve the pipeline issue’ the Ministry issued instructions to the DINAGECA in August 2000 to ‘archive’ all the pending applications that had not been renewed. This ‘archived’ status, however, still did not prevent renewal of the applications and a significant number were renewed at no cost to the applicants right up to December 2001, a full two years after the legal deadline.<sup>19</sup> It was only at this point that the last of the ‘pipeline’ applications were finally submitted to the provincial Governor for formal cancellation.

The official delay of the cancellation of these applications demonstrates the shortcomings of an approach that separates policy-making processes from implementation. The extensions to the deadline and the acceptance by the SPGC of renewals far beyond the cut-off date were unsanctioned by law. Consultative mechanisms, such as the Inter-Ministerial Commission that had been used in the development of the policy and law, were not involved in these decisions and DINAGECA’s decisions may have been largely as a result of pressure from the provincial SPGC offices. Local actors, at a provincial level, appeared to be the most powerful in respect to this aspect of the law.

It was also notable that NGOs from the land sector, who had argued for the renewal clause, appeared either to be unaware of the extension or unwilling to challenge it. As a report on NGO influence on land reform policies in Mozambique and Kenya highlighted: ‘legislation and regulations can be modified, reinterpreted or simply ignored when it comes to implementation, when local level power relations become critical’ (Kanji et al. 2002). In the case of ORAM in Zambézia, the provincial power relations were not in their favour during this period and they had been facing accusations in the press of agitation and misinformation. This may explain why there was little public reaction at the time from ORAM. Despite efforts to ensure the transparency of information held in the land register and to underline the implications of non-cancellation, there were no major campaigns during this period by ORAM or other land NGOs to push for the proper implementation of the law.

Involvement of officials at a district level was negligible, as is the case generally with land applications made at this time. District level officials complained of not knowing anything about the land holding situation in their own areas since all the information was held, and all the decisions taken, in Quelimane.

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<sup>18</sup> Results from this campaign were interesting because of the statistics revealed about the applicants and area of residence. For example, in the district of Maganja da Costa, there were a total of a 154 applications that had not been renewed. Of these 154 applicants, only 21 were from the district, 13 lived in Maputo and 43 were from the provincial capital of Quelimane.

<sup>19</sup> It is impossible to provide figures on these since the SPGC offices also stopped tracking the renewal dates in early 2000.

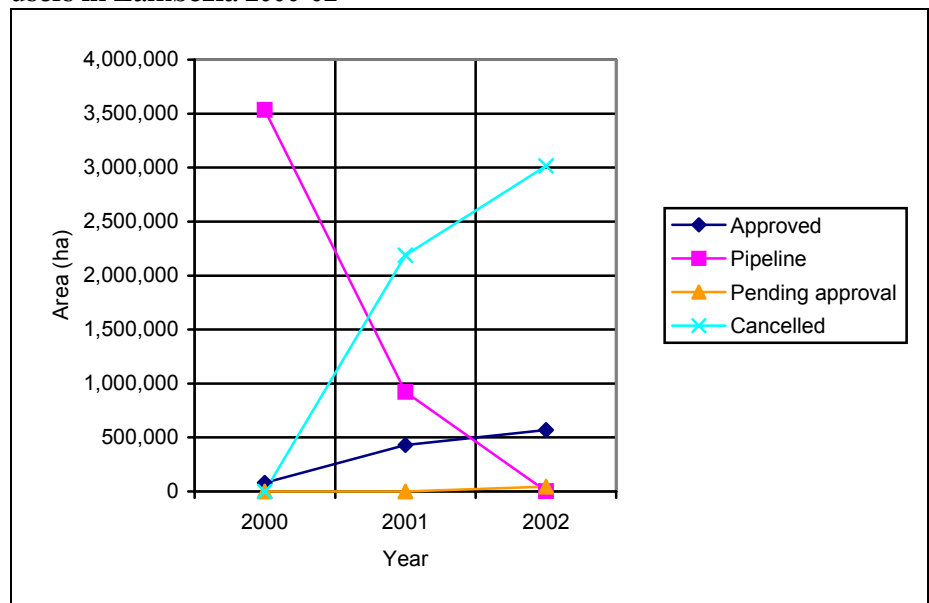
Notable also was the fact that the eventual cancellation of the applications was largely attributable to the arrival of a new head for the SPGC office in June 2001. Under this new leadership there was a more consistent application of the procedures for adjudication and a list of applications to be cancelled was prepared for publication (by DINAGECA) in the national press in July 2001. Although never actually published, the compilation of the list was an important psychological step in the cancellation process.

Political pressure to streamline the application process has continued, with the Minister signalling that the target should be 45 days, from lodging of the applications to approval. In response the DINAGECA formulated a new set of ‘simplified procedures’ to be followed. These contain several controversial elements, including the holding of community consultation meetings before publication of the official notice and a fixed payment of \$12 as an ‘incentive’ to the community.

### The impact on the map of land rights

What then has been the impact of the cancellation of these applications, when it finally came? It appears that despite the hugely extended deadline, the majority of the pipeline applications were, in fact, cancelled. Figure 1 below demonstrates graphically the extent to which the land area that was destined for private, exclusive use in 2000 has become free of use rights (except those acquired by community groups through customary occupation) in 2002.

**Figure 1: Land areas requested and approved for use by private sector users in Zambézia 2000-02**



Source: ZADP (2002).

The statistics at a provincial level show that a huge proportion of the land under application in 2000 has subsequently been freed of any 'claims'. Of the original 3.5 million ha, only 598,000 ha have been adjudicated to private users, with a further 35,000 ha presently under review (ZADP 2002). Given the disorganised state of the provincial cadastre and land register, the figure of 3.5 million needs to be treated with caution, although there is less margin of error for the presently approved 598,000 ha.<sup>20</sup> In any event it would appear that a large amount of natural capital in the form of land, which would have been lost to the exclusive use of private sector operators, is now available as a potential asset for use by the poor.

Looking at the statistics at a district level the picture shows even more clearly how in the more populated lower lying areas close to the provincial capital there was a much greater demand for and pressure on land. The maps on the following pages show the status of private land applications before and after cancellation in the three target districts of the LTC; the hatched shaded areas represent the community-delimited areas. The district of Nicoadala, for example, had a total of 398 applications for land outstanding in 1999, covering an area of 150,000 ha. After the cancellation of un-renewed applications, the total approved area of land under private sector control stood at roughly half this (76,100 ha).

Namacurra district, also relatively highly populated and with fertile soils, had 186 applications for land in 1999, covering an area of almost 100,000 ha, or more than half the total district land area. After cancellation the area approved for private use stood at 60,000 ha.<sup>21</sup> In Guruè, the picture was similar: over a third of the total district area was under application in 1999, and by 2002 the approved area had been reduced to a tenth (49,662 ha).

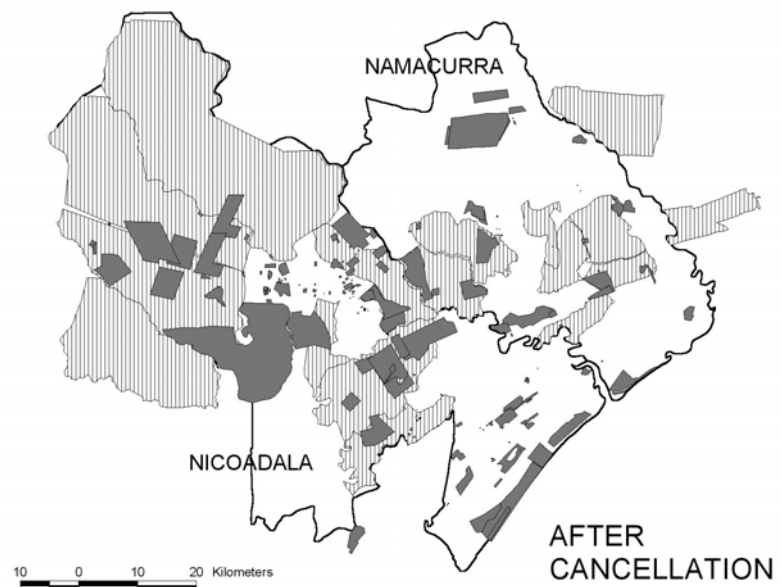
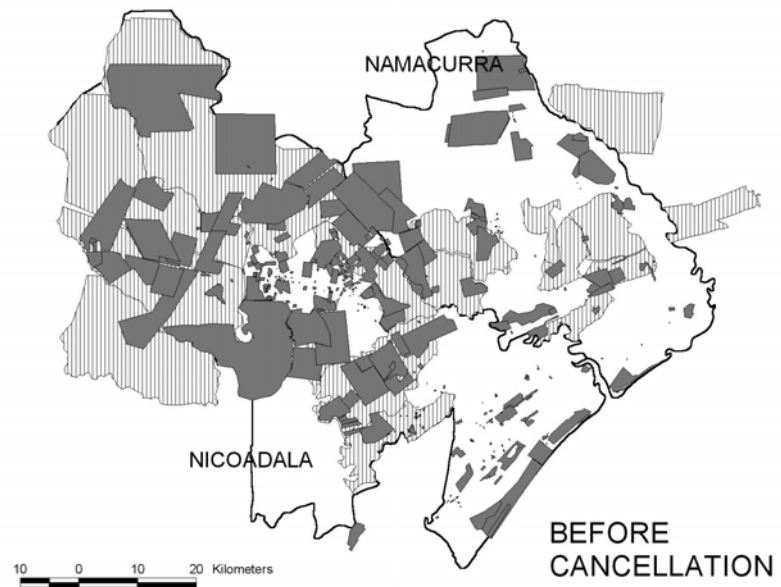
The statistics at a local level, however, show a clearer picture of what this process may actually mean in terms of livelihood opportunities. For some of the communities that have delimited their land use rights (using the new legal provisions for registration), the 'removal' of pending applications in their areas has freed up to 80% of the total area available to them, securing a considerable part of their natural capital that was in danger of being lost to them (at least for the next 50 years).

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<sup>20</sup> Many separate applications were actually made concurrently for overlapping parcels of land and the calculation of land areas from sketch maps was often highly inaccurate.

<sup>21</sup> Note that on Map 1, not all of the land applications in Namacurra are shown. These applications have not yet been mapped by the SPGC.

**Map 1: Namcurra and Nicoadala districts, demonstrating the impact of the cancellation of private land applications**



**Map 2: Gurue district, demonstrating the impact of the cancellation of private land applications**

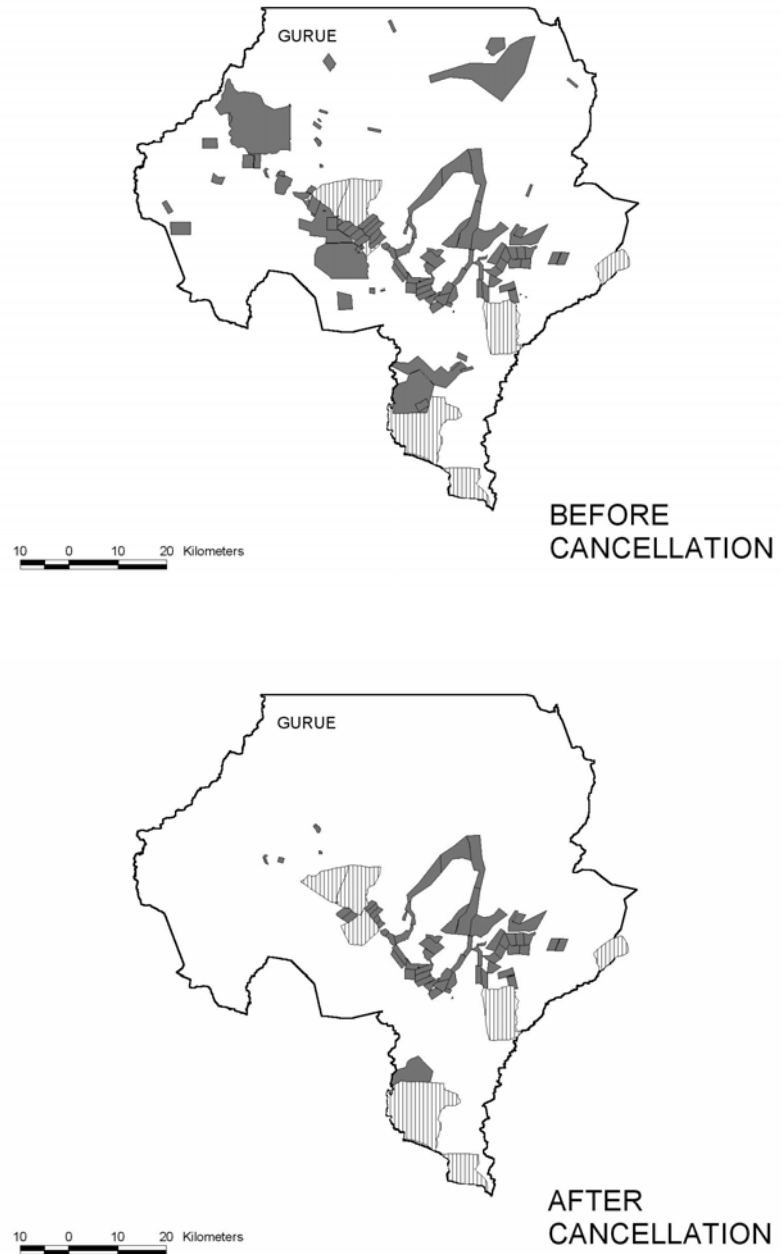


Table 1 below shows the impact of the processing of the private land applications on eight of the delimited communities; all the community areas show a significant drop in the number of ‘live’ applications (those that have been approved or are awaiting approval). Although details on the total reduction in area that this represents are not available for each of the communities a rough assessment of this can be made from examination of the maps, where the size and number of cancelled

applications are strikingly revealed. The change in extent is particularly pronounced in the communities of Nhafuba, Trepano and Mucelo Novo.<sup>22</sup>

**Table 1: The impact of cancellations on some community areas**

Community Name	District	Number live applications 2000	Number live applications 2002	% decrease in 'live' applications
Nhafuba	Namacurra	13	3	77%
Trepano	Namacurra	18	11	39%
Mongoma	Mopeia	22	7	68%
Namacala	Guruè	11	9	18%
Mutange	Namacurra	4	2	50%
Murrua	Nicoadala	28	11	61%
Mugrima	Nicoadala	21	7	67%
Mucelo Novo	Nicoadala	9	1	89%

The community area that has registered the smallest reduction in third party land applications between 2000 and 2002 is that of Namacala. The land parcels in this area all consist of tea plantations that are in existence since the colonial period, were registered to and operated by the state company Enochá in the post-independence period, and have since been privatised.

The community of Mucelo-Novo (see Map 3, next page), in Nicoadala district, has delimited an area totalling 5,688 ha. Prior to the cancellation of un-renewed 'pipeline' applications, more than 90% of this area was under application by third parties, most of them local business entities. All except one of these applications was subsequently cancelled. The map demonstrates the impact on the amount of land available to the community.

Mucelo Novo is a relatively small area close to the urban centres of Quelimane and Nicoadala where there has been considerable pressure on land. Community members that form part of the local land committee reported in April 2002 that there is no space left for any outside parties to take up land holdings since the entire area is under use by community members or individuals from the two urban centres who lease or have acquired rights to *machambas* there.<sup>23</sup> With a population of roughly 8,000

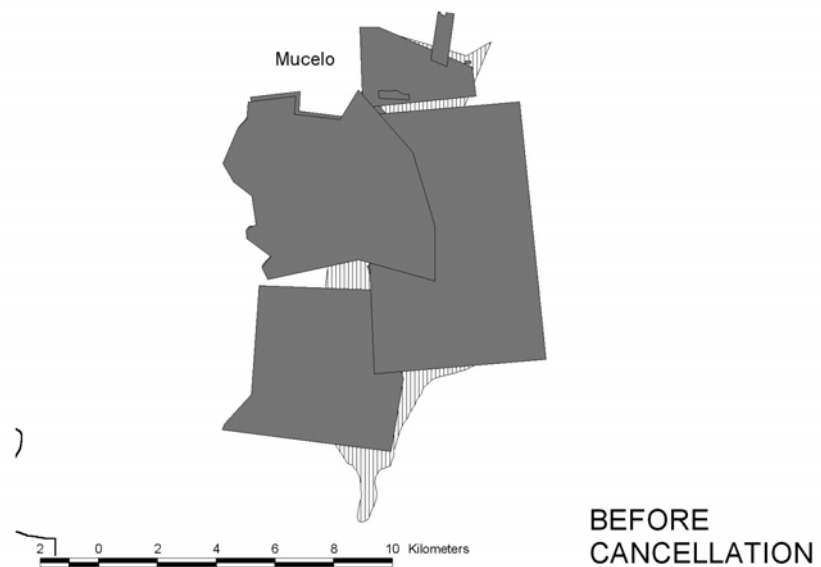
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<sup>22</sup> Of the cancelled applications in Nhafuba there are two large areas that were intended as forestry concession applications, and that no longer require the land right to be previously secured by the applicant. It is likely that these are still pending applications but they now fall within the remit of the SPFFB and will not involve the obtaining of an exclusive land right.

<sup>23</sup> In the nearby community of Mugrima it was reported that there is a similar emerging pattern of informal land leases. One informant claimed to be informally leasing a 1-hectare rice machamba (for an annual rent of 150,000.00 Mts) from a formal titleholder.

people, access to land for the community of Mucelo Novo is already coming under considerable pressure. This situation would have been exacerbated considerably were the ‘pipeline’ applications to have been approved.

**Map 3: Mucelo Community Area, demonstrating the impact of the cancellation of private land applications**

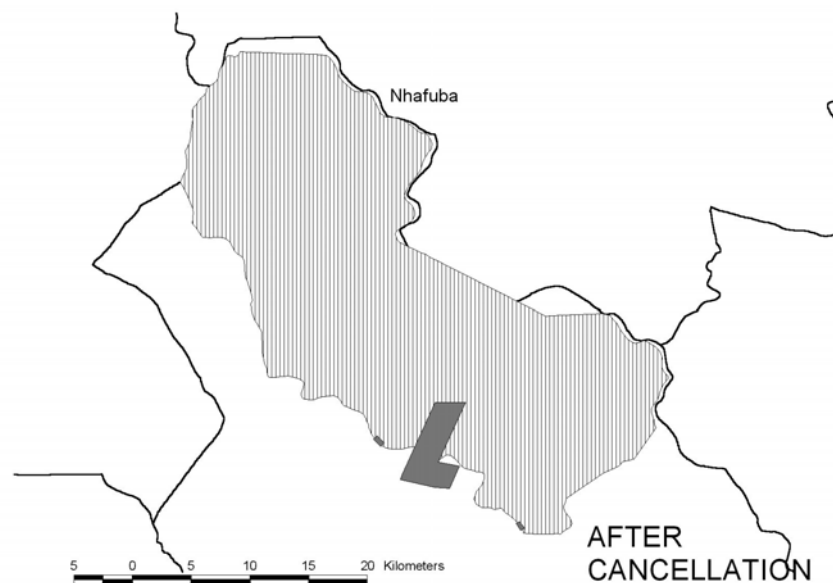
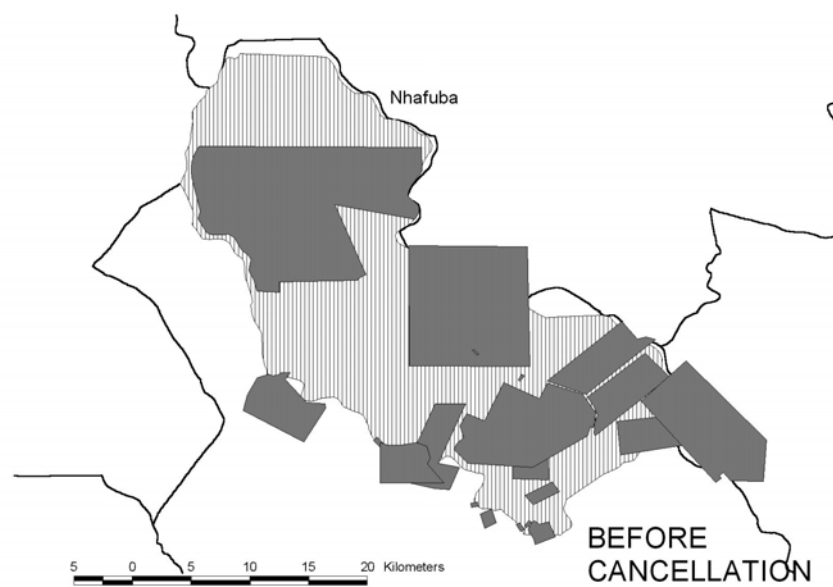


The area of formal title (seven ha) is apparently informally sub-divided into 1 hectare sub-plots and leased to six lessees, the title-holder retaining one hectare for his own use.



Similarly, the present day map of Nhafuba community area (see Map 4 below), delimited in 2001, is dominated by many applications that were subsequently cancelled. Many of the applications in this area were for livestock rearing and covered considerable areas. Nhafuba land is characterised by its good grazing potential and forest resources (on which there is still considerable pressure from unlicensed loggers).

**Map 4: Nhafuba Community Area, demonstrating the impact of the cancellation of private land applications**



Research conducted in this area in early 2000 revealed that a number of the applications, which at this time were still applications in the ‘pipeline’, were being handled in an exclusively bureaucratic manner with little, if any, consultation with the local community (Norfolk and Soberano 2000). For example, an application for an area of 2,000 ha within the Nhafuba community was lodged in 1996 in the name of a Sr. Raúl Escriver Qualquer, who seemingly wished to revive an old concession abandoned in 1975 by a Portuguese settler called Agostinho de Oliveira Pereira.

In October of that year the application received support in writing from the President of the Locality of Nhafuba, a Sr. Pedro Canjavo. This letter states that there are seven families living within the area requested, but nonetheless signals the approval of the local administration. The same official also signed a descriptive memorandum of the land parcel. In the following month the District Administrator lends his support in a letter to SPGC-Z in which he states that the land is ‘free of occupation’.

According to the traditional authority figure of Nhafuba, Regulo Assumate, the first indication that there was an application for such a large area of land came only in 1999, when he was visited by a white man. This man informed him that he wished to take over the land of Sr. Escriver Qualquer (who had recently died), and presented the regulo with two bottles of wine. The white man was presumably a Sr. João Augusto Mendes, into whose name the widow of Sr. Escriver Qualquer had purported to ‘transfer the land’ through a legal declaration. At this time, the application was being treated by the SPGC as if such a transfer had legal effect, rather than being considered to be a ‘new’ application.

The cancellation of this application, and the fact that it has not been the subjects of further application under the new regulations, would seem to reveal the fact that approval under the present legislative framework would be highly unlikely.

If the other applications had been approved, the population of Nhafuba would have had very little involvement in the adjudication process and more than likely would have found that they had lost access to a considerable amount of their land.

Table 2 (next page) shows the extent of the community land areas that have been delimited and the proportion of these areas that are under ‘live’ application from the private sector<sup>24</sup>.

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<sup>24</sup> Many of these private concession areas also register overlapping boundaries amongst themselves; in order to calculate an accurate figure for the amount of community land that is occupied, these overlapping areas were excluded. The figures on which the calculation is based are contained in the column headed ‘Unique area overlap’ in the tables of Annex 1.

The case studies show a wide range of values regarding the areas delimited: the community of Mongoma has delimited an area of more than 200,000 ha, whilst that of Namacala is only slightly over 3,000 ha.

**Table 2: Delimited areas**

Community Name	Area (ha) delimited by community	Area (ha) under private application	Percentage of community area under private application
Nhafuba	69,535	3,048	4.38%
Trepano	35,658	12,640	35.45%
Mongoma	213,984	99,310	46.41%
Namacala	3,264	1,594	48.84%
Mutange	9,941	2,952	29.70%
Murrua	10,222	1,837	17.97%
Mugrima	22,990	7,148	31.09%
Mucelo Novo	5,688	3,800	66.81%

It would appear that many of the delimitations being undertaken now have boundaries that are contiguous with those of the old colonial-era *regedorias*. In the *localidade* of Pida in Namacurra, for example, the two communities of Muehiva and Muibo have delimited boundaries that are the same as the two *regedorias* registered and mapped by the Portuguese authorities. The largest community that has delimited land, Mongoma, straddles two districts, however, and contains within it the old *regedoria* areas of Mulombe, Passura and Medumbua in the Derre Administrative Post of Morrumbala district and other *regedoria* areas within Mopeia district.

The extent of third party occupation also varies widely. The community of Mucêlo Novo is officially able to make use of less than 40% of the area that they have registered, whilst Nhafuba has an occupation level of less than 5%. Whether this official figure accurately represents the actual amount of land being used by private rights holders seems doubtful, however, since many of the communities report that the officially registered land parcels are in fact unoccupied or under-utilized.

## The practise: consultations with communities

In terms of the scale of its impact, the new ‘institution’ of mandatory consultation with community groups (even those that have *not* registered land as part of the delimitation process) is one of the most important innovations of the new policy. Even with a comprehensive tenure reform programme supported by the government it would be several years and probably decades before communities occupying land of interest to the

private sector would be able to register their interests and underlying rights. By obliging applicants to consult with local groups, irrespective of whether acquired rights had been registered, these rights were 'protected' in law.

Between the passing of the law to the end of 2001 there were 139 registered consultations regarding private applications for land in Zambézia. Table 3 shows a breakdown of what became of these applications subsequent to the consultations. Notable is the fact that although only 28 of the applications were subsequently cancelled, these represented over 50% of the total land area requested, an area three times greater than that which was subsequently approved under the 100 successful applications.

**Table 3: Applications for which consultations with local communities have taken place**

Current Status	Data	Total
Cancelled	Applications	28
	Total area (ha)	299,224
Approved	Applications	100
	Total area (ha)	107,976
Withdrawn	Applications	1
	Total area (ha)	1,600
Refused	Applications	2
	Total area (ha)	10
Pipeline	Applications	1
	Total area (ha)	2,000
Awaiting approval	Applications	7
	Total area (ha)	25,902
Total Applications		139
Total Total area (ha)		436,712

*Source:* ZADP (2002).

An analysis of the results of these consultations is much more revealing, however, when it deals with the agreements between applicants and communities that emerged from the process. Table 4 (next page) examines the outcomes of 85 of the consultations undertaken to the end of 2001. The remainder of the 111 subsequently approved applications, which were stated to have complied with the provision requiring consultation, did not contain any documentary evidence and could not therefore be evaluated.

The predominant form of agreement (57% of cases) was for opportunities for local employment. In only 1 of the 48 cases, however, was any detail provided in respect of this agreement; for the vast majority, the number and nature of opportunities to be created, remuneration levels, selection policies, etc., were all unspecified. The next

largest category of agreement (16 cases representing 19%) were cases in which the community did not object to the application but where no specific agreements on local benefits were made. A further 16% of the cases involved the applicant agreeing to make local produce available for purchase, to establish a local mill or to construct other amenities (including shops). In 5% of the agreements, some form of compensation was paid to existing rights holders. In only 1% of the cases did an applicant agree to make livestock available as traction power for ploughing and clearance of land, despite the predominance of applications for grazing land.

**Table 4: Forms of agreement made through private sector consultation with local communities**

Category of agreement	Number	%
Local employment	48	57
Sale of produce to locals	7	8
Compensation to existing rights holders	4	5
Establishment of local mill	5	6
Construction of amenities (including shops)	2	2
Use of applicants livestock for ploughing and land clearance of community land	1	1
Good relationship	2	2
No specific agreement	16	19
Total	85	100

*Source:* ZADP (2002).

In most of the cases examined there was some form of involvement from local authorities, usually a representative of the district administration. The documentary evidence of the agreements was in most cases insufficient, lacking either details or proper identification of the parties involved. Some of the consultations appear to have been arranged in the form of closed meetings between local officials, traditional authorities, and the applicant, rather than at public meetings.<sup>25</sup> In fieldwork conducted in the delimited areas, the representatives of various communities demonstrated a high awareness of the requirement that they be consulted on new applications for private land use rights within their areas. However, they registered complaints regarding the quality of consultations that have taken place to date, and record that in some instances there are other 'local structures' that are consulted in their name.<sup>26</sup>

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<sup>25</sup> None of the communities interviewed reported the display of the public notice (edital) in the area of the application. ORAM workers in Namacurra stated that the notices were 'sometimes' displayed in the administration buildings in Namacurra town but never in the locality of the applications themselves.

<sup>26</sup> The representatives of Mutange reported an instance of this: process number 3,274 in the name of Ernesto Intabo was granted provisional approval (500 ha) after a consultation that took place without the presence of ORAM (contrary to a local agreement) and which involved only the Bairro Secretary. The application involved an

Evidence from the community representatives points to the fact that there is a high level of awareness of land applications *where some actual activity* is taking place on the land, but not of those cases where the parcel remains unused. The committee in Murrua knew of 6 of the 11 live applications that are registered in their area. In Mehuia the representatives claimed that there are three land parcels being utilised, instead of the two registered with SPGC. All of the groups interviewed displayed detailed knowledge regarding the history of use of the parcels and of old colonial areas that are now defunct, as well as many details, unrecorded by SPGC, of events relating to contemporary land parcels.

## Concluding remarks

For the land policy framework to achieve its intended results, much remains to be put in place, including investment in and engagement with the new community institutions, and the development of further mechanisms that will translate the newly registered natural capital into realisable benefits for the rural poor. An approach that assists the rural poor in understanding the value and potential of their land is critical. As Hanlon (2002) has recently pointed out, 'few (rural communities) are looking to be partners with investors or looking for long-term income or other gains from investors'. In addition, the existing land administration system, which is geared more to servicing the needs of the minority, has to be turned into a service for the rural majority. Consultations should be viewed as serious opportunities rather than bureaucratic hurdles, delimitations should be treated as the beginning of longer-term development processes rather than isolated exercises in boundary establishment, and the new institutions created as a result of the land policy should be allowed and encouraged by the state to be formal community representatives rather than being marginalised. The more the practise of tenure reform in Mozambique begins to conform to the policy intentions, the quicker and more effectively will those in rural areas be given the opportunity to improve their livelihoods.

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area previously used by the PIDE as a prison farm and which was never demarcated. Community members therefore occupied it after independence so a conflict arose when it was re-awarded to Sr. Intabo. The representatives further reported that the Secretary subsequently lost his position as a result of the consultation outcome.



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