**Lesson 1:**

Land Laws can Provide a Fundamental Basis for Improving the Livelihoods of Those who Depend on Land

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**INTRODUCTION**

A law can be a powerful tool for poverty alleviation and rural development. In most developing countries, a majority of the population lives in rural areas. Most rural residents — and especially the poorest people — depend on the land for their livelihoods and long-term social security. Laws that give people access and secure rights to land and encourage investment in the land can establish a foundation on which rural families can grow their incomes and assets. Good land laws can help create an environment that empowers rural communities, encourages economic growth, prevents land conflicts, and provides opportunities for people to improve their lives.
Recognizing the potential power in a well-conceived law, Mozambique drafted and enacted a new land law in the late 1990s. Many consider the land law to be one of the world’s most progressive. For the first time in Mozambique, a formal law recognized the land rights that communities and individuals acquired through systems of customary land occupancy and use. This achievement was only possible because the government coordinated with civil society, academics, and donors to try to address Mozambique’s post-conflict land issues.

Almost immediately after achieving its independence from Portugal in 1975, the socialist FRELIMO government was challenged by the RENAMO guerrilla movement. In the years of violence that followed, more than six million people fled the country or were displaced from their homes and farms, settling on other land or moving to urban and peri-urban areas.

In the midst of the war, the government began a transition from the state farms established by the socialist government at Independence to limited privatization of these failing enterprises. The government also began leasing large expanses of apparently vacant or underutilized land to investors who had the capital and capacity to begin large-scale enterprises. The movement toward the privatization of productive rural land did not include comprehensive recognition of the customary rights of indigenous communities, and it was evident that the process was causing problems. As a result, near the end of the war an Ad Hoc Land Commission was set up in the Ministry of Agriculture to assess the privatization of state farms and its future implications.

With the signing of the Peace Accord in 1992 and the end of the war, people began to return to their homes. Seemingly abandoned and unused land was being allocated by government agencies to new investors keen to capitalize on the new market economy. Former colonial landholders and commercial investors were also reclaiming their rights, in most cases over land that was concurrently claimed by indigenous communities, who had been using it for many years.

The Ad Hoc Commission documented many cases of conflict between returning displaced people and the many other groups claiming rights over land. Both government and the international community recognized that these conflicts posed a threat to the continuing peace effort, and that it was imperative to address ‘the land question’ as a priority within the post-war reconstruction program. Yet, while Government accepted the need to ensure secure rights to land for returnees and those who needed to produce their own food, it also realized that private investment was critical to economic recovery.

To address this difficult challenge, an Interministerial Land Commission was formed which brought together all the public sectors involved in land access and use (including land administration, agriculture, tourism, mineral resources, defense, etc), civil society, academics and the private sector. Yet, while there was strong political will, Government also recognized that its technical capacity to implement a full review of the land policy and legislation was limited. The UN-FAO was therefore asked to provide technical assistance to the new commission, including analysis of existing land management and production systems, legal reviews, and institutional support as the process evolved.

The earlier Ad Hoc Commission had found that enduring customary rules and structures governing land rights were playing a fundamental role in enabling rural communities to reoccupy their land peacefully. Customary institutions were handling competing claims to land between those who claimed ancestral ties, displaced people who had settled on land during the war, and former state farm workers claiming rights to plots granted to them as a term of employment. The new Commission also found that customary institutions were trying hard, but with less success, to resolve issues between new investors and local people. With the state presence at local levels almost non-existent, these institutions were recognized as ‘the’ de facto land management system of the country, working alongside a weak and poorly resourced public sector land administration.

While the Commission gained a new appreciation for the legitimacy of customary institutions to administer land and resolve conflicts, they also realized that integrating customary tenure systems into the formal state system within a single policy and legal framework would pose new challenges. In addition, they grappled with how to provide secure new rights for investors, who could contribute to sustained economic growth and stability. This raised a critical question – how would the inevitable competition over resources between...
Implementing the Land Law

The law gives rural residents a high degree of formal protection of their land rights and a powerful role in controlling the development of their land. But the law alone cannot make these rights a reality if people do not have knowledge of the law or lack the skills and resources to effectively assert their rights or negotiate with outside interests. Local officials and investors are often able to take advantage of ambiguities in the law regarding the identification of community land interests and the process for community consultation and approval. Communities lacking sufficient knowledge of their rights and the capacity to negotiate equitable agreements can be manipulated and their rights compromised.

Much has been done to address these questions. Shortly after the law was approved, a national Land Campaign was launched in 1997 by the late Dr José Negrão to create widespread public awareness of the land law. The Campaign trained 15,000 volunteers from over 200 NGOs, church, associations, and cooperatives to bring the key principles of the new law to 114 of Mozambique’s 128 districts. The Campaign prepared 120,000 copies of comic books showing how the law works for local people, 3,000 audio dramatizations of the comic books, 20,000 copies of a manual accompanying the land law, 15,000 copies of land dispute registration forms, and 500 posters.

The Land Commission was also instrumental in building NGO and public sector capacity to implement the law, with specific attention given to identifying and delimiting community held DUATs. Twenty-one pilot exercises were carried out to develop and test a participatory methodology in which communities would in effect indicate and delimit their own borders as well as internal features such as customary rights of way. Lessons from the pilots were used to prepare the Technical Annex for Delimiting Communities, followed by a series of training courses for NGO and public sector offices involved in land and community development issues.

The process of drafting and enacting the land law and the Land Campaign were significant achievements for Mozambique. Subsequent successes with implementation, however, owe much to the determination of civil society and the commitment of donors and technical
IMPLEMENTATION HAS BEEN PLAGUED BY INADEQUATE INSTITUTIONAL CAPACITY OF LOCAL GOVERNMENT OFFICES CHARGED WITH ADMINISTERING, SURVEYING, AND RECORDING RIGHTS. IN MANY AREAS, LAND ADMINISTRATION AUTHORITIES LACK AWARENESS OF THE LAW AND THE ACQUIRED LAND RIGHTS HELD BY COMMUNITIES, LEADING TO CONFUSION OVER THE AVAILABILITY OF RURAL LAND FOR PRIVATE CONCESSIONS. DESPITE THE REQUIREMENT FOR INVESTORS TO CONSULT WITH COMMUNITIES REGARDING PLANNED LAND USES AND DEVELOPMENT, SUBSTANTIAL NUMBERS OF INVESTORS HAVE RECEIVED RIGHTS TO LARGE TRACTS OF LAND WITHOUT ENGAGING WITH THE COMMUNITIES IN A MANNER THAT RECOGNIZES THEIR LAND RIGHTS AND SUPPORTS COMMUNITY DEVELOPMENT. FINALLY, MORE THAN A DECADE AFTER THE ENACTMENT OF THE LAND LAW, MOST RURAL COMMUNITIES STILL LACK THE KNOWLEDGE AND INSTITUTIONAL SUPPORT NEEDED TO UNDERSTAND AND ENFORCE RIGHTS GRANTED TO THEM UNDER THE LAND LAW.

EFFECTIVE IMPLEMENTATION AND ENFORCEMENT OF THIS PROGRESSIVE AND INNOVATIVE POLICY AND LEGAL FRAMEWORK IS CRITICAL TO MOZAMBIQUE’S ABILITY TO REACH ITS GOALS FOR POVERTY ALLEVIATION AND ECONOMIC GROWTH. CIVIL SOCIETY, DONORS AND RESEARCHERS ARE WORKING WITH THE GOVERNMENT IN MOZAMBIQUE TO ADDRESS THE GAPS IN IMPLEMENTATION OF THE LAND LAW. THIS PROCESS HAS TO BE INCLUSIVE BY BUILDING GOVERNMENT AND COMMUNITY CAPACITY TO ADMINISTER AND ENFORCE LAND RIGHTS, PROVIDING FINANCIAL AND TECHNICAL SUPPORT FOR COMMUNITY LAND DELIMITATION, AND FACILITATING INVESTOR ACCESS TO LAND ON THE BASIS OF MUTUALLY BENEFICIAL PARTNERSHIPS WITH COMMUNITIES. SUCH AN APPROACH CAN GENERATE EQUITABLE AND SUSTAINABLE DEVELOPMENT TO TRANSFORM THE RURAL ECONOMY, END POVERTY, AND ENSURE THAT EVERYONE BENEFITS FROM THE LAND AND NATURAL RESOURCES THAT ARE, PERHAPS, MOZAMBIQUE’S GREATEST PHYSICAL ASSET.

SOURCES