

MOZAMBIQUE'S LAND LAW REFORM AND THE FINANCING OF PROJECTS

On the 20th anniversary of Mozambique's Land Law, a bold proposal for reform that would still protect the interests of local communities caused excitement

Mozambique's natural gas reserves seem to have become the country's most tangible hope in its attempt to reverse the current crisis and level of poverty, and to promote more socially sustainable economic development. The volume of investment in projects, notably the Rovuma Basin, is a clear indicator of this and of its transformational potential.

Notwithstanding this, Mozambique continues to regard land as its primary resource (and rightly so) despite the difficulties in tapping in to its full potential, particularly with the implementation of projects in the fields of agriculture, livestock and tourism, as well as the industrial and other sectors, including oil & gas and mining.

The ninth session of the Fórum de Consultas sobre Terras (FCT [Land Consultation Forum]) took place in November 2017, on the 20th anniversary of the Land Law (Law 19/97, of 1 October 1997). The issue of land reform was under discussion at this event, among other topics of relevance. The FCT is a government consulting partner composed of members of the Council of Ministers and of provincial governments, plus district administrators, mayors, co-operation partners, members of the diplomatic corps, scholars, and representatives of civil society, local communities and the private sector.

Two outcomes are particularly worthy of mention in this regard. First, in its findings, the FCT expressly adopted President Nyusi's view that any process aimed at improving land law and policy must comply with the constitutional principle according to which land is the property of the State and must not be sold or otherwise disposed of, mortgaged or pledged. Second, the FCT resolved to recommend to the government the presentation of a one-off proposal for a reform of the Land Law in order to enable the transferability of the Direito de Uso e Aproveitamento da Terra (DUAT [Land Use and Exploitation Right]) within the context of an assignment of exploitation.

Socio-economic aspects

The President of the Republic's stance, founded mainly on the socio-economic aspects of access to land — which represents the livelihood of 70 per cent of the Mozambican population — limited the debate and scope of discussions and/or reform proposals to solutions that combined the current land property framework with an enhancement of land owners' rights.

Even in a constitutional public property framework, the establishment of private land-use models is vital to attracting investment and securing funding for any projects related to land.

Frameworks that allow for private investment in projects of public interest offer undeniable and crucial legal certainty as to the right of possession and disposal of the fruits of investment — even when related to land, whether as a means of increasing the liquidity of the asset or of ensuring the protection of creditors, through clear frameworks for the acquisition or disposal of rights that act as security with respect to the funding related to such investments.

Crucial first step

Although the recommendations that emerged from this ninth session of the FCT continue to debate the reform of land policy and land law in conservative terms, the willingness to broaden the transfer of DUATs to transfers between living natural persons, not contemplated thus far, represents a first step towards reform apparently sought by all, without prejudice to the necessary protection of local communities' interests.

As with the debate on land privatisation, there are several arguments for and against its transfer between living natural persons. It would seem that legally establishing this type of transfer would simply regulate what already happens in fact, generating conflicts and legal uncertainty.

Given that Mozambique is actively seeking solutions to overcome its crisis in the short run and attract investment, a more creative and bold reform that nonetheless protects the interests of local communities could be the necessary catalyst.



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