

# Land titling in Mozambique: Improved tenure security for communities?

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## Abstract

Land has become a widely debated topic in the world. From governments, academics, civil society groups to local farmers, all have been concerned with issues related to land and, more specifically, how to make use of this asset to improve societies' well-being and promote economic development. Among the many debated issues concerning this topic, there is concern about promoting a secured land ownership tenure that will give incentives for greater investment in land as well as the importance of preventing and correcting social inequalities to promote a more equitable and sustainable development. In the current context, the majority of the African population lives off the land practicing agriculture for subsistence, and Mozambique is no exception. Amid the increase in the number and size of foreign land investments, this paper aims to analyse the impact of land titling on the tenure security of communities in Mozambique. The theoretical focus will be on the Neoliberal Paradigm that advocates for land titling and privatisation in the process of land reform.

**Keywords:** tenure security, land titling, large-scale land investments



## 1. Introduction

Land titling has become an issue of contention and reflection among circles of policy makers, academics, and civil society organisations around the world. Extensive literature has been written regarding this subject, which has become a key component of land reforms and a measure of the impact of implementation of these land reforms. However, land rights, the main target of land titling, do not follow a one size fits all approach. Different countries have implemented different policies regarding land distribution and land rights systems. Throughout history, many social, political, and economic factors have shaped the way in which the current land rights are defined worldwide. In sub-Saharan Africa, in particular, many different types of land tenure systems have been implemented, resulting in a pluralistic nature of the land tenure system in this region where different types of formal and informal land rights coexist. According to the World Bank, only 2% to 10% of the land in Africa is formally registered, and all this land is located in urban areas (Cotula *et al.* 2009).

Renewed interest in the question of land titling in sub-Saharan countries has been registered with international actors, foreign governments, and multinational corporations aiming to secure foreign land for food production, investment, and speculation under the contexts of urbanisation, demographic pressure, climate change, and scarcity of arable land. Thus, increase in foreign direct investment, land rush, and land grab has made it imperative to discuss land access and its related subtopics.

One of the main arguments that justify securing land in foreign countries is the vast availability of vacant or idle land in sub-Saharan Africa that leads to concessions as large as 500,000 hectares in Madagascar and 100,000 hectares in Mozambique. However, Cotula *et al.* (2009) warn that this argument needs critical analysis and that it does not necessarily address the vacancy of the land but the perception of lack of productivity. However, this perceived lack of productivity might still ensure the livelihoods and food security of local inhabitants. This is brought to evidence by Régulo Lopes<sup>1</sup>, the community leader in Morrúa (a community in the Angoche district in Mozambique), who states that the lives of rural communities are essentially natural. They rely on plants and agricultural products, both for self-consumption as well as for selling to have money for basic necessities such as paying for education of their children, going to a health centre, or using the grass to build their houses.

The idea of idle land is also related to the lack of government information on the status of land use nationwide because of the absence of an extensive and updated database on land use and informal types of tenure that the majority of the population lives under which are recognized by the government as legitimate rights of occupancy, despite not being formally registered.

Mozambique has 80 million hectares of land, of which 36 million hectares are arable, and according to government sources, 16 million hectares of land is already occupied. From the information available,

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<sup>1</sup> Interviewed by the author in Angoche, Nampula in January 2019.

details of the occupied land are as follows: 17 million hectares are for parks and other protected zones, 10 million hectares are occupied by delimited communities, and 3 million hectares have already been allocated to investors (Mousseau and Mittal 2011). Besides agricultural land, the country is also endowed with mineral resources such as aluminium, oil and gas, coal, gemstones, gold, and heavy sands. All this potential for agriculture, forestry, and mining investments has not gone unnoticed and, in fact, the country has become one of the top 20 destinations for foreign direct investment in land. However, this interest was met with the state's lack of preparation to negotiate these deals and to ensure that such deals did not result in resource depletion and impoverishment not meeting the government's agenda for development. After the publication in 2008 of the alarming report 'Seized: The 2008 landgrab for food and financial security' by the non-profit organisation GRAIN, the term land grab came to be widely used to describe the pervasive displacement and impoverishment of rural communities. Mozambique, in response, imposed a moratorium on land allocation from 2009 to 2011, this was an action added to the ongoing land policy reform with a national consultation process that had been initiated in 2007. One of the main topics addressed in this forum was how to preserve the rights of local communities, considering the lack of formalisation of their tenure. During the discussion, the old neoliberal prescription of privatisation and land titling was again revisited. Therefore, this paper aims to discuss how land titling in the context of increasing foreign large-scale land acquisition benefits the local communities in terms of tenure security. By doing so, it also adds the case of Mozambique to the vast literature on the relevance and impact of land titling as a central measure of land reform, considering the local dynamics of land tenure and land rights recognition. In the present endeavour, a revision of the literature on land titling and tenure security will be presented, along with a description of the land titling process in Mozambique and an analysis of the status of tenure security of rural communities. This paper presents a combination of quantitative and qualitative research. First, some of the arguments of the debate on land titling and tenure security are presented based on literature review and interviews conducted. Second, a description of Mozambique's land law and land titling policy is presented based on an analysis of the current and past laws and policies. Then, an assessment of tenure security in Mozambique is presented, combining a compilation of quantitative studies based on large surveys conducted in the country by secondary sources as well as individual and group focus interviews conducted by the author. The geographical scope was limited to Mozambique and the provinces of Maputo where the interviews with government officials and academics were conducted and Nampula and Tete, where the author visited the communities in Angoche and Moatize, respectively. In total, six individual interviews were conducted with key informants, two group interviews were conducted with 29 community members aged 24 to 68 in Tete province, and one community consultation was observed in Nampula.

## **2. The debate over land titling**

The Neoliberal Paradigm and Neoclassic Economic Theories advocate for the implementation of land titling as a way to promote economic development through the creation of tenure security, increased land investments, access to credits, and development of land markets. In the current context of the avid interest of governments of developed countries, sovereign wealth funds, financial institutions, and multinational corporations in securing land in developing countries, there has been a renewed debate on the importance of land titling. However, some scholars argue that land titling has a negative impact on the tenure security of vulnerable stakeholders. The following section presents the main arguments of both sides in favour of and against land titling.

### **2.1. Proponents of land titling**

Land has always been an important issue, but there is renewed interest in the land debate accompanied by a global call for new land reforms. This renewed debate has a neoliberal orientation focused on the improved use of land to generate capital. This is the economic argument for land titling. The World Bank tried to advance this economic perspective on land titling and tenure security through its 'Land Reform Policy Paper', published in 1975. Essentially, this policy paper defended the central impact of land on poverty reduction and economic growth by advocating for the abandonment of communal tenure systems in favour of freehold titles, which would essentially lead to the formalisation of individual titles and the privatisation of land despite recognizing a plurality of tenure systems in the developing world. These developing countries are inhabited in majority by poor rural communities who value group identity and customary laws: why then do land reforms instead of strengthening and promoting these ties are going in the direction of promoting individual land rights? Those who advocate for property rights believe that it will prevent wasteful investment to secure the land by other means, will lead to a more sustainable use of natural resources, will facilitate access to credit and attract investment which would lead to the evolution of financial markets, and will facilitate the transfer of property from less to more productive owners (Deininger and Feder 1999, Deininger and Binswanger 1999, Feder and Nishio 1998:25–26, Hadisi and Ndong 2018).

The main justification is that investments to increase the productivity of land are only made when there are expectations of enjoying the benefits of these investments over a long period of time; therefore, tenure insecurity due to the risk of losing the land reduces this incentive. Feder and Nishio (1998:25–26) argue that land titling reduces risks and increases investments along with productivity. Furthermore, the formal land title would guarantee access to formal loans that have lower costs than informal credits that do not require land as collateral. The authors support their argument using the cases of Thailand, India, Costa Rica, Brazil, Jamaica, and Ecuador as quantifiable examples of the connection of land titling with tenure security and productivity. Additionally, if the land users do not possess the necessary skills to

properly allocate these incentives for productivity, land titling will enable the transfer of land through a monetary transaction to more skilled users. In such transactions, having formal land titling, recognized by the legal system, would reduce land ownership uncertainty, which can cause lower demand and lower offer prices. In sum, the economic approach to land titling aims to create better land allocations and efficient land markets.

The Peruvian economist Hernando De Soto is also a great proponent of the view of land as central to economic development. In his book ‘The Mystery of Capital’, published in 2000, he established the link between property rights and poverty and has been vocal about capital loss in the extensive arable lands in the developing world due to lack of property rights. He argues that what distinguishes a foreign investor from a local one is the legal right to use the land because this right can attract credit or investment capital. With investment, the value of land in developing countries, used by big mineral and agroindustrial companies, is rising in the global market. For him, both the vast availability of minerals and the global food shortage are leading to a growing interest in land in developing countries. He started to experiment his argument in Peru, where he worked to help 1.2 million Peruvian families to acquire the titles of their farmlands (De Soto 2011:35–40). In practice, land titling is usually one of the aspects addressed by land reforms worldwide in the context of neoliberal promotion of market reforms across the developing world with various implementations and multiple outcomes.

Besides the economic importance of land rights, other arguments in favour are that titling will promote labour diversification, urban migration, better land governance, less duplication of land rights, and can fortify group cohesion by defining boundaries and informing communities of their rights.

## **2.2. Critics of the land titling argument**

The opponents to the view that land titling creates multiple benefits for land users, argue that land titling does not increase productivity, does not guarantee access to capital, and though it does increase tenure security, it may cause conflicts.

A major limitation of the previously presented market-based approach to land as a commodity is that it advocates for a radical change in the land tenure system. As noted by Boone (2014), individual land ownership rights in sub-Saharan Africa are rare. As cited by Boone (2014:22), only 2% to 10% of land is under private property regimes in sub-Saharan Africa. As for Mozambique, in 2003, only 3% of all land was registered under private title. The same was the case with most sub-Saharan countries as they had less than 20% of the land registered as private property with the exception of Zimbabwe (41%), Namibia (44%), Lesotho (44%), and South Africa (72%), all former colonial states that had white settlers. Many countries are under a statist land tenure regime where the public land or all of the land is owned by the state, giving it a higher discretionary power to allocate land. As Boone shows, in sub-Saharan countries, the reality is that majority of the land allocations are not market-led as most

proponents would want it to be, but are in fact authority-led where state entities or agents control structures landholding, access to land, and land transactions, and therefore, land tenure systems in sub-Saharan Africa differ from liberal forms of property (Boone 2014:23–25). A qualitative study conducted by Brown (2005) in Zambia to assess the impact of land titling concluded that while there has been some increase in investments for tourism and agriculture, land titling of customary land has led to land speculation by investors; displacement of local inhabitants through the allocation of occupied communal land to investors by chiefs and councils, leaving the affected community members landless; erosion of local rights to nearby common pool resources such as forests, rivers, and lakes; and intra-community conflicts and resistance.

Unruh (2006:754) has stated that ‘land tenure has proven to be one of the most perplexing issues in the developing world’ due to the lack of conciliation of formal and customary property rights to provide security to tenants. He adds that previous studies have proven that giving land titles to small-scale farmers did not cause any significant change in inclusion or connecting tenure systems and that recognition of customary or informal rights makes it difficult to create an inclusive land law. He proposed landscape-based evidence that can be used to claim both formal or customary rights, showcasing Mozambique as an example of this practice.

Higgins *et al.* (2018) in a literature review of 59 studies to assess the impact of measures to increase rural land tenure security, found that there is a positive relationship between land tenure security and investments in conservation agriculture as well as for women’s empowerment. However, the authors found a weak connection between tenure security and productivity and access to credit and income. Bruce and Migot-Adholla (1994) corroborate that the literature does not present substantial evidence of the positive effects of land registration and titling in Africa, particularly on tenure security. In their quantitative research conducted to assess the impact of security of tenure and the relevance of titling in the African context, they identified three elements of importance: duration of the rights, protection of rights, and robustness of rights. In the studies conducted in Somalia, Senegal, Uganda, and Kenya, to assess the contribution of state initiatives of land titling to tenure security, they found that ‘registration under a weak tenure from the state does not provide meaningful security and may, in fact, decrease security of tenure’ (Bruce and Migot-Adholla 1994:257).

The British Department for International Development (DFID 2002 cited by Hanlon 2004) recognises that ‘freehold titles are unlikely to meet the needs of many of the poor and titling has not in general led to improved access to formal credit’ and Deininger (2003) in the ‘Land Policies for growth and Poverty Reduction’ has stated that ‘it is now widely recognised that the almost exclusive focus on formal title in the 1975 paper was inappropriate’. Critics of the World Bank Land Policy remark that customary tenure systems which are widely prevalent in African countries can provide tenure security, rendering unnecessary the costly, time-consuming, and universally unattainable conventional titling

policy of replacing customary rights (Quan and Toulmin 2005).

### **3. Mozambique's land tenure system**

Although Mozambique's first post-independence land law was adopted in 1979, the first legislation towards land was adopted with the 1975 independence constitution in which the government revoked all previous tenure systems and nationalised all existent territorial land and its natural resources. The total state ownership of land has prevailed throughout the constitutional revisions of 1990, 2004, and 2007, and remains still in place. The land law of 1979 (Government of Mozambique 1979) consolidated this ownership, reinforcing that land was not subject to sale, rent, mortgage, or any type of alienation. In the period of implementation of the first land law, Mozambique followed a Marxist-Leninist orientation and envisioned the creation of a socialist state and the collectivisation of the means of production by creating state farms and communal villages, resembling those of the Soviet Union (Lunstrum 2008). Takeuchi (2014) argues that privatisation of land was not a policy immediately implemented by the African states after independence because most governments were interested in perpetuating or extending the states' control over customary lands. Socialist ideology reinforced this land policy because it was opposed to the promotion of private property rights that led to class stratification. Boone (2014:38–39) calls it a Statist land tenure regime, where 'the central state itself is a direct allocator and manager of land access and use' and where '...a property right not honoured by the state is no property at all' (ibid.40). However, political and economic events affected the course of governance in the country and, consequently, the land administration. One such event was the 16 years long civil war that began in 1986 along with the end of the Cold War. After 1992, there was an ideological shift in multiple spheres towards a more neoliberal orientation for the Mozambican state to become more democratic, decentralised, and market-oriented, reversing the privatisation of state-owned enterprises and ending state farms and communal villages. This shift was greatly influenced by the Bretton Woods Institutions that provided financial aid for the country's post-war reconstruction. This shift also addressed land tenure, a central issue for the Neoliberal Economic Paradigm; thus, a new land law was drafted and implemented in 1997 through a process that was deemed very participative due to the nationwide public consultation during the drafting period. This law has been described by Lunstrum (2008) as a compromise between the proponents of privatization and those concerned with the land rights of the rural poor communities. The 1997 law has been in a decade of revision by an inclusive myriad of stakeholders who hold annual meetings through the Consultative Forum on Land to discuss issues that are part of the neoliberal global debate. Some of the issues under debate are related to institutional capacity, inclusive participation, tenure security, and access to financial credit in rural areas (Tunzine 2019).

### 3.1. Mozambique's land rights

The new 1997 Land Law introduced the DUAT- Direito de uso e aproveitamento da terra (right of use and improvement of the land) that can be acquired through a formal request or through occupancy by individuals or communities according to customary norms and practices, and individuals in good faith (for a prior minimum of 10 years). Without the formal title, the DUAT can be claimed through witness proof (community members) or other means.

These rights are limited only by areas of the public domain, such as protected zones for conservation, nature preservation, or areas for state defence and security<sup>2</sup>. For non-commercial purposes, individuals and communities have an indefinite right of occupancy of the land, and for economic activities, a lease concession can be granted for 50 years subjective to renewal<sup>3</sup>.

Furthermore, although the state forbids sales and rentals, the DUAT can be transferred through the sale of the improvements done to the land (trees, infrastructure, etc.) or through inheritance, and individuals can use these improvements as collateral for loans.

### 3.2. The land title

The land title, which is a document that proves the right of use and improvement of the land (DUAT), is issued by the provincial services of geography and cadastre, and other general or urban public services within the maximum period of 90 days. According to Article 13 n.2 of the 1997 Land Law, the absence of the title does not compromise the right of usage by occupation and can be issued to communities or individuals. In the case of individuals within a community, their request for individual titles has to be preceded by community demarcation. For communities with customary tenure, the law states that they can request delimitation of their land, rendering them a certificate of occupancy which can then be formalized to the land title.

### 3.3. The State's discretionary power over land allocation

As mentioned previously, the land in Mozambique belongs entirely to the state. According to Article 18 of the 1997 Land Law, the right of use (DUAT) can be revoked through voluntary request, lack of fulfilment of the exploration plans, or by revocation of the right for reasons of public interest upon the payment of a compensation to the users. In Chapter 6 (Articles 25-27) of the Land Law, initially a five-year provisory land right is granted to applicants, and after the fulfilment of the exploration plan, a definitive right and the land title is granted. After the five-year period, if the exploration plan is not fulfilled and there is no justification, the land right can be revoked without compensation for

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<sup>2</sup> Nevertheless, a special license can be requested for specific activities.

<sup>3</sup> For economic activities, specific licenses have to be obtained and the duration of the land right will depend on the regulations of each specific license.



improvements made in the land by the applicants. However, this monitoring is deficient as many applicants request the land for speculation purposes and keep it idle. In 2018, the government launched a national land inspection campaign of approximately 7.8 million hectares, to reclaim idle land by either revoking the land right or reducing the exploration area of those requests larger than 1,000 hectares. The target was to reclaim one million hectares by 2019. Furthermore, Article 22 of the 1997 Land Law states that for non-urban areas, the approval of land use is under the competency of provincial governments for areas smaller than 1,000 hectares; the Ministry of Agriculture and Fishing for areas larger than 1,000 hectares but smaller than 10,000 hectares; and the council of ministers for areas larger than 10,000 hectares.

One of the causes of conflicts between communities and investors is the allocation of vast areas of land by the state without proper consultation with the communities that held customary rights to the land in question or without paying proper compensation to the communities.

### **3.4. Communities' land rights**

Communities have customary rights over land for an indefinite period. In the rural area, the land law attributes them the right to participate in the management of natural resources, in conflict resolution, and in the titling process where they should be consulted to confirm the vacancy of the land. A minute of the community consultation is one of the eight documents required to obtain the land title. The Regulation of the Land Law, Decree n. 43/2010 (Government of Mozambique 2010), and the Ministerial Diploma, n.158/2011 (Government of Mozambique 2011), establish the procedures to be followed during the community consultation. One of the provisions is the requirement of at least two community consultations, the first one to inform and the second one to ask for the community's deliberation. After the consultation, a copy of the minute of the community consultation must be given to the community. In theory, this is where the communities have the opportunity to voice their doubts and concerns about land allocation or even oppose land allocation. However, it is the state entities who have the ultimate decision-making power in the allocation and it has been reported several times by communities and NGOs that the consultation procedures have not been followed by the administrative authorities, resulting in conflicts between the communities and the investors.

Community consultations are important for two reasons: first, information regarding the land deals and the investors is still difficult or inaccessible to the general public. This is an opportunity for the communities to gain access to this information. The second and most important reason is that there is still a lack of awareness of the legal rights of the communities and the land policy in general; the consultations are also an opportunity for the administrative entities to inform the communities about their rights. Some initiatives are being carried by NGOs such as União Nacional dos Camponeses (UNAC) and Iniciativa para Terras Comunitárias (ITC) to inform communities about their rights and

organise them to form associations for the management of natural resources. With knowledge of their rights and the procedures of land transfers prior to the engagement with the investors, the communities are better prepared to negotiate fair compensation.

#### **4. The land titling process in Mozambique**

Hanlon (2004:605–611) believes that the land law definition of local communities is both broad and vague because communities are self-defined; they can be a traditional clan with chiefs, an extended family, or a group of neighbours.

‘In general, it appears that rural communities are being defined in terms of areas under individual régulos or other chiefs, referring back to maps from the colonial era (even though this is not necessary, as communities can define themselves in other ways). This suggests that Mozambique has several thousand communities, which implies a delimitation cost of 10-30 million usds’ (ibid.).

Furthermore, ‘the law is an attempt to balance the need for a simple system to guarantee the rights of most Mozambicans to the land they occupy, while creating a modern land title system that is seen as necessary for investment’ (ibid.).

Adams and Knight (2012:47–48) argue that new global trends of large-scale land investments undermine the impact of land tenure reforms in Southern Africa and that the actual tenure security of poor rural smallholder communities is much weaker than it was before the reforms, mostly due to the poor implementation of reforms. The authors point to the lack of resources and political will as the main reason for the poor implementation of these reforms. They use Mozambique as an example of the focus on the promotion of investment instead of allocating enough financing to land delimitation. However, they argue that even if appropriate efforts are put into delimitation, there is no certainty that they would be enough to prevent the central government from allocating communal land to large-scale investments.

Currently, land titling occurs through voluntary decision of the community members, land rights campaigns led by NGOs, investment interest, and the government’s registration campaigns. The most prominent land titling initiative is being led by the Ministry of Land and Environment called Terra Segura. Funded by the World Bank, this project plans to cover 71 districts corresponding to 45% of the territory within the period 2018 to 2024. Prior to this project, only 950 communities had been delimited, and around 500,000 land titles had been granted. The main challenges to land registration were poor institutional capacity in terms of finance and trained staff, lack of coordination between registration services, and diversification of standards and practices across the country (World Bank 2018). Furthermore, there was a lack of incentives for the individuals and communities due to the long distances to institutions, the costs, and the number of procedures.

## **5. Assessment of tenure security in Mozambique**

### **5.1. Quantitative studies: Perceptions of tenure security**

The mixed views on the importance of land titling call for more evidence-based studies that take into consideration the African context where institutional capacity for land governance is weak, access to formal credit institutions is low, and informal customary tenure is prevalent and recognized by the state and where communities draw social security from within. There is still a gap in the literature, in particular, pertaining to Mozambique's perceptions of tenure security and the impact of land titling in enhancing this security. Some qualitative studies analysed tenure security using policy analysis methodology. From a legal perspective, theoretically, Mozambique has a progressive land policy that recognizes and protects the customary rights of communities despite the absence of a formal title. Following this rationale, the tenure security of holders of customary rights is somewhat guaranteed without the need for titling. However, as discussed in the previous sections, the Mozambican state enjoys discretionary power as the sole regulator of land use, but still has a poor record of land governance. Thus, the reinforcement needed for tenure security could come from the dissemination of information about land rights to the communities, the strengthening of governance capacity, and the implementation of the existent regulation. However, it is also important to consider the voices on the ground by assessing these communities' perceptions of their own tenure security, but quantitative studies based on large surveys to collect this information are still very few.

Nevertheless, important considerations can be drawn from the existent data. This section presents the findings of three studies conducted in Mozambique to assess perceptions of tenure security.

#### **5.1.1. The Urban Land Mark survey**

The first study is the Tenure Security Facility Southern Africa Project from the Urban LandMark, conducted in 2012 in two provinces of Mozambique: Maputo in the South, 567 households were surveyed, and Tete in the centre with 407 respondents (Urban LandMark 2013). In this study, two questions were asked pertaining to the perception of tenure security: if the respondents thought their property rights were strong and if they had done any improvements to the infrastructure. In Maputo, 67% of the respondents believed their rights were strong compared to 63% in Tete. With regard to improvements, 72% of the respondents in Maputo achieved improvements compared to 53% in Tete.

Additionally, it was also asked if the respondents had a formal title (DUAT) and if they had any conflicts related to their land. In Maputo, 50% of the respondents bought the property and 4% acquired through the municipal council attribution. In Tete, only 28% bought the land and 28% were allocated land by the municipal council. In terms of conflict, 7% of the respondents in Maputo experienced a land conflict compared to 6% in Tete.

### 5.1.2. The Millennium Challenge Account survey

The second study is an extensive report (Singing *et al.* 2017) commissioned by the Millennium Challenge Account to assess their Land Tenure Service Project in Mozambique and brought some insightful findings to understand tenure security in Mozambique. This report (*ibid.*), published in 2017, was conducted to evaluate a 507 million USD project between the Government of Mozambique and the Millennium Challenge Account Corporation from 2008 to 2013. This project aimed to increase land investment, reduce costs of land rights acquisition, and prevent land conflicts.

The report describes a study conducted in the provinces of Nampula and Cabo Delgado, both in the northern region of Mozambique, where 1,417 households were surveyed on issues related to employment, parcels, land conflicts, land law, land rights and perceptions of risk, parcel renting, investments on land, crops, ownership of assets, monthly expenditures, credit, livestock, and consumption. For the purpose of this paper, the focus on the report findings will be specific to the situation of land rights and the perception of the impact of titling (Singing *et al.* 2017).

In terms of access to credit, the report found that access to formal credit is extremely rare; only 4.1% (56 of the 1,417 households) had applied for credit in the 12 months prior to the survey, and only 27 of the 56 applicants were granted credit. Of the credits denied, insufficient collateral and insufficient income were among the reasons. The majority of households which did not apply for credit claimed a lack of access, not wanting to contract debt, fear of not being accepted, and not needing it as reasons for not applying. 66% of the applications were for agricultural production (*ibid.*).

The report also mentions the existence of a rental and sales market, but inheritance remains the most important mode of land acquisition. Furthermore, the land was mainly rented to family members, and the land for residential purposes did not involve payment or financial compensation.

In terms of investments, 19% of the respondents made investments in the land, and only 7.3% made investments in agriculture to increase irrigation and to create water supply facilities (*ibid.*).

In terms of land rights, 93% of the households surveyed did not have a formal land right (DUAT) but were interested in having one, 73% of the respondents believed that having a DUAT would increase the value of the land, 4.2% thought it would not make a difference, and 12% thought it would reduce the value of the land. In terms of the surveyed perception of conflict, 12% thought there was a potential for land conflict in the future, 27% believed that the land demarcation would increase the chances of conflict, and 70% believed that the DUAT would make dispute resolution more likely. Furthermore, 80% of the households thought that having a DUAT would likely reduce the risk of land expropriation; 64% believed that having a DUAT would make land investments more likely and 5% thought it would reduce investments (*ibid.*).

### 5.1.3. The Prindex survey

The third quantitative study presented in this paper was conducted by Prindex, the first global dataset that measures the perceptions of tenure security. In Mozambique, 1,436 surveys were conducted asking ‘in the following five years, how likely or unlikely is it that you could lose the right to use this property, or part of this property against your will?’ (Prindex 2020:8). According to this database, 57% of the respondents felt secure against 24% who felt insecure about their property rights. The causes for insecurity included disagreements with family or relatives (21%), owner may ask me to leave (13%), government may seize (11%), death of a household member (9%), lack of money or other resources (6%), companies may seize (4%), and issues with customary authorities (2%). In terms of documentation, only 50% of the respondents had formal documents, 9% had informal documents, and 41% had no documents (ibid.).

## 5.2. The qualitative study: Communal rights in practice

Qualitative research was conducted by the author in the form of group discussions, observation, and interviews with key informants in the provinces of Nampula and Tete. This section presents two cases of communities that received large-scale foreign investments for mining purposes. These two communities did not hold a formal land title prior to resettlement, relying only on their customary rights. These were also well-documented cases of early interactions between communities and large-scale investors. Many lessons were learned from these two cases that raised awareness of potential causes of conflict in other similar contexts as well as improvements to the land law policy.

### 5.2.1. The case of Moatize

Moatize district, located in the province of Tete, has an area of 8,428 square kilometres, with 260,843 inhabitants and a population density of 34.6 inhabitants per square kilometre (INE 2019:11). In 2007, 78.3% of the population in the district of Moatize practiced agriculture; 15.9% worked in commerce, transport, and services; and 5.7% worked in industry, energy, and construction (Ministry of Statal Administration 2014). Besides its potential for agriculture, the district also has one of the biggest coal reserves<sup>4</sup> that has successfully attracted foreign investment. Coal mining began in 2011, preceded in 2009–2011 by the resettlement of the small-scale farmers community that resided in the area. A total of 1,365 households were resettled by the mining company Vale to three neighbourhoods in the district. The Rio Tinto Benga mine, which was first acquired by the Riversdale company and subsequently by the ICVL company, began its resettlement in 2011, moving an estimated 736 households. These were the first cases of large resettlements in the extractive sector. Proper resettlement guidelines and

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<sup>4</sup> The country has been described as *El Dorado* of coal due to its ‘largest underdeveloped coal basin on the planet’ by Kirshner and Power (2015:67).

legislation were not in place at the time, resulting in faulty procedures and violations of the communities' rights thoroughly documented by Oxfam, Human Rights reports, the local media, and the Mozambican Bar Association (Ordem dos Advogados de Moçambique) who sued both the company and the state for its misconduct.

Although these two cases of resettlement were managed differently, some of the complaints were shared by both affected communities such as deficiencies in the consultation process, lack of sufficient information about the resettlement process, forced resettlement, dissatisfaction with the compensation, unfulfilled expectations of job creation or job opportunities, loss of livelihoods, poor quality of the houses built, difficult access to water, distant access to the market, and loss of diversified livelihoods.

The case of the Moatize resettlement became a cautionary tale of what not to do when engaging with communities, and rightly so. As a result, a National Conference for Resettlement in Mozambique was organised by the government in 2016, with the participation of companies from the extractive sector, NGOs, civil society groups, community representatives, and academics reflected on how to improve the relationship between investors and communities and protect the rights of the vulnerable, while paving the way for economic development.

### **5.2.2. The case of Angoche**

The district of Angoche, in the southern part of the Nampula province, has a total area of 3,535 square kilometres, an estimated population of 327,304 inhabitants, and a population density of 110 inhabitants per square kilometre. Subsistence agriculture is the main occupation for the majority of the population in this district; other minor activities are cattle herding, hunting, collection of wood, and fishing. In terms of land rights, most land users do not hold a formal title. Despite the precarious living conditions, the district of Angoche is rich in mineral resources and the coast is being exploited for heavy sands by the Chinese company Haiyu Mozambique Mining since 2011, year of the attribution of two mining licenses to operate near the localities of Sangage, Morrua, and Nagonha. The exploration of heavy sands has an environmental impact that directly affects the communities' livelihoods. However, of the 12 communities affected by mining activities, only three were consulted. This exclusion led to serious conflicts between the communities and the investor. Furthermore, in 2015, flooding affected the community of Nagonha, one of the excluded communities, leaving 290 people homeless. A report by Amnesty International (2018), based on interviews with the affected community members and expert analysis of satellite images, concluded that the heavy deposits resulting from mining activities might have contributed to the flooding by blocking the natural pathway for water drainage. The company denied any responsibility. After the incident, the community of Nagonha requested several times to be resettled due to the environmental impact of mining activities on their well-being and livelihoods. However, after negotiations, the company proposed a resettlement that offered compensation of only 90

USD to each family to rebuild their houses, which the communities declined. Furthermore, the remaining community consultations were held after the company started its activities.

It is important to note that the guidelines for community consultation were only published in 2011, under a Ministerial Decree, no. 158/2011, and the Regulation on the Resettlement Process Resulting from Economic Activities Decree, no. 31/2012, was only implemented a year after the concessions were granted to the mining company.

## **6. Conclusion**

This study combined qualitative and quantitative data collection to assess the tenure security of communities amid the increased interest in communal land by foreign investors. Here, tenure security was analysed based on three components: first, *de jure*, through a discussion of the local land legislation, it was found that both formal and informal rights of communities are protected by law; second, perceived security with a review of quantitative studies that shows that although the majority of respondents do not have a formal land title, their perception of tenure security is relatively high; and third, *de facto* evidence of two cases involving poor implementation of legislation and lack of protection of the communities' rights showcases their tenure insecurity in the face of investors' interest (even if they perceived it as secured). These two examples make evident the lack of bargaining power and the tenure insecurity of the communities. Due to the weak status of formalized land rights, the process of land titling usually occurs when there is already an interest in the transfer of land rights. In such cases, titling is more beneficial to facilitate the acquisition of land rights by investors rather than to strengthen the land rights of communities because they cannot legally sell the land and only receive financial compensation for the little improvements done on the land. Changing this scenario, land titling campaigns are in motion covering all of the country's provinces, particularly, the densely populated areas or areas of interest for large-scale investments that could be potential focus of conflicts. These campaigns disseminate information regarding land use, strengthens the institutional capacity for land governance, expedites the process of land transfer to investments, thus reducing potential conflicts. For the communities, it is beneficial to inform them of their territorial boundaries and educate them about their rights and land policy at large. However, even with more information and a title, it is not clear to which extent their tenure security would improve due to the high discretionary power of the government in land allocation processes. A further study comparing the data regarding tenure security before and after land titling is needed to reach a more decisive conclusion.

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