



# POLICY BRIEF AND SUMMARY OF SPEED+ SUPPORT FOR REFORM OF MOZAMBIQUE'S LAND SECTOR

## Supporting the Policy Environment for Economic Development (SPEED+)

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# CONTENTS

<b>1.</b>	<b>INTRODUCTION</b>	<b>I</b>
<b>2.</b>	<b>THE CONTEXT</b>	<b>2</b>
<b>3.</b>	<b>UPDATED TECHNICAL NORMS FOR DUAT ACQUISITION</b>	<b>3</b>
3.1.	COMMUNITY CONSULTATIONS	4
3.2.	DEVELOPMENT PLAN REQUIREMENTS AND DUAT REVOCATION	6
3.3.	DUAT TRANSFERABILITY	8
<b>4.</b>	<b>CONCLUSION</b>	<b>II</b>

## I. INTRODUCTION

The USAID SPEED+ project has been supporting Mozambique to improve the legal framework governing land administration with the aim of enhancing accessibility to land and strengthening land tenure security. The underlying principle behind this reform effort is that greater certainty regarding land rights, clearer procedures, and increased flexibility to transfer land rights will stimulate an increase in land-based investment. Bringing more transparency and clarity into the process of acquiring and transferring secure access to land via DUATs (Direito de Uso e Aproveitamento de Terra, or Land Use and Development Right, essentially a long-term land use title) will lead to increased transactions and eventually to a more market-oriented allocation of land rights. In turn, a more efficient allocation of land rights means that land will flow to those people and enterprises with the capacity and capital to put the land to more productive use. Increased investment will lead to greater productivity and economic growth, primarily in agriculture but also in sectors—such as housing or light industry—that require secure access to land.

After applying a political economy analysis during the first year of the program, SPEED+, in coordination with the then Ministry of Land, Environment and Rural Development (and currently with the re-organized Ministry of Land and Environment, or MTA by its acronym in Portuguese), decided to focus on four critical areas of reform, in order to achieve the broader goals described above: (1) updated and streamlined technical norms for DUAT acquisition; (2) improved regulation of genuine community land consultations; (3) simplification and clearer guidelines for the required “plano de exploração” development plan and a reduced scope for DUAT revocation; and (4) eased transferability of land rights.

For each of the areas mentioned, SPEED+ analyzed the challenges, proposed solutions, held workshops both regionally and nationally with stakeholders to obtain feedback, and in coordination with DINAT (Direcção Nacional de Terras, or National Land Directorate), drafted legal instruments for consideration and eventual enactment by the government.

The finalized four work packages have been officially shared publicly, with government and civil society attending, at a February 2020 meeting of the land sector’s multi-stakeholder Grupo de Reflexão, basically a working committee set up as part of the process leading up to the government-led Fórum Consultiva sobre Terras (FCT), or Land Consultative Forum, which occurs once every one to two years. DINAT has agreed to take ownership of these reform proposals and carry them forward for discussion at the next FCT, scheduled for April 2020.

The timing for the SPEED+ project’s conclusion of this phase of the reform effort is propitious not only because of the planned FCT for April 2020 (particularly because the FCT has not met since 2017), because also because MTA also officially launched in February 2020 the work of a special reform commission, naming the members in a ministerial announcement. This Comissão de Revisão da Política Nacional de Terras will be coordinated by André Calengo, who in fact also led the transferability component of the SPEED+ work and assisted in coordinating the work packages of all four areas, thus ensuing continuity for the project’s efforts. Another two members of the Commission are also SPEED+ consultants who worked respectively on the updated technical norms and on the DUAT revocation reform. The presence on the Commission of these members virtually assures that the SPEED+ products will be the starting point for reform efforts regarding those issues.

## 2. THE CONTEXT

Mozambique has benefitted from a widely respected legal framework for land that has served its purposes well since enactment in 1997. However, Mozambican society and economy has matured in these past 23 years and it is therefore an appropriate time to update this legal framework in order to meet the needs of Mozambique in 2020 and beyond. Mozambique can facilitate access to land by enacting streamlined and less restrictive procedures for acquiring and transferring land rights, in both urban and rural areas—while still protecting legitimate customary, community and smallholder land rights.

Technically speaking, all land in Mozambique is owned by the state, held in trust for the people to be managed for their benefit. Citizens, foreigners, and corporate entities may acquire DUAT rights in various ways. Essentially long-term leaseholds granted or recognized by the state, DUATs run for varying periods of time (the length of a DUAT's validity depends on a number of factors and can even be of indefinite duration under certain circumstances). Technical ownership of the land by the state is not a constraint to secure tenure or a more fluid land market (or its functional land rental equivalent). Rather, constraints arise due to partial restrictions on DUAT transferability and to inefficiencies in land administration that lead to actual and perceived weak title or insecure tenure.

With the set of reforms now being discussed, Mozambique is poised to make significant strides toward promoting increased investment in land by revising the current legal framework but leaving the fundamental premise of the 1997 Land Law—the state's unequivocal ownership of all land—untouched. As demand for access to agricultural land increases—whether from national investors, international conglomerates, or just a local smallholder wishing to increase the size of his or her farm—the pressure for clarity and transparency in land administration has grown accordingly. This informed the project's decision to draft an update of the 1989 technical procedures norms, which are obsolete in many respects and create confusion about what steps are required for acquiring a DUAT. Given investor interest in accessing land of an economically viable scale, which often involves community land, the project also chose to focus attention on the required consultation with affected communities. The premise behind the drafted reform proposals is that a more genuine and substantive consultation will result in a win-win for both communities and investors by: (a) reducing risk for investors that conflict later in the project lifecycle could disrupt their investment, and (b) providing tangible benefit-sharing for the community.

The third area of focus, the interconnected issues of DUAT revocation and development plans (the latter being the plano de exploração), was selected due to investor concerns about losing their land rights (and any infrastructure investments on that land) due to incompliance with their development plan. Ironically, the government in February 2018 launched a National Land Audit Campaign to revoke DUATs from people or enterprises that were not putting their land to productive use. The reforms proposed by the project reflect a belief that a more market-oriented legal framework could accomplish similar goals more efficiently and cheaply.

The final area of focus, facilitating transferability of DUATs, aims at creating a market in land use rights—not a market in land per se, because as noted the state must remain the owner of land and this principle remains unquestioned but a market in leaseholds that nevertheless can essentially achieve the same goals. The result will be a more efficient allocation of land to those persons and companies with the capital and

capacity to make the land more productive. Mozambique can attack the problem of “terra ociosa” (unproductive land) with this market-based approach, rather than a revocation campaign.

Full privatization of land remains politically unacceptable, but loosening the restrictions on land rights transfers in rural areas are now openly discussed in the press and at major conferences. SPEED+’s contribution has not just been to draft legislative instruments, but also move the policy debate forward. SPEED+ arguably played an important role in opening the political space for the discussion over transferability during the past several years. The project supported the 15th Conferência Anual do Sector Privado (CASP) in March 2018, during which land policy was selected for discussion at one of the sessions. The CASP event, organized by the Confederação das Associações Económicas (CTA), was attended by President Filipe Nyusi and a number of other dignitaries, including Celso Correia, the Minister of Land, Environment and Rural Development (MITADER, by its acronym in Portuguese). CTA President Agostinho Vuma expressed his support for relaxing the restrictions on DUAT transferability in rural lands and the other efforts to streamline land administration and make it more efficient and transparent. Minister Correia expressed support for gradually proceeding in the direction supported by CTA, though cautioned about moving too quickly. The discussion at the CASP event was covered by the media and helped bring elements of this debate into the open.

In short, the government and political culture have been moving toward consensus that the land law framework should be updated. At the November 2017 FCT, Minister Correia declared the government would work on a “revisão pontual,” perhaps best translated to mean targeted revision, of the land law, and hinted at supporting more of a market approach to land rights (referring to the importance of valuing land and assuring its sustainable use). In June 2018, the Minister signed a “Diploma Ministerial” (ministerial decree) that created the above-mentioned Comissão de Revisão da Política Nacional de Terras. This Commission is essentially a revival and reconstitution of the Comissão Interministerial de Revisão da Legislação de Terras, the Inter-ministerial Commission for the Revision of the Land Legislation, created by Council of Ministers Decree in 1996 and which spearheaded the drafting of the 1997 Land Law. Finally, in early 2020, MTA formally launched the Commission (which had existed only on paper since 2018) by naming its members, and scheduled a FCT for April 2020. With the political will and reform mechanisms in place, it is thus expected that legal instruments drafted by SPEED+ can be reviewed, adjusted as necessary, and enacted. Below follows a more detailed description of the four proposed reforms and draft legal instruments.

### **3. UPDATED TECHNICAL NORMS FOR DUAT ACQUISITION**

Stakeholder interviews conducted early in the project, and supporting research, showed that updated norms for DUAT acquisition – whether for systematic regularization (RDUAT) or sporadic application (via “pedido”) – are not clearly and comprehensively expressed in definitive regulations or administrative instruments. The most recent official technical norms issued by the cadaster services was in an Ordem de Serviço signed in 1989 by the head of the DINAGECA (the relevant government department at the time). The underlying principle behind SPEED+ efforts to clarify these norms is that clear procedures should be known to all players and enforced in a consistent manner. Furthermore, if rules and procedures are issued in official and signed documents, then they can be discussed and debated in a transparent manner – and appealed and modified over time as appropriate.

SPEED+ consultants drafted revised norms and conducted consultations and interviews with key stakeholders and held a regional public consultation in Inhambane Province in July 2019 to inform their work. They finalized the draft of the proposed text for a Ministerial Diploma that will support the implementation of a standardized DUAT acquisition process. The draft has 13 chapters that clarify procedures from the initial application for DUAT acquisition to the registration and tax payments. The aim is to allow the appropriate government staff and DUAT applicants to understand and carry out the steps needed for DUAT acquisition, with clear guidance for the time and procedures required. This streamlined process would govern applications for DUATs (including by investors) and create a uniform set of rules across the country, whereas currently different provinces apply varying rules due to the absence of official central guidelines.

One of the important innovations in the proposed draft is to approve the use of various technologies that were not readily available when current rules were issued in 1989, including the use of GPS/GNSS technology in the demarcation of parcel boundaries. A critical aspect of the new proposal is also the mandated replacement of hard copy records (such as the unwieldy and decaying parcel map books) with the national digital land information system. Without legal support to require use of the land information system (SiGIT by its acronym in Portuguese), there has been uneven commitment among the provincial cadaster agencies to input new registrations into the system, particularly for “sporadic” registrations as opposed to systematic regularization campaigns. A robust land information system, whose use is mandated, serves both efficiency and transparency aims. Of course, the system must be operating correctly, and its maintenance (and/or replacement) is one focus area of the upcoming World Bank funded “MozLand” program.

The proposed revision of the technical norms also updates calculations and payment procedures for the annual DUAT tax, which can and should (but currently do not) play an important role in promoting a sustainable land administration system, which suffers from under-funding.

### **3.1. COMMUNITY CONSULTATIONS**

One of the most critical issues for investor confidence and security, as well as for the protection of community members’ land rights, remains the mechanism for community consent. The project’s approach is based on the premise that consultations must be genuinely participatory and foster informed consent. It is important to note that informed and effective consent by the local community of a proposed project is not only a protection for members of the local communities— it’s also a protection for the investor who does not want to see an initial investment of time, money and effort wasted if, at a later time, disaffected members of the community object to the project and successfully pressure community leaders or the state to cancel the contract, citing insufficient consultation. In short, hasty and incomplete community consent, as well as one-sided (unfair) negotiations will backfire later with community opposition.

For that reason, the project engaged consultants to recommend a revision of the community consultation guidelines to better ensure reliable community participation and clarify procedures for the benefit of the investor. The project’s interventions in this activity area were informed by USAID’s “[Operational Guidelines for Responsible Land-Based Investment](#)” as well as the New Alliance’s “Analytical Framework For Responsible Land-Based Agricultural Investment.”

The current legal framework for community consultations is weak and in certain respects confusing. The Land Law in Article 30 anticipated that the mechanisms of representation of local communities with respect to land rights would be defined by the enactment of future legal instruments to regulate such procedures. However, no such law has ever been enacted. There has been some guidance as to the procedures for conducting a community consultation within the context of awarding a DUAT to a third party on land that may affect or involve community land, and there is guidance (in the Technical Annex to the Land Law Regulations) on the process by which a community delimits its land. Strictly speaking, these are two different processes, though in reality they may often occur at the same time and the differing guidelines may create confusion in their practical application.

The 1998 Land Law Regulations originally specified that the minutes or written results of community consultations (in the context of a third party DUAT application) would need to be signed by representatives of the community as well as by DUAT holders or occupants of neighboring land. The provision did not specify how the representatives would be chosen, though the implication was that the mechanism for representation was to be determined by, or from within, the community. This procedure was modified by a 2010 *decreto* whose effect, somewhat controversial, was to change the requirement that the minutes or conclusions of community consultations would be signed by members of the *Conselhos Consultivos de Povoação e de Localidade* as opposed to directly by member of the communities. A 2011 *Diploma Ministerial* elaborated on the 2010 *decreto* and required at least two stages to the consultation process.

While naturally the *Conselho Consultivo* would likely include members of the local community, this council is, technically speaking, an extension of the state apparatus whose composition is determined by the *Regulamento da Lei de Órgãos Locais de Estado*, in effect a representation imposed from above (and thus more politicized) as opposed to self-determined representation from below. Moreover, the requirement that occupants and DUAT holders from adjoining areas also sign the documents resulting from the community consultation was dropped. On the positive side, the 2011 *Diploma Ministerial* mandated at least two phases to the consultations (recognizing the need for a preparatory and informational phase) and warned that consultations not following the procedures in the *Diploma Ministerial* would be invalid (thus presumably invalidating the DUAT application process itself).

The bottom line is that the procedures for community consultation and community land delimitation were inconsistent and incomplete, resulting in the consultation process being done in an ad-hoc fashion that has often led to land disputes after DUATs are issued. The goal is for investors to engage in meaningful consultations so that issuance of DUATs and the resulting investment projects do not trigger land conflict. Central to carrying out successful consultations and developing agreements that have the full support of local community residents and land users, has been the question of representation. Who speaks in the name of the local community when engaging with investors and the State? Who represents local people when deciding whether to cede land, or when negotiating the terms attached to the ceding of local rights to external third parties? Another issue has been clarification of the mechanisms for the community to become a legal entity capable, for example, of opening a bank account and receiving funds it is entitled to (either because of contracts with outside investors, or via the percentage of mining, forestry, and tourism-related fees it is entitled to under those corresponding laws).

The SPEED+ project, in coordination with DINAT, has proposed a solution consisting of a new regulation that would revoke prior inconsistent legislation and create a clear process for a more substantive and

transparent consultation. The draft regulation would finally fulfill the promise in the 1997 Land Law that such a regulation would follow.

The following summarizes the highlights of the proposed regulation:

- A seven-step process is established and described in detail, beginning with technical and legal preparation of local communities and their representatives and ending with formal registration of the negotiated agreement. There are at least 3 community meetings involved;
- Consultations are to be conducted and mediated by an independent third party. If agreement cannot be reached on the choice of third party, the community's choice prevails;
- Potential investors and communities can both initiate the consultation process;
- Participation of the District Administrator is mandated, and his responsibilities are clarified. The delegation of this responsibility is restricted;
- The transfer of land rights is temporary, for the duration of the investment project, and a mechanism for sharing economic benefits is required;
- A written contract or agreement is required to document the agreement between the parties and the benefits promised to the community;
- In those cases where a public or private project will result in the permanent transfer of community land rights (i.e. extinction of land rights) and involuntary resettlement, formal agreements between the government and the community will be required, as well as the agreement between the private investor and the community. These agreements require the approval of the National Commission on Human Rights;
- Communities are guaranteed representation from within the community and from technical or legal advisors;
- The roles, responsibilities and selection process for community representatives are defined;
- Representation and participation are guaranteed for vulnerable groups especially women, young people, and the elderly;
- The participation of civil society organizations is incorporated into the consultation process.

### **3.2. DEVELOPMENT PLAN REQUIREMENTS AND DUAT REVOCATION**

DUAT-holders are at risk of losing their land rights if they are in violation of their *plano de exploração*, or development plan. This applies to both definitive DUATs as well as provisional DUATs, although the law and regulations is more explicit about provisional DUATs.

Not only do DUAT-holders risk losing their DUAT rights and title, they also do not have the right to compensation for any non-removable improvements (such as buildings, irrigation infrastructure, or planted crops) in the event of revocation. The ownership of such improvements is transferred to the state along with the reversion of the land rights. The confiscation of this private property without compensation constitutes a serious risk for the potential investor and existing DUAT-holder, presumably inhibiting investment.

The standards for when a DUAT-holder is in violation of its *plano de exploração* varies in practice among the provinces, with opportunities in rent-seeking resulting from the discretionary power of government

officials. The smallholder as well as investor needs greater certainty about what constitutes a significant enough violation of, or departure from, its development plan so as to trigger revocation of its DUAT. More generally, the DUAT-holder needs greater flexibility to adopt to changing market conditions (and thus modify its business plan from what may have been in the *plano de exploração*) without having to worry about the risk of revocation.

The legal framework provides for exceptions to the revocation of the DUAT—referring to “*motivos justificados*” or “justified reasons” for non-compliance—but there is no official guidance on what constitutes a justified exception, further adding to the discretionary power of government officials and variance of standards.

The legal framework also allows for re-dimensioning the size of the DUAT whose *plano de exploração* is not being fulfilled—in other words leaving the land right holder with a portion of the original DUAT land and taking away the rest. However, there is insufficient guidance on when this is appropriate, or when an investor or DUAT holder can insist on this solution. Some legal scholars argue that if there is an improvement on the land, then on constitutional grounds the state *must* redimension the DUAT in order to leave the rights holder with that portion of land with the improvement (unless the remaining land is rendered economically useless), or, alternatively, the law should be changed to compensate the rights holder. These arguments rest on the principle that the state cannot take away a person’s property without just compensation (see Art. 82 of the Constitution) and clearly the improvements on the land are private property.

The issue of revocation is of particular relevance given the government’s announcement in 2018 of a *Campanha Nacional de Fiscalização de Terras*, which consists of auditing DUATs (apparently focusing on parcels over 100 hectares) for their compliance with their respective *plano de exploração*. The campaign has as an explicit purpose the full or partial revocation of DUATs, via administrative or judicial processes. The land law and regulations are silent about the appropriate procedures, and this needs to be clarified. Importantly, it’s not clear what administrative procedures the DUAT-holder can pursue to appeal the decision.

The issue of DUAT revocation due to non-compliance with the *plano de exploração* is of course closely linked to the requirements and rules about the *plano de exploração* itself. Investors and small holders seeking additional land need to understand better how much detail is required in the *plano de exploração*. Placing too much detail in the plan could lead to more risk later on, in terms of being found in non-compliance. Yet placing too little detail could lead to rejection of the DUAT application. Rejection of DUAT applications due to an unsatisfactory *plano de exploração*, without clear criteria, once again raises the concern of arbitrary and non-transparent government decisions with the opportunity for rent-seeking by government officials.

The solution proposed by the project, in consultation with DINAT, introduces a number of changes to resolve the issues described above, including providing due process safeguards in the event the government seeks to revoke a DUAT, and specifying clear guidelines for the development or investment plan. The proposal involves amendments to both the Land Law and the Land Law Regulations, and the replacement of the *plano de exploração* by a new concept called a “*Projecto de Investimento*,” or Investment Plan.

Highlights of the proposed reform include:

- Establish clearer guidelines for what must be included in the Investment Plan as part of the DUAT acquisition process;
- Establish timelines for government review and approval of submitted Investment Plan;
- Allow variations to the Investment Plan that do not significantly deviate from the goal of the original plan (rather than requiring a new approval);
- Specify when a definitive DUAT would be issued (e.g., when half the investment envisioned in the investment plan was realized and other clear conditions are met);
- Define situations and procedures by which a provisional DUAT-holder can apply for an extension of time (to achieve the conditions required for applying for a definitive DUAT);
- Define clearly justifications for when incompliance with the Investment Plan will be excused (and thus not lead to revocation of the provisional DUAT);
- Eliminate compliance issues with the Investment Plan as a basis for revocation of a definitive DUAT;
- Establish and clarify the administrative procedures for DUAT Revocation, including procedures for affected DUAT-holders to effectively contest revocation, including petitioning for a hearing and submitting evidence (and the right to have an advisor assist the DUAT-holder in such proceedings);
- Require fair value compensation to the DUAT-holder for improvements on the land (infrastructure, buildings) expropriated by the state as a result of revocation.

### **3.3. DUAT TRANSFERABILITY**

The issue of DUAT transferability (referred to as *transmissibilidade* in Portuguese) is at once the most important and most sensitive of the reform measures addressed by the project. At one time, loosening the restrictions on land rights transfers, especially in rural areas, was a taboo subject, but that is now changing. As mentioned earlier, the question is now being openly discussed in the press, at the periodic Land Consultative Forums led by government, at the 2018 *Conferência Anual do Sector Privado* (CASP), and at CTA-sponsored “Business Breakfast” events (such as the project-supported “Acesso à Terra” meeting in August 2018). Currently, DUATs cannot be sold, and can only be transferred under certain conditions—essentially with the sale of improvements on the land. But even then, in rural areas, the transfer is permitted only in limited circumstances with a high degree of government discretion. And the transfer of bare land, where there is no construction or improvement to sell, is extremely difficult (though overcome in urban areas by somewhat risky workaround contracts that retain the original rights holder as the DUAT holder until construction is well underway).

The SPEED+ project’s premise, based on stakeholder discussions and economic analysis, is that simplifying the procedures for transferring secure leasehold access to land via DUATs will lead to a higher volume of transactions, with a greater number of these transactions brought into the formal registration process. A more fluid environment for transactions will eventually lead to a more market-oriented allocation of land rights, with the legal framework—engaged rather than skirted—protecting the rights of the most vulnerable, including women and the poor. The more efficient allocation of land rights, accompanied by increased investment, will lead to greater productivity and economic growth—primarily in the agricultural sector but also in other sectors such as housing or light industry which require secure access to land.

Reform can be achieved without touching the fundamental premise of the 2005 Constitution of state ownership of land. The state's status as the *per se* land owner does not by itself constitute a restraint. Secure tenure of long-term DUATs, with renewable and transferable rights, serve as a good proxy for ownership and does not significantly impede the flow of capital to underdeveloped land. There are numerous examples of countries in which full "ownership" of land is vested in the state, and yet secure, renewable and transferable "leaseholds" between a private person (or corporate entity), as lessee, and the state, as lessor, function to enable relatively efficient land markets. A long-term kind of a leasehold in which the state's discretion over renewability and transferability is very limited can very closely resemble "full" property rights.

In fact, an argument can be made that "full property rights" in a self-proclaimed capitalist-oriented economy such as the United States is only semantically different than a long-term leasehold: after all, a property owner in most U.S. jurisdictions must pay annual property taxes (or risk expropriation by the state) and, furthermore, the land at all times is subject to "eminent domain" in which the state can expropriate anyone's property for any number of reasons (such as building a road, a school, or even making way for a redevelopment project involving other private entities) as long the state pays fair compensation. Viewed through a different lens, an annual real estate tax in the U.S. is only semantically different from "rent" paid by a private citizen or corporation for a leasehold from the state on the land in question. In short, there are precious few examples in the world of theoretically "absolute" property rights held by private persons over real property within the borders of a sovereign country. The more critical issue, therefore, from the perspective of facilitating economic development and the flow of capital, is the degree of government discretion in transferability and renewability.

The Mozambican legal framework arguably inhibits investment and development because transferability of rural land, and of vacant urban land, is subject to a high degree of government discretion (unless the transfer is by virtue of inheritance, in which case it is essentially automatic). Transferability of land use rights with regard to developed urban land is less of an issue, since the legal framework provides for what amounts to the fairly automatic (i.e. minimal government discretion) transfer of a DUAT when an improvement (for example, a building or other tangible development on the land) is sold.

The issue of being able to transfer DUATs in rural lands is particularly important in the context of being able to sell improvements (buildings, irrigation infrastructure, planted crops). A willing buyer for the improvements will likely only be interested if it can also become the DUAT-holder. An investor would prefer the security of knowing that, if it is running short on capital mid-way through a project, the improvements and DUATs can be sold to another interested entrepreneur. There are many examples in Mozambique of "abandoned" improvements and infrastructures (which ultimately revert to the state if the DUAT is revoked), but it is not clear if these improvements would have been "abandoned" if the DUAT transfer procedures in rural areas were automatic or at least less discretionary.

There are also a number of other problematic social and economic situations created by the transferability restrictions, such as families who begin construction in peri-urban areas (under rural land administration jurisdiction) and subsequently do not have the means to complete their home. Recouping their investment by selling to a buyer with more resources could be an attractive option, but this may not be possible (or at least subject to arbitrary discretion) under the current framework.

The time is ripe for Mozambique to address this core aspect of its land law. Given the sensitivity of this issue, the project has offered a set of three alternative (with corresponding draft legal instruments). The most straightforward option, if sufficient consensus can be achieved, is to amend the Constitution to eliminate the clause which prohibits the sale of land, i.e. Article 102(2), which is generally understood to mean prohibiting the sale of DUATs. Note that an argument can be made that the sale of a DUAT is *not* the sale of land, but rather the sale of a long-term leasehold right, and thus does not contravene the constitution. However, most Mozambicans interpret the cited Constitutional clause to prohibit the sale of DUATs. The first option, therefore, is to eliminate Article 109 (2) of the Constitution and open a market for the sale of DUATs (though it is worth repeating that even in this reform, the state remains the land owner, and the referenced sale is of the leasehold, still subject to revocation by the state, especially if the DUAT is provisional, under various circumstances).

The second option set forth by the project is to leave the Constitution as is, but amend the Land Law to essentially make the approval of DUAT transfer automatic. This approach would eliminate (or drastically reduce) the discretionary power of the land administration entities to reject DUAT transfer requests. At a minimum it would simplify the procedures for rural DUAT transfers to make the process more similar to urban areas (though that would still leave bare land outside the reform). If rural DUAT transfers were made essentially or mostly automatic, this would also open the possibility for a credit market in which lenders would be able to foreclose not only on the infrastructure but also on the underlying DUAT leasehold. If access to credit could be increased, this would increase investment and thus productivity. The final option would be to clarify and regulate the *cessão de exploração* mechanism (an assignment of DUAT rights) as a supplementary or alternative mechanism to outright transfer of the DUAT. The assignor would still remain as the official DUAT holder (for example in the cadaster), but the assignee would be granted the full land rights during the time duration of the assignment (presumably the assignment is not permanent, but rather time-limited). The *cessão de exploração* mechanism appears in Articles 15 and 20 of the 1998 Land Law Regulations, but without much detail. The need for further guidance has been recognized by both government and private sector stakeholders and recommended for several years. A draft regulation has thus been prepared which would clarify and encourage its use. This option, the least controversial, is not mutually exclusive of the others, and might be useful to enact regardless, particularly in the case of community land. It may be more appropriate for a community to cede a part of its territory temporarily to an outside investor, rather than allow an outright DUAT grant on its traditional or delimited territory.

At the 2017 FCT, DINAT and MITADER already signaled their intention to facilitate rural land rights transfers, but the implication was that it would be via the mechanism of a *cessão de exploração*. The project has set forth the other options mentioned earlier, because those options would address the issue of rural DUAT transferability more broadly at its root, rather than just indirectly via the *cessão de exploração* mechanism. Those approaches are to likely have a more rapid and dramatic impact in terms of freeing up a land use market and promoting investment.

## 4. CONCLUSION

The SPEED+ project has put together a package of four reforms, complete with draft legal instruments, that range from the most technical and least political (updating the norms and standards for DUAT acquisition) to the most political and sensitive (loosening the restrictions on DUAT transferability, potentially permitting the sale of DUAT leasehold rights). This package has been developed with significant feedback from both government and civil society stakeholders in a number of national and regional forums, consultations and workshops. The government has committed to take these issues forward in the contexts of both the *Fórum Consultiva sobre Terras* scheduled for April 2020 as well as the newly formed *Comissão de Revisão da Política Nacional de Terras*, in which the same consultants who worked on the reform package for SPEED+ will be deeply involved, assuring the project's work products will be utilized and—it is hoped enacted with any appropriate adjustments.

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