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## The Impact of Mozambique's Land Tenure Policy on Refugees and Internally Displaced Persons

by Bina Hanchinamani\*

Memories of bloodshed and massacres accompany many refugees and displaced persons as they attempt to reclaim the homes and livelihoods they left behind. Many of these returnees journey back to their abandoned homelands only to find that they have no homes left to which to return. Even when returnees repatriate voluntarily, they often find their homelands ridden with landmines, angry competing land-right holders, residual ethnic animosity, and hostile armed forces. Competing land rights often begin wars, and continued land conflicts after war threaten to re-ignite these hostilities once again. Unstable political regimes, post-socialist land distribution quarrels, faulty dispute resolution mechanisms, and conflicting customary and traditional legal systems only fuel the frustrations that cause violence to erupt. In response to such issues facing returnees, Mozambique implemented a new land tenure policy to address the unique land tenure problems that arose after its civil war. The struggles and successes of recent Mozambican land policies offer a model for improving land tenure rights for returning refugees in other countries around the world.

Located on the southeast coast of Africa, the Republic of Mozambique ended its 15-year civil war in 1992. According to UN High Commissioner for Refugees (UNHCR) statistics, the fighting uprooted and displaced 5.7 million of the country's 16 million people by the war's end. At the signing of the peace accords, Mozambique was one of the poorest countries in the world and heavily dependent on foreign aid. From 1993 to 1995, 1.7 million Mozambican refugees repatriated from six different countries, and 3 million internally displaced Mozambicans returned to their homes.

### Background

The evolution of Mozambique's land rights history can be traced through its political history. During Portugal's colonization of Mozambique, the Portuguese government wanted to protect peasants from the influence of nationalistic forces, and therefore required peasants to move to "protected villages" where the government supposedly could shield peasants from such influences. The Portuguese government also granted concessions of land in fertile areas to larger commercial interests and moved the local people to less fertile areas. After obtaining independence from Portugal in 1975, the FRELIMO (*Frente de Libertação de Moçambique*) government took over Mozambican rule. When the shift in government took place, local peasants who had lost their land to commercial farms under Portuguese rule reoccupied the land with the belief that under the new government they could reclaim what had been their land.

The FRELIMO government, instead, began a socialist development strategy by moving approximately 1.8 million people into communal villages with new schools and health centers. To accommodate these communal villages, the government forced rural people to give up their homes and ancestral lands. Peasants worked on poorly managed state farms to produce surpluses for export crops and received small plots that allowed them to produce food for themselves. Other peasants survived merely in the subsistence sector, where families struggled in cooperatives to produce food to sustain them. The government moved unemployed migrants from the cities to work on state farms.

The violent emergence of RENAMO (*Resistência Nacional Moçambicana*) opposition forces soon after independence further displaced

people. Both the Mozambican army and RENAMO forces engaged in practices that forcibly removed and resettled populations. By the early 1980s, agricultural production collapsed and neither state farms nor peasants produced significant surpluses. To encourage western support against RENAMO, the Mozambican government began to implement changes in its policies, such as joining the Bretton-Woods financial institutions and encouraging foreign investment by granting land concessions to private sector firms, often in joint ventures with the state. The government also re-allocated lands that refugees and displaced persons left behind and used them as concessions for new private sector interests favored by the state. However, these land grants were poorly recorded.

In July 1992, FRELIMO and RENAMO signed a General Peace Agreement in Rome, ending the civil war. Since the peace agreement, land rights for returnees exist under a number of arrangements. Section IV of Protocol III to the General Peace Agreement provides that "Mozambican refugees and displaced persons shall be guaranteed restitution of property owned by them which is still in existence and the right to take legal action to secure the return of such property from individuals in possession of it." There are some questions as to whether this would apply to land rights, considering that the state owned all lands and peasants had only use

rights. Another agreement that protects the land rights of returnees is the Tripartite Agreement between the Government of the Republic of Mozambique, the Government of Zimbabwe and the UN High Commissioner for Refugees for the Voluntary Repatriation of Mozambican Refugees from Zimbabwe, signed in 1993, which

states in Article 5(4) that "the Government shall ensure that returnees have access to land for settlement and use, in accordance with Mozambique laws." However, the history of complicated changes in the government's land policy created widespread conflict in determining who possessed what rights over the land.

At the signing of the peace agreement, Mozambique faced several problems with its land policies. In 1992, the Land Tenure Center, a research organization at the University of Wisconsin in the United States, conducted a study of the state farm sector in Mozambique and discovered that land distribution "was proceeding without direction, transparency, or equitable competition for resources." Mozambique's lack of an organized system for divesting state assets often resulted in the issuance of overlapping land rights. Not only did departments within the government grant conflicting land use rights, but local level customary authorities did also. Furthermore, land policies lacked transparency and were applied unevenly. For instance, the government often granted land use rights to foreign interests and other influential individuals, at the expense of small landholders and small private Mozambican interests. Additionally, the state lacked labor, trained administrators, financial resources, and technical expertise to resolve conflicting land claims in an equitable manner.

Since the peace agreement, the Mozambican government has dealt with the land problem by creating a series of commissions and also by implementing projects through more permanent public institutions. For example, in 1992 the government created the Ad Hoc Land Commission within the Ministry of Agriculture to examine the divestiture of state farmland. At this time, Mozambique experienced pressure from foreign donors to deal with the land rights problem as a pre-condition to awarding funds for development

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programs. The Ad Hoc Land Commission eventually led to the creation of a Technical Secretariat of a new Inter-Ministerial Commission for Revising Land Legislation, which included nine ministries under the Presidency of the Prime Minister. The Council of Ministers approved a new land policy in September 1995, articulating several goals. These goals included increasing national agriculture production, stimulating private investment by securing land rights, promoting land access rights of rural populations, guaranteeing customary and traditional land rights, preserving important ecological areas, and creating an effective land tax system. The new land policy finally culminated in the July 1997 Land Law (*Lei de Terras*).

#### July 1997 Land Law (*Lei de Terras*)

The new land law formalizes many provisions that help returnees and peasants. Under the new law, the state still owns all land but grants use rights to individuals, communities, and companies in the form of leases that can last up to 100 years. These leases can be transferred, but not sold or mortgaged. Use rights emerge either through occupancy or by a specific grant through the state. The government can issue use right title documents to individuals, companies, or entire communities and groups, although those who occupy the land for more than ten years acquire permanent use rights without the need for title documents. This particularly benefits peasants and returnees who often do not possess actual title documents to prove their occupancy of land. One of the new land law's mechanisms for improving the rights of those who lack title documents is the requirement that courts accept verbal evidence from community members regarding occupancy of land. This acceptance of verbal evidence is particularly important because of the high level of adult illiteracy among Mozambican peasants and returnees.

The new law also protects the rights of small landholder returnees against the often conflicting claims of large landholders by creating requirements for development plans before the issuance of title. The government will grant 100-year use rights two years after issuing title, only when there is evidence that the development plan is actually being carried out on the land. By requiring a development plan, the law diverts the intentions of high officials who registered land speculatively in the past with the expectation that they would sell the land for high profits when the government eventually submitted to foreign investment pressure and privatized land.

The land law also improves land access rights by decreasing the bureaucracy and cost of registering land titles, therefore encouraging peasants to register titles for their land. Increased use of title documents offers further security to occupiers of land and offers an easier way for courts to determine which claims over a piece of land are legitimate. Also, one way of ensuring that peasants have the ability to carry out the development plans required to gain title is to allow small landholders to seek titles for their lands in the name of their local community, rather than making them undertake the expense and bureaucracy as individuals.

To prevent conflicting land claims created by overlapping issuance of title, the new law prevents the state from granting new occupation rights when others already hold title over the land in question. To prevent incidences where one agency grants land rights over a certain property, while another agency grants land rights to

someone else over the same property, the law creates a more structured system for delegating the power to grant titles for land use in particular areas. The law also provides that titles identify the scope of the land occupied. When conflicts emerge about which claims over a certain piece of land are legitimate, the new land law provides court remedies that take into account the verbal testimonies of community members.

One of the most important provisions of the new law is the increased role of local communities and traditional leaders. Local communities exercise considerable discretion in the management of natural resources, resolution of conflicts, the implementation of titling processes, and the definition of the limits of land they occupy. This provision allows the use of local customary law in determining local land rights policies. Furthermore, to determine whether the land in question is occupied, the state must consult local authorities before granting leasehold titles that last up to 50 years. However, the July 1997 Land Law contains a provision that seeks accountability from local authorities by requiring that they give a legal statement that specifies "the representation mechanisms" of their local communities.

Although the new law grants more discretion to customary authorities, these authorities may not employ customary practices that discriminate against women. Because local policies must not conflict with the national constitutional requirement of treating men and women equally, local authorities are legally bound to engage in equitable treatment between the sexes. This requirement serves to acknowledge inheritance rights of widows and

divorced women by protecting them against eviction from lands they worked for more than ten years.

#### Responses to the 1997 Land Law

Because the new land law vastly expands the rights and bargaining power of peasants, the new law is considered "good" and a "victory for peasants" by the two largest organizations representing peasants in Mozambique, ORAM (*Associação Rural de Ajuda Mutua*, Rural Organization for Mutual Help) and UNAC (*União Nacional de Camponeses*, National Peasants Union). Lorena Mangwane of ORAM described the achievement of the new law by telling one researcher that "the old law was written in offices without an understanding of peasants; the new law was written by the people and responds to our reality." Non-governmental organizations (NGOs) like ORAM and UNAC were instrumental in fighting for the provisions in the new land law to benefit peasants. These NGOs continue to commit themselves to improving application of the law and educating peasants about their rights under the new land law.

#### Applicable International Law

International law supports the measures Mozambique has taken to protect the land rights of refugees and displaced persons who return to their homes after war. Although international law does not directly delineate the specific land rights of returnees, international law regarding property rights, indigenous rights, and refugee rights comprises protections that benefit returnees. Furthermore, peace agreements in other countries suggest an international norm of rights for refugees and displaced persons who return to their homes after war. All of these trends point to the



Mozambican returnees rebuilding their homes.

UN/UNHCR/T. Bolstad

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emergence of international law to protect the land tenure interests of returning refugees and displaced persons.

The Universal Declaration of Human Rights (UDHR), in Article 17(1), articulates a right to own property, individually and collectively. The UDHR also protects people from being arbitrarily deprived of their property in Article 17(2). Another example of United Nations endorsement of property rights for returnees is the

**Local communities exercise considerable discretion in the management of natural resources, resolution of conflicts, the implementation of titling processes, and the definition of the limits of land they occupy.**

1997 UN Guiding Principles on Internal Displacement, which in Principle 21(3) states that "Property and possessions left behind by internally displaced persons should be protected against destruction and arbitrary and illegal appropriation, occupation or use." A problem with applying international standards of property protection to situations like the one in Mozambique is that the state owns all land; the lands previously occupied by returnees then were owned by the state and afterward continue to be owned by the state. This brings into question whether land use rights can be considered ownership rights that UN documents intend to protect. Some scholars argue, however, that returnees have rights under international law dealing with prescription. They argue that because prescription rights are common in many domestic legal systems, they constitute international norms. Under this theory, returnees' rights to lands, even without written title, should be upheld on the basis of certain periods of uninterrupted possession. It is significant to note that refugees and displaced persons who originally occupied a piece of land prior to war left their lands involuntarily due to the compelling circumstances of war. Were it not for such circumstances, these original occupiers would have continued to occupy their lands.

Another tenet of international law that more specifically applies to many returnees refers to the rights of indigenous people. These laws, which commentators assert have become part of customary international law, particularly protect the rights of indigenous returnees against the competing rights of outside investors or large landholders. Article 25 of the UN Draft Declaration on the Rights of Indigenous Peoples provides that "Indigenous people have the right to maintain and strengthen their distinct spiritual and material relationship with the lands, territories, waters, and coastal seas and other resources which they have traditionally owned or otherwise occupied or used, and to uphold their responsibilities to future generations in this regard." This provision is important because it protects the rights of those persons who occupy or use land even if they do not technically own the land. Article 39 of the same declaration provides that "Indigenous peoples have the right to have access to and prompt decision through mutually acceptable and fair procedures for the resolution of conflicts and disputes with States, as well as to effective remedies for all infringements of their individual and collective rights. Such a decision shall take into consideration the customs, traditions, rules and legal systems of the indigenous people concerned." These provisions empower indigenous communities in protecting their rights and traditions.

In addition, the International Labor Organization (ILO) Convention 169 on Indigenous and Tribal Peoples (Convention 169), adopted in 1989, protects "people in independent countries who are regarded as indigenous on account of their descent from the populations which inhabited the country, or a geographical region

to which the country belongs, at the time of conquest or colonization or the establishment of present state boundaries who, irrespective of their legal status, retain some or all of their own social, economic, cultural and political institutions." Many refugees and displaced returnees fall under this definition of indigenous. ILO Convention 107 on the Protection and Integration of Indigenous and Other Tribal Populations (Convention 107), adopted in 1957, asserts: "The right of ownership, collective or individual, of the members of the populations concerned over the lands which these populations traditionally occupy shall be recognized." Convention 107 goes on to provide that states substitute the lands of displaced persons with lands that are of "at least equal quality . . . suitable to provide for their present needs and future development." Convention 169 acknowledges the right of indigenous people to own, use, and occupy ancestral lands. Although Mozambique has not ratified Convention 169 or Convention 107, the value of these norms as part of customary international law is significant. Additionally, one can argue that the United Nations' and ILO's emphasis on the rights of indigenous peoples to preserve and practice their cultures inevitably includes a right to land ownership, particularly among people who have cultural or religious ties to land. Assertions of indigenous rights serve to protect returning refugees and displaced persons by acknowledging their legitimate interest in and cultural ties to the lands they occupied prior to war. As the land rights situation in Mozambique indicates, competing outside investors and large landholders often threaten the land rights of returnees. Indigenous rights help safeguard against such a threat.

Finally, provisions set forth in peace agreements in Guatemala and Bosnia offer examples of how other countries have provided for returnee land rights, often with the support of the international community. In Guatemala, for example, the government and UNHCR-recognized refugees formed the CEAR-CCPP (Guatemalan National Service Commission for Repatriates, Refugees, and the Displaced - Permanent Commission of Guatemalan Refugees in Mexico) Repatriation Agreement of October 1992. Under this agreement, both parties created specific provisions for refugees and displaced persons to reclaim their land rights upon returning home after fleeing the armed conflict in Guatemala. For example, under this agreement the Guatemalan government negotiates with and encourages second occupiers to leave the returnees' former land. If the second occupier does not leave, the returnee may pursue judicial remedies. In cases where pursuing judicial remedies would be too burdensome for the returnee, the government provides the returnee with alternative land financed through specially created government agencies. Additionally, during the Guatemalan peace

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negotiations under the June 1994 URNG (*Unidad Revolucionaria Nacional Guatemalteca*) - Government Uprooted Populations Agreement, the government confirmed its commitment to determine land rights with special consideration to the involuntary nature of the abandonment of lands. In Bosnia, the peace process included important provisions for returnees' rights to the homes that they occupied prior to the war. Article 1 of Annex 7 of the December 1995 General Framework Agreement for Peace in Bosnia and Herzegovina, commonly referred to as the Dayton Accords, provided that refugees and displaced persons have a right to "freely return



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arbitrarily of life, as defined in the Article 4 of the American Convention and Article 6 of the ICCPR. A state having violated these articles is obligated to pay reparations.

#### Case Updates

##### *Caso del Carazco (previously known as Caso Aguilera La Rosa)*

On November 12, 1999, the Court issued a press release concerning the developments in this case. The Commission filed a petition with the Court on June 7, 1999, alleging that the state of Venezuela violated the American Convention's right to life (Article 4.1), to humane treatment (Article 5), to personal liberty (Article 7), to judicial guarantees (Article 8.1), to judicial protection (Articles 25.1 and 25.2(a)), and to suspension of guarantees (Article 27.3) in accordance with the obligations to respect rights (Article 1.1) and domestic legal effects (Article 2). The allegations relate to events occurring in Caracas, Venezuela, in February and March 1989, when state agents extrajudicially executed 35 people, disappeared 2 people, and injured 3 other people. On November 10, 1999, Venezuela publicly acknowledged the truth of the allegations during a session of the Court and accepted the judicial consequences and its international responsibility. Reparations in this case are now pending.

##### *Caso Castillo Petruzzi and Caso Loayza Tamayo (Peru)*

The Court issued two press releases on November 17, 1999, concerning Peru's refusal to abide by the Court's decision of June 11, 1999, in the *Castillo Petruzzi* case and its opinion of

November 27, 1998, in the *Loayza Tamayo* case. On June 11, 1999, Peru's Plenary Court of the Supreme Council of Military Justice declared that it would not enforce the Court's decision in the *Castillo Petruzzi* case because the judgment "lacks impartiality and infringes upon the Political Constitution of the State." Additionally, Peru's Second Transitional Penal Chamber of the Supreme Court refused to execute the Court's decision regarding reparations in the *Loayza Tamayo* case. Peru claimed that the Court did not have proper jurisdiction to render judgment because the petitioners had failed to exhaust internal remedies.

The Court concluded, however, that Peru has no legal justification for non-compliance with the decisions. Pursuant to Article 67 of the American Convention, which concerns the Court's procedures, a Court judgment is final and not subject to appeal. If there is a disagreement, however, as to the meaning or scope of the decision, Article 67 also allows a party to request that the Court interpret the decision. In the *Loayza Tamayo* case, Peru requested an interpretation of the decision in accordance with Article 67 and the Court issued its interpretation on June 3, 1999. According to Article 68.1, parties to the American Convention must comply with the final decisions rendered by the Court. Furthermore, the Court noted that Article 27 of the Vienna Convention on the Law of Treaties of 1969 prohibits parties from invoking internal law to justify non-compliance with treaty obligations. The Court called for Peru's prompt compliance with its judgments. ☺

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to their homes of origin," as well as a "right to have restored to them the property of which they were deprived in the course of hostilities." In cases where property could not be restored to returnees, the Dayton Accords provided that returnees have a right to compensation instead. Additionally, the UN Security Council, the UN Commission on Human Rights, and the UN Committee on the Elimination of All Forms of Racial Discrimination issued statements supporting the rights of refugees and displaced persons in the Bosnian conflict to return to the homes that they occupied prior to the armed conflict. The post-conflict agreements in Guatemala and Bosnia are examples of international norms that favor the land rights of returnees. Again, the practice of these two countries, and the international organizations that supported them, suggest the emergence of customary international law to protect the land tenure rights of returnees.

#### Conclusion

Although Mozambique's implementation of the July 1997 Land Law generally serves as a model example of compliance with international legal protections for returning refugees and displaced persons, some land tenure problems for Mozambican returnees still persist. Despite the advances in the law to promote returnees' interests, it continues to be difficult for peasants to enforce their rights in the midst of competing large landholders and outside investors. Additionally, there are conflicts over which small landholders should use the limited amount of fertile land available to peasants. In the spring of 1999, the Land Tenure Center reported that land access was still linked to wealth-related factors. Cases of fraudulent land expropriation still continued after implementation of the new land law, further disrupting peasants' access to lands.

Another problem concerns conflicts among small landholders themselves. The Land Tenure Center observed that, although the July 1997 Land Law did much to protect the interests of small landholders against the competing interests of large landholders, it did not contain enough provisions that addressed existing competing land claims among peasants. This is a sensitive area, particularly in light of the policy desires to resolve land conflicts at the local level with customary authorities.

Furthermore, other problems at the local level still exist. Although the Land Commission provided that the July 1997 Land Law would be translated into local languages to help local people access it, NGOs are still trying to inform peasants of their rights under the new law. It also has been difficult to maintain a balance between the active role of customary authorities and the new standards of accountability developed by the new land law to legitimize local processes. In addition, enforcing the land rights of women still remains challenging due to the history of discrimination against women who, in customary practices, lacked land use, development, and inheritance rights.

Despite these concerns, the changes implemented by the July 1997 Land Law have been mostly positive. Mozambican government agencies, international organizations, local NGOs, and researchers continue to work through the remaining problems returnees and other peasants face today. Mozambique's efforts to resolve post-war land tenure conflicts reflect a compliance with international standards and demonstrate methods for improving land tenure policies for returning refugees and displaced persons in other countries around the world. ☺

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