

# ON SOLID GROUND

ADDRESSING LAND TENURE ISSUES FOLLOWING NATURAL DISASTERS

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# Mozambique

## THE FLOODS IN MOZAMBIQUE

### Environmental context

Throughout its history, Mozambique has had to deal with cyclones and floods, and when these are severe they have a devastating impact. Apart from the immediate threat to human life, such natural disasters seriously impede economic growth.

There is no doubt that the Limpopo valley floods in 2000 were one of the worst flood disasters in Mozambique's history. At least 700 people died, and some 500,000 to 650,000 were displaced and temporarily sheltered in over 100 camps set up by the government. It is estimated that the total cost of the 2000 floods was equal to almost 20 percent of the country's gross domestic product, and slowed down the economic growth rate by 2.1 percent.



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## FLOODING OVER 30 YEARS

Event	Impact
1978 – Limpopo	350 killed; 400,000+ affected.
1981 – Limpopo	500,000 affected.
1985 – Southern Provinces	500,000 affected.
1990 – Pungue-Sofala	12,000 displaced.
1996 – Southern Rivers and Zambezi	200,000 affected.
1997 – Central Rivers and Zambezi	300,000 affected; 78 killed.
1999 – Inhambane and Sofala provinces	70,000 affected; 100 killed.
2000 – Southern Rivers including Limpopo	2 million affected; 700 killed.
2001 – Zambezi	500,000 affected; 115 killed.
2007 – Zambezi	
2008 – Zambezi	

## DISASTER MANAGEMENT BODIES CREATED THROUGH THE POLICY ON DISASTER MANAGEMENT

- ❖ **Coordinating Council for Disaster Management (CCGC)**: the government body chaired by the Prime Minister responsible for policy decision making. It comprises the ministers of key ministries such as Foreign Affairs and Cooperation, Public Works and Housing, Transport and Communications, Health, Agriculture and Rural development;
- ❖ **National Institute for Disaster Management (INGC)**: responsible for disaster management and the coordination of prevention activities, relief to disaster victims, and the rehabilitation of affected infrastructure. It falls under the Ministry of Foreign Affairs and Cooperation and has offices at the provincial level;
- ❖ **Disaster Management Technical Unit (CTGC)**: responsible for coordinating sector and ministry early warning systems, defining national alerts and proposing declarations of emergency to the CCGC. It is chaired by the Director of the INGC and its members include Ministerial members of the CCGC, and representatives from the Mozambique Red Cross, UN agencies and NGOs.

Floods in 2007 were almost as severe. In all, over 400,000 people were said to have been affected by the severe flooding and the cyclone which struck Inhambane and Sofala provinces. The flooding led to 45 deaths, extensive crop damage, and the evacuation of around 163,000 people from low-lying areas. It was estimated that agricultural production in the affected areas had been reduced by 30 percent in the first quarter of 2007.

## Government context

The flood events of 2000 were a first test for the implementation of the National Policy on Disaster Management which the government had passed in October 1999. This policy marked a shift from a reactive to proactive approach towards disaster management, aimed at developing a culture of prevention.

A central element of this mitigation strategy is securing land rights for communities that are exposed to frequent disasters of this kind, as well as in communities that can be identified as safe havens for displaced communities to settle temporarily in or permanently. Mozambique has strong tools to implement this strategy: the Land Law (1997), the accompanying Regulations (1998) and the Technical Annex on Community Land Delimitation (2000). These tools promote the involvement of local-level institutions in land access and management, with a focus on identifying and securing local land rights. This involvement in turn has a clear mitigating impact with relation to flooding generally.



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The Land Law, for example, already integrates customary and formal land access and management systems into a single Mozambican law. Customary practices and local land management institutions are formally recognized and given due place in the law. These institutions are strengthened through their involvement in land administration activities, and are consequently also better able to deal with other challenges, such as resettlement and other land issues created by serious flooding. Decision-making on land management, including dispute resolution, continues to be primarily dealt with by informal but mostly legitimate institutions at the local level. Displaced people as well as those who receive the disaster victims often use these same institutions to take care of their problems and challenges. The legitimacy and relevance of these institutions is formally recognized by the National Land Policy of 1995, and given concrete form in the Land Law. Customary land rights exist and are recognized as such. Local people also accept these rights, which are based on the occupation and use of land. This offers major advantages in the absence of formal documentation. It also gives weight to oral testimony in case this is required and promotes finding local solutions to problems.



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## Major land tenure issues

Early assessments were conducted in 2000 by the UN organizations and the World Bank, together with different government bodies, mainly line ministries. The best results were achieved when international organizations were working closely together with Mozambican institutions and local agencies.

The UNEP/UNCHS assessment took into consideration the fact that land tenure and housing rights may be a challenge in the emergency and recovery phases. A number of urgent tenure security issues were identified:

- the rights of flood displaced people who decide not to return;
- rights in resettlement areas;
- the rights of people returning to their areas without legal documentation;
- the rights of informal settlers affected by floods; and
- the rights of hosts where resettlement would occur.

## Land tenure issues for the displaced

**Strengthening tenure arrangements through visible occupation.** Upon arrival in their area of resettlement, flood victims were registered by relief agencies or the state authorities, making them eligible for emergency assistance. It was also on this basis that plots of land were allocated in the resettlement villages. In a majority of cases, this registration, supplemented by an index map where each plot number corresponds to the name of a resettled person or family, is the only documentation that secures any tenure over the land and property.

Maintaining secure access to productive assets such as land in the area of origin, as well as employment, is a core livelihood strategy that flood victims have long used as part of a post-disaster response. Permanent occupation of land, or exercising highly visible land use, is an accepted way of establishing strong rights over land. This is part of the customary heritage of all social groups. Post-independence socialist governments

embraced this policy, on the basis that “land belongs to those who use and cultivate it”, and indeed resettled flood victims have used this strategy to strengthen their tenure security. They have tried to occupy both the lands that they had to leave, as well as the newly allocated lands. When distances between the two sites are too great, families tend to split up and establish some form of presence on each plot. The 1997 Land Law also recognizes these ‘acquired rights’ as fully equivalent to the State Land Use and Benefit Right, or DUAT. However, these acquired DUATs do not have to be registered, with the result that their absence on official records creates vulnerability, which needs to be compensated for by strong local intervention that can support claims to long-standing occupants of land that has been abandoned during floods.

**Resettlement on community land.** Most people are resettled on community lands in rural areas. Resettlement locations on community land are identified by the local government authorities or

district administrations, with the involvement of the local community representatives. The consultation is more likely to correspond with a decision taken after some “superficial consultation”, rather than a decision based on negotiation. This fast action seems to be justified by urgency, but may result in friction and problems later between the resettled and the host community.

Resettlement on community lands in rural areas is a laudable policy, as it may offer at least a minimum of conditions to enable the displaced to engage in economic activities. Through the land law, local communities have established legal rights over these lands through long-term occupation according to local rules and customs. Local land management institutions, as well as a significant part of the community members, often have a clear idea of the position and extent of the community boundaries. The land policy and law embrace negotiations and community consultations as mechanisms for outsiders to obtain access to community land. The community, represented by a local land management body, agrees



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or disagrees with the request for access to land and the use of this land under certain conditions. The latter may refer to the duration of the right to use the land, but also to the benefits that this temporary transfer entails for the community.

For a number of resettlement places in the vicinity of towns, some sort of outdated town plan usually exists. These plans have no provisions for emergency resettlement. In the best case, areas earmarked as possible extension sites for town development could be used for the resettlement of flood victims. In practice this did not happen, mainly because local governments did not want to see their future prime land being permanently occupied by displaced people.

**Trust in the state to guarantee land and property rights.** The only security of tenure that resettled flood victims acquire over their land and house is based on trust in the local administrative state structures and whatever support may be found among the local communities. They are not issued any kind of certificate for the acquired plot; neither do they obtain a building license for the shelter or house. The state is still very much respected, at least in the southern parts of Mozambique, and this trust may provide certain levels of perceived tenure security. But, in other areas of Mozambique, the state did not acquire the land for resettlement through an “official legal” agreement from the host community. The host community could, in principle, question the validity of the resettlement site because they were not formally consulted. In this context the question arises as to why the state does

not go through a legally binding process with the host community, such as an official community land delimitation, followed by a genuine negotiation of access to community land according to the Land Law. The lack of any preventive action combined with the urgency to act when a disaster occurs is probably the major reason why a negotiated agreement is substituted by a more imposed form of agreement.

#### **Gradual strengthening of weak tenure arrangements.**

After several years, when initial gratitude has given way to real-life challenges, plot beneficiaries realize that they require a more direct form of tenure security. For instance, some individual households are now applying for (i) the registration of their plot as a formal certificate to secure the plot; and (ii) a (post factum) building license to secure the infrastructure on the plot. This pro-active registration process originates in the resettled community itself, as a response to a perceived feeling of tenure insecurity.

**Lack of information.** Information on the nature and costs of legal procedures to secure tenure seems to constitute a major hurdle for people. Very few are informed about the possibilities that the Land Law offers to initiate a land registration process. Local NGOs and other civil society groups do not seem to take up this challenge. It appears that the involvement of NGOs and others in emergency work is limited to providing relief immediately after a disaster, including the building of shelter. Securing the land on which this shelter is built seems to be less of a concern.

#### **Emergence of parallel mechanisms for securing land.**

A significant number of people rely on the local authorities (administrative post level, or even lower) to obtain some sort of written declaration stating their ownership of land or infrastructure. The local authorities charge a fee for these services. The documents and the process of registration are all handled at district level. Given that the only legally recognized cadastre, outside of the municipality areas, is at the provincial level and that land rights must be authorized by the provincial government, these procedures do not seem to have any legal backing; however, they do appear to be legitimate for the incumbent and to the local authorities.



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## Land tenure issues for the returnees

**The imperative for tenure security in areas that are susceptible to floods.** Resettlement often only gives flood victims an opportunity to acquire a residential plot in a safe haven. As a permanent option, resettlement is not generally useful for establishing a new livelihood. There is then a strong “push factor” away from the resettlement areas and back to areas of origin, where people encounter better conditions and established social networks for their livelihoods, and where they have their own acquired rights over land.

The bottom line is that displaced people want to continue having access to the fertile and productive lands they left when taking up residence in a resettlement site.

« The Government has provided a re-settlement area. Houses have been built using local materials and there is a concrete school. However there are few jobs and people have returned to the floodplain in spite of the risk. The issue of employment and livelihoods for people in resettlement areas should be discussed between the Community and the District Administration. *(HR Wallingford, 2005)* »

Where there is a perceived risk that people may eventually lose access to these lands, they will not be encouraged to leave the areas when the floods arrive. Providing secure tenure to these lands of origin, while securing access to a residential plot in a safe haven is therefore key to any successful flood mitigation policy. Failure to achieve the two challenges simultaneously will result either in poverty and destitution or in continuous exposure to the dangers of recurrent floods.

**The role of local institutions in providing security of tenure.** People who return and exercise a permanent occupation of their land have not in general encountered any problems in re-establishing their rights. Infrastructure was not wiped out completely, leaving clearly visible indications of previous occupation. The local leadership, neighbourhood secretaries and other local dignitaries have played an important role in confirming previous occupation and ownership when required. It does not appear that the loss of documentation, mainly building permits in urban areas, has prevented re-occupation of property.

It is essential to highlight the existence of “the living cadastre”, a local institution of mainly elder people who maintain mostly memorized records of local land use, transactions and ownership. The living cadastre plays an essential role in the normalization of post-disaster land occupation. Legitimacy and reliance on local structures takes on an important dimension when most land was allocated in an informal way, even by the state, and never documented.

## Land tenure issues for the host communities

**Recognition of host communities’ needs and contributions vis-à-vis newcomers.** Land issues and the tenure rights of host communities should also be addressed. The common practice is that resettlement occurs through the local government or district authorities, which alienate a part of the host community lands without following the necessary procedures as described by the law. Consequently, this land is re-distributed to flood victims, who, after some time, will procure some form of individual tenure security for the plots that

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the state allocated. This results in resettled people acquiring rights over land that may be perceived as being stronger than the rights of their hosts. This situation is exacerbated when community land rights are not delimited and registered.

In general, principles of solidarity are used and accepted by host communities in giving refuge to their brothers and sisters who have been the victims of a natural disaster. When this solidarity turns into unconditional alienation of their own land – undermining their own rights and imposing pressure on their own natural resource base, often without their consent, and without bringing any benefits – it is understandable that conflicts can arise. Again, this is exacerbated by the fact that emergency and recovery aid is channelled only to the resettled victims, but not to the host community members.

**Unnecessary state interventions.** In some areas of the country, there is evidence that certain government initiatives to secure land for the displaced have been at odds with a correct application of the land law and with local land management issues. There is little doubt that when rural communities have registered their land rights, through a legally sanctioned delimitation process, and have prepared a simple land use plan for the area, they are more likely to (i) accommodate victims of natural disasters, (ii) be more actively involved in encountering local and acceptable solutions for managing the resettlement; and (iii) benefit from recovery efforts. An enabling environment of local land management accountability is more likely to prevent disputes between hosts and newcomers than an imposed intervention from state authorities.



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## Loss or destruction of formal records

A major problem in this context is that the vast majority of existing land rights in rural areas have not yet been subject to any cadastral surveying, and these rights are thus not documented as official cadastral records. If these rights were recorded in 'normal times', an urgent and essentially reactive response to the allocation of land to flood victims could be avoided.

### PREVENTING LOSS OF OFFICIAL RECORDS

National staff from different departments identified a number of simple measures to prevent a similar impact on formal records:

- Keeping official records in safer places is an obvious response to avoid future 'paper disasters'.
- The information flow between the provincial and national cadastre levels has improved, but there is no online connection with the central system, and the system itself is susceptible to virus attacks. In principle regular back-ups are made, but it is not clear whether there are standard procedures to do this, or if the back-ups are held off-site in safer areas.
- A number of logistic weaknesses have been identified, including: proper filing systems in closed filing cabinets (existing filing cabinets are not waterproof); the use of waterproof ink for handwritten documentation and registers; multiple copies of cadastral maps and other documentation; barred windows and doors in offices to prevent records from being carried outside the building by the flood waters.

In addition, all documented DUATs that were approved after 1998 have, in principle, been subject to a process of consultation with local leaders and authorities, as part of the legally approved procedures. This local consultation process leaves traces that can be tracked down when needed. When documents are destroyed by floods, there is usually a local reference who is able to confirm whether a person or entity has been through a process of acquiring a certificate.

This does not imply that lost documentation does not need to be restored, or that land rights do not require documentation. When land rights of communities are not made visible through delimitation and recording, it is difficult for community structures and members to exercise their rights vis a vis outsiders who may question these rights. Undocumented community land rights are easily encroached upon by outsiders who may acquire incompatible overlapping rights in bad faith. Documented individual certificates are also needed to access credit, secure investments, and avoid overlapping land rights.

It must also be noted that the recovery and restoration of records have not directly induced a systemic change. The lost or damaged records were restored as best they could be, but the recording system itself was not improved.

The recovery and restoration of cadastral data poses a question as to the legality of reconstructed data. Most of the damaged documents with original signatures have been copied, and there is doubt whether copied signatures have the same legal value as the originals. There is no knowledge about an eventual legal instruction dealing with this issue. In this context, oral testimony and other non-conventional forms of proof allowed in the land law become even more important,



and indeed the process of restoration of records offers a unique opportunity to give more prominence to these innovative aspects of Mozambique land legislation.

## An enabling environment to prevent land disputes following a natural disaster

An examination of land rights and land issues in the post-disaster situations that Mozambique has faced reveals a common positive feature: major disputes and conflicts are generally absent. Some of the principle reasons are briefly described below and can serve to help prevent disputes from happening in the future.

**Resilience to disaster.** Over the past ten years, work on disasters has increasingly focused on the capacity of affected communities to recover with little or no external assistance. This requires a stronger emphasis on approaches that stress resilience rather than just need or vulnerability. Through recurrent disasters, it appears that the Mozambican people have established a high degree of resilience to the recurrent character of these disasters. Strategies to minimize risks of economic hardship have been developed over time. These include a diversification of agricultural production in time and space, having access to different types of lands and soils and making alliances with neighbours to secure this access. Losing one or two parcels due to the occurrence of a disaster is compensated by arranging for access to parcels in different locations.

**Solidarity and social networks.** Strong forms of solidarity remain part of Mozambican society. In rural areas there are many solidarity and mutual help systems.



Effective responses to a disaster require a stronger emphasis on approaches that stress resilience rather than just need or vulnerability.



**Absence of major ethnic, social and political differences.** Mozambique is a multi-cultural society but has remained largely immune to confrontations or conflicts defined along ethnic fault lines.

**Land availability.** Post-disaster situations are not, as yet, being used by groups or individuals to grab land or natural resources, and in general there is a relative abundance of land for agricultural development. Private land concessions are an established feature in the Limpopo Valley and seem to meet the consent of local populations. Larger concession holders are not yet massively encroaching upon smallholder or communal land (although more recent reports indicate an increasing interest from the agro-fuel sector).

**Informal but strongly legitimate land rights and local institutions.** As previously mentioned, decision-making on land management, including dispute resolution, continues to be primarily dealt with by informal but mostly legitimate institutions at the local level. Both displaced people as well as those who receive the disaster victims often use these same institutions to take care of their problems and challenges.

## Lessons learned for addressing land issues

**The enduring role of 'traditional' institutions.** 'Traditional' institutions for land management in the rural areas of Mozambique are the most important, enduring and flexible mechanisms for the majority of people to secure access to land and resolve conflicts. The hierarchy of traditional chiefs in the rural areas represents a repository of information regarding land allocations, boundaries and entitlements; in effect they are a 'living cadastre', and a point of reference for everyone.

**Secure tenure to lands of origin, and access to safe haven.** Displaced people want to continue having access to the lands they left. For them, the establishment of strong rights over these lands is essential. Where there is a perceived risk that they may eventually lose access to these lands, they will not be encouraged to leave them when the floods arrive.



## SUSTAINABLE RESETTLEMENT – AN ACTION PACKAGE

### The Resettlement as a disaster mitigation policy.

Resettlement on community land is probably the only way forward. A challenge is to turn resettlement, as a mitigation strategy for natural disasters, into something that responds to the needs of the potential victims. It is a voluntary process, and to make it attractive and successful, an enabling environment needs to be created. Looking at the traditional strategies of alliances between different communities might offer some insights into how best to manage this process.

Where people continue to live on flood-prone and vulnerable areas there is a need to discuss coping strategies with them and understand their needs for rehabilitation. The concerns of both men and women need to be incorporated into the rehabilitation and resettlement strategies.

### Securing land and property tenure for host communities.

Resettlement brings stress to those who play host to the displaced. The present resettlement approaches on communal land can result in the permanent alienation of host community land. Why should a rural community host an important number of people, if they know that this will result

Sustainable resettlement is not limited to the basic needs and services in resettlement sites, but must also consider actions in the areas of origin which are subject to flooding. Providing secure tenure to these lands of origin, while securing access to a residential plot in a safe haven, is key to any successful flood mitigation policy. A failure to achieve the two challenges simultaneously will result either in poverty and destitution, or in continuous exposure to the dangers of recurrent floods. There are a cluster of activities that need to be considered, as part of a holistic package, in order to promote sustainable efforts of resettlement.

in a loss of assets? It is essential that tenure security is established over the land and natural resources of the host community and that access to it is then negotiated through formal and legal processes. A community planning exercise is the only legal and legitimate approach to decide on a number of issues: location of resettlement villages, compensation for the customary land owners, conditions for accessing

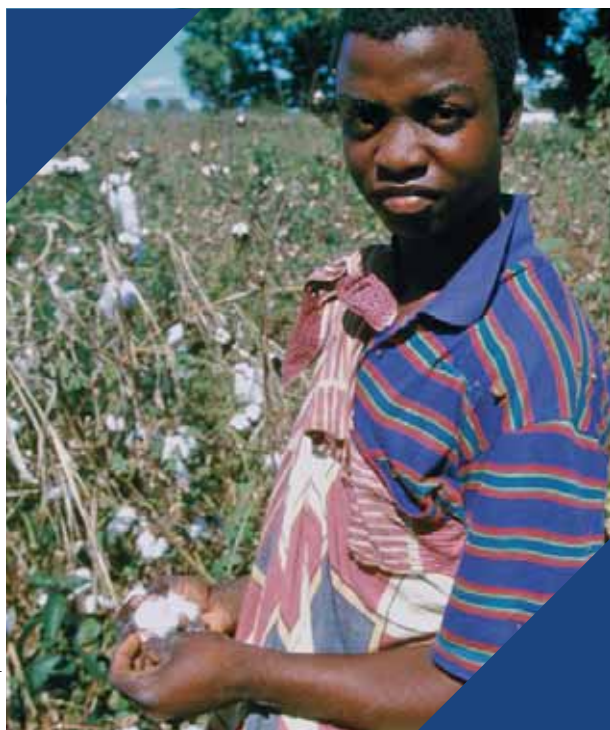
other land and natural resources by the flood victims, and the needs and possibilities for the development of the resource base (new small irrigation schemes, development of new *machongo* areas).

Carrying out 'pre-emptive' community delimitation in both flood-affected and host communities, before the emergency strikes, can also pave the way for a more effective integration and resettlement process. Once again, the traditional model of alliances and integrated strategies for coping with floods can offer interesting lessons here, as precisely a kind of 'pre-emergency' strategy that facilitates an emergency response when it is needed.

**Securing individual tenure for newcomers in resettlement villages.** Many resettled people, particularly in the peri-urban areas, want to acquire strong forms of tenure security over their allocated plot, and over the infrastructure that is built on it. There is a fear that the state could reclaim what it has given to flood victims. Local community members who lost their lands to flood victims also continue to reclaim their lost access and productive assets (mainly fruit trees), albeit in a peaceful and low-key way. Individual security seems to be essential for a number of reasons: (i) the populations of resettlement villages are not necessarily socially coherent and

homogeneous, and a strong organizational structure to well manage common property may be absent; (ii) collective ownership in resettlement villages has a legacy of failure and non-acceptance; (iii) it weighs heavily on a number of fundamental principles such as inheritance and the transferability of land and property; (iv) common property models in peri-urban resettlement situations do not necessarily provide tenure security for individual families.

**Actions that strengthen local institutions.** There is a strong imperative for local institutions to be actively involved in mitigating the impact of the floods generally, and particularly so in the areas of land access and management. The Land Policy, the Land Law and the accompanying Regulations and Technical Annex provide the rationale, the legal basis and the necessary tools for achieving this involvement. However it is still more common to find central or provincial state-driven approaches that tend to marginalize both the affected and the host communities. This is in great part due to the lack of capacity at a local level – within local government generally and particularly within land administration institutions, both at district level and within communities. The state could capture existing capacities by involving NGOs with specialized knowledge of land and natural resource management issues.



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### Adopting better and more efficient cadastre systems.

There is a need to improve both the organization and the protection of the cadastre. A generalized lack of capacity throughout the system and an uneven understanding of how the administration of the cadastre fits within broader land administration systems leave it vulnerable to the loss of valuable information and ambiguous demarcation situations. Once there is a more appropriate conceptual basis for the cadastral system, within a broader strategy for land administration that genuinely accepts the legitimacy of acquired customary and locally managed rights, the issues that have arisen in the post-flood context can be better addressed. The technical development of the system will only be sustainable once these foundations are in place.

**Tools to address land tenure challenges.** A number of tools can be used to address underlying land tenure challenges in a natural disaster context. Most of these tools are available in Mozambique, and some have even been developed in the country itself. There is no doubt that the present policy and legal framework to address land tenure and land use or territorial planning is by far the strongest tool.

## AREAS FOR TECHNICAL ASSISTANCE

- Strengthening local institutions.
- Identifying appropriate resettlement areas in the event of new floods.
- Delimitation and issuing of DUAT titles.
- Local and government literacy on the Land law and regulations vis-a-vis floods and other natural disasters.
- Efficient cadastre and registration systems.
- Integrating land tenure issues into national and local emergency programmes.

### NATURAL DISASTERS AND LAND TENURE GOVERNMENT INSTITUTIONS IN MOZAMBIQUE

#### NATURAL DISASTERS:

National Institute for Disasters Management

#### LAND TENURE AND RELATED INSTITUTIONS

Ministry of Agriculture (MINAG)  
 Land and Forests National Division (MINAG/DINATEF)  
 Planning and Development Ministry  
 Environmental Coordination Ministry (MICOA)  
 National Cartography Secretariat (CENACARTA)  
 Juridical and Judiciary Training Centre (CFJJ)



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