

The impact of new legislation in Mozambique

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Abstract

The present paper purports to examine the situation of land ownerships in Mozambique and put into perspective with those of the region. A brief analysis of the situation before the country's Independence is made. Furthermore, the paper explains the procedure to access land in Mozambique as well as the mechanisms for the transfer of land rights. A contrast is made between urban and rural land given that for each case there are different approaches with regard to taxation and transfer of rights.

Introduction

It is important at the outset to remind ourselves that Mozambique gained its Independence in 1975 from Portugal after a 10 year struggle waged by Frelimo.

At the Independence Day all the land was nationalized and the state became the sole owner, whereby the citizens could just acquire the rights of occupancy. This declaration was then converted into law in 1979 through the Land Act 6/79 and the respective regulation by means of a Decree 16/87 of the Council of Ministers. As can be seen the law was passed in 1979 and only 9 years later, its regulation was approved.

The approval of the Land Law regulation concluded in time with the structural adjustment programme known as PRE (Programme for Economic Rehabilitation) which overtly paved the way to an open market economy and gradually burying the socialist paradigms.

Due to the fact that the regulation aimed at orientating the implementation of the land law 6/79 which was out of phase, it was realized that new legal instruments in line with the new political, economic and social developments, should be in place. A countrywide process of consultation was conducted involving all the stakeholders, including the civil society. Indeed, participatory exercises at the grassroots took place all over the country.

Meetings were held in villages, local communities and in other levels of the society for discussing the draft of what would eventually become the new land legislation. One of the most important aspects raised was the security of tenure by the communities and the

family sector land holders. Although in the previous law the communities were recognized, there was a drawback in that they were not obliged to register, and in so doing they were prone to land grabbing.

The Land Law 19/97 and respective regulations

The new land law, with nr 19/97, was approved by the Mozambican Parliament in 1997, to replace, as indicated in the introduction, the Land Law 6/79. This law has been passed in a new political setting.

The country adopted a multiparty system in 1990 and in 1992 a general peace accord was signed. In its preamble, the act states that the driving force for its revision is the need guarantee the access and security of tenure for smallholder Mozambican family sector and both national and foreign investors.

The new land law establishes the mechanisms for guaranteeing the peasants rights. Whilst in the previous law such a guarantee was implicit, in the new one there are clauses stating explicitly so and yet there is a possibility for partnerships between the community and a willing investor. The former can negotiate the terms and conditions under which the latter may have access to part of the community land. It can actually be a win-win situation provided the community elect a good negotiating team. As a result, apart from possible cash money, the investor may build schools, health centres, water supply facilities, amongst other infra-structures.

The Act 19/97 also states clearly how foreigners can invest in Mozambique, unlike the previous one which spoke only of mixed economy, that is, state and private investor. There was no clear indication as for how the non-resident foreigners could invest in the country, perhaps because of the fact that the CPI (Investment Promotion Centre) had not been created the law was approved in 1979.

Another interesting aspect of this law is an explicit reference to the possibility of women being allowed to own rights on land.

In order to guide a correct implementation of the law, the Council of Ministers approved the regulations of the law through the Decree 66/98 and a technical annex. The latter provides instructions on how, and under which circumstances, to delimitate community land; who takes part in such an exercise given its participatory nature.

In the light of this annex, communities having common boundaries have opportunity of discussing and drawing sketches on the ground so as to reach consensus on the actual limits. From the participatory map, a cartogram is drawn.

Forms of acquisition of land use rights

As mentioned in the previous section, any individual or company can acquire the right of land use. There are various forms depending upon whether it is an individual or a company as follows:

- a) National citizens who have been occupying a piece of land for at least ten years, can acquire rights over it if such an occupation is considered to have been in *good faith*, unless it falls in areas pre-destined for public utilities;
- b) Any citizen can lodge an *application* for the acquisition of land use rights;
- c) Organizations or companies by application *on lease basis*
- d) Local communities occupying land under *customary practices* acquire automatically the right of occupancy, unless there is an overriding public interest on that land. Willing, the community may request the delimitation and registration of their land on the cadastral register, as prescribed in the technical annex.

All formal applications are subjected to community consultation. This means that any application has to go to community discussion before a decision is taken by the authorities. The local community has a say with regard to the usurpation or not of their land. If it issues a negative recommendation the authorities mentioned above will simply turn down the application.

Ownership and titling

Despite the institutionalization of market economy in the country, land remains state property. However, any citizen can acquire rights of occupancy over a piece of land under the forms described above.

How does the process function?

Land applications are submitted to the relevant authorities, which are the National Mapping and Cadastral Organisation (DINAGECA) including its provincial branches or the Municipal Councils depending on whether it is a rural or urban area.

For rural areas the approval of the applications is the Provincial Governor's up to 1000 ha, the Minister of Agriculture and Rural Development for areas between 1000 and 10000 ha, and the Council of Ministers above these limits.

After lodging a land application a provisional authorization is issued whose duration is five years for national citizens and two years for foreigners. This means that within this time frame the application must do the necessary investment according to the approved investment or development plan.

Failure to meet the requirements can lead to cancellation of the rights. Other reasons for cancellation include public interest on land, term end giving up by the rights holder in

which cases there is an indemnity/compensation due. When the rights are cancelled the immovable capital goods become state owned.

Having satisfied the investment (development) plan, a final (definitive) authorization can now be given and a title issued by the cadastral authorities. This title must then be registered at the Registrar of Titles' Office, Ministry of Justice. It can be used as proof of ownership of occupancy rights before courts or elsewhere.

National citizens are not subject to time limit whereas national or foreign organizations or enterprises can apply land for a fifty year lease, renewable for equal periods.

For the registration at the Justice Department to be effected a demarcation of the parcel must be accomplished by public cadastral authorities or private surveyors.

Transfer of land rights

Rights on land may be transferred as follows:

By inheritance- that is, rights may be passed to heirs, regardless of sex;
Between living persons- in this case only infra-structures built on land can be transferred if it is rural land. Transfer of surrounding land is not automatic meaning that it is subject to new application. The person transferring the land must attach proof of payment of all annual tax fees as well as the compliance with the development plan.

In urban areas the whole land parcel where the infra-structures are built is transferred when selling those, with no need for State authorization.