

Post-conflict land administration and its current status as facilitator of the post-conflict state building; case Mozambique

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SUMMARY

This study addresses the challenges that land administration has faced in the post-conflict period, the current status of land administration and the role of the land administration as a facilitator of the overall process of post-conflict state building in the case of Mozambique.

Mozambique suffered from a civil war, known as 16 years of war, which was officially over with the act of signing a General Peace Agreement (GPA) between FRELIMO government and RENAMO in Rome, Italy on 4 October 1992. In the GPA land issues are mentioned in relation to refugees and internally displaced persons (IDPs). During the war and some severe periods of droughts approximately 6 million people were displaced. One study showed that approximately 500.000 landmines were present primarily in the most fertile areas. After the GPA was signed, a process of returning of war displaced people started, and for these requirements and other land related issues the so-called Ad Hoc Land Commission was formed. Not a big number of IDPs and refugees came back to their homes. Some of their properties were occupied by secondary occupants - soldiers and military staff. Others did not return because of the mine fields in the rural areas. IDPs and refugees settled in the bigger cities and locations near infrastructure, markets and transport.

A study was conducted by the Ministry of Agriculture, Ad Hoc Land Commission and USAID to support the development of the Land Policy, in the period of 1992-94. This study identified many land related issues which require improvement. Since 1995 land became an important issue on the political agenda resulting in development of: National Land Policy; Land Law; regulations for Land Law – rural land; cadastral reforms and incremental decentralization; urban land regulations within the Land Law. Currently in Mozambique land administration is executed via the National Directorate of Land and Forests under the jurisdiction of the Ministry of Agriculture.

General characteristics of war-torn societies are: weak institutions, economic and social problems and low security. These characteristics were also present in post-conflict Mozambique. Developments that are evident in the land sector help tackle at least two of these characteristics, they contribute towards strengthening the institutions and to economic and social development. Having said this, land administration could be seen as one of the elements of the overall process of post-conflict state-building.

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1. INTRODUCTION

Historically observing Mozambique reveals it was a Portuguese colony for almost five centuries and for the purposes of administering colonial Mozambique the Portuguese civil law was applied. This legal framework still has a significant presence within post-independence Mozambique. According to the colonial era law, land was classified into three classes: urban land, land around villages and land considered by the colonial state as ‘free’ and available for handing out to new investors.

Movements for independence were evident since 1962 and in 1975 Mozambique won its independence with socialistic FRELIMO as the governing party. A civil war started quite soon after the independence and is rooted in the pre-independence developments and the role of Rhodesia and apartheid South Africa at that time. Also former Portuguese land owners played their role. They were fighting against the socialist way of ruling the country and the land resources (“A terra a quem a trabalha”) after independence. All land in Mozambique was nationalized at independence in 1975 under a basically socialistic constitution. Former colonial land users abandoned their farms, larger estates became state farms, and a cooperative and villagization program was introduced - land was cultivated collectively and communal villages were created (Norflok and Tanner 2007). A civil war started in 1976 and it lasted for 16 years.

This study addresses the challenges that land administration has faced in the conflict and the post-conflict period, the current status of the land administration and identifies the role of land administration as a facilitator of the overall process of post-conflict state building in the case of Mozambique. In Chapter 2 characteristics of the conflict and post-conflict environment in Mozambique are explored, Chapter 3 continues with studying land administration in Mozambique before, during and after the conflict and Chapter 4 reviews and identifies what was the role of land administration in the overall process of post-conflict state building. Chapter 5 draws some conclusions from the study.

2. CHARACTERISTICS OF CONFLICT AND POST-CONFLICT ENVIRONMENT IN MOZAMBIQUE

The period of almost five centuries as a Portuguese colony came to a close for Mozambique with establishment of its independence in 1975. After the independence a civil war started in

1976 known as 16 years of war (guerra dos 16 anos). Main causes for the civil war were big political and ideological disagreements between the FRELIMO government and RENAMO - the National Resistance Movement. One of the many other fuelling factors for the conflict was the way how the state dealt with and managed the country's land, more specifically the government's villagization programs (FAO-LSP 2004).

Biggest fights were fought in 1984-85 and the civil war lasted until 1992. During the period of 16 years of civil war and severe draught approximately 6 million internally displaced persons (IDPs) and refugees fled from their homes. Mozambique has produced more refugees than any other country in Africa (USCR 1994). More than half of this people were IDPs and the refugees found their shelter in the neighbouring countries like: Tanzania, Malawi, Zambia, Zimbabwe, Swaziland and South Africa. Many IDPs went to the cities and stayed there after the war ended (this phenomenon contributed to growth of informal settlements). Since the conflict did not exceed the boundaries of the territory of Republic of Mozambique this conflict could be characterized as intra-state conflict.

After a period of three years of negotiations, a General Peace Agreement (GPA 1992) was signed between the FRELIMO government and RENAMO in Rome on 4 November 1992. The role of a host and mediator as a peace maker was delegated to the Italian government and the Roman Catholic Santo Egidio community. Mediation and negotiations were observed by U.S., Great Britain, Portugal and Germany. The GPA consists of seven protocols designed to address both the formal resolution of Mozambique's civil war and the establishment of the new political system meant to provide a basis for lasting political stability. At the centre of the political settlement was the establishment of a competitive multiparty democracy along majoritarian lines, though a parliament to be elected under the system of proportional representation (Manning 2002) .

In the GPA land issues are mentioned in relation to refugees and IDP's. In protocol 3, point 4 is with a title: Return of Mozambican refugees and displaced persons and their social reintegration, with sub-point (e) dealing with property issues saying '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' (GPA 1992). The sub-point (e) goes in alignment with later adopted UN Resolution 1998/26 on 'Housing and Property restitution in the context of the return of refugees and internally displaced persons'(UN 1998).

The first challenge that post-conflict Mozambique was facing was keeping the peace, which became possible with big involvement of the international community. A big International Community and Donor's presence could be notices in post-conflict Mozambique. United Nations Observation Mission in Mozambique (ONUMOZ) was most active and most present in post-conflict Mozambique with one of the main roles to reintegrate the soldiers from the long lasting civil war into every day work and life. Other international actors present were Red Cross, Norwegian Red Cross, Spanish Red Cross and other different NGO's. In the land sector international community was evident with support from USAID, UNDP and FAO.

During the civil war many IDPs went to the bigger cities and towns and stayed there after the war – this contributed to growth of informal settlements. After the end of the civil war the process of returning of refugees started. The return of 1.7 million refugees and several million IDP's in Mozambique has been touted as one of most successful return projects ever (Smith 2012). Statistics show that 1.7 million displaced refugees returned to Mozambique in the period 1993-95 (UNHCR 2002) with almost 1.3 million coming back from Malawi (UNHCR 1992-94).

Together with the process of returnees a challenge of the property related issues arose on the horizon. In some cases it was possible for returnees to settle on their own properties but in the majority of the cases it was not possible because of: completely destroyed properties; due to protracted conflict, the situation on the ground was totally different, mine fields - one study estimates that 500,000 landmines were present primarily in the most fertile areas (HRWAP 1994); secondary occupation by governmental staff, soldiers and military, and many other reasons. Because of this, many returnees were located near infrastructure, markets and transportation (Myers 1994) but also a big number of them found shelter in the existing towns and cities – this is clear example where displacement fosters urbanization.

In parallel to the process of settling the returnees, government agencies have been haphazardly distributing land rights to new and returning private national and foreign enterprises as well as to government officials through privatisation of the vast state farm sector, reactivation of former colonial titles, and granting of concessions. It is estimated that as of May 1994 40 million hectares of land, more than half of Mozambique 's total area, has been granted in concessions or 'sold' to commercial enterprises (Myers 1994).

Ad Hoc Land Commission (formed in 1993 and among other duties they were dealing with managing and solving the competitive claims over land) in short period of time started to face challenges of multi-layer competitive claims which were dating from the colonial time, post-independence and civil war period.

Land issues are seen as too politically sensitive, technically too complicated or lacking of governmental capacities (EU-UN 2012) to be structurally addressed in peace agreement documents and as early as possible in the post-conflict period. Experience in many cases has demonstrated that this is a bad practice, it has long term effects and this practice should be changed. This was the case in Mozambique as well; the government has been largely silent on the issue of land tenure reform. A government report on the transition from emergency assistance to reconstruction fails even to mention land issues (RM-UN 1993). The government in a meeting of the Coordinating Council of the Ministry of Agriculture was unwilling to discuss the matter. The new political parties have also neglected the issue (Myers 1994).

Having said all this for the case of Mozambique, it reveals that land issues are once more identified as a gap in the international response capacities and they were not appropriately

addresses in the emergency and early recovery period after the conflict by the governmental actors as well. Recognizing the important role that land is playing within the conflict and post-conflict period, drives this research paper to explore further how the land was managed and administered in these circumstances.

3. LAND ADMINISTRATION IN MOZAMBIQUE – BEFORE, DURING AND AFTER THE CONFLICT

Before the independence when Mozambique was still a Portuguese colony, on the national level the authority responsible for dealing with Geographic and Cadastral issues was DINAGECA (Directorate of Geography and Cadastre). On the lower - provincial - level each province was creating and maintaining their cadastral works. At that time, provinces before the independence were administered by Portuguese colonial authorities. For the purposes of administering colonial Mozambique the civil Portuguese law was applied. This legal framework still has a significant presence within post-independence Mozambique. The present Land Law and the Property Registration Code are no exception. Indeed, many of the elements of the 1997 Land Law were evident from the later part of the 19th century. According to this colonial era law, land was classified into three classes: essentially urban land, around the main cities and towns; land around villages where local people maintained their systems of production; and land considered by the colonial state as ‘free’ and available for handing out to new investors (Chemonics 2006).

Land professionals who dealt with issues related to land surveying, mapping and administration were mainly Portuguese. Different Provinces had different status of developments regarding land administration. During the independence period technical staff and a large part of maps and documentation were moved to Portugal. Land administration systems can suffer in several ways during a conflict. The most obvious blow follows from the loss of staff and records (Zevenbergen and Burns 2010).

From the beginning of Mozambique’s independence, the Marxist government assumed ownership of all lands, recognizing only usufructs based on custom (ETLLP 2005). After the independence DINAGECA was weak with limited staff, maps and documents, and it was very dis-organized. During the conflict almost all offices of this authority on provincial level were burned and destroyed together with the maps and documents. Only few offices in the bigger cities remain in fact. Around 1980’s some offices of District Service of Geography and Cadaster stopped their work and this lasted until 1992 (Todorovski 2012).

Nowadays Mozambique has a land governance system that allows for strong protection of community-based land rights, community consultation with respect to partnerships with investors, and also secure rights to land for investors. However, the implementation of legislation has been slow and the capacity among state actors is weak (LANDac 2012). In the figure no. 1 follows a number of legal land regulatory documents and laws adopted during the post-conflict period.

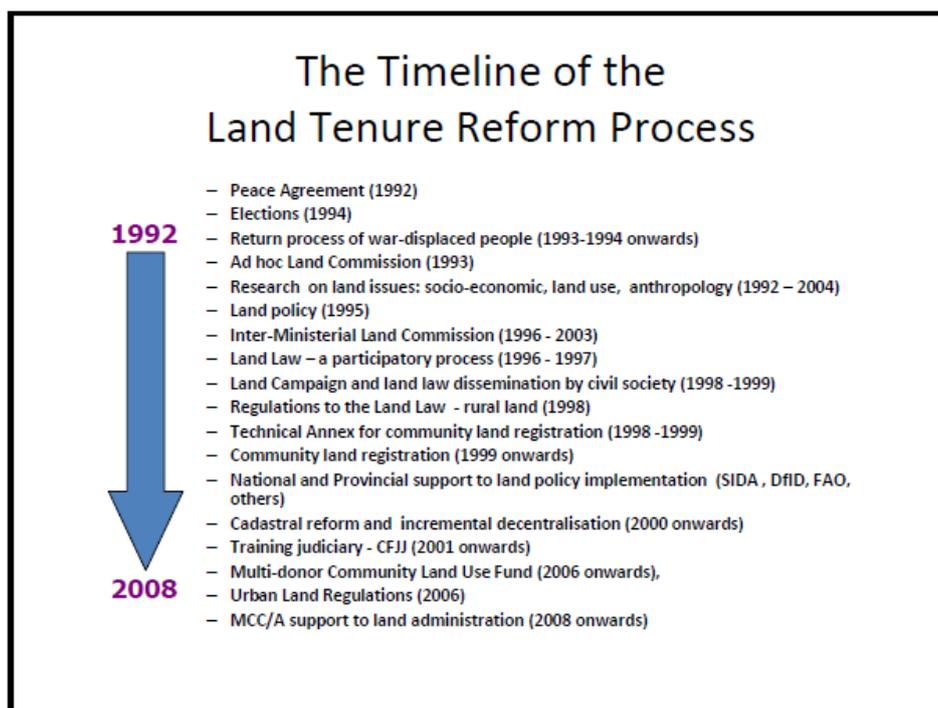


Figure no. 1: Time line of Land Tenure Reform Process (Cossa and de Wit 2009).

After the GPA was signed, a process of returning of war displaced people started (1993-1994 onwards) and for this, and other land related issues, the Ad Hoc Land Commission was formed in 1993. A study was conducted by the Ministry of Agriculture, the Ad Hoc Land Commission and USAID to support the development of the Land Policy, in the period of October 1992 to November 1994. National Land Policy was developed in 1995. Land law was developed in 1996-1997 and it is in force since 1997. Regulations for Land Law – rural land are in force from 1998. In 2000 a technical Annex to the Land Law was adopted related to the processes for identifying and recording the rights of local communities and good-faith occupants. Cadastral reforms and incremental decentralization started in 2000. Decree No. 1/2003 established new provisions for the National Land Registry and Real Estate Cadastre, procedures for the registration of inherited land use rights and secure rights to customary rights-of-way. Urban land regulations within the Land Law came in 2006 (Cossa and de Wit 2009).

Land tenure issues are fundamentally important to a peace process and agriculture recovery (Unruh 2001), as was also the case in post-conflict Mozambique. The immediate post-conflict period when many returnees started to come back to their places of origin raised the issues of land disputes and claims from different time periods: colonial, independence and civil war time. Tenure dispute resolution mechanisms widely viewed as legitimate and pursued by the state, can contribute to a peace process by bringing increased legitimacy to a post-conflict, re-emerging government (Unruh 2001). In the period immediate after the civil war informal mediation and conciliation processes were most commonly used by the population resolving

disputes. Elders, traditional leaders, neighbourhood heads, district officials and many NGOs provide informal dispute-resolution services (LANDac 2012) Land-related disputes were dealt also by the formal court system (district courts, provincial courts and a supreme court). The administrative court received tasks for state administrative actions. However, procedures were lengthy and costly and the judicial system is plagued also with corruption (AfDB 2008).

The state owns all land in Mozambique. Land rights may not be sold, mortgaged or otherwise alienated (GOM 1997). The Land Law recognizes use rights to land, known by the Portuguese acronym, DUAT (*direito de uso e aproveitamento dos terras*). DUATs can be held individually or jointly. DUATs are obtained by inheritance, occupation, state grant, purchase or lease. In urban Mozambique, most residents access land through the land market (62%), either obtaining land on the formal market by buying or leasing use-rights held by DUAT-holders, or more commonly, obtaining use-rights on the informal market. Most rural land is held by communities, which have perpetual DUATs based on their traditional occupancy. Delimitation and registration of this land is voluntary: communities are not required to delimit or register their land to assert their DUAT (LANDac 2012). Recognised communities that could be registered and could obtain DUATs can be traditional units based on clans or chieftainships, extended families, or simply a group of neighbours (Chemonics 2006).

Responsibility for land administration and cadastre lies with the National Directorate of Land and Forests (DNTF) of the Ministry of Agriculture, and which disposes of provincial and district services (decentralized). At a national level, the DNTF is the regulatory authority, charged with holding and organising the national land cadastre records and, in the case of large-scale land applications over 1000 ha, responsible for processing applications for approval. The DNTF also provides technical guidance to the cadastral services of the provincial administrations and the decentralised municipalities. For rural land, the Provincial Service of Geography and Cadastre has primary operational responsibility (Norflok and Tanner 2007).

Despite being reputed as one of the best land laws in southern Africa, government implementation of the Mozambican land law, especially the progressive provisions that balance community and private land rights, has been under attack due to the gap between theory and practice (Salomao 2011).

4. POST-CONFLICT STATE BUILDING

At the end of the conflict, after the GPA was signed in 1992, a process of state building started. State-building is defined as a purposeful action to build capacity, institutions and legitimacy of the state in relation to an effective political process to negotiate the mutual demands between the state and societal groups (OECD 2008). The first challenge that post conflict states are facing is keeping the peace. What is important for all societies that emerge from conflict is that a peace process has equitable access to legitimate land tenure dispute resolution institutions between groups who may view land resources very differently, possess profoundly different evidence with which to pursue claims, and may have occupied different

sides in the armed conflict (Unruh 2001).

General characteristics of the post conflict environment in Mozambique were present as in many other cases and they were: weak institutions, economic and social problems and low security (Ball 2001). With the support of UN and the international community, democratic elections took place in 1994, a new Government of Mozambique was formed and the state started to function. All new formed Ministries and Governmental authorities required appropriately educated and skilled staff in order to execute and perform their everyday working tasks. This was and still is the case in the Cadastral and Land Administration organization DNFT.

Governmental formation changed several times during this period. For example at first after 1994 it was Ministry of Agriculture, Environmental Planning and Fishery, then it was Ministry of Agriculture and Forests and nowadays it is Ministry of Agriculture where DNFT is one of the directorates with two main branches Land Administration and Forests.

Currently and predictions for the future regarding the situation of the land administration is that the Government of Mozambique is dedicated to further develop the Agricultural Sector and one of its mechanisms would be good land administration. A lot of discussions about the development of land administration are going on nowadays in Mozambique, and DNFT is in a phase of development and implementation of a Land Information Management System (LIMS). LIMS is a system which is expected to support avoiding/solving land conflicts, accelerate the process of getting certificates for land use called DUAT, avoid double registration of same parcels, avoid duplication of administrative activities and double or triple databases about the same subjects. The LIMS is expected to help achieving sustainable development and that will contribute to the security in land tenure (Todorovski 2012).

We could derive that although at the immediate emergency and early recovery post-conflict period land issues were treated unwillingly and with old legal framework, very soon they became high on the political agenda. Land administration become very important element for the post-conflict state building process and for the sustainable development of post-conflict Mozambique. Developments are evident in the land sector of Mozambique that supports at least two characteristics of the post-conflict environment, they contribute towards strengthening of the institutions, and economic and social development. Having said this land administration could be seen as one of the elements of the overall process of post-conflict state-building.

5. CONCLUSIONS

The conflict – civil war in Mozambique has characteristics of intra-state conflict which resulted with approximately 6 million IDPs and refugees – more than any other country in Africa. In the GPA land issues are mentioned in relation to IDPs and refugees. Many IDPs went to the cities and stayed there during and after the conflict but also after the end of the war, many returnees find shelter in the cities and towns – displacement fosters urbanization.

Big presence of international community and donors was evident in post-conflict Mozambique. Land issues are identified as a gap in the international response capacities during the emergency and early recovery period after the conflict, and they were not appropriately addressed by governmental actors either.

In the Mozambique colonial period, land was classified into three classes: urban land, land around villages and ‘free’ land, considered by the colonial state as available land for handing out to new investors. After the independence all land was nationalized by the state, and soon after land was cultivated collectively and communal villages were created. During and after the conflict land related issues to IDPs and refugees came on horizon. The situation got much complicated with big lease/concessions given by different governmental actors to national and international companies. Very soon multiple layer land claims and disputes were big challenge of the overall bad state performance related to land.

After the land was identified very important element for the future development of post-conflict Mozambique land issues come very high on the state political agenda. Since then a lot of development in legal, institutional and organizational aspects are evident in the land sector. Nowadays it is reputed as one of the best land legal framework in southern Africa. Government’s implementation of the Mozambican land law has been under attack due to the gap between theory and practice. Land administration is identified as important element in the post-conflict state building process and for the sustainable development of Mozambique. Developments are evident in the land sector that supports at least two of the characteristics post-conflict environment; they contribute towards strengthening the institutions and economic and social development. Having said this land administration could be seen as one of the elements of the overall process of post-conflict state-building.

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