



## **Workshop on Land**

### **"Mercado de Terra" (Land market)**

#### **Maputo Rovuma Hotel, April**

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#### ***General***

A workshop was held on April the 8th at Rovuma Hotel in Maputo; it was organized jointly by NET (Nucleo de Terra e Desenvolvimento) based at the UEM in Maputo and SARPN hosted in South-African HSRC.

All participants shared an interest in the land question; most belonged to Mozambican NGOs and state organisations, as well as donor agencies; there were also observers, among which two Angolans, and others in their personal capacities (see list in SARPN website).

The theme of the Workshop, as it was on the conference document released on the spot, was

Mercado de Terra, viz, Land market.

The theme thus appeared slightly at variance from the goals stated in the Workshop document, which placed special emphasis on the link between Land policy in Mozambique since 1998 and poverty alleviation. The discussions as a matter of fact focused around the relevance of altering the Land Law in order to create a land market in Mozambique and some of the implication of such a move.

Various papers were tabled and presented, most of which were circulated and are on the SARPN and/or UEM dedicated websites. As a rule, the written version is in English while the presentation was done in Portuguese. Negrao's introductory and conclusion papers were not circulated in written form. Some papers were circulated but not read.

## Caveat

The following is an attempt to conceptualise and sketch the main issues at stake and the core of the debates. It is not meant as a faithful summary of everything said or written; it does not mention each and every communication — most being in any case available for consultation — neither does it state the ownership of individual opinions expressed. Because it does not claim to be a study on its own, it does not attempt to quote from other papers and studies.

As in any such exercise, the lenses through which this review is compiled need to be acknowledged. The present writer, a researcher with IFAS (French Institute of South-Africa) was invited as an observer by SARPN, on account mostly of his previous experience in Mozambique, where, as a development project coordinator in a rural district, he gathered a direct understanding of some of the constraints informing rural livelihoods based on agriculture production. Some of his experience and his understanding of the broad issue obviously inform the following.

We shall briefly recall some major features of the Mozambican Land Law, before turning to the debated issues.

### *Context of the Mozambican Land Law*

The year 1997 saw the approval by Mozambique Parliament of a new land law, further defined by regulatory instruments passed in 1998 and 1999.

This was the result of a protracted process, started as early as 1995, viz, after the end of the civil war and the subsequent repatriation process, which opened a new area in the country.

The debates took particular momentum in the last two years before the text was made into law, as it ran through the whole Mozambican social body.

Civil society organizations present in the country one way or another (local and international NGOs, churches, other groups of interest) took upon themselves to bring the debate to root levels and channel the data collected to policy-makers: they disseminated successive drafts of the law, registered the reactions, the needs and perceptions, and eventually informed the population at large of the outcome, that is, of the provisions of the law. This whole process was known as the *Campanha da Terra*, which operated in a decentralised manner in nearly all of the country districts. The main impact of that immense and far reaching sensibilization was probably to dramatically strengthen the hand of traditional land users - especially communities and poor city-dwellers — in any commercial deal involving land use, such as agricultural developments, and therefore, to some extent at least, keep speculation at bay.

The main features of the 97 Land Law may be tentatively summarized as follows:

Ownership of land is vested in the State and cannot be transferred; this is reminiscent of the previous socialist dispensation. Only a right of use and deriving benefit from it, "direito de uso e aproveitamento", can be claimed and transferred; one important consequence, sometimes overlooked, of this legal frame is that it places a strict obligation of effective and undeterred use on the part of the attributaries: should they not put the land or the plot to use in accordance to commitment, their rights may be rescinded by the state without further ado;

The law treats the territory as one and makes no fundamental difference between rural areas and agricultural land, on the one hand, and urban areas and city dwellings on the other; however, some specific dispositions apply to urbanized land, specifying in particular that the transfer of houses or flats implies automatically that of the right of use of the land the item is erected on; The rights of traditional occupants are recognized and protected, even in the absence of any writ provided a minimum of 10 years of occupation is proved; a procedure whereby communities and/or individuals can obtain titles to the land they have been relying on for their subsistence farming or for their abode is established;

Bodies representing social groups, capitalist concerns and individuals can obtain title deeds establishing their rights of use of a given area; it seems these titles may, following specific procedures, be transferred.

### ***Factors limiting agricultural development:***

Brief assessment of the 1997 land law

A few years down the line, agriculture in Mozambique is considered to have yielded far fewer resources or income than anticipated and than its potential would allow: even including fallow land and land reserved for grazing and fuel, at least 50% of agriculturally-fit land remains under or not used (more severe studies consider that only 10% of agricultural land is put to effective use). In Mozambique, land constitutes the prime resource: 75% of the population live in rural areas and agriculture contributes 40% of the GNB; poverty levels, on the other hand, remain unacceptably high, which makes under-use of land clearly unsustainable economically and, possibly, morally.

The philosophy of the land law that disallows private ownership and limits transactions is seen as a key factor behind this situation, especially for the apologists of a purely market-driven economy. They quote in particular as consequences of the land law that affect negatively the sector development:

Investors are discouraged, because they cannot own the land as a guarantee to their investment and because the procedure to secure rights of use required from them is complex, tenuous, lacks transparency and involves red tape;

Traditional users cannot obtain bank loans, as the land they cultivate cannot be used as a collateral since their rights to it could not be transferred in case of their failure to repay; this aspect is considered crucial in preventing the emergence of a modern agriculture.

Informal land transactions that occur, whether for sale or rental, do not offer much safety to the beneficiary, due to the lack of state recognition, which opens way to conflicts if as has been documented the same area is 'sold' or 'rented' several times by different (or the same) parties ...

Land transactions whatever their legal status (below) do not reflect what would be market prices — social, political, individual and opportunistic considerations having more weight.

#### International factors

It was accepted that these are valid points, even though other important factors, beyond the immediate reach of a country such as Mozambique, should not be underplayed, among which:

The unequal trade terms which determined a global and continuous decrease in the value of primary and particularly agricultural products from third world countries over the last decades, against the value of manufactured goods and services from the developed world;

The subsidies given by developed countries to their own producers whenever they are at risk; those countries appear to take liberties with the idiom of market economy that they are keen to force on other countries — cotton being a case in view, with Mozambican mills facing closure after the world price is kept low due to US and EU subsidies;

The general reluctance of investors to invest in Africa, due in part to what is perceived as political instability and less productive and flexible labour;

#### *Update the Land Law: how?*

The participants generally shared the view that the land law should be altered, in order to facilitate agricultural development and the creation of wealth, and that privatisation, the sale of land were not altogether taboos. However, whatever change would be brought about should not cancel a crucial social and political advantage that the land law secured in Mozambique: essentially that Mozambique, conversely to countries where land is treated as a purely commercial commodity, is characterized by the conspicuous absence of a significant class of landless people, be they peasants or town dwellers, 'the armies of landless' known widely in South-America for instance, and that this is a crucial factor for social justice and political stability.

Little attention was directed during the workshop to the possibility that traditional users may have been abused by investors or speculators, in contravention to provisions of the Law; the tendency was rather to look into ways to make it more palatable to potential investors.

It was underlined that there existed various options, other than either maintaining unchanged the present provisions or a general privatisation of land. Regarding this aspect, the procedure by which existing concessions could be turned into private land should be investigated carefully in order not to favour speculators who took advantage of weak administrative capacity to obtain concessions unduly. However possible options were not discussed in any detail — what could be the initial procedure, the fixing of prices, the controls, checks and limits to be put in place, etc. It was noted, in

reference to GB, that the fact that land is state owned appeared not to prevent its being transferred.

## Urban Land

The question of land in urban areas was touched. The existence of a body of legislation dating back to the Portuguese delimitating areas around a number of cities and some of the dispositions was recalled, but how it fitted exactly within the ambit of the land law was not exposed with much clarity. Some allusions were made to situations in and around Maputo.

In the mean time transactions are going on

It was noted that, on the ground, transactions in land were taking place, both in urban and rural areas, some by state agencies, some by private stake-holders including traditional users, be they communities as such or individuals.

In cities or peri-urban zones, plots are made available for construction by municipalities or other authorized bodies, at a value which reflects the local situation, but would not in theory include the price of land as such — only its viabilization. This situation was criticized by some as an infringement on the supremacy of market in dictating economic parameters. It also seems there are large discrepancies between some cities which are witnessing a large pressure on land in peri-urban areas, and others, where land is still available.

Many transactions though are done without or with partial state or official recognition, as some, initiated outside state intervention, endeavour to be registered; prices, fixed ad hominem, often also factor in the risk of litigation as one face the risk of loosing his plot.

A question raised in relation to peri-urban dwellings in particular was whether those were on line with urbanization plans.

A problem of terminology

A debate ensued as to the status and nature of the transactions done by private stakeholders outside the scope of state control:

Legal or illegal: some were of the view that any private transfer of land was illegal as it was in conflict with the letter of the law, which made land a non-transferable state asset; however, it was observed that the generality of the practice gave it weight as magistrates had to take bearing on reality, and could not merely ban or disregard practices that were happening on such a large scale;

Formal vs. informal: the tendency to qualify as informal any transaction that does not enjoy state recognition was criticized on the account that formality is not coextense with writing: traditional marriage involves many formalities even though it remains unwritten (and unrecognised by the state). Therefore, transactions referred to as "informal" might be better qualified as "non-

registered", or "non-government registered", keeping the term informal for the cases when there is indeed no formality at all — if such exist.

Those categories are not clear-cut, as we have mentioned, and it appeared all the more urgent to undertake a clarification of concepts and definitions, which should be rooted in a study and categorization of the various situations occurring in the country.

### *Conclusions*

The Workshop did not elaborate a set of recommendations, as it was not mandated to do so; in any case the attendance, we feel, was not sufficiently representative of Mozambican civil society to give them much weight should it have done so.

Still, three conclusions emerged.

A survey on transactions of land, be it formal or informal, for the purpose of sale or for rental, is needed. It would investigate country-wide the extend of the practice, its purpose, its context and conditions, and the monies involved, as well as register people's feelings about the way land should be disposed of, so as to compile data enabling to understand the processes and forces at play, and the needs and fears. Regional data banks on transactions might come as a result, which would provide information on the regional land market, including pricing.

The Workshop also made an urgent plea to the powers that be to refrain from any hasty decision in the matter. That the law needs revision is not questioned to allow for some form of privatisation, but this revision should result from a democratic debate, much as had happened in 96-97, where the various aspects and effects of the land law on the country as a whole could be presented, discussed and balanced, so that the final decision reflect priorities in terms of national interest at large. Also the procedure by which existing concessions could be turned into private land should be studied carefully.

Regarding urban land in particular, it is urgent to streamline the process of sale to reduce litigation and safeguard the rights of all parties.

Such a survey, as a matter of fact, is to be launched by Forum de Terra and its affiliated organizations, in the near future. It was suggested that any change to the Land Law should await the findings of the survey, so as to design a policy that would be more deeply grounded in reality.

### *Angola*

Two observers from Angola attended the conference. They were exposed to the reality of a country which had established a law intended to offer protection to traditional users, but which had seemingly failed to create noticeable agricultural development in its 3 years of implementation.

The case of Angola was briefly related; it was noted that a legal vacuum existed during a period after colonial laws were abolished but before a new policy was enacted. It seemed that the legal status of some former colonial estates — Angola was once an important producer of coffee — remain to this day uncertain.

These issues obviously will take a new and crucial importance if, as is hoped, a lasting peace eventually prevails.