



LAND MARKET IN URBAN ÁREAS

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The aim of this work is to bring up the land market issue in urban areas. For that, although this phenomenon is being often treated irrespectively to the land privatisation, leads to great confusion. Therefore, there is a need to distinguish between one and the other concept to better understand the present approach.

Basic concepts:

Market- An ideal, abstract, meeting place between sellers and buyers, whereby goods are priced accordingly. Which means that besides the traditional localized market sense, there are other of a greater special and logic amplitude. It is on the other abstract sense of market where expressions such as: Market tendency, market situation, market fluctuation are applied. (in, Dicionário Jurídico de João de Melo e António Martins)

Privatisation: Selling of public goods especially of Industrial capital to private investors. (in Dicionário de Economia, Donald, Rhuthersord)

Land Ownership: State exclusive right, stated on the Mozambican Public Constitution, integrating, all property rights and the right to determine accesses and use and conditions by individuals or groups. (Lei 19/97, de 1 de Outubro, a Lei de Tarras)

In Mozambique the issue of land market in urban areas is a fact. Although legislation has not yet brought about regulations for this phenomenon, the marketing, pawning and

mortgaging of this supreme good (land), are indications of the existence of land market in Mozambique.

The land value depends on the following factors:

- Location;
- Added value;
- Location within/outside demarcated urban planning;
- Per urban activities, roads and water supply;
- Layout of rustic buildings and delimitation for layout of public areas;
- Rights transmittion/Rights transfer/**transactions**
- How to gain private sector interest in urbanization activities; building agencies and building societies
- Lack of access roads for vehicles in some “bairros” that for example unable evacuation of sick people in emergencies or fire fighting.

In light of the presented specific aspects of urban land use, which differs from access and occupation in rural areas, The Inter Ministerial Commission regarded necessary to elaborate rules and regulations that could be applied to urban clusters.

After the Mozambican Independence, the following legislation was approved:

- The Permanent Commission of the Peoples Assembly Resolution (CPAP) n° 5/80, of 26/06/1980, which determines that Maputo city be raised to a Province status and approved its boundaries;
- CPAP Resolution n° 2/81, of 02/08/81, which approves geographical surfaces and boundaries of Lichinga, Pemba, Nampula, Quelimane, Tete, Beira Chimoio, Xai-Xai and Chokwé. Inhambane city is not included.
- Law n° 06/86, of 25/07/1986, approved by the Peoples Assembly (AP), which determines that it is of the People’s Assembly competence to create, change, extinguish territory units at provincial, district and city levels. To the Council of Ministers, within the same law, have the competence to create, change and extinguish territory units at administrative post and village level, classify territory units and define or change their main headquarters.

- Peoples Assembly Resolution n°6/86, 7/86 and 8/86, all dated of 25/07/1986, that states:
 - o There are created new districts per province;
 - o Some areas within the districts are transferred;
 - o Others

It is now important to consider some aspects related to the land law:

The land law 12th article states that one of the ways to acquire rights, is the land occupation by national individuals with good will who have been using it for at least 10 years. The ST information to the Interministerial Commission of March 1998 refers that, “in urban land, the occupation and building standards, mainly for housing, are not often according to the urban planning. Most of the plans were elaborated during colonial time and the areas covered by the plans do not correspond to the actual boundaries. On the other hand, if some specific areas are considered for housing, the type of building foreseen in the urban plans may not correspond to the existing buildings; most of them are built without a licence”.

The question now allocated is; when do these people get the right of land access and use.

The preliminary proposal of the RLT revision of March 1998, proposed exception to the general rule of land rights acquisition to be considered, the cases in which occupation is made even without injuring other's rights, and was based on an infringement of the land law and regulations, namely thought marketing/ pass on plots disregarding legal formalities, should fall on the legally reserved areas for any use or exercised within the municipalities boundaries, the rights of acquisition would be conditioned without specific legislation.

Many were the issues discussed by the Interministerial Commission law regarding the following:

- Local structures intervention (quarters);
- Need to contact PROL Project about urban land occupation;

- Approved **decree-law** by the building and inspection government;
- Need to open development space for the municipalities, simultaneously avoiding anarchy in urban land occupation;
- City planning for later building licence attribution;
- The urban centres of Montepuez, Cuamba, Angoche, Ilha de Moçambique, Gorué, Mocuba, Manica, Dondo, Maxixe, Chibuto and Matola are raised to city categories.

The resolutions nº 6/87, 7/87, 8/87 and 9/87 of the Council of Ministers, all dated of 25/4/1987, states that:

- Administrative post per province and districts are created;
- Cities are classified in 4 levels: A, B, C and D;
- Districts are classified in 3 classes: 1,2, and 3;
- Sixty-eight urban centres are raised to the village category.

Recently, a municipality legislation package was approved that includes Law nº2/97, of 18 February from which:

- It is of the Municipality Assembly competence trough proposals or requests by the Municipality Councils to approve the Autarchy development plans, structural plans, territorial plans as well as rules regarding building and urbanization.
- It is of the Municipality Assembly competence trough Municipality Councils proposals, to approve the establishment of municipality reserves and proposals of the definition and establishment of protected areas.
- It is of the Municipality Assembly competence to exert the power established in the land law and regulations;
- It is of the People´s Assembly competence trough proposal or request from the People´s Councils to approve the autarchy development plans, structural plans, territorial plans as well as rules regarding building and urbanization;
- It is of the Peoples Assembly competence to exert the power established in the land law and regulations;

- Law n°7/97 of 31st May (Administrative Custody Law), according to which the autarchy body acts that have the objective to approve the local autarchy development plan and territorial plans, needs to be ratified by the custody body;
- Law n°11/97 of 31st May (Local Financial Law) according to which it is of the local autarchy competence to elaborate and approve development plans, territorial plans or structural plans, general and partial urbanization plans and detailed plans. These plans are made in collaboration with competent entities of the central administration.

WAYS TO LAND ACCESS

Occupation by customary way and Good Will

According to the constitutional rule which states that “ In the land access and use titular right, the state recognizes and protects the rights acquired by occupation or inheritance”, there is a need to recognize the good will occupation by national individuals for at least 10 years. According to the established land law, good will occupation is one of the ways to acquire the rights of land access and use.

The second tendency, hesitates to recognize that rights have been acquired through good will occupation for a minimum period of 10 years, subjected to the recognisance of the right to comply the existing buildings with the cities and villages urbanizations plans.

The second tendency brings about the issue that cities and village urbanization plans are exhausted, meaning that, since Independence day no urban plans have been approved.

The existing plans, at the time did either not foresee the growth of urban centres, or established high building standards for the national citizens economic capacity. At the moment, the prevailing tendency, at international level, is to recognize the rights that today are denominated “informal occupation”.

The basic structures have significantly fit the cities growth, which allows occupation by national individuals often without knowledge of the applicable plans. For example, in

order to compare on site situation and information registered from all sources, a pilot study was done by PROL in 5 quarters of Maputo, and it was found out that land access is not always through the Municipality. The table below shows ways to land access in 4 quarters.

Area	Bought (%)	Hired (%)	Inherited (%)	Municipality (%)	Local Administration (%)
3 de Fevereiro	32	2	9	49	8
Polana Caniço	43	3	16	1	37
Mavalane	71	9	14	< 1	6
Mafalala	28	39	17	< 1	17

The table above shows clearly that, considerable percentage of land is acquired through marketing (between 28-71%). Municipality intervention is only significant in the "3 de Fevereiro" quarter, whereby occupation was coordinated by that institution after a new layout was made.

Remaining cases

Besides good will occupation, for at least 10 years, it is proposed that, in the remaining cases, land access be through public tenders valuing the minimum basic urbanization expense costs such as: roads, public lights, drainage and water supply. Candidates are allowed to propose amounts higher than the minimum costs.

Local Public Administration Body Responsibility

The land law establishes in its article twenty three that, it is of the Municipality Mayor, Peoples Council, and District Administrators competence, in places where municipality bodies did not previously exist, to authorize land access and use requests in laid out areas and existing register of assessment services.

These law demands (existing urban layout and register of assessment services), made the District Administrations raise the issue that it is not possible for them to exercise the competence given by law. In order to have urban centres plans; the Physical Planning National Institute has been collaborating by elaborating urban layouts. It would be

necessary to train enough personnel for the local cadastre services. Therefore, a reflection on the matter is proposed so that it will simplify land accesses in urban centres.

Following the Minister of Agriculture pronouncement regarding land market and privatisation, last July, the Government of Mozambique initiated a public debate. The Minister pronouncement is as follows:

“I think that it is time to start discussing land privatisation in Mozambique. As a Minister, I think that it is time to start discussing the creation of land markets; to discuss this means having an approach compatible to our reality. Today’s Mozambican land law, that protect the farmers, was conceived last year through participatory debates with farmers and civil society, at that time the consensus was that it was best to protect the farmer, but it think that it is time to begin selling the land. If land access and use had been open to the land market, we would have rapidly, by this moment, be discussing landless people, because the first thing that would have been sold by the poor and vulnerable farmers, would have been the land. We would soon have landless farmers and others being pushed further away from their lands and in a difficult situation. Today, I am proud to say that the government of Mozambique is ready to discuss with everybody, I mean everybody, because who is asking for land privatisation is a number of commercial farmers. However, the majority in Mozambique are peasant farmers. At the same time, family sector farmers associations think that it is not yet time for land privatisation. Then, it is possible to create differential treatment areas. We now have urban land problems. And I repeat: We need to start discussing so that they will be partnerships, dialogue in order to find out an approach that would at the same enable protecting the majority because privatisation measure would develop Bourgeoisie and will not solve neither the countries problems nor of the farmer who will sell their plots of land to gain two million meticaís.

Mainly, in terms of bureaucratic procedures, knowing that up to this moment there were only issued little over two thousand land access and use title deeds, is the State prepared to follow up this process?

There were issued more than that and, regarding that, soon I will surprise many people; I will invite the media to inform about what we have done towards the land access and use titles deeds issued, due to the dynamics that we are applying to the process.

In the next 6 months we are going to issue more than 1400 titles deeds, and the officers are ready for the task. It is also part of this task fighting against corruption; the officers know that they will be punished if involved in a corruption scheme.

It is a task that we will carry out seriously. What we would like is that the process of land attribution takes a maximum of 90 days.

GENERAL COMMENTS

1. The current land law is still very young and all legal procedures have not yet been properly applied in order to operationalize the development of economic, social and cultural activities.
2. Premature changes could bring up some constrains, however, regarding local communities, land ownership security is one of the great achievements of the actual law.
3. The lack of transitional title deeds does not seem to be the principal obstacle to credit access by farmers. Regarding credit access, there is a need to deepen and know other means that could constitute difficulties to it by those concerned. They are the cases of i.e. agricultural activities insecurity that is characterized by being vulnerable to natural disasters, low yields due to lack of basic techniques knowledge by the majority of the farmers amongst other factors.
4. Being the land owned by the State, transitional titles deeds would not be of any value when not having infrastructures that can be seizable.
5. Land access and use title deeds rights transaction, can lead to land speculation, because this possibility can be misunderstood as the land being sold and not the title deeds itself.
6. Any transaction should not affect the titular core principle of ownership rights in States favour. This principle should be kept sacred to preserve the more vulnerable people interest.

Having made these comments, nevertheless the presented observations, the group made the following suggestions:

- 6.1 Open possibilities for substitution freedom of the intervenient in the current files and allow rustic buildings titles deeds free transaction.

6.2 In Urban buildings, the new urban land regulation should better define the transaction freedom criteria and or transfer of ownership rights amongst the concerned.

6.3 In rustic buildings as well as in urban buildings, a possibility of mortgaging and pawning the right of land access and use should be considered, without harming State land ownership.

The proposals presented by the group, took into consideration the real environment that actually characterizes the land access and use rights transmission in the Mozambican society.

The current picture shows a tendency to have more and more cases of illegal land access and use rights transfer being practically an against law custom. In these circumstances, it is recommended that entities responsible for legislation think over and act towards legislating what is being the current practice which is accepted by the communities

The **freedom** proposed will not affect the State control role, the State will continue to use protective and preventive mechanisms foreseen by law in order to fight against possible anarchic situations.

Land privatisation, is a measure that would weaken land ownership by the farmers and limit State strength in acting against forestalling land situations without proper exploitation.

The principle of mortgaging and pawning of land rights of access and use can be assumed without risking the land rights core principle that it should remain on the hands of the State. What is wanted is, if alienation of the land rights of access and use (title deeds) is accepted, a feasible mechanism, which will allow mortgaging and pawning of land rights access and use would be created.

Next steps:

- To study what changes need to be done on the legislation that will allow title deeds transfer and market establishment; i.e. land law 16 (property transfer), no

2 which states that, in agriculture infrastructures transactions, the title deeds transferred should only be following authorization by a State entity), should be changed.

- To study the value of urban and rural land
- To improve land administration systems- layout and register.

Conclusions:

1. The issue of land privatisation can not and should not misunderstood with the land market, which as a matter of fact is a practice in the country and does not affect the constitutional land ownership by the State.
2. Registration of land title deeds transfer in urban areas, with the land/buildings registry office is of outermost importance so that the intrinsic right is valued “*Erga Omnes*”, that is, opposable to third parties.