

LEGAL EMPOWERMENT OF THE POOR: DEFENDING PROPERTY RIGHTS

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ABBREVIATIONS

ACTIVA	Associação Moçambicana de Mulheres Empresárias e Executivas (<i>Mozambican Association of Businesswomen and Women Executives</i>)
AMMCJ	Associação Moçambicana de Mulheres de Carreira Jurídica (<i>Association of Mozambican Women in Legal Careers</i>)
APIE	Administração do Parque Imobiliário do Estado (<i>Administration of the State's Housing Stock</i>)
AVIMAS	Associação das Viúvas e Mães Solteiras (<i>Association for Widows and Single Mothers</i>)
DUAT	Land Use and Benefit Right
INAS	National Social Action Institution
IPAJ	Judicial Patronage and Assistance Institute
ISCTEM	Higher Institute of Sciences and Technology of Mozambique
ISPU	Higher Polytechnic and University Institute
MMAS	Ministry of Women and Social Action
MULEIDE	Mulher, Lei e Desenvolvimento (<i>Women, Law and Development</i>)
PARPA	Action Plan for the Reduction of Absolute Poverty
PES	Social and Economic Plan
WILSA	Women and Law in Southern Africa
UEM	Eduardo Mondlane University

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EXECUTIVE SUMMARY

This task was organised by the United Nations Commission on Legal Empowerment of the Poor and has as its objective to contribute to the national consultation process to be held in Mozambique with regard to the status of property rights.

In that which refers to the internal context, the right to property has been provided for in the constitution since 1975 when, as a result of the prevailing economic regime, the State's ownership was most evident. Private ownership has been given importance since the 1990 Constitution, with this right currently being protected under article 82 of the Constitution of the Republic.

In Mozambique, the acquisition of property rights complies with legally foreseen requirements, which are stricter for the acquisition and transaction of immovable property aiming at ensuring their security. The Mozambican Civil Code and Civil Registry Code foresee the legal regime for the acquisition and registration of private property, the right to co-ownership as well as simplified means for acquiring and defending this right.

With regard to land, article 10 of the Mozambican Land Law highlights the acquisition of the right to the use and benefit of the land by both men and women, guaranteeing access to land within a gender perspective. This law also safeguards the local communities' access to rights over the land, providing for a situation of co-ownership of this right by the members of that community.

In that which refers to policies, the 2006-2009 Action Plan for the Reduction of Absolute Poverty (PARPA 2006-2009), the Government's 2005-2009 Plan and the Government's Social and Economic Plan for 2007, foresee improvement in governance as one of the fundamental pillars for guaranteeing citizens' rights. These plans prioritise the improvement of decision-making mechanisms, respecting the traditional structures, the need to rethink the judiciary, the need to strengthen the Judicial Patronage and Assistance Institute (IPAJ), the dissemination of the Family Law, particularly as regards the protection of women's rights concerning assets, and advocacy for the registration of people and assets. Mention is made in the instruments referred to above that in order to improve governance, among other aspects, it is necessary to highlight some important measures regarding the strengthening of the legal protection of citizens' rights, and

interventions relating to the creation of district and community courts (Republic of Mozambique: 2005: 73-76).

At the level of government organisations working in defence of the poor, the Judicial Patronage and Assistance Institute (IPAJ) has been in existence since 1994. This Institute has currently been prioritising the establishment of agreements with public and private universities to strengthen their human resources and guarantee practical courses for students from these learning establishments. At the level of non-governmental organisations, the role of civil society organisations involved in attending to the more needy strata, such as MULEIDE, *Associação Moçambicana de Mulheres de Carreira Jurídica*, *Fórum Mulher* and the Human Rights League, that with their actions complement the work carried out by IPAJ, must be noted.

The following are highlighted from among the causes of legal exclusion which makes it difficult for the poor to enforce their rights, particularly the defence of their property rights:

- a) Weak access to justice as a direct result of the lack of knowledge of the laws and lack of legal culture;
- b) Low level of schooling or even illiteracy which, in some cases, results in a lack of knowledge of the advantages of registering the land, or with regard to its defence;
- c) Difficulties faced by the poor in being able to gain access institutions that deal with defending the poor and their property;
- d) Cultural habits negatively influencing the transfer of property rights upon death;
- e) Failure to foresee the high costs involved in the property registration process and judicial patronage, associated to ignorance of the institutions working in the defence of the poor, coupled with the non-provision of legal mechanisms exempting the citizens in need of justice or from paying lower fees;
- f) Non-existence of compulsory registration of births as a condition for the subsequent exercising of some rights, including the registration and safeguarding of property rights;
- g) Inadequate articulation between the institutions involved in supporting the poor;
- h) Weak institutional capacity of the institutions dealing with legal support for the poor in responding to the demands of the cases presented to them;

- i) Lack of formal marriages and written wills (testament) makes it difficult for the surviving spouse to gain access to the assets.

Four pillars for change were identified with a view to responding to the causes of legal exclusion:

- a) Dissemination of information using brochures and using local languages, as well as education on legal matters, with emphasis being placed on the importance of property rights and of land tenure, focusing on the equitable distribution of resources between men and women, sharing of community resources, their legal acquisition, defence and transmission, with special importance being given to women.
- b) Facilitating access to services for the registration of property rights at lower costs and at closer distances, particularly in the rural areas. Special attention should be given to the form of acquisition of the property right, foreseeing the inclusion of traditional methods.
- c) Institutional strengthening, particularly of IPAJ in terms of human resources with an understanding of matters relating to legal, financial and material aspects, inter-sectoral coordination of the institutions supporting the poor as well as the decentralisation of legal support services to the poor; and;
- d) Strengthening the relevant policies and legislation, emphasising the need to focus on the issue of equity with regard to the possession of assets, and interlinking the activities in the social area with those of legal empowerment.

In order for the change to be successful, there needs to be greater coordination between the institutions working with the vulnerable populations, like for example IPAJ, *Associação Moçambicana de Mulheres de Carreira Jurídica* (AMMCJ), Human Rights League, Women and Law in Southern Africa (WLSA) and others, in order to avoid an overlapping of activities and focusing on the same topics. The approach of property rights as a cross-cutting issue should be considered.

Institutions committed to legal training, particularly universities, law faculties and the Mozambican Bar Association, have an important role to play in terms of legal education, through their internships, seminars and courses, as do IPAJ and other institutions that deal with underprivileged target groups. For such, these organisations

should focus their activities on the dissemination of information and advocacy, targeting the areas where most of the vulnerable groups can be found. The role of community radio stations in the dissemination of information was considered to be strategic.

The need to facilitate access to legislation, to simplify procedures for registration and to strengthen the mechanisms currently used to defend property rights was considered crucial. The role of community leaders, local administration structures, and the recourse to arbitration is considered strategic to the resolution of conflicts at local level. Thus, strengthening relations between community courts and the institutions that defend the disadvantaged populations, as well as the use of community radios to disseminate these rights, are some of the strategies that could be considered.

The traditional aspects are important since it is considered that these may have an influence in the distribution and management of poor households' assets. In terms of legislation, it has been noted that efforts are being made to foresee equal rights for men and women. The involvement of community leaders in awareness-raising activities for the affirmation of women's rights is considered strategic. The role played by religious institutions is also fundamental in bringing about a change in attitude for the defence of women's rights.

Some examples of people or communities who exercised their property rights successfully in Mozambique were given. One of these examples is the implementation of the Great Limpopo Transfrontier Park, where populations were resettled and compensation was paid to people whose property was destroyed. The construction of the N4 national road was also mentioned among others where rights were respected.

I. Overview of the nature of legal exclusion in defending property rights and assessment of the problem

The present task was organised by the United Nations Commission on Legal Empowerment of the Poor, with the objective of contributing to the national consultation process to be held in Mozambique on the status of legal empowerment of the poor, particularly with regard to property rights. (*Commission on Legal Empowerment of the poor*: 2006: 1).

The objective of the national consultation process is to encourage discussions and raise awareness at national level of the nature and dimension of the legal exclusion of the poor, relating specifically to property rights. It also aims at promoting dialogue between government organisations, civil society, and academic institutions in order to establish partnerships to ensure legal empowerment of the poor as a contribution to poverty reduction.

In order to prepare the present document, 15 institutions involved in providing legal support to the poor, as well as 104 people, most of whom beneficiaries of programmes for the poor, were interviewed in the City of Maputo - Chipamanine (7), Zimpeto (9), Magoanine B (10); District of Catembe - Inguide (5) and Djuísse (22); Province of Maputo - City of Matola (16); Seat of the District of Boane (13); Seat of the District of Marracuene (10); City of Inhambane (12), where 82 (89%) of the interviewees were women and 22 (21%) men. The document was also prepared using, among other pertinent documentation and legislation, the studies already carried out specifically for this purpose, and which dealt with the situation of women with regard to the right to succession and the implementation of the Family Law.

The document will cover, specifically, the context of the nature of social exclusion, particularly in that which refers to property rights, pointing out some of the obstacles to the legal empowerment of the poor. It will also highlight some key areas for change, particularly in the defence of property rights as well as the key actors and their

contributions. The document will attempt to approach the matter taking into consideration gender issues, particularly with regard to women's rights.

Contextualising the situation of property rights in Mozambique, it must be referred that the right to property has been consecrated in the constitution of Mozambique since the proclamation of independence in 1975.

The 1975 Constitution of the Republic of Mozambique highlights the consecration of the State's property, regulated in article 10, and private property, regulated in article 13. In this Constitution, special protection was given property belonging to the State, as the leader and driving force of the economy. In article 13 of the Constitution, private property had some obligations attached, with it having been stipulated that it could not be used to the detriment of the interests established in the Constitution of the Republic.

The protection afforded to State property was linked to the economic regime in force at the time - a centrally planned economy consecrated in article 9 of the Constitution.

The 1990 Constitution, approved at a time when a market economy prevailed, foresaw more liberal principles, highlighting the existence of four types of property found in article 41, number 2, namely: State property, cooperative property, mixed property and private property.

One of the more remarkable aspects of the 1990 Constitution of the Republic is the relevance of private property and the liberalisation of the State's ownership of real estate, anticipating that real estate could also belong to private entities, with this legal consecration being reinforced in Law 02/91 of the 16th of December, which determines the procedures for the transfer of the title deed of State property to tenants.

In the Constitution currently in force, approved in 2004, the right to property is consecrated in article 82, maintaining the principles foreseen in the 1990 Constitution. Article 99 consecrates three sectors of production property, namely: the public sector, made up of production means owned and managed by the State and public entities; the

private sector, made up of production means owned and managed by natural persons or private legal entities; and the cooperative and social sector, which includes the production means belonging to communities, as well as those intended for the collective exploitation by workers, and the production means owned and managed by non-profit legal entities. The Mozambican Civil Code also regulates property and related rights in articles 1302 and following.

Compulsory purchase, i.e., the deprivation of exercising private property rights, occurs in cases of necessity, utility or public interest, and gives rise to the right to compensation. This is a principle consecrated in article 82, number 2, of the Constitution as well as in article 1307 of the Mozambican Civil Code.

It is important to mention that, in Mozambique, the acquisition of property rights complies with legally foreseen requirements, which are stricter for the acquisition and conveyance of movable and immovable property subject to registration. The objective of this is to safeguard the property and protect the titleholders' rights. The Civil Code and the Civil Registry Code foresee the legal regime for the acquisition and registration of private property, co-ownership and simplified means of acquisition, as well as the defence of this right.

According to the Report on the Second Poverty Assessment in Mozambique (DNPO: 2003: 29), as living conditions improve over time, individuals and households tend to accumulate durable goods. The data in the report indicate that a relationship exists between the accumulation of durable goods and poverty reduction. However, it is noted that this accumulation of durable goods by households is only applicable to a small percentage of families, and that this growth is small, tending to be found among more affluent households and highlighting the small percentage of accumulation by poor households. (DNPO: 2006: 29)

Despite the accumulation of durable goods being important for poverty reduction, it is not enough to have an increase of access to these durable goods by the poorer populations. It is important for this to exist and to be legally protected, in order for these

durable goods to be easily traded, invested and used as risk-free guarantees by disadvantaged households. In this way, it will be possible to guarantee coverage of transaction risks as well as assist in obtaining credit, among other aspects.

When referring to the management of private property, despite equality between men and women being constitutionally foreseen in Mozambique, it is considered extremely important to mention the situation regarding the management and transfer of property rights, taking gender aspects into consideration, particularly in that which refers to women's rights. Article 102 of Law 10/2004 of the 25th of August, Mozambique's Family Law, provides for a balanced system in the management of a couple's assets, taking the gender perspective into consideration.

1.1 Legal protection of property rights

Specifically, in that which refers to the legal protection of durable goods, the Land Registry Code approved by Decree 47 611 of the 27th of February 1968, regulates the procedures for the registration of immovable property. The process for the registration of assets is considered lengthy and expensive and in many cases discourages people from using it.

According to the findings from the interview process¹, a considerable percentage of the population is unaware of the importance of property rights, as well as of the need for its registration and the mechanisms for its defence. For example, approximately 77% of the people interviewed mentioned that the houses owned by them were not registered and no legal procedure was followed for their conveyance, as they were unaware of the importance of this registration and did not know the procedures required to carry out the registration. The people referred-to above relate the lack of interest in registering the houses to their low cost (as a result of the precarious materials used for their

¹ Of the 22 people interviewed in the Djuísse Neighbourhood and Marracuene, most stated that despite owning property, such as a house, land that they have occupied for many years, and animals, they did not know how to register these assets. They only knew of the traditional form of defending their property, basically respecting inheritances (right to succession) left by their ancestors.

construction), or even as a result of the high costs involved in the property registration process.

On the other hand, 14% of the people interviewed mentioned that their houses were registered in their names or the names of their children. They stated that they had been made aware of the need to register the property through family members or because the local administrative structures counselled them on the need for this registration; if they hadn't received the referred-to counselling, they stated, they probably would not have followed the legal procedures for the conveyance of the assets.

Approximately 9% of the people mentioned that they lived in houses let for free either by family members or friends, or that they paid symbolic rent without any form of written contract or contract prepared by someone with legal knowledge. Good faith is considered the basis of these transactions. These situations very often place the people who do not resort to legal counselling at a disadvantage and in a position of weakness, since the value of their assets could well be underestimated.

In that which refers to the transfer of assets as a result of death, article 83 of the Constitution of the Republic foresees the right to succession, with this right being regulated in a specific manner in Book V of the Civil Code.

In Mozambique, and particularly after the approval of the Family Law in 2004, the regime of succession was found to be out of sync with the current reality. Thus, the Law of succession is currently being reviewed, with efforts being made to safeguard the rights of spouses in the event of asset-sharing, while at the same time foreseeing the need to make the procedures for the acceptance of the inheritance more flexible. Reinforcing the protection of the rights of spouses could be supported by the fact that many widows and their children are dispossessed of their inheritances, even when married, in some cases motivated by customary practices. The lack of written wills (testaments), formal marriages and a property system adopted by the couple is considered to be one of the aspects influencing the distribution of the couple's assets.

1.2 With regard to land rights

One of the crucial aspects to be considered refers to land tenure. In Mozambique, land is considered to belong to the State, with the objective being that land is there to generate wealth and social well-being for the entire Mozambican population. Thus, land has been prohibited from being sold, alienated, mortgaged or attached since 1975. This principle, foreseen in article 8 of the 1975 Constitution, prevails in the Constitution of the Republic currently in force, with the Mozambican state determining land use and benefit.

The regulation of the land use and benefit right (DUAT) has been protected in article 109, number 2, and in article 110 of the Constitution. Land use and benefit rights are also regulated in special legislation, namely in Law 19/97 of the 1st of October, and in the Land Law and its respective Regulations, approved by Decree 66/98 of the 8th of December.

In the terms of article 12 of the Land Law, the land use and benefit right may be acquired *customarily*, either by local communities or by individual men or women who are not in opposition to the Constitution of the Republic, by *good faith occupation of more than 10 years*, as long as this is by national individuals, or by *authorisation of an application* submitted by national or foreign, natural or legal entities.

Article 10 of the Mozambican Land Law highlights the acquisition of the land use and benefit right by both men and women, guaranteeing access to land taking into account the gender perspective. This Law also safeguards the access to land rights by local communities, providing for a situation of co-ownership of this right by community members.

The benefits of co-ownership of land rights by local communities were questioned in some cases, since some of the people interviewed mentioned that there are situations in which community leaders transfer the community's land rights against payment of an amount, and it is not known how the amount paid is subsequently used.

As far as the procedures for access to land are concerned, according to Camilla: 2006: 6, Mozambique is an example of a country in Southern Africa where land rights are registered at a low cost and in a simple manner. Any citizen may apply for registration of his/her land rights, although the registration is not a determining factor in the efficacy of this right by citizens or communities that acquire the right through good faith occupation or customary practices.

1.3 Guaranteeing access to justice for the poor

As to guaranteeing access to justice for the poor, it is important to mention the role played by the institutions involved in the mediation of conflicts at local level. Approximately 95% of the people interviewed stated that when faced with a problem, the first instance they resort to for mediation of the conflict, or even its solution, are the heads of neighbourhood, district heads and traditional leaders. If the conflicts are not resolved at that level, the case is taken to court. However, this rarely happens as in most cases the conflict is resolved by the local structures without the need to resort to the courts.

According to our findings in the consultations, recourse to the courts is done as a last resort, since it is expensive and time consuming, given that these courts are, in some cases, located far away. This recourse is evident in the urban and peri-urban areas where 58% of the people stated that if their case were not resolved they would resort to the courts. This is different from the more distant areas, where 92% of the interviewees stated that they would agree with the decision made by the local structures.

The data above show that the local structures play an important role in conflict resolution at local level. The recourse to courts is one of the alternatives used by people who live in the urban and peri-urban areas, as opposed to people living in the rural areas.

With regard to access to justice, judicial patronage and assistance, particularly for the poor, is a right protected in the constitution under article 62. At government level, the Judicial Patronage and Assistance Institute (IPAJ), a State institution created through

Law 6/94 of the 13th of September and subordinate to the Ministry of Justice, committed to providing *pro bono* assistance and judicial patronage to the poor, has been in existence since 1994.

IPAJ was created to operationalise the constitutional precept that foresees State guaranteed access to justice by the poor and has, for that purpose, 84 legal assistants and 1052 legal technicians as well as Delegations in all of the provincial capitals².

Some of the constraints mentioned in the operation of IPAJ refer to the lack of technicians qualified in legal matters who are available to provide permanent *pro bono* assistance to the disadvantaged citizens, the lack of an own budget, the lack of infrastructures for its operation – particularly in the provinces, weak coordination with other institutions involved in providing support to the poor, and inadequate dissemination of its activities.

IPAJ is currently undergoing a restructuring process aimed at giving a new dynamic to its activities, with one of the challenges being to work with law graduates and coordinate their work with the other institutions working on the legal defence of the poor. In order to rise to the challenge, IPAJ foresees the establishment of partnerships with public and private higher education establishments. These agreements will allow for an improvement in the quality of IPAJ's human resources, which is one of the priorities of the justice sector for the current year.

From the interviews held, it was found that approximately 60% of the cases brought before IPAJ, at least at the level of the City and Province of Maputo, had to do with claiming property rights, conflicts relating to the sharing of spouses' assets, and conflicts relating to land delimitation. Approximately 60% of the cases are presented by women, most of who reside in peripheral districts of the City and Province of Maputo. The nature of the cases presented reveals a need to strengthen legal training on property rights issues

² Data supplied by IPAJ up to July 2007. Given the difficulties faced with regard to material and human resources, it is evident that these Delegations need to be strengthened. The effective operation of 11 delegations for Legal and Judicial Assistance has been included in the Government's 2007 Plan (Republic of Mozambique: 2006: 87).

and access to land so that IPAJ's technicians are able to provide appropriate legal assistance.

One of IPAJ's responsibilities is to carry out its work in coordination with other organisations operating in the field of legal defence of the poor. One of the aspects that should be examined is the need for IPAJ to establish coordination mechanisms with other institutions such as the National Institute for Social Action (INAS), subordinate to the Ministry of Women and Social Action (MMAS), which carries out programmes in support of the poor. Some of INAS's programmes aim at generating income and, consequently, enable an increase in the assets of the beneficiary populations. The target groups covered in these programmes come from the poorest strata of society. (INAS: 2006: 24).

The programmes implemented by MMAS, through INAS, focus on the social component and on generating income. In cases of conflict requiring legal support, it was found that the referral of beneficiaries of those programmes to the institutions that guarantee *pro bono* assistance or patronage to the vulnerable groups was weak, if not non-existent. This referral could facilitate the legal support provided to the poor and also allow, for instance, the income generated to be invested in the acquisition of legally protected durable goods.

As concerns the non-governmental organisations working in providing legal support to the poor, we can mention the Human Rights League, *Fórum Mulher* and its associates, highlighting the *Mulher, Lei e Desenvolvimento* (MULEIDE), *Associação Moçambicana de Mulheres de Carreira Jurídica* (AMMCJ), *Associação das Viúvas e Mães Solteiras* (AVIMAS), among others working on providing assistance for the poor, particularly women. These organisations have provided noteworthy support to the poor strata of society.

Approximately 78% of the people interviewed stated that they are unaware of a government institution providing legal support to the poor. Approximately 22% of the people interviewed, particularly those residing in the urban and peri-urban areas (City of

Maputo, Zimpeto and Bagamoio districts, City of Matola and Seat of the District of Boane) mentioned that they knew of the Human Rights League and MULEIDE. These data demonstrate the role that these organisations play in complementing IPAJ's activities.

In that which refers to the involvement of traditional authorities, there is a link between the work carried out by IPAJ and the work carried out by the community courts, however, this link needs to be strengthened. The recourse to community courts is a reality, with these community courts being an immediate recourse for the communities, particularly the more distant ones. Approximately 97% of the people interviewed stated that they would resort to the community courts for the resolution of conflicts.

At the level of existing policies and programmes, the 2006-2009 Action Plan for the Reduction of Absolute Poverty (PARPA II), the Government's 2005-2009 Programme, and the Government's Social and Economic Plan (PES) for 2007 foresee an improvement in governance and access to justice as one of the fundamental pillars in the reduction of poverty. In these plans, measures are foreseen for strengthening the legal protection of citizens' rights, namely the improvement of decision-making mechanisms respecting traditional structures, the expansion and consolidation of community courts as a complement to the conventional courts, the need to rethink the judiciary, and interventions relating to the creation of district and community courts.

The Government's 2005-2009 Programme anticipates that one of its fundamental pillars of good governance involves (i) the reform of the justice sector, with special attention being paid to the rights of women and also anticipating some actions such as consolidating and extending legal assistance and patronage to the underprivileged citizens, particularly women; (ii) modernising the registration and notary services; (iii) carrying out activities aimed at ensuring that an increasing number of national citizens have records of their personal situations as well as of their goods. (Republic of Mozambique: 2006: 62-63).

At legal reform level, the Government's Plan for 2007 foresees, among other aspects, the conclusion of the preparation of the Law of Succession, the dissemination of the Family Law, particularly in that which concerns women's rights in the marital home, and the preparation of the Family Law Regulation, in that which concerns co-habitation (common law marriage).

It must be mentioned that although the referred-to plans outline the general support actions for the defence of the poor, they do not refer in detail to the link between property rights and poverty reduction.

II. The main obstacles in the legal empowerment of the poor

2.1 The obstacles of the political and legal environment

Some of the aspects that have been presented as obstacles are: weak access to justice as a result of lack of knowledge of the laws, unfamiliarity with the legal protection of owned rights and of the operation of the justice system, and the distance between the judicial courts and most of the populations' areas of residence.

We mentioned before that recourse to local administrative structures to mediate or even settle conflicts relating to property at grassroots level has been one of the alternatives used to safeguard the rights of the poor. However, the lack of legal training of these structures may hinder the proper referral and protection that should be afforded to these persons' property rights and in some cases may even result in an unfair settlement of the legal dispute.

Allied to the difficult access to justice bodies, the lack of knowledge of the importance of registration and the procedures to be followed for the legal defence of property rights, and the lack of legal culture even among the more affluent strata, are some aspects that need to be highlighted. The lack of financial resources to register the assets, and the non-existence of asset registration services in the communities where most of the populations reside, are also some of the barriers that can be mentioned.

The registration of births as a condition for the subsequent registration of property rights is one of the aspects to be considered. Data collected suggests that there are many Mozambicans, both children and adults that have not been registered, largely due to the lack of knowledge of the importance of this registration and to traditional factors. For example, some parents do not register their children within the 120 days after birth since there are very often traditional issues that need to be taken into consideration when naming the children. The operational difficulties faced by the Registry and Notary Services in the Administrative Posts and rural areas can also be pointed out as an additional constraint.

Highlighted from among the risks and costs for formalising property rights are those relating to the procedures for formalising the property rights for immovable assets.

As mentioned previously, the 1990 Constitution liberalises State owned property in Mozambique, and foresees that this property may be owned by private entities. Thus, as from 1991, with the approval of Law 02/91 of the 16th of January, the alienation of State property is foreseen in terms of Law 05/91 of the 9th of January.

With regard to precarious dwellings belonging to the State, Decree 26/97 of the 12th of August (which regulates Law 7/92 of the 6th of May) provides legal mechanisms for the alienation of precarious dwellings belonging mostly to low-income families. A special regime for the registration of assets was also foreseen, with the Administration of the State's Housing Stock (APIE) being responsible for this registration. These procedures were put into place in order to facilitate the real estate registration process at a lower cost for low-income families.

As to the registration of these precarious dwellings, the process for their alienation began in 1997, and since then 7309 applications have been submitted, with only less than 100 still awaiting the evaluation process; all of the other dwellings have already been alienated. Of the 198 applications submitted in 2006, 66 (33%) were submitted by women.

The costs for legalising precarious dwellings belonging to APIE are incurred with the official recognition of the necessary documentation. Although the alienation process for these dwellings is done free of charge, the alienation cost of the dwelling is done based on an evaluation of the rent established, and may be paid in a lump sum immediately or paid in up to 15 years, depending on the applicant's circumstances.

With regard to the registration of property in general, costs are defined in function of their value, with the cost being established at 1.5% of each value stipulated; even this costs is beyond the means of poorer families who, even owning properties or holding a DUAT, fail to register them since they cannot afford it. It is found that most of the people with scarce financial resources end up selling their properties at below their real value or assigning their DUAT's, sometimes free of charge and without following the necessary legal procedure. This demonstrates that the procedures referred to above are not widely known and that these procedures are not being used by the people who should be benefiting from them.

Most of the cases requiring a deed and its subsequent registration in accordance with legislation refer to real estate located in urban areas, and are applied for by people who have some financial resources or information on the procedures to be followed.

The high costs involved in the registration of the assets and the possibility of having to pay taxes after the registration of a particular asset are pointed out as reasons for not registering assets; the benefits of this registration in terms of security and valorisation of the assets is not taken into consideration. For example, from the interviews carried out in the Inguide Neighbourhood, it was found that one of the causes hindering the registration of property is the lack of personal documentation, which very often implies having to travel across the Bay to the City of Maputo to apply for Identity Documents, which can become very expensive³. The actual costs involved in conducting the process for

³ In the Djuísse Neighbourhood, District of Catembe, located approximately 65 km from the seat of the District, the people interviewed stated that they have to travel long distances from home to Maputo to obtain Identity Documents. The same situation is applicable for residents in the Districts of Marracuene and Boane.

obtaining the title deeds and the land use and benefit rights are imagined to be expensive, leading people to not even consider beginning the process.

With regard to the legalisation of the DUAT, most of the people, particularly in the Districts of Catembe, Marracuene and Boane stated that their assets have not been registered since they do not even have the necessary documentation that proves their rights over the land on which they have built their dwellings. They also stated that one of the causes of not registering the DUAT was the lack of knowledge of the Land Law. This leads to land conflicts with people coming from outside the Area or District, since these outsiders appear and demand the occupation of plots of land already occupied by the residents, alleging that they were awarded the land use and benefit rights to those plots of land by the Administration.

Most of the people interviewed answered that they were unaware that land could not be sold, but mentioned that the monetary values charged for the transfer of land was a symbolic value for the plants and other assets on the land since, culturally, land is not sold. Most of the interviewees stated that they did not know that the acquisition of DUATs through good faith occupation was legally consecrated and that the lack of the title deed, when acquired through customary practices or good faith, does not affect the exercising of this right. The lack of knowledge with regard to the legislation precludes the effective exercising of these rights.

2.2 Legal protection of property rights and women's rights

In that which refers to women's situation in the acquisition, transfer and defence of property rights, the Constitution of the Republic of Mozambique has, since 1975 to the present date, provided for equal rights between men and women.

As to specific legislation, efforts are being made in the legal reform to include the gender perspective in some legal diplomas. These efforts are the result of the approval, in 2004, of the Family Law, i.e., Law 10/2004 of the 25th of August. Allied to this, the Law of Succession is currently being prepared with the perspective of establishing gender

equality. These efforts show the desire to establish legally guaranteed gender equality in the management and transfer of assets.

The Family Law provides for equal rights between spouses in the management of the couple's assets. The marital status of the couple and the matrimonial property law adopted by them has been fundamental in defining the mechanisms for managing the couple's assets. On the other hand, as was mentioned in the CEEI study (2007: 17), the importance of cultural factors, traditionally used to define the rights of household members, has been important in defining the procedures for managing the assets. This same study showed, for example, that the men felt that if the families owned assets such as money, cattle, or dwellings, these should be kept by the men. This situation exemplifies how the division of assets is done.

As to the right to succession, the study carried out by the Centre for African Studies (CEA) at the Eduardo Mondlane University, quoted in the Save the Children: 2007: 63 points out some features that enable a better understanding of the total or partial application of customary norms in the transfer of goods, namely: the presence of the man's family and the woman's family at the time of death of one of the spouses; the existence of assets belonging to the couple; the composition of the family council upon the death of one of the spouses; the type of marriage; the existence of a verbal will (testament); the faith (creed) of the man's family, and of the widow's family; the different economic conditions of the man's family members; the woman's and the man's level of education; or their status, in the case of widows.

The lack of written wills (testaments) has an influence on the division of the assets by family members. The example was given of cases where a lack of formal marriages and written wills prevented one of the spouses from having access to the couple's assets, for instance, from receiving death subsidies.

A demonstration of the perception of the influence of traditional factors in the transfer of goods was seen in the Inguide, Zimpeto and Magoanine B neighbourhoods. When questioned on who benefits from the registration of assets, the interviewees answered unanimously that traditionally the assets belong to the man of the house because he is the

head of the family, adding that this does not mean that their wives cannot benefit from those assets. At the same time, however, they gave evidence of many situation where, after the death of their husbands, the wives were driven out, their assets expropriated, and they were expelled from the home by their husband's family members. These situations could have been avoided if the assets had been registered in both of their names. The answers given took the customs of the locations into consideration.

According to the CEA study (Save the Children: 2007: 89), in the specific case of widows, they are seen as having very few or almost no rights over the assets left by the husband, and are expelled from the home, particularly when the children are under age and they are unable to defend their mother. It must also be mentioned that even if the widow is not expelled, she does not have total control over her own assets, and will live most of the time under threat from her in-laws. Female family members (daughters, sisters) could eventually make use of some of the assets inherited by men, or inherit the assets considered to be of less importance and of less value to the preservation of the patriarchal structure (clothing, household utensils).

The data presented above may reflect the importance that should be given to the protection of women's property rights and their effective rights. In an attempt to find alternatives to overcome the obstacles presented above, some interviewees, particularly women, mentioned that a person's worth lies not only in their personality, but also in their resources, the assets that they are able to present. They also added that property rights reinforce the respect afforded to them and could increase their sense of self-worth. Women who own assets such as a house or other durable goods such as land for growing crops, inherited from their families or not, tend to receive more respect from the community, and their assets can guarantee the future of their children in the event of the death of their husbands or a separation.

It was found that the precarious situation of many widows and divorced women are the result of poor access to resources and the influences of habits and customs, which make this group even more vulnerable. Therefore, in order for the women's voices to be heard, it is necessary for access to resources to become a reality, encouraging their participation in decision-making with regard to the management of the household's

financial resources, and gradually raising awareness while respecting their habits and customs.

As a result, it was found that women's lack of property rights over durable goods contributes to their having weak access to credit from banks, which is why most women resort to microfinance services to ensure their access to financial resources. The women feel that that the sureties required by these services are more affordable.

Easier access to credit is seen as one of the strategies for obtaining financial resources and, consequently, acquiring durable goods. Most of the beneficiaries who receive credit will be able to invest in small businesses, mostly in the informal sector. The data also indicate that the informal trade in Mozambique is made up mostly by women. (Silva. T: 2005: 4). Interviewees from the Chipamanine neighbourhood in the City of Maputo, City of Inhambane and City of Matola stated that most of the small stalls belong to and are managed by women, and that many of them were acquired using credit from microfinance institutions. Some of the stalls are not legally registered in the names of their owners. Once again, the alleged reason for the non-registration of the stalls or failure to declare an economic activity is the need for tax evasion and the non-payment of registration fees, since the amounts charged are beyond their financial means.

However, despite the influence of cultural factors, lately there has been an increase, albeit still small, in the number of women who wish to register their own immovable property. Although most of the applications submitted are in favour of men, in most cases the women appear as joint-heirs or heir. In cases where women apply for the registration, it is normally to comply with legal formalities in order to subsequently dispose of the property.

One of the strategies that can be highlighted for affirming women's property rights is organising women into women's associations where the women executives and businesswomen share their successes with other women, supporting those most in need during the change process. These examples can be used as proof to contribute to overcoming obstacles related to legally protected ownership of durable goods by women.

There are examples of services provided in terms of counselling and legal support by the *Associação Moçambicana de Mulheres Empresárias e Executivas (ACTIVA)*.

Following is a summary of the challenges that need to be overcome in order to guarantee the legal protection of property rights taking gender equality into consideration: cultural habits that discriminate against women in the management of the couple's assets; low level of education; guaranteed access to resources, i.e., durable goods; along with poverty reduction programmes and involvement by men in producing changes in attitude with regard to practices that discriminate against women.

III. Strategies for change and partnerships

Four areas of change can be highlighted in view of the obstacles presented for legal empowerment of the poor, particularly with regard to property rights, namely: a) education in and dissemination of property rights; b) facilitating access to registration; c) intersectoral strengthening and coordination; and d) reinforcement of policies.

a) Education on and dissemination of the importance of property rights

Legal education for citizens, particularly women, is one of the fundamental pillars for change. In order to contribute strategically to raising awareness of the importance of property rights, training should be focused on the methods for the acquisition, transfer, legal guarantee, and defence mechanisms of property rights.

The issue of land tenure and exercising rights thereto should be considered. The focus on the distribution of resources in an equitable manner, budgeting from a gender perspective, sharing community resources, implementation of income-generating projects that provide access to legally protected durable goods, is another component that should be considered.

The institutions committed to legal training, with emphasis on the Law Faculties and Institutes, the Mozambican Bar Association, IPAJ and civil societies involved with

underprivileged target groups, play an important role in legal education, provided through organising internships, seminars and courses on basic issues relating to property rights. These organisations should focus actions on dissemination and advocacy at grassroots level, where most of the vulnerable groups are found.

The reinstatement of holiday practical courses for law students from universities or law faculties could be useful to achieve advances in providing support for the poor. These activities should be concentrated in the rural areas and focus on the poor as groups to be supported. In this way, law students will be able to play an important role in providing counselling and advocacy on property rights.

Technicians from the organisations working for the poor strata of society, whether governmental or non-governmental agencies, should be trained in property rights issues.

Given the significant influence that community leaders have in bringing about a change in attitude and raising awareness in communities, one of the strategies that should be used is to provide training for community leaders and community court judges on matters relating to legal concepts. Once these levels have been trained and are aware of the importance of property rights and the mechanisms that should be used in their defence, they could become key actors in citizenship training.

In order to facilitate communication, the use of local languages incorporated into the content of the training courses and in the brochures produced, as well as in nationwide written media and community radio broadcasts could be of added value. The media, particularly those based in the communities, should be involved in awareness raising, dissemination and training of citizens in general, and those from the more disadvantaged groups in particular, and should be considered strategic partners. Radio or television programme broadcasts on issues relating to property rights and other legal matters should be encouraged, so that these messages are able reach the rural areas.

Therefore, community radios linked to the Social Communication Institute (ICS) or to the Community Radio Forum (FORCOM) should be considered strategic partners in the

effort to reach communities. These radio broadcasts could disseminate the relevant information in a more efficient manner, under the responsibility of the community leaders. The use of local languages and the fact that these broadcasts serve as resource centres could be taken advantage of in order to disseminate information and provide citizenship training.

The work carried out by organisations such as Women and Law in Southern Africa (WLSA), *Fórum Mulher*, and Human Rights League, among others involved in the dissemination of the rights of vulnerable groups, particularly women's rights, should be encouraged and expanded to cover other subject areas, such as the case of property rights.

In that which refers to specific actions to safeguard women's property rights, government and non-governmental organisations play a fundamental role in developing initiatives concerning the empowerment of women, lobbying and advocacy at political level, institutional support and information. For example, there is an initiative called "Men as Partners" being carried out by *Fórum Mulher*, which aims at involving men in the campaign for the fight against HIV/ AIDS, respect for women, and poverty reduction, among other issues. Initiatives such as this one should be encouraged, since they enable awareness to be raised among different groups of society on the importance of guaranteeing women's rights, with the involvement not only of women, but particularly of the men.

There may be some resistance from religious groups or traditional leaders, but these should not be excluded from the education and awareness process, particularly with regard to women's rights. Mechanisms can be found to place community leaders and religious leaders in the role of activists for issues relating to the non-stigmatisation of women, so that they can set the example. Progressive churches could play a key role in providing counselling on issues related to women's rights and changes in attitude.

b) Facilitating access to the registration of property rights

Some of the areas that could be mentioned with regard to facilitating access to the registration of assets are: provision for free registration in the event of financial

incapacity; unification of the registration system; and decentralisation of the registration services.

The adoption of mechanisms for quicker registration and defence of property rights and which require shorter processes, is one of the critical activities that must be carried out. Thus, it was found that the inadequate legal safeguarding of mechanisms prevents the poorer citizens from gaining access to justice, or from paying lower fees.

The provision for free registration of property for cases of proven financial incapacity, as well as the definition of the eligibility mechanisms for the beneficiaries of these free registration services are issues that should be considered. It was also found that some conditions need be taken into consideration when providing for this type of free assistance, i.e., the definition of the requirements for access to such services, through the presentation of a “certificate of poverty” or other criteria to be defined.

In that which refers to the unification of the asset registration system, it was noted that at present the real estate and land registry systems are not standardized and on-line, with cases of double registration of assets occurring frequently. The unification of the system would allow for the timely sharing of information, and faster processes in awarding title deeds with greater safety.

The land registry offices, notary public offices, municipal councils, cadastre and geography services, are all institutions that play an important role in the asset and land registration process, and can also be involved in the education on and dissemination of the procedures required for the registration of assets.

One of the strategic actions that could be pointed out with regard to the dissemination of the services for the registration of property, births, and land is the mobilisation of the population using the same local structures to which they resort for conflict resolution. These local structures can make known the importance of protecting property rights, access to land and registration of births. This could be supported by interested organisations working in the country, that have been working together with the Ministry

of Justice such as, for example, Save the Children, and the Human Rights League, among others.

Increasing the number of brigades to carry out the registration of births among the poorer strata of society and reopening the birth registration offices at hospitals, closed as a result of patients not registering the births for the traditional reasons mentioned previously, is a strategy that could be adopted.

With regard to the transfer of assets after death and the subsequent access to and registration of these goods, the Civil Procedure Code was recently revised, having been considered a unique opportunity to provide for flexibility in the inventorying process for assistance to orphans. This process is currently time consuming and exhausting, which discourages citizens from resorting to it. This is an aspect that should be taken into consideration in the Law of Succession, currently under preparation, with the review and adjustment of the Civil Procedure Code being performed at a later stage.

Also pointed out is the need to provide for some traditional forms of acquisition of property rights, in order for this right to be easily accessible and less complex.

c) Intersectoral strengthening and coordination

Institutional strengthening and intersectoral coordination of the institutions involved in providing support to the poor could be adopted as a strategy to overcome the obstacles presented in terms of these institutions' weak institutional capacity and coordination. This is the third key area of change required in order to guarantee the sustainability of the defence of legal empowerment of the poor, particularly the defence of property rights.

In that which refers to guaranteeing the sustainability of the organisations working in the field of legal support for the poor, the definition of an own budget for IPAJ, as well as its expansion, could ensure greater financial autonomy for this institution and enable better planning of its activities and territorial coverage. The strengthening of IPAJ's human resources is an aspect that must be highlighted.

The Government's Social and Economic Plan for 2007 (PES 2006: 87) foresees some strategic actions with regard to institutional strengthening, with emphasis being placed on the need to map the community courts, describe their current situation, plan in function of the 11 Delegations for Legal and Judicial Assistance, as well as establish partnership agreements with universities and other higher education institutions. It is believed that the implementation of these actions will contribute to strengthening IPAJ's intervention in assisting the impoverished.

In terms of strengthening IPAJ's human resources, the Mozambican Bar Association will provide IPAJ with a list of the trainee lawyers undergoing the second stage of their internships, who can provide free support to the poor. The fact that trainee lawyers can be appointed as public defence counsel is an added value that should be taken advantage of.

In 2005, a Pro Bono Office was created within the Mozambican Bar Association. The creation of this Office is one more contribution toward providing support for the poor. Mention must be made of the work carried out by the Legal Clinics of the Law Faculties and Colleges such as, for example, the Legal Clinics at the Eduardo Mondlane University Law Faculty (UEM), at the Higher Institute of Sciences and Technology of Mozambique (ISCTEM) and at the Higher Polytechnic and University Institute (ISPU).

IPAJ's use of the resources available from the Bar Association and Legal Clinics would strengthen its human resources as well as the interventions being carried out in terms of available staff with the necessary higher level technical training to provide support to the poor.

The weak coordination between the institutions involved in providing legal support to the poor could be considered an area where emphasis should be placed in terms of policies. For example, there is still no institutional agreement between the Bar Association and the Legal Clinics, despite some of the difficulties faced by these Clinics as a result of a lack of professional lawyers to supervise the students that provide pro bono support services to the poor. This type of agreement would be strategic in terms of coordinating efforts.

There should be greater coordination between IPAJ and the organisations working in providing support to the poor, for example, the Human Rights League, MULEIDE, AMMCJ, Bar Association and the Legal Clinics, among others, so as to avoid an overlapping of activities and focusing on the same areas.

Acknowledging that some civil society organisations are only just beginning their activities in the field, these organisations should be institutionally strengthened in order to be able to perform their role capably, and their financial autonomy and sustainability should be guaranteed.

In terms of coordination between the institutions working in providing legal and social support to the poor, it can be mentioned that the programmes carried out by MMAS, through the INAS, for providing assistance to the vulnerable groups are in no way linked to the activities carried out by IPAJ. Most of the 104 interviewees stated that they did not know that IPAJ was a Government institution committed to providing pro bono legal support to the poor. Consequently, the necessary articulation between the activities carried out by INAS and IPAJ could be established in order to refer the poor for the appropriate pro bono legal support, representing an articulation between the policies and actions of these two government institutions. Easier access at grassroots level and direct contact with the poor populations by INAS could be useful to IPAJ in the dissemination of its mission to the target populations.

MMAS can, through its interventions, have an influence in changing attitudes and promoting the non-discrimination against women's access to durable goods, and can complement the activities of the justice sector in that which refers to legal empowerment.

Civil society should be involved throughout the entire reform process, and citizens living in poverty should be heard, so as to ensure their participation in the process.

d) Strengthening policies

PARPA is a macro-level planning instrument that establishes the priority areas in the reduction of poverty. There is a need to coordinate and strengthen the interventions aimed at contributing to a reduction of social and legal exclusion, in order to be able to produce a positive impact on their beneficiary groups.

The clear definition in PARPA II and in the Government's Social and Economic Plan for 2007 of the actions aimed at disseminating the importance of property rights and their registration, as well as strengthening those institutions linked to the justice sector, could be among some of the actions that reflect the Government's commitment to guaranteeing property rights, particularly in defence of the poor.

Strengthening IPAJ institutionally in order to increase its interventions and its capacity for response and coordination will demonstrate a commitment to meeting the constitutional principle of State-guaranteed access to justice for the poor.

The next PARPA, annual plans and programmes underway should clearly demonstrate the relationship between the legally guaranteed property rights and poverty reduction. Thus, the interventions being planned should show evidence of this complementarity. The guarantee of access to justice, registration of goods and people, and free assistance for the poor should be a demonstrated commitment aimed at safeguarding this constitutionally consecrated right.

In this process, the definition of policies that are less discriminatory against women should continue to be strengthened, with the necessary alliances at grassroots level being identified. The process underway for the revision of the Law of Succession is an opportunity that should be used to provide for less discriminatory norms, straightforwardness in the transfer of goods as well as a simplification of the procedures.

At social security level, it is found that most of the population invest their resources in the informal trade sector and, in most cases, these activities are not registered and the

people involved do not have social security. In many cases, the durable goods are used as investments in the informal sector, and credit is applied for. It is considered that the legal safeguarding of the rights of self-employed workers is important since this will ensure their social security in any risks that they may face.

In Law 5/89 of the 18th of September, the Social Protection Law in force up to the time, self-employed workers did not have a legally protected social security regime. The recently approved Law 04/2007 of the 7th of February, the Social Protection Law, defines the legal framework for legal protection, providing for complementary social security which permits the social security regime to be extended to people involved in informal trade, who are now equally able to benefit from the system. This regime will correct the exclusion of those people who are not in the employ of third parties. The inclusion of self-employed workers in this regime is an added value of the recently introduced new social security system.

However, in that which refers to the effective implementation of the new Social Security Law, the constraint faced by the National Social Security Institute (INSS) is linked to the issue of tax evasion, an activity very common among many of the people involved in the informal sector. This means that it will be difficult to make people understand that it is better contribute to social security now, in order to be able to reap the benefits at a later date. The dissemination of the benefits of social security services and clarification of the advantages and benefits of joining Social Security should be encouraged.

Given the current role played by community courts in conflict resolution, the discussion of their role in the judicial reform is an aspect which should be considered.

Guaranteeing the property rights of the poor depends largely on empowerment and a contemplation of cultural aspects. Considering the successful experiences in claiming the rights of the poor, together with solving the problems identified, the legal defence of property rights of the poor could be effectively guaranteed.

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