SUSTAINABLE LIVELIHOODS IN SOUTHERN AFRICA

INSTITUTIONS, GOVERNANCE AND POLICY PROCESSES

Mozambique Mapping Phase Report 1 of 2

Background to policy and institutional changes affecting natural resource use and management in Zambézia province, Mozambique

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ABREVIATIONS

AT	Technical Annex to Land Law Regulations
CPI	Promotion Investment Centre
DFID	Department for International Development
DNFFB	National Department of Forestry and Wildlife
DINAGECA	National Department of Geography and Cadastre
IMCRL	Inter-Ministerial Commission on Revision of the Land Law
LFFB	The Forestry and Wildlife Law
LT	The Land Law
MADER	Ministry of Agriculture and Rural Development
MPF	Ministry of Planning and Finance
NGO	Non-governmental Organisation
PROAGRI	National Agricultural Development Programme
RLFFB	Regulations to the Forestry and Wildlife Law
RLT	Regulations to the Land Law
SPFFB	Provincial Forest and Wildlife Services
SPGC	Provincial Geographic and Cadastral Services

SUMMARY

The concept of use and benefit from natural resources for local communities in Mozambique occupies a central position in the formal government vision for rural development and has been given prominence in the policies that govern access to land use rights and forest and wildlife resources. There are constitutional guarantees that recognise rights to land that have been acquired through occupation or inheritance through customary systems of allocation, and enabling legislation that permits the registration of these hitherto 'informal' rights. Policies relating to land and to forest and wildlife resources provide for legal mechanisms to allow rural communities to benefit from natural resource exploitation by third parties and to participate in decision-making about resource allocation and use.

However, these elements of the policy framework have been consciously balanced against the need to provide access and security of tenure to private sector exploitation of the resources, in order to encourage investment and employment opportunities and to provide an engine for growth in the rural areas. Natural resource use policies explicitly state the need to strike a balance between these competing interests, and the relevant sector legislation contains mechanisms for realising the policy vision of 'partnerships' between the parties, in addition to the guarantees given to user rights.

The nature of these mechanisms varies, according to the nature of the resource. Land rights may be registered in the name of community management entities that hold these rights in trust and, under certain circumstances, may negotiate their use by third parties in return for some form of benefit. Local community rights to forest and wildlife resources are protected by law when their use is for subsistence and, in addition, community representatives may participate in decisions regarding the commercial exploitation of these resources. They are further entitled to financial benefits accruing from a percentage stake in the licensing revenues generated through the allocation, taxation and regulation of the use of resources.

The policy framework and related legislation have been put in place only recently and the necessary institutional framework for appropriate government regulatory services has not yet been developed. In addition, the relatively recent and major restructuring of the economic environment in Mozambique has compounded the problem of ensuring that new policy objectives are attained. Capacity at provincial level remains weak, despite recent improvements and is weaker still at sub district level. State capacity in the province to put in place an appropriate enabling environment for the realisation of policy objectives is generally low.

In Zambézia the vast majority of the rural population depend almost exclusively on access to natural resources for their survival and well being, but it is also an area where there is considerable outside interest in these resources. Historically, the province has witnessed the large-

scale exploitation of land by outside entities, first through the colonial era *prazos* and company plantations and subsequently through large state companies. Restructuring of the state farms and the liberalization of land rights policies has lead to significant recent increases in the pressure on land from the private sector, particularly quality land in more densely populated areas.

INTRODUCTION

This is the first of two reports produced from the mapping phase of the "Sustainable Livelihoods in Southern Africa: Governance, Institutions and Policy processes" research project in Mozambique, which focuses on the utilisation of natural resources in the province of Zambézia. The two reports together provide an examination of the policy framework in Mozambique regarding natural resource access and use, an overview of the implications and challenges for the implementation of these new policies in Zambézia province and a more detailed examination of the livelihood strategies of rural people in the study sites in so far as these relate to land, forest and wild resources.

This report contains a description of the content and background to the development of the relevant natural resource policies in Mozambique and an examination of the formal governing institutions that exist (or are in the process of being created) in Zambézia. Some general description of the study areas is included here, with initial commentary on the local livelihood strategies and the role of natural resources, but the more detailed analysis of these and an examination of informal institutions in operation is the subject of the second report.

1. NATIONAL POLICIES AND INSTITUTIONS RELATED TO NATURAL RESOURCES

This section is intended to give an overview of the policies and the legal framework that affect access to and use of natural resources (land, forest resources, water and wildlife) in Mozambique. Its most basic purpose is to describe the content and nature of the policy framework as clearly as possible. But it is also written with two general perspectives in mind: that policy can be viewed as the content of legislation and the process of its formulation, and the way in which policy is implemented can change the effective content, either because policy declarations have not been fully understood, or because the policy is subverted by those responsible for implementing it (Thomson, 2000). Accordingly, an initial attempt has been made to summarise the following:

- the relevant 'macro' policies that impact upon access to natural resources (principles from the constitution and the stated objectives of the government's present 5 year programme) and the specific sector policies that have been developed within these (land, forestry and wildlife, water and environmental policies);

- the nature of the policy development processes in relation to the different sectors (the institutions and the processes that were used to arrive at the policies and the legal instruments designed to put them into effect);

- the government's official procedures and guidelines that set the rules through which citizens can claim or request user rights and access to natural resources (the regulations, technical annexes to laws and the departmental operating procedures);

- the extent of participation, both in the development of these 'rules of the game' and in the ongoing management and monitoring of the use and benefit from natural resources; and,

- the arrangements made for formal governance of natural resource use, including the capacity of relevant institutions.

It is important to state that the picture is very much a snapshot, since the environment in which natural resource policies and practises are being developed in Mozambique is a particularly dynamic one and the experience of implementation of these policies is as yet extremely limited (or, at least, little of that experience has yet been captured holistically). The policy framework outlined here has many gaps in it and is awaiting the further development of additional laws and the creation of new institutions (however these arise). It will therefore continue to evolve. A central question in the future will be the adaptability and responsiveness of the policy, as the practises and institutions that emerge begin to have an impact. Some further work needs to be

done to analyse how these policies are being implemented at provincial and, particularly, district level.

1.1. A note on the civil legal tradition and common law

In common with the English-speaking countries of Africa, where the application of English-derived and Roman Dutch law was imported (through 'reception' clauses) into the administration of the colonial dependencies, the civil Portuguese law was applied in the colonial province of Mozambique. Although the civil law tradition puts much less emphasis upon the role of judicial precedent (and therefore has insulated the law of Mozambique from contemporary interpretation of the laws of Portugal, much more than in African countries with common law and Roman Dutch systems, whose jurisprudence evolves with decisions made in England and South Africa) the basic principles of the received Portuguese law have been retained in Mozambique. (McAuslan, 2000).

The impact of this heritage on the contemporary development of natural resource use policies, particularly those policies that target the issue of access to resources by the poor, is significant and may well explain why changes to policy and legislation in Mozambique have not had the same catalysing effect as similar changes taking place elsewhere in the region (Anstey, 2000). Some of the issues arising because of this 'burden of the past' will be examined later in this section. However, it is useful at this stage to provide a sketch map of the way in which different legal and policy instruments relate to each other in the Mozambican legal system.

The Constitution	*Constituição*	Highest legal instrument
Presidential Decree	*Decreto Presidencial*	
Law	*Lei*	Broad framework, rights and duties
Ministerial Diploma	*Diploma Ministerial*	
Regulations	*Regulamentos*	More detailed legal framework attached to a sector law, rights and obligations, penalties on trespass
Technical Annex	*Annexo Tecnico*	Detailed & procedural
Resolution	*Resolução*	

Figure 1 Hierarchy of legislative instruments

There are already subtle changes occurring in the Mozambican legal system that may represent a shift away from the civil legal tradition, including, for example, the recognition of contemporaneous rights to land. On a more conscious level, the present Structural Adjustment Programme contains a programme of reform of the legal and regulatory practices in use. These are generally considered to be archaic and outmoded (the current Commercial Code is based on Portuguese 19th century commercial law) and an impediment to providing a business-friendly

environment (Pontera, 1999). The extent to which further reforms to the legal system take place, including the integration of customary law, is unknown, but there are indications that this process will continue and begin to embrace the Civil Code as well.

1.2. Constitutional principles relating to natural resources

A constitutional debate in Mozambique was initiated in 1990, largely as a result of decisions taken at the 5th FRELIMO Party Congress. As a result of this debate, a new constitution was approved in November 1990. The articles of the constitution that have a bearing on the quality of Mozambican citizenship in respect to access to natural resources are outlined below. Taken together, these articles form the basis of an answer to the question: what rights do citizens have to the natural resources in their country?

Of primary importance is Article 35, which deals with the public domain of the State and which, in common with many other constitutions from around the world, entrenches the concept that the State is the paramount owner of the natural resources occurring within its territorial limits. As Alden Wily states in a review of several African land tenure reform processes, "amidst all the democratisation (such as it is), all but one nation (Uganda) has firmly entrenched the notion of root title, a notion which awards the State ownership of the soil and landholders ownership of only interests or rights in land"(Alden Wily, 2000). This is the case in Mozambique, where the notion of root title is contained in the constitution.

The article states:

> "1. The ownership of natural resources located in the soil and the subsoil, in interior and territorial waters, on the continental shelf, and in the exclusive economic zone is vested in the State.
> 2. The public domain of the State shall also include:
> a) the maritime zone;
> b) the airspace;
> c) archaeological heritage;
> d) nature conservation zones;
> e) hydro-power resources;
> f) energy resources;
> g) other property and assets classified as such by law. "[1]

[1] All translations in this section are sourced from the English language version of the Mozambican constitution available at http://www.urich.edu/~jpjones/confinder/const.htm

Article 36 recognises the obligation of the State, in the national interest, to develop the natural resources of which it is the paramount owner and to determine the conditions under which citizens (and others) may access these resources for their use and enjoyment[2]. Thus the constitution makes provision for the owner of the resources (the State) to develop mechanisms that enable it to grant other forms of rights to these resources to its citizens.

Remaining articles of the constitution that refer to access to natural resources deal exclusively with land and there are no other specific references to other natural resources. The only other provision that may have some relevance to the manner in which the owner (i.e. the State) may develop the nature and forms of access to benefits from natural resources is Article 37, which obliges the State to "promote efforts to guarantee the ecological balance and the conservation and preservation of the environment for the betterment of the quality of life of its citizens."

Regarding land, the constitution is unequivocal in its stipulation that the right of ownership is vested in the State and that no land may be sold, mortgaged, or otherwise encumbered or alienated[3]. However, the same provision also stipulates that the use and enjoyment of land shall be the right of all the Mozambican people[4]. The exact conditions under which citizens may exercise this constitutional right of use and enjoyment of land are the prerogative of the State, which is constitutionally obliged to develop specific laws governing these conditions.

However, the constitution also introduces qualifications and limitations on the eventual content and nature of these conditions (or mechanisms of access). Firstly, the constitution stipulates that rights of use and enjoyment may be granted to individual or collective persons, *taking into account its social purpose*. Secondly, there is a constitutional directive to the effect that direct users and producers must be afforded priority and that the laws developed by the State may not permit use and benefit rights of land to be used to favour situations of economic domination or privilege to the detriment of the majority of citizens[5]. Most importantly, however, the 1990 constitution obliged the State, for the first time, to recognise rights acquired through inheritance or occupation[6]. It was this amendment that heralded the subsequent revision of the land law and led to the legal recognition of customary and other rights to land. Mozambicans had, through this amendment, finally ceased to be squatters in their own country.

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[2] "The State shall, with regard to the national interest, promote the inventory, the knowledge and the development of natural resources and shall determine the conditions for their use and enjoyment."

[3] Article 46 (i) and (ii) [Constitution]

[4] Article 46 (iii) [Constitution]

[5] Article 47 (iii) [Constitution]

[6] Article 48 [Constitution]

The other aspects of the constitution that have a primary relevance to natural resource access are those provisions that deal with the issue of citizen participation. In general, these appear to be enabling provisions rather than obligations upon the State to do or refrain from doing any particular thing. They tend to highlight the continuing centralised conceptualisation of State authority and power. In particular, Part III (Organs Of State), Chapter I (General Principles) of the Constitution contains a number of provisions that unequivocally establish that the central level organs of the State have the paramount role in relation to governance and the development of policy. This is underlined in the following provisions:

- Article 110: "The central organs of the State are the organs of sovereign authority, governmental organs taken as a whole, and such public institutions as are responsible for guaranteeing the precedence of national interests and the realization of a unitary State policy."

- Article 111: "The central organs of the State shall, in general, have power to exercise sovereign functions, to regulate matters in accordance with the law, and to define national policies."

- Article 114: "The Provincial Government is the organ charged with ensuring the implementation, at the provincial level, of centrally defined government policies."

However, Article 115 in the same 'General Principles' section states that "democratic-representative organs may be set up at the provincial level" and that the law shall regulate the organization, composition, powers and operation of these organs.

Similarly there is a constitutional obligation, albeit a rather vague one, on the organs of government at various territorial levels, to ensure that "citizens may participate and decide on matters of interest to their respective communities"[7]. This theme is developed further in Chapter IX (Local Organs of the State) in which local government authorities are charged with "organizing the participation of citizens in solving the problems of their communities"[8]. In fact, the very nature of local government authority was significantly changed by the amended 1990 constitution: there are provisions that specifically state that these 'local organs of the State' shall consist of 'representative organs' as well as 'executive organs'[9], that the decisions of the representative organs shall be binding within their area of authority[10] and that the executive

[7] Article 16 [Constitution]

[8] Article 185 (i) [Constitution]

[9] Article 186 [Constitution]

[10] Article 187 [Constitution]

organs are accountable to the representative organs[11]. Finally, the 1990 constitution stated that the "organization, powers and operation of local State organs as well as the legal form of their acts shall be defined by law"[12], ushering in a period of policy and legislative amendment regarding decentralisation and local levels of representation that is still continuing.

It is also worth drawing attention to article 76, which deals with the right to free association, an amendment to the previous constitution; as well as the guarantee of the right, the clause included a paragraph which referred to "social organizations and associations" which are assured the right "to pursue their aims, to set up institutions designed to achieve their specific objectives and to own assets in order to carry out their activities"[13].

1.3. Access to Land

1.3.1. The historical development of policy

The regime of rights to land in Mozambique is presently unique in the region. Throughout the fairly rapid transition from the previously socialist system, from 1987 to the present, the State has remained the *de jure* owner of all land in the country. Although there has been a process that is described as a 'privatisation' of land rights (Tanner, 2000), this has actually consisted of the privatisation of the economic use of land[14] (on what is effectively a long-term leasehold basis) and the award of use rights to certain categories of existing occupiers).

The initial impetus for the changes to land policy predates the introduction of the PRE in 1987[15] but it was the Fifth FRELIMO Party Congress in 1989 and the introduction of the new Constitution in 1990 that really gave momentum to this process. Previously, in 1987, the regulations to the Land Law had been revised in recognition of the shift towards a market economy, but the basic principles from the existing law remained:

- the State continued to be the owner and manager of the State Land Fund;
- the purchase and sale of land was not legally recognised;

[11] Article 189 [Constitution]

[12] Article 190 [Constitution]

[13] Article 76(ii) [Constitution]

[14] Clearly this depends on state capacity to ensure that economic use is in fact occurring, where this capacity is weak, it is more accurate to speak of the privatisation of land.

[15] At the Fourth FRELIMO Party Congress in 1983 a decision was taken to section off parts of some of the failed state farms and offer them to party cadres who maintained that they would be able to make more productive use of these units (Tanner, 2000).

- land areas cultivated by the family sector (but not the more extensive areas that were also used for subsistence purposes) were protected (but without adequate legal documents to support this principle);

- use rights over remaining land continued to be allocated by the State through long-term concessions. (Tanner, 1995)

By the early 1990s, it became clear that the national legal and regulatory framework governing land use rights did not provide secure tenure rights to either smallholders or larger commercial interests. A new National Land Policy was approved by the Council of Ministers in October, 1995[16]. The main elements of this new policy were that it:

- recognised customary rights over land, including the various inheritance systems;

- recognised the role of local community leaders in the prevention and resolution of conflicts;

- aimed to create conditions for the development and growth of the local community and the promotion of investments by the commercial sector;

- maintained the concept of all land belonging to the State.

These were significant changes, since the new policy was for the first time recognising that there existed customary rights over land, and that there was a place for local authority involvement in the prevention and resolution of conflicts (here, the policy deliberately steered clear of specifying 'traditional' authorities, referring instead to 'resident rural populations'[17]). In addition, the policy highlighted the importance of a flexible Land Law, which over time would induce a "formalisation of the informal", principally in respect to land rights and holdings in the family sector[18]. There seemed to be some appreciation within this policy that local landholding systems did not consist of rigid rights and precise rules and that customary law in respect to land use was by nature 'procedural'[19]. Hence the space opened up by the policy for the local 'traditional' authorities, albeit one constrained to adjudication.

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[16] National Land Policy and Strategy for Implementation [*Política Nacional de Terras e a Estratégia para a sua Implementação*] Resolution 10/95 of 17th October 1995. [PT]

[17] Article 17 [PT]

[18] Article 65 [PT]

[19] This appreciation continued through into the development of the methodologies for registering these land rights contained in the Technical Annex.

Of importance also was the central declaration of intent in the policy to "safeguard the diverse rights of the Mozambican people over the land and other natural resources, while promoting new investment and the sustainable and equitable use of these resources".

An 'Ad Hoc' Land Commission was established by the then Ministry of Agriculture and Fisheries in 1995 and was subsequently replaced by a permanent Land Commission, and then, in 1996, by an Inter-Ministerial Commission for the Revision of Land Legislation, formally established through presidential decree[20], comprising a total of 10 Ministries and Institutes. The composition of this commission and the associated Technical Secretariat (both bodies referred to generally as the 'Land Commission') is contained in Annex 1[21]:

The new statutory body was tasked with the revision of the land legislation in force and was given a mandate to promote the consultative processes necessary for this to happen. The enabling decree specifically mentioned the holding of meetings, seminars and conferences to disseminate and consult on the contents of the revised law[22].

The consultation process for a new Land Law, based on the policy principles that had been defined, began in 1996 with submissions from a wide range of stakeholders and the National Land Conference in June of the same year. According to the annual report of the Land Commission for this period, over 200 people attended the meeting, "50 of whom were from the provinces" (CIRLT, 1999). The attendance list reveals that there was a significant presence from the private sector and various levels of government, but there were also 9 attendees who described themselves as 'peasant' [*camponeses*] in the list and there were over 20 representatives, of both national and international organisations, who could be expected to have had a pro-poor agenda. None of the attendees at the meeting described themselves as a 'traditional' authority of any kind, although this does not necessarily mean that there was no presence from this grouping.

Although the picture painted by the Land Commission and other government personnel is one of full and open consultation with civil society organisations throughout the process of policy revision, other observers relate the initial difficulties of creating an environment for open debate, principally due to government reluctance. On occasions it was only through pressure from donors or technical assistance projects that these spaces were created (Tanner, pers comm.). To compound the problem, some civil society organisations may have been too quick to accept government offers to become 'official' representatives of interest groups, not realising that to do

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[20] Decree 6/96 of 3rd March 1996 (the creation of the commission itself had been provided for in Article 76 of the Land Policy)

[21] Some of the Ministries have subsequently been restructured.

[22] Article 3(1)(a), Decree 6/96

so might be to limit the space for genuinely inclusive discussions. It would seem that the Land Campaign (*Campanha Terra*[23]) was aware of this contradiction, at least some times[24]. This trend, where the government attempts to locate and appoint (and therefore possibly emasculate) a single 'organ' of civil society as its sole interlocutor on a particular issue, has continued to this day with the machinations surrounding representation on the Zambézia provincial 'nucleus' of the national Land Commission[25].

Notwithstanding these initial difficulties, a range of issues arising from the proposed legislation were discussed and clarified at this national meeting. According to the land commission report these included the following:

- Issues related to the maintenance of all land as property of the State;
- The replacement of the terminology from the previous legislation, which classified land into agricultural and non-agricultural use purposes, with a classification that distinguished areas on the basis of whether rights could be obtained to the land or not;
- Issues related to groups of rights holders, and specifically the cases of women, local communities and foreigners;
- The involvement of traditional authorities and customary systems of land use;
- The transmission of rights to land and infrastructure, and the limitations to these;
- The requirement or not of a development plan and the enforcement of this stipulation;
- The notion of abandoning land and the consequences of this;
- Issues related to the valuing of rights to land;

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[23] See Annex 2 for list of membership of the Land Campaign

[24] See, for example:"…the Land Campaign *had been invited by the Legislative and Executive powers to represent Mozambican civil society in the process of elaboration of laws and regulations (our emphasis)*. The Land Campaign began by putting into the public domain what had already been produced, and finished by participating in the production of new legislative material." (Negrão, 1999) and "The Land Campaign did not aim to substitute for the voice of the small farmers, but to inform the producers, as well as the operators and businessmen, about the rights and duties of each according to the new Bill. In other words, the Land Campaign disseminated information, but it remained up to the individuals themselves to defend themselves in the case of eventual transgressions of the Law and to define future interventionist strategies". (Negrão & ORAM, 1999)

[25] An attempt in 2000, by the government in Zambézia province, to preempt the establishment of a broadly representative provincial version of the land commission by setting up its own 'consultative forum on land conflict' was initially aided by a single NGO (ORAM) agreeing to play the role of sole civil society representative.

- The resolution of conflicts regarding rights to land.

The land commission report fails to capture the fact that several aspects of the draft legislation were problematic for small farmers and their representatives. The debate that ensued regarding the draft law often consisted of strongly opposing positions of different interest groups. Some of these opinions and positions included:

- the management of land should be done at the local level and thus a national policy does not make sense;
- title deeds should immediately be issued to everybody;
- communities are the landowners and should be enabled to negotiate land ownership with the investors;
- land in the family sector should be demarcated in order to protect it;
- what is most important is to establish a free market in land;
- land should be privatised but private hoarding and speculation must be controlled.

[Source: Negrão, 1998.]

One report regarding this period observed that "civil society assembled around principles which were defined by the negative: 'We do not want anybody without land, we do not want access to land which is restricted by income and we do not want a family sector confined to marginal areas'" (Devereux & Palmero, 1999).

The draft law was subsequently submitted to the parliamentary commissions for Agriculture, Regional Development, Public Administration & Local Power (CADRAPPL) and for Legal Affairs, Human Rights and Legality (CAJDHL). The principle comments from these commissions related to the concept of local communities and the 'organisational' forms that these would assume and the levels of government authority required for the approval of various levels of use rights.

The national assembly approved the new Law in 1997[26]. Prior to revision of the regulations attached to the Law, the participatory nature of the process was deepened by the establishment of working groups to concentrate on the innovatory concepts that had been introduced by the law itself. These consisted of groups that examined (a) procedural aspects, (b) tourism, natural resources and investment, (c) communities and local level authority and (d) fees for land use and

[26] Land Law [*Lei de Terras*] Law 19/97 of 1st October [LT]

approval of rights. Included as members of the working group examining community issues were representatives from the National Union of Peasants [*União Nacional de Camponeses* - UNAC] and the Rural Association for Mutual Aid [*Associação Rural de Ajuda Mutúa* - ORAM]

Revision of the regulations continued during 1998, commencing with a decision by the Inter-Ministerial Commission that these should be restricted to the regulation of access and management of rural land only, since the urban zones of Mozambique presented a different and more complex set of issues that would need to be resolved in a separate set of regulations.

Also at this time, it was recognised that further work was necessary on mechanisms for community representation. A workshop was held on Management and Occupation of Land by Local Communities, which addressed issues such as the identification and delimitation of land occupied and managed by local communities. A series of provincial consultative workshops were organised and the regulations were submitted and approved by the Council of Ministers at the end of 1998[27].

The regulations envisaged a Technical Annex to be approved by the Ministry of Agriculture and Fisheries (as it was then), in order to specify the requirements for delimitation and demarcation of land occupied by communities. According to the Land Commission report, after participating in three regional courses, different teams undertook over 20 pilot delimitation exercises throughout the country. The findings of this pilot approach were discussed in two meetings, which found that the methodology was appropriate, and the Technical Annex was approved in 1999[28]. Its final content was a response to the criticism that had been made regarding the vagueness of the concept of a local community: instead of attempting to devise a single definition, the Technical Annex was a single, legally prescribed *methodology*, complete with pro forma documentation and setting out in detail the procedures to be followed in the delimitation of community land (Tanner, 2000).

A National Meeting on Implementation of the Land Law was also held in 1999, with the participation of the President and 124 district administrators. The objective of this meeting was to identify the fundamental role of the local administration system in land management and the need to reorganise the provincial cadastral services and strengthen inter-institutional coordination at the provincial level. It appears that this meeting concentrated little on, and has had no impact in fundamentally changing, the nature of local State authority interaction with customary authorities, despite the far-reaching implications of the new legislation.

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[27] Rural Land Law Regulations [*Regulamento da Lei de Terras*] Decree 66/98 of 8th December [RLT]

The National Directorate of Geography and Cadastre [*Direcção Nacional de Geografia e Cadastro* - DINAGECA] is in the process of drafting a set of Norms and Instructions, which are guidelines to the Provincial Services [*Serviços Provinciais de Geografia e Cadastro* - SPGC] on the implementation of the legal framework. A preliminary analysis of this document (presently in draft form, which has been its status for more than a year) reveals an emphasis upon the technical methods involved in capturing and codifying local land holdings (at the level of community delimited lands, not within these areas) and of maintaining the national cadastre. Little attention has been paid to fleshing out the principles and objectives contained within the concepts of 'consultation' with local communities and the 'establishment of partnerships'.

There is a prevailing sense that the process of legislative amendment and consultations on policy and strategy are now completed and that now the need is to begin the learning of further lessons through the implementation of a land reform programme[29]. Largely, the policy development process has been pronounced a success[30] and held up as a model of democratic government. The recent report of the PROAGRI Land Review Mission, completed in November 2000, observes that "the package for rural areas is already complete…it is essential that the now complete legal framework be moved forward to a well-supported implementation phase" (PROAGRI, 2000). Similarly, in a DfID report on a workshop held in December 2000, it is stated that "all the necessary legal instruments and policy documents are now in place for implementing a full-scale local level development programme built upon the progressive foundations of the new land policy and legislation. It is essential that an effective implementation programme be launched now as quickly as possible, in order to test the model in practice and answer the many practical questions that have been raised about its applicability on the ground" (DfID, 2000).

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[28] Land Law Regulations -Technical Annex for the Demarcation of land use and benefit areas [*Anexo Técnico ao Regulamento da Lei de Terras*] Ministry of Agriculture and Fishing Ministerial Diploma No. 29-A/2000, 7th December 1999.

[29] See for example: "Report on an FAO Workshop - Common Property Tenure Regimes: Methodological Approaches and Experiences from African Lusophone Countries". Rome, 12-13 December 2000, C. Tanner for DFID Rural Livelihoods (Land Tenure) Department.

[30] According to Joe Hanlon: *"The Land Law was a genuinely consultative process, and the campaign on the law was an unprecedented democratic process. The Land Law might have been the most significant anti-poverty action taken by this government."* (Quoted in Devereux & Palmero, 1999). Scott Kloeck-Jenson wrote in a paper published posthumously: *"In general, the new Land Law is seen as a significant positive step towards devolution of authority and autonomy with respect to land and other natural resources to local populations, especially in Maputo and international circles. The process of developing the policy, law, regulations and technical annex took place over several years and involved widespread consultation, which has contributed to the emergence of partial consensus.*" (Kloek-Jenson, 2000) The Land Campaign's verdict on its own programme is rather similar; although it demonstrates an analytical understanding of the importance of the process, it is backward rather than forward-looking and fails to critically examine the potential for future activities.

Inherent in the comments from these reports is that the gains that have been made in terms of policy may not translate into an effective improvement in the livelihoods of rural people unless there is a strongly supported implementation programme. In the DfID report, the head of the Land Commission is quoted as saying that "there are some in Mozambique today who worry that the new obligations to consult and work with local communities on land occupation and management issues will block or delay the development process" and she underlined the need to "take the facilitating role of the [technical secretariat] down to provincial level now in order to assist full implementation of the policy and law in practice" (DfID, 2000). Further presentations made at this workshop by high ranking civil servants within the MADER were characterised in the report as "reveal(ing) a tendency within the more conventional thinking of PROAGRI towards a dualist view of 'family' sector (community) land use and new, private sector land needs" and implying that "'all the gymnastics' of land delimitation, demarcation and negotiation with communities was a bit of a nuisance and would only hinder private investment" (DfID, 2000).

Presently, the Land Commission as an Inter-Ministerial Commission appears neither to be meeting, nor to have any plans to do so and there are indications that it may be requested to wind up its affairs. Given that the enabling decree that established the commission specified that a further responsibility would be the design of institutional arrangements for land administration, this would be a premature move. The Technical Secretariat still meets regularly, but these meetings tend to be with civil servants from the DINAGECA. The development of operating procedures and principles in the DINAGECA, which will add or detract significantly from policy and legislative gains, are taking place 'in-house', largely by conservative technicians, with all the attendant dangers that this holds. More importantly, it seems that the DINAGECA may, as part of the institutional restructuring that is ongoing in the Ministry, take over the role that has hitherto been played by the Technical Secretariat of the Commission and become the sole government body responsible for all land administration matters.

1.3.2. Description and analysis of key policy concepts

1.3.2.1. Forms of rights

The Land Law builds on the policy principle that customary rights to land exist and are recognised, by opting to award a right of use and benefit of land [*Direito de Uso e Aproveitamento de Terra* – DUAT] to local communities (where this occupation was according to customary practises) and to 'good faith' occupants (who must have been in occupation for at least 10 years). Although the DUAT is commonly described as being a "full and exclusive land use right" this is not strictly correct, since it is a partial or subsidiary right to the State's ownership of the land. The State's right remains the paramount right, manifested through its control and regulation over the

acquisition of rights by non-occupants, over the transmission of rights and over other forms of alienation of rights (Garvey, 2001). The fact that the DUAT acquired by a local community (or members of it) may be, in fact, a right in perpetuity[31] does not alter the fact that it will be the State that transfers rights in the event that a community agrees to make land available for use by others. The community themselves cannot do this, at least not in a manner that alienates the land in any way[32].

The other forms of rights to land are as follows:

- The right of land use and benefit in respect of estates in land [*prédio rústico*][33];
- The right of land use and benefit in respect of estates in tenements [*prédio urbano*]
- The special licence to use and occupy land that may be granted within zones of partial protection
- Rights of way and other easements and servitudes.

According to the civil legal tradition property in land is unitary, while the English land law tradition treats property rights in land as an aggregate or bundle of rights, each of which can represent different coincident property interests (commonly referred to as land tenure rights or estates in land[34]). Some have argued that the inclusion of clauses in the Mozambican constitution that vest the property interest of land in the State, whilst also recognizing and protecting rights acquired through inheritance or occupation (customary or otherwise), has effectively meant the adoption of a pluralist approach to real property rights in land. Trindade and de Sousa Santos[35] refer to this recognition of "acquired rights of property" as an indication of an "epistemological rupture in legal doctrine" in Mozambique (quoted in Garvey, 2001). Certainly, the legal framework generally is evolving in a way that increasingly allows for different levels of

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[31] This is implicit where the customary right that is being recognised by the DUAT has such a permanent character and is uncritically accepted by the law itself that puts no time limitations on the DUAT acquired through customary occupation.

[32] See later s1.9

[33] The phrases "estate in land" and "estate in tenement" are used as an imprecise translation of the terms "prédio rústico" and "prédio urbano" respectively, which have no English language synonym. Black's Law Dictionary (6th Edition West's Publishing) uses the original Latin '*prædium rusticum*' and '*prædium urbanum'* to define the concept. (Garvey, 2000)

[34] The range and complexity of these different estates to land have their roots in the desire of the land owning classes in England to keep land in the family. Before the reforms of 1925, for example, it was possible to have an estate in land that would shift to another person on the happening of a future event (e.g. marriage).

[35] 'Conclusões e Ideias para as reformas das justiças em Moçambique'; Boaventura de Sousa Santos & João Carlos Trindade, 2000

proprietary rights to be awarded; the granting of forestry concession management units and concessions granted for mineral exploration, for example, previously represented an award of limited use rights by the State over resources that were exclusively under its control and ownership, but in the context of the new land law the procedures under which these licences are granted are having to be reviewed[36].

The use right that may be obtained in land (upon application to and approval by the State[37]) is also the same right as that acquired by occupation – that is, a DUAT. However, it would appear in this case that the DUAT is a more limited right, since there is administrative discretion as to how long the right is granted for and a legislated limitation on this of 50 years. It is interesting to note that a focus of the information dissemination programmes relating to land rights has been to emphasise the equality of the DUAT rights obtained by occupation with those obtained through the State. Implicit in this has been a perception that the DUAT rights awarded to communities might have been regarded as somehow inferior to those granted by the State. In fact, it appears as though they are stronger.

1.3.2.2. Holders of rights

The nature and identity of the holder of a DUAT have important implications for how the right may be acquired and how it may be held, as well as for the kinds of duties and obligations that attach to the holding of the right. The law identifies several categories of rights holders, namely:

- a Mozambican national natural (as opposed to juristic) person who has acquired the right of land use and benefit through good faith occupancy of that land for at least ten years;
- a local community who has acquired the right of land use and benefit in accordance with customary norms and practices;
- a Mozambican national natural person who has acquired the right of land use and benefit in accordance with customary norms and practices (which may be an individual member of a 'local community' who requests the de-annexation and individualised title for their discrete plot of land from that of the 'local community');
- a Mozambican national natural or juristic person (e.g. company, association, etc.) who acquires the right of land use and benefit by application to the State;

[36] For example, the DNFFB is prepared to award a forest concession management right only to an entity that already has the DUAT over the land in question. (pers comm. Sr. Chicué, DNFFB Lawyer)

[37] Local community involvement in the process of evaluating these applications is explicitly recognised, as is the role played by the district administrations.

- a foreign national natural person who acquires the right of land use and benefit by application to the State;

- a foreign national juristic person[38] who acquires the right of land use and benefit by application to the State.

Some of the rights are acquired through the operation of the land law itself and do not require an application to the State. Mozambican nationals who are good faith occupiers and local communities that have occupied land in terms of 'customary norms and practises' acquire these rights and do so automatically. Foreign and national natural and juristic persons can apply to the State for an award of the same type of right over land, but are then obliged to fulfil certain other obligations. Some of these obligations attach to the process of application itself (the need to consult with local occupiers, payment of fees, etc.), whilst others arise as a consequence of the nature of the applicant. For example, plans for the use of land (that are submitted by prospective applicants as part of their 'bid' for the land right) must be completed within 2 years where the applicant is a foreign person or entity, whilst Mozambican nationals or companies are given a longer period (5 years) to comply with the provisions.

As stated above, the fundamental nature of the right may also be said to be different, depending on the nature of the right holder. The 'customary' rights, now recognised in law, may be in the nature of rights in perpetuity. If that is the case, they have a superior character to the 'DUAT' rights that are obtained by application to the State. In fact, the legislation does not involve itself in an examination of the nature of the customary rights and treats them all as if they are rights in perpetuity by allowing their registration in the cadastral atlas without any further limitations attached.

1.3.2.3. The concept of local community

The concept of a 'local community' was itself first introduced by the LT[39]. In developing the legislation, one intractable issue related to how to define the community in territorial terms:

- community territory could be based on existing administrative boundaries, but the legitimacy of this would vary from region to region;

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[38] Defined in the land law as being a company where less than 50% of the equity capital is owned by Mozambican nationals.

[39] Although there is a single definition in the law regarding a local community, in application the definition appears to have two distinct although related meanings. One is in the nature of a real property right, wherein local community members acquire a share in title for the overall area occupied by the community and an individual title for the area that the community member personally occupies. The other meaning is as a socio-political unit, the exact form and significance of which is to be regulated by further legislation. (Garvey, 2000)

- use 'traditional' community boundaries, but these were defined by the colonial administration, and were designed to facilitate the collection of taxes and the expropriation of land by commercial interests; or

- allow communities to define themselves (Kloeck-Jenson, 2000)

In the law as promulgated, a local community is defined as:

"a group of families and individuals living within a geographical area at the territorial level of a locality or subdivision thereof and which seeks to safeguard its common interests through the protection of areas for habitation, agriculture, including both fallow and cultivated areas, forests, areas of cultural importance, pasture land, water sources and areas for expansion[40]." [Source: "English Translation of Land Law Nº 19/97 of 1 October", J. A. Garvey, undated.]

Hence a partial compromise was reached and although the community may essentially define itself, a limitation has been put on the territorial limit within which this may be done. A community may not, in terms of the law, define itself within territorial limits that go beyond the limits of a locality (an administrative boundary legislated by parliament). The extent to which this will restrict the self-defining nature of the process of 'identifying the community' is yet to be discovered.

The LT permitted the registration of these community-acquired rights in the cadastral atlas and the national register of land, either as community lands or in the form of individual titles, in which case the relevant piece of land is dismembered from the community holding.

1.3.3. Procedural aspects

1.3.3.1. The application process for land use rights

The acquisition of a DUAT by individuals or collective persons is permitted by article 12(c) of the new Land Law and applications to acquire the DUAT are made in terms of article 24 of the accompanying regulations.

Article 24 details the documentary requirements of a valid application and other articles in the regulations refer to the procedural requirements that must be followed. Further refinement to some of these requirements is contained within the Norms and Instructions of DINAGECA (see

[40] "*Comunidade local: agrupamento de famílias e indivíduos, vivendo numa circunscrição territorial de nível de localidade ou inferior, que visa a salvaguarda de interesses comuns através de protecção de áreas habitacionais, áreas agrícolas, sejam cultivadas ou em pousio, florestas, sítios de importância cultural, pastagens, fontes de água e áreas de expansão*."

below). The major requirements for provisional authorisation of a DUAT under the legislation are as follows:

- The payment of all fees, proof of identity
- The publication of a public notice [*edital*], placed in the district headquarters [*sede*] and in the area of the requested land, for a period of thirty days[41]. Proof of the publication must be obtained through the signature of the Administrator and a person from the local area of the requested land. The *edital* should indicate relevant information and the date of a meeting to be held with the local community, which should be within the period of the publication of the *edital*[42].
- Meetings involving representatives of the District Administration, the SPGC and members of the local community and (at least) one document signed by at least 3 representatives of the local community, the district administrator and the SPGC, confirming and recording the terms of the local community's agreement.
- An application for land by any applicant needs to be accompanied by a development plan (*plano de exploração*) for the land[43]. These plans may be for the exercise of economic activities, in which case they are initially approved and later checked by the relevant sector government department[44]. Alternatively, they may be in fulfilment of the obligation to provide a description of the nature and extent of proposed activities on the land as contained in article 24 (f).
- Other technical opinions regarding suitability of the land requested for the proposed land use. These should be provided by the relevant government department at request of the SPGC and must be provided within a 45 day period[45], failing which the application may be sent without the technical opinion, for approval by the competent authority.
- A sketch of the requested land, normally at a scale of 1:50,000 and sufficiently marked to enable it's location on the relevant map, signed by the applicant and the technician[46].
- A descriptive memorandum, detailing limits of the land and any servitude[47].

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[41] Article 24(f) [RLT]

[42] Section 1.6 [Norms & Instructions, DINAGECA]

[43] Article 19 [LT]

[44] Article 26(1), article 24(2), article 19(1) [RLT]

[45] Article 26(2) [RLT]

[46] Section 1.3.4 [Norms & Instructions DINAGECA]

Successful completion and adherence to the requirements of article 24 (and other related articles) of the regulations and the subsequent approval of the application by the competent authority, leads to the acquisition of a provisional authorisation of the land right, an authorisation which is valid for a maximum of 5 years for Mozambican citizens and for 2 years for foreigners.

The competent authorities are the provincial governor (to 1000 hectares), the Minister of Agriculture and Rural Development (to 10,000 hectares) or the Cabinet (greater than 10,000 hectares). Applicants are advised not to invest in the land until this authorisation has been given[48].

Certificates of provisional authorisation of the DUAT are issued by the SPGC[49]. Applicants are to be advised of the authorisation within 48 hours of it being received by the SPGC[50]. Authorisations are published in the Government Gazette [*Boletim da República*].

After provisional authorisation is granted there is a period of one year in which the land must be properly surveyed and demarcated, a process that may be done by the SPGC at the client's cost, or through a professional private surveyor[51]. If this is not done within the time limit the authorisation and the application are cancelled[52]. An applicant may ask for an extension of a further 90 days only[53].

If the approved development plans are completed in the relevant period of time, the provisional authorisation for the land right can become a definitive authorisation and a title issued[54]. Checking of the completion of exploitation plans must be done through a site visit [*vistoria*][55], which can be done by the SPGC (the *Sector Agrimensura*) or another competent sector-specific government agency[56].

Definitive authorisations and land titles have a maximum duration of 50 years, which can be renewed for an equal time or according to the renewal terms of the original authorisation. After

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[47] Section 1.3.5 [Norms & Instructions DINAGECA]

[48] Section 9.13 [Norms & Instructions DINAGECA]

[49] Article 29 [RLT]

[50] Section 4.1.1 [Norms & Instructions DINAGECA]

[51] Article 30(2) [RLT]

[52] Article 30(3), a39(6) [RLT]

[53] Article 30(4) [RLT]

[54] Article 26 [LT]

[55] Article 31 [RLT]

[56] Article 37(2) [RLT]

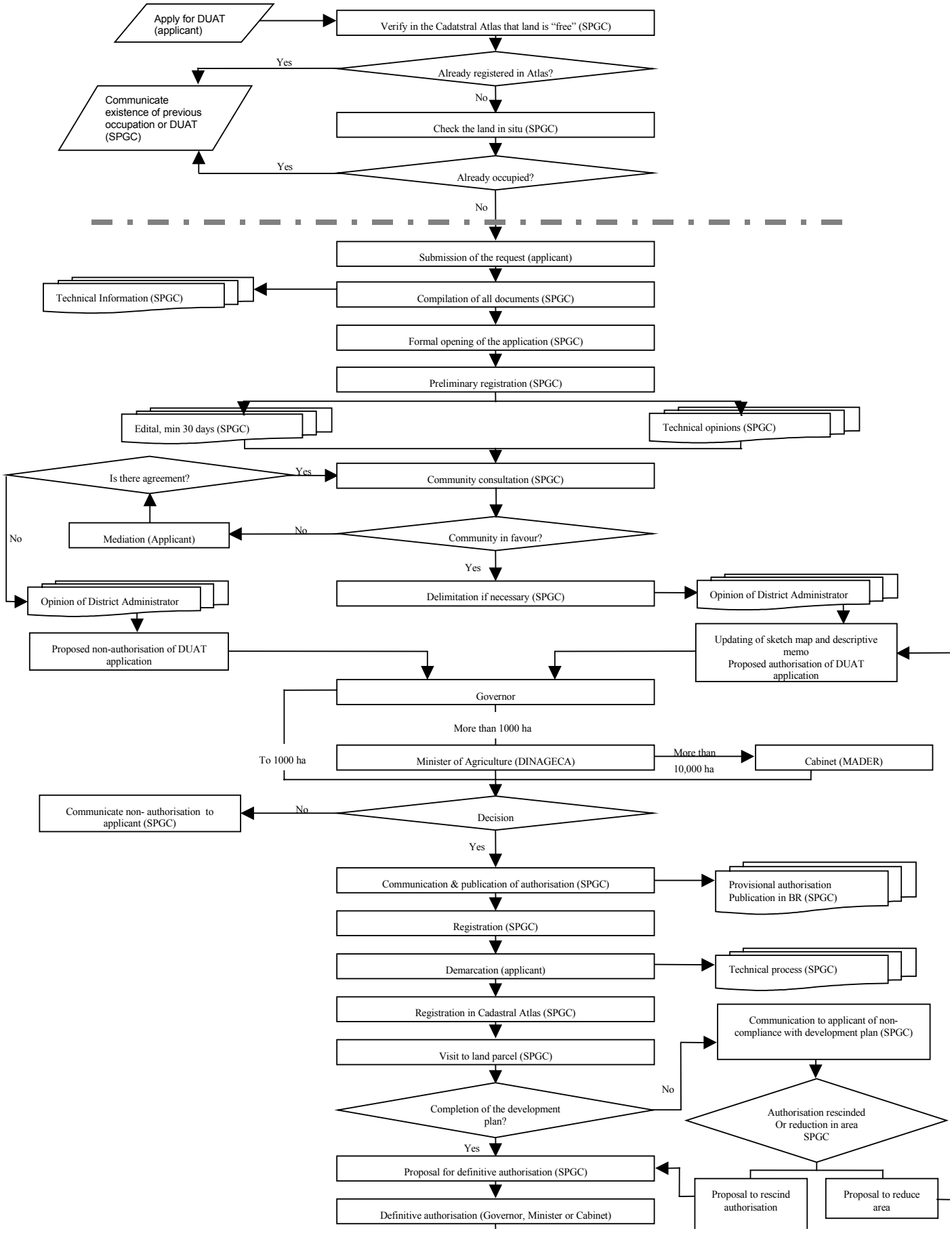
this renewal period, further renewal of the rights can only be achieved through a new application[57]. This time limit of 50 years does not apply to residential applications[58].

The flow chart reproduced overleaf is the standard procedural treatment that should be given to each application for a DUAT[59]. This is based on a version used by DINAGECA until recently and which has subsequently been considerably simplified.

[57] Article 17(1) [LT], Article 18(2) [RLT]

[58] Article 17(2)(b) [LT]

[59] Based on DINAGECA draft version


Apply for DUAT (applicant)
Verify in the Cadatstral Atlas that land is "free" (SPGC)
Already registered in Atlas?
Yes
Communicate existence of previous occupation or DUAT (SPGC)
No
Check the land in situ (SPGC)
Already occupied?
Yes
No
Submission of the request (applicant)
Technical Information (SPGC)
Compilation of all documents (SPGC)
Formal opening of the application (SPGC)
Preliminary registration (SPGC)
Edital, min 30 days (SPGC)
Technical opinions (SPGC)
Is there agreement?
Yes
Community consultation (SPGC)
No
Mediation (Applicant)
No
Community in favour?
Yes
Opinion of District Administrator
Delimitation if necessary (SPGC)
Opinion of District Administrator
Proposed non-authorisation of DUAT application
Updating of sketch map and descriptive memo
Proposed authorisation of DUAT application
Governor
More than 1000 ha
To 1000 ha
Minister of Agriculture (DINAGECA)
More than 10,000 ha
Cabinet (MADER)
Communicate non- authorisation to applicant (SPGC)
No
Decision
Yes
Communication & publication of authorisation (SPGC)
Provisional authorisation Publication in BR (SPGC)
Registration (SPGC)
Demarcation (applicant)
Technical process (SPGC)
Registration in Cadastral Atlas (SPGC)
Visit to land parcel (SPGC)
Communication to applicant of non-compliance with development plan (SPGC)
No
Completion of the development plan?
Authorisation rescinded Or reduction in area SPGC
Yes
Proposal for definitive authorisation (SPGC)
Proposal to rescind authorisation
Proposal to reduce area
Definitive authorisation (Governor, Minister or Cabinet)

1.3.3.2. Delimitation applications for land rights acquired by communities

Local communities are awarded co-ownership rights to land that they occupy by operation of article 12(a) of the land law and 9(1) of the regulations, and do not need to request and acquire the rights through an application, as is the case with article 12(c). This right is the same as that acquired through application by private individuals and companies (a DUAT), except that it is not a limited term right but is granted in perpetuity.

Further, a community may request registration of the DUAT, acquired through occupation, in the cadastral atlas and the national register[60]. The process, referred to as delimitation contains the following procedural aspects[61]:

- A series of meetings with the community explaining the law and the processes involved, culminating in the election by the community of their representatives in terms of the legal process of delimitation[62].
- Approval of the process by the district administrator, including an indication of the reasons for the delimitation and an agreement on division of the costs of the process[63], signed off by at least the administrator (or representative) and the community representatives[64].
- A participatory planning exercise with the community to produce at least two maps of the land use types in the community (compiled by different land user sub-groups) and to identify limits with neighbouring community groups. These are used as the basis for a *cartograma* of the community land area, on which a sketch map at 1:50,000 scale will be based. Work completed in this phase must be recorded and reported on to the SPGC[65].
- The elaboration of a sketch map and a descriptive memorandum[66] of the community delimited land, done through fieldwork involving the community, neighbouring

[60] Article 9(3) [RLT]

[61] Article 7 [AT]

[62] Form 1 [AT]

[63] Form 2 [AT]

[64] Article 8(3) [AT]

[65] Form 3 [AT]

[66] Form 4 [AT]

communities and a team that must contain a technician with basic knowledge of surveying[67].

- An obligatory meeting involving the community, district administrator (or representative) and neighbouring communities at which the results of the delimitation process are presented. This must include presentation of the sketch map and the descriptive memorandum[68]. This meeting must be reported on and the report signed by representatives of those present[69].

After agreement at the previous meeting all the necessary documentation can be delivered to the SPGC who will verify that the process is complete and in terms of the law[70].

If all the documentation is correct the SPGC will record the delimited land in the atlas and the register[71], attributing a parcel number and issue a certificate to the community within 60 days of the presentation of the documents by the community[72]. Thus the rules and procedures for the delimitation and eventual demarcation of local community lands established in the Technical Annex essentially adopt a form of participatory rural assessment, designed to catalyse and facilitate the local community's self-definition.

1.3.3.3. The decision to delimit

The legal basis to the delimitation of the land area over which a community has acquired a DUAT is article 9(3) of the RLT, permitting a community to request this or for it to happen 'where necessary'. Guidance as to what 'where necessary' may mean can be found in article 6 of the AT which identifies 3 priority situations for delimitation. These are:

- where there are conflicts regarding land use or natural resources
- where the State or others intend establishing new economic activities and/or projects and development plans
- at the request of the community

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[67] Article 11(2) [AT]

[68] Article 12(2) [AT]

[69] Article 12(3), Form 5 [AT]

[70] Article 13(1), Form 6 [AT]

[71] Article 13(2) & (3) [AT]

[72] Article 13(4) & (5) [AT]. NB - The Technical Annex and the Norms and Instructions document issued by DINAGECA makes no reference to the Governor's authorisation that would seem to be required by article 35(d) of the land law regulations.

The attribution of the costs of the delimitation are also regulated by the AT[73] which states the following:

- Where there is conflict between or within communities or between communities and 'good faith' occupants, the decision as to costs is made by the 'local public administration' (presumably referring to the district administrations)

- Where an investment, project or development plan is contemplated the costs are borne by the investors involved in this

- Where a community request delimitation, the costs are borne by the community

The standard costs that would be involved in an application for land delimitation include the following:

- Facilitation of participatory planning and mapping processes and support to community decision-making body in the form of information and documentation of the process. These may be costs incurred by an NGO or other suitably qualified entity from the private sector.

- District Administration costs: these would involve the costs incurred through participation of district administration representatives in the formal meetings involved and, if necessary, in other phases of the delimitation.

- Survey costs: these would include the costs of surveying and mapping of the delimited area, production of a sketch map and completion of a descriptive memorandum concerning the land. These may be costs incurred by the SPGC or by private sector companies qualified to do such work. For the SPGC these are fixed costs according to the area, equipment used and number of personnel involved .

- SPGC costs: these would cover the participation of SPGC personnel in the formal meetings, verification of the sketch maps and the registration and processing of the delimitation.

1.3.3.4. Community representatives

Decree 15/2000 together with the regulations set out in Ministerial Diploma 107-A/2000 define who are the representative authorities for local communities (and other social groupings of people), the methodology of recognition of this authority, their rights and obligations and the

[73] Article 6(4) [AT]

matters in which the local State organs (such as district administrators) must consult and act in co-ordination with such local communities. It is not clear, however, whether the Land Law and Technical Annex must be read in conjunction with Decree 15/2000 and Diploma 107-A/2000 or whether the land legislation itself establishes 'autonomous' procedures for the election of the 3 to 9 members of a community that will be representatives during the delimitation process. Those outside of government tend to emphasise and support this interpretation, whereas government officials see these laws as related and the role of the representatives as one limited to the process of registration itself rather than involving any subsequent land management responsibility. This has been the case with some of the land committees established as a result of delimitation processes in Zambézia which have subsequently been marginalized by local government authorities in decisions relating to land concession applications.

The definition and regulation of community authorities is significant, however, in that the process is autonomous. The selection and criteria procedure is defined by the community itself (Article 8 of Diploma 107-A) and may be a traditional, government-linked or other authority. This diversity of local authority legitimacy reflects what numerous researchers have found, namely that at the local level the wielding of authority depends more on the actual respect and authority derived from the community rather than any designation by virtue of a traditional claim, a State appointment or representation of a political party (Garvey, 2000).

1.4. Water

1.4.1. The historical development of policy

A National Water Policy (NWP) was approved in August 1995[74] and represents the initial formulation of water sector policy by the government in the post conflict era. The NWP accords high priority to the basic needs of the poor in respect to water supply and sanitation and envisaged the participation of consumers in relevant planning and management of water supply systems.

The major principles embodied in the policy are:

- Designed to balance economic development with poverty alleviation
- Recognition of social and economic value of water
- Government role as facilitator and regulatory authority not implementation – decentralised context
- Need for capacity at lower levels – decentralisation to autonomous entities at basin level (basin committees)
- Private sector viewed as major player in provision of services
- Integrated management as a means to maximise the benefits to communities, promoting accountability for environmental impact and conservation of resources for future generations – closely aligned to National Environmental Policy

Priorities according to this policy are:

- To target provinces with lowest coverage rates
- The rehabilitation of small piped water systems
- The establishment of mechanisms of sustainable operation and maintenance
- Community contributions to increase & private sector involvement in provision BUT maintain public sector capacity in rural water sub sector to intervene where private sector not viable

The NWP led to the development of the Rural Water Transition Plan, a working document that spells out the major changes required in rural institutions over a five-year period. This plan

clarified the operational strategy at provincial level. Water & Sanitation Departments (DAS) were established within the provincial Directorates of Public Works and Housing (DPOPH) and rural sanitation was also included in these DAS (for the first time). Parastatal construction agencies were to be gradually transferred from government management.

Major challenges outlined in the document:

- Province defining how to move towards new arrangements according to operational conditions, market, funding, etc.
- Development of policy and legal frameworks
- Establishing institutional capacity to fulfil provincial plans

A national low cost sanitation programme (PNSBC) included the piloting of rural sanitation programmes in three provinces (Cabo Delgado, Manica & Tete). This phase finished in 1998 and conclusions were agreed at a national seminar that year. [Transfer of PNSBC to water sector – summary document 1999-2003. (PNSBC/UNDP, 1998)].

After development of NWP the DNA established a department (DPI) to draw up and monitor a sector investment programme – the initial programme is extended to 2004.

There are further principles established in the Water Tariff Policy[75]:

i. User payer
ii. Environmental protection/Efficient use of water
iii. Equity
iv. Sustainability
v. Decentralisation/participatory management

1.4.2. Description and analysis of key policy concepts

The legal framework for water supply is still incomplete since regulations for several areas of the Water Law remain undeveloped.

Other sector legislation, such as mineral resources and water, also contains provisions that provide for customary use. While not specifically mentioning the term 'local community', the legislation recognises the inherent, customary right to access to and use of water.

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[74] Resolution 7/95 of 8th August, 1995

[75] Resolution No. 60/98 of 23rd December, 1998

1.5. Forest and wild resources

1.5.1. The historical development of policy

A single national directorate within the Ministry of Agriculture and Rural Development currently manages both forest and wildlife resources in Mozambique[76]. During the colonial period there was a separation of these management functions, between the government structures of 'Agriculture and Forestry Services' (forest) and 'Veterinary Services' (wildlife).

Post independence policies were geared towards the industrial processing of forest products (mainly timber for railway sleepers and parquet), the utilisation of forest and wildlife products, conservation and a major focus on reforestation programmes. A nationalisation process after independence saw the integration of all existing enterprises into either MADEMO EE [*Madeiras de Moçambique*] or EMOFAUNA [*Empresa Moçambicana de Fauna*]. Neither of these State companies remained viable enterprises for very long and the ensuing period of war lead to their more or less complete disintegration.

The government management and control of forest and wildlife resources remained institutionally separated until 1981, until which time both functions were integrated into national directorates that had wider portfolios. In 1982, the management functions were upgraded within the existing (separate) directorates and in 1987 they were integrated into a single National Directorate of Forest and Wildlife [*Direcção Nacional de Florestas e Fauna Bravia* - DNFFB].

The introduction of a structural adjustment programme (the PRE – *Programa de Reabilitação Económica*) in the same year initiated a gradual privatisation process within the State companies and the government began to develop management programmes and principles that focussed on native forests and 'social' forestry, concepts that were captured in a strategic document developed in the late 1980s[77].

The development of the existing policy framework and a corresponding sector investment programme for the Forestry and Wildlife sector in Mozambique began in 1991 with the drawing up of a provisional programme under a UNDP/FAO team. This was apparently the first attempt at a 'programme approach' within the agriculture sector (Cuco, 2001). A 'Forestry Pre-Programme', based on the 1991 design phase, began in 1993 for a period of 18 months with finance provided from the UNDP.

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[76] There has been a recent transfer of management responsibilities for a series of national reserves and parks from the DNFFB to the Ministry of Tourism.

[77] "Strategy for Forestry Development and Guidelines for the Development of Wildlife" ["*Estratégia de Desenvolvimento Florestal e Linhas gerais de Desenvolvimento de Fauna Bravia*"]

In 1995, a 'National Programme of Forestry and Wildlife (1995-2000)' was prepared by the DNFFB, followed in 1996 by the development of an 'Investment Programme for the Forest and Wildlife Sector', drawn up with technical assistance from FAO/UNDP. Also in 1996, a 'Forestry and Wildlife Policy and Strategy' was developed. None of these processes seem to have been accompanied by any formal process of consultation with civil society organisations.

The investment programme was subsequently revised in 1997, following a Joint Donor Pre Appraisal Mission and integrated into the broader PROAGRI programme. The Forestry and Wildlife Policy and Strategy document was adopted by the Council of Ministers in 1997[78]. Prior to this, no new forestry laws had been promulgated since 1965 and no laws relating to wildlife since 1978. This was followed by the passing of the new Forestry and Wildlife Law in 1999[79] [LFFB], a law which again appears to have been developed with very little consultation during its drafting and which has been greeted with dismay by some of those who worked on the land law and policy development processes. The consultation process was seen as being limited to 'foresters' and 'technicians' and did not involve other important organisations with more connection to the social aspects of the law. Attempts by donor organisations to establish steering committees attached to high-spending projects and programmes have borne little fruit although more recent attempts by DfID to support the establishment of a "policy working/thinking group" within the departments' internal structure and involving donor and forestry project representatives appear to have been welcomed and approved by the department.

Draft regulations to the LFFB have been circulated to interested parties in recent months and at least one national workshop to present and discuss these has been held. The regulations are presently awaiting approval by the parliamentary commissions, after which they will be presented to parliament for adoption. Comments made here relate to the draft regulations as presented to the commissions, except where explicit reference is made to the standing regulations presently in force.

1.5.2. Description and analysis of key policy concepts

1.5.2.1. Inherent rights

The principles enshrined in the LFFB are similar to those contained within the Land Law, but the content and approach of the legislation itself is markedly different. Indeed, the only key principle that is stated as unequivocally as it is in the Land Law is the reservation of ownership of all forest and wildlife resources to the State[80]. The LFFB does commit the State to practise the

[78] Resolution 10/97 of 7th April

[79] Forestry and Wildlife Law [*Lei de Florestas e Fauna Bravia*] Law 10/99 of 7th July [LFFB]

[80] Article 3(a) [LFFB]

conservation, management and utilization of forest and wildlife resources without prejudice to customary practises and recognises the role of 'local communities' in the preservation and conservation of biodiversity. It does not, however, permit a stronger manifestation of 'ownership' and control over forest resources, which by contrast can be found in the provisions of the Land Law[81].

The LFFB starts by repeating the Land Law's definition of a 'local community' but adds 'hunting' to the definition as one of the areas considered as 'safeguarded' by the local community[82]. This is a positive change, since it recognises a further purpose for which customary user rights have existed. However, the LFFB only recognises these customary rights to forestry and wildlife resources for *subsistence* purposes. Instead of going beyond this, to recognise more fully an inherent right to the resources (which could then not only be safeguarded by the community, but used by them as a natural capital asset with which they could negotiate), the law establishes a licensing framework for development and exploitation of such resources on a commercial basis. While it is true that members of local communities can apply for and hold the licences for hunting and exploitation of timber resources, they are required to do so (mostly) in terms applicable to any other user[83] (see below).

The LFFB does hold the possibility for communities to 'register' the fact that a particular forest area holds cultural and religious significance for them. Article 13 defines such areas as "zones of historical-cultural use and value…destined for the protection of religious interests and other sites of historical importance and cultural use, in accordance with the norms and customary practises of the respective local community"[84]. Within such areas the law permits the use of resources in terms of customary practises. The draft regulations contain provisions that amplify how these areas may be registered; to obtain this status, they must be officially declared by the provincial

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[81] Commentators take different approaches to this difference: "*The new Forestry law adopts a very different approach to the land law and does not recognise any inherent right that a community might claim over the resources that happen to be on 'their' land. All forests and similar resources are the property of the state and the state licences their use in various ways. In effect trees and wild animals are legally separated from the land and subject to distinct provisions. This strips communities of any inherent rights over these resources that they can subsequently use to secure the best possible deal with logging or eco tourist firms for example*." (Tanner 2000). Garvey (2000), however, considers both laws to be inherently the same: "*The Forestry and Wildlife Resources Law* (sic)*, like the Land Law, establishes an enabling framework rather than securing the role of local communities and residents of those defined or undefined communities in the development and exploitation of forestry and wildlife resources*."

[82] Article 1(5) [LFFB]

[83] Article 18(3) [RLFFB]

[84] "As zonas de uso e de valor histórico cultural são áreas destinadas à protecção de florestas de interesse religioso e outros sítios de importância histórica e de uso cultural, de acordo com as normas e prácticas costumeiras das respectivas comunidades locais" Article 13(1) [LFFB]

governor and geographically delimited, although the exercise of customary rights within the areas is not prejudiced by the absence of this declaration or the delimitation of the area[85].

1.5.2.2. The involvement of local communities

Article 3 of the LFFB contains a list of principles upon which the law and its regulation are to be based. Amongst these are the following:

- "of equilibrium: the policies of social and economic development and the preservation and conservation of biodiversity must involve local communities, the private sector and civil society in general, with the object of advancing a sustainable development in the present and for future generations;" [86]

- "of harmony between local communities and local organs of the State: the promotion of conservation, management and utilization of forestry and wildlife resources without prejudice to customary practises and in conformity with the principles of conservation and of the sustainable utilization of forest and wildlife resources, within the framework of decentralization;"[87]

- "of private sector participation: involvement of the private sector in the management, conservation and exploitation of forest and wildlife resources, with a view to adding value and imprinting greater development for local communities;"[88]

Already here it is possible to see some distinctions between what the government considers as appropriate roles for the various sectors of civil society; whilst communities are to participate in the 'preservation', 'conservation', 'management' and 'utilization' of resources, it is the private sector that may involve itself in the 'exploitation' of those resources. That aside, the principles in the law do provide a platform for greater community involvement and are reinforced later in the text, where it is stated that "Management [of forest and wildlife resources] must ensure the

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[85] Article 11 [RLFFB]

[86] "do equilíbrio: as políticas de desenvolvimento económico e social e de preservação da biodiversidade, devem envolver as comunidades locais, o sector privado e a sociedade civil em geral, com o objectivo de se alcançar um desenvolvimento sustentável no presente e para as gerações vindouras;" Article 3(b) [LFFB]

[87] "da harmonia com as comunidades locais os órgãos locais do Estado: promoção da conservação, gestão e utilização dos recursos florestias e faunísticos sem prejuízo das práticas costumeiras e em conformidade com os princípios da conservação e da utilização dos recursos florestais e faunísticos, no quadro da decentralização;" Article 3(e) [LFFB]

[88] "da participação do sector privado: envolvimento do sector privado na gestão, conservação e exploração dos recursos florestais e faunísticos, visando atribuir maior valor acrescentado, e imprimir maior desenvolvimento para as comunidades locais;" Article 3(e) [LFFB]

participation of local communities in the exploitation of forestry and wildlife resources and in benefits generated by resource utilisation"[89].

The regulations, still in draft form, have been long awaited, largely because they were expected to flesh out some of these vague principles and commitments. The extent to which they have done this is limited and there remain many unanswered questions in relation to the State's promotion of community involvement in forest and wildlife resource management. These include the important issues of benefit sharing and mechanisms that ensure that local resource management fora are able to operate clearly and effectively.

The law had already foreseen the creation of representative 'local resource management councils' that would be responsible for management of resources in general areas and which could be composed of several local communities, private sector stakeholders and local State administrative structures[90]. In addition, there was a further clause that seemed to allow for the possibility of meaningful local community control over resources in a particular area: "The State may delegate management responsibility ... to local communities"[91]. The regulations take these concepts further, rather ironically starting with a specific reservation of powers to the State: under the heading 'General Norms' in the chapter referring to management of forest and wildlife resources is the following:

- "The management, administration, control and monitoring of activities of utilization of forest and natural wildlife resources as well as the respective ecosystems in the national territory are the competency of the State, through the Ministry of Agriculture and Rural Development, without prejudice to other entities with specific legal competencies."[92]

This is a standard clause from legislation of this kind, identifying the State entity that is responsible for the sector. It then becomes important to identify what "other entities" may consist of and what specific 'legal competencies' they are able to hold. Amongst these 'other entities' are other organs of State (such as the Ministry of Tourism) but included also are the local resource management councils, whose establishment was envisaged by the LFFB.

The regulations specify the following important points in respect to these councils:

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[89] Article 31.3 [LFFB]

[90] Article 31(1) [LFFB]

[91] "O Estado pode delegar poderes de gestão dos recursos florestais e faunísticos...às comunidades locais, associações ou ao sector privado..." Article 33 [LFFB]

[92] "A gestão, administração, controlo e monitoramento das actividades de utilização dos recursos florestais e faunísticas naturais bem como dos respectivos ecossistemas existentes no território nacional é da competência do

- they will be comprised of an 'equal' number of representatives from four groupings, identified by the RLFFB as being local communities, the private sector, the NGO sector and the State;[93]

- the councils are 'collective persons' and have legal personality, independently of their members;[94]

- within defined territorial or administrative areas the councils have powers to[95]:

    - pronounce upon requests for forest and wildlife exploitation licences;
    - take measures to ensure that the sustainable use of resources contributes to rural development and especially of local communities;
    - pronounce upon and propose solutions to conflicts regarding resource use;
    - facilitate and assist State entities responsible for enforcement of resource use regulations;
    - propose measures for the improvement of policy and legislation regarding forest and wildlife resource use;
    - unlock actions relating to the control of forest fires;
    - pronounce upon proposed management plans for resources within their area of jurisdiction.

- the councils have veto power over 'projects' which are not compatible with rural development and the sustainable use of resources;[96]

However, the all-important process of the delegation of powers, envisaged in article 33 of the LFFB, is not dealt with by the regulations and is instead left for future specification in a Technical Annex to be developed. The wording of this clause makes it unclear as to whether this involves the details regarding the delegation of powers to the natural resource councils (as detailed above) or just to those instances where the management of a particular natural resource

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Estado, através do Ministério da Agricultura e Desenvolvimento Rural, sem prejuízo de outras entidades com competências legais específicas." Article 94 [RLFFB]

[93] Article 105, [RLFFB]

[94] Article 106, [RLFFB]

[95] Article 107(1), [RLFFB]

[96] Article 107(3), [RLFFB]

area is being handed over by the State to another entity[97] (including, potentially, a local community).

Community involvement at a direct local level is also provided for through the stipulation that local communities must be consulted on the allocation of forest concessions[98], and must be allowed free access to the concession area and resource use for subsistence purposes[99].

1.5.2.3. Benefits to local communities

The other policy concept, proposed by the LFFB, and developed by the RLFFB relates to the method and accrual of benefit to local communities from forest and wildlife resource usage. The State's licensing framework for resource exploitation involves the payment of fees by licence holders. Local communities are, in terms of the LFFB, awarded a percentage of this revenue[100], and the RLFFB proposes that this should be set at a level of 20%[101]. There are, however, restrictions placed upon what this revenue may be utilized for: the RLFFB specifies "collective benefit" and the conservation of natural resources in the zone in question[102]. Again, the mechanisms by which these payments are to be made, distributed and utilized is left for further regulation through a Ministerial Diploma[103].

The RLFFB deals also with the issue of enforcement of the laws, regulations and licence arrangements. Once again the regulations begin by attributing this role solely to the State, through the DNFFB, except where expressly attributed to other organs[104]. The regulations recognise an unspecified role of 'community agents' in the process of enforcement, as well as of the management councils, agents of public security and other functionaries of the Ministry. Participation in the apprehension of transgressors gives community agents a 25% share of any resulting fine[105].

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[97] "Compete ao Ministro de tutela definir, através de um anexo técnico, os termos e condições para a delegação dos poderes de gestão, às comunidades locais, ao sector privado, organizações e associações ou a estes em parceria com o Estado, visando o envolvimento destes na exploração, utilização, conservação dos recursos florestais e faunísticos." Article 109 [RLFFB]

[98] Article 17(2) [LFFB]

[99] Article 18 [LFFB]

[100] Article 35(5) [LFFB]

[101] Article 112(1) [RLFFB]

[102] Article 112(2) [RLFFB]

[103] Article 112(3) [RLFFB]

[104] Article 118 [RLFFB]

[105] Article 123(1) [RLFFB]

1.5.3. Procedural aspects

1.5.3.1. The acquisition of simple licences for timber extraction

The standing regulations to the LFFB set out a procedure for obtaining a 'simple licence' for the cutting or exploiting of any forest product, whether logs, firewood, poles, charcoal etc. These are allocated on a yearly basis, theoretically in the first three months of the year when exploitation itself is not allowed[106].

The applicant fills in a form stating how much of the particular type of product he wishes to extract, and from which area. For logs, different rules apply if he represents an "industrial" company (i.e. with his own sawmill) or simply a logging contractor who will cut logs and sell them on. In the latter case (the 'simple licence') the operator is restricted to cutting 500 m3 in a year, of all species combined. In the case of an 'industrial licence', a larger volume may be cut in negotiation with the SPFFB, based on an estimate of the timber volume available in the area sought.

Theoretically, SPFFB staff visit the area to approve the licence, and a simple sketch map is drawn to delimit the area in which cutting may take place. For a 'simple licence' the area exploited must be no more than 1000 ha, but a larger area may be obtained by an "industrial". If the area is approved, a licence fee is calculated, based upon the volumes of the species required. This fee is payable whether or not the operator cuts his full quota during the year. Normally (to avoid SPFFB staff handling large amounts of cash) this must be deposited in the bank and a letter of credit presented in order for the licence to be cleared. In some cases payment may be made by instalment through the year.

Under the newly proposed regulations, the exploitation of forest resources is still permitted under the regime of a 'simple' licence, even though the DNFFB has stated its intention to emphasise timber exploitation in the future through the award of forest management concessions. The 'simple licences' are only available to Mozambican citizens or collective persons, or to local communities. Applications are restricted, as with the previous regulations, to a single licence per operator per year to a limit of 500 cubic metres of timber and to a contiguous land area not exceeding 1000 hectares[107].

The requirements for a successful application are as follows:

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[106] Cutting of logs and other products takes place from April to December, although this seasonal regime does not always appear to be followed.

[107] Article 19 [RLFFB]

- The request, with proof of nationality and the essential elements of identification of the area within which the licence is sought, is submitted to the provincial governor [through the *Serviços Provinciais de Floresta e Fauna Bravia* (SPFFB)].

- A topographic map of the area at a scale of 1:50,000 must be presented in triplicate to the SPFFB.

- The applicant must include in the request a simplified management plan for the area. This has to contain a preliminary inventory of the principal forest species occurring in the area, an estimate of the quality, quantity and nature of the products, an indication of the average annual takeoff, a description of the industrial methods and mechanics to be used throughout the harvesting cycle and the envisaged level of natural regeneration in the area[108]. The SPFFB must also be informed of the planned market for the products[109].

- Upon receipt of an application for a simple licence, the SPFFB are responsible for verifying the legal status of the applicant and the contents of the management plan, including a verification of the capacity of the applicant in terms of tree felling and the collection and transport of timber. The applicant supports the costs of these processes, which include a visit to the area[110].

- The application must also include a declaration from the local administrative organs of the State to the effect that the local communities in the area are in favour of the award of the concession. There is a further requirement to indicate the number of jobs and other benefits accruing to the community.

1.5.3.2. Applications for forest concessions

Although the new law does not go into much detail regarding the procedures and requirements for the award of forest concessions, the following elements are important:

- "Forest concession" means the demarcated public area granted to a specific individual through a concession contract, and meant for forest exploration for industrial purposes, subject to the observance of a previously approved management plan.

- Holders of exploration licences must be able to guarantee the processing of the forest products. Essentially this will mean ownership of a sawmill. Hence, although local

[108] These are significant improvements to the previous legislation on simple licences that allowed exploitation without any obligation for resource management and maintenance.

[109] Article 21(2) [RLFFB]

[110] Article 23(1) & (2) [RLFFB]

communities are specifically mentioned as being eligible for forest concession contracts it is very unlikely that they will fulfil the obligations imposed by law. Holders will have to guarantee that no more than 40% of the annual production will be exported as unprocessed logs[111].

- The concession contracts are subject to the maximum deadline of 50 years that can be extended for equal periods upon the request by the applicant.

- A topographic map of the concession area must be provided by applicants for concession contracts in addition to a descriptive memorandum and an initial forest products inventory.

- The local administration must provide a guarantee that local communities are in favour of the application.

1.5.3.3. Wildlife hunting licences

Although hunting for subsistence purposes is recognised as a right that 'local communities' possess in terms of the law, and they are exempt from the payment of taxes in this regard, there are restrictions placed upon this right. It may only be practised in areas that are for multiple use, areas that have been zoned as official hunting zones or of being of historical/cultural value and in productive forest areas. To both practise the hunting and to benefit from the tax exemption a person must be recognised by a particular community (in accordance with customary norms and practises) as a 'community hunter'. This right is not transmissible and must be verified by a state entity before it comes into existence.

One of the several forms of hunting licences that can be obtained relates to the capture of small game for subsistence purposes by local communities. Here, the law states that the newly formed local committees will be empowered to issue the licences, within the framework of management plans or sustainable norms (which of these applies depends on the area in which the hunting is to take place); however, the draft regulations are confusing in this respect and do not refer to the role of the local committees at all, stipulating instead that the licence applicant must be 'recognised' as a local hunter. Licence approval done once per year to the governor via the SPFFB[112].

[111] This provision is aimed at boosting the local processing industry and the export of value-added wood products.

[112] Article 68 [RLFFB]

1.6. Cohesion between policy objectives and government planning and implementation processes

1.6.1. The Five Year Plan

Although not an executive instrument, the Five Year Programme for 2000-2004 adopted by the Mozambican Parliament in March 2000[113] is a useful indicator of government will and an early indication of where differences between practice and policy may arise. This plan gives an overview of the way in which the government understands its own priorities and obligations in relation to both the existing constitutional obligations, which were newly placed upon it by the amended constitution of 1990, and the challenges that have arisen through the adoption of specific sector policy goals.

The structure of the five-year plan also reveals something about the governments thinking in relation to the nature of the challenges that it has set itself. Section 2 of the plan is entitled "Social Development" and it is in this section that the government lays out its action plan in relation to the environment, clearly indicating that it considers this to be a social issue. It is here where mention is first made of community involvement in the management of natural resources. Amongst the actions to be realised in achieving *environmental* policy objectives is the realisation of "capacity-building programmes for communities in the management of natural resources, with priority for the rural areas of greater environmental sensitivity and risk, including the dissemination of existing legislation"[114].

Similarly, in the section that deals with Agriculture and Rural Development [s3.3], one of the 'multi-sector strategies' adopted is to guarantee the sustainable use of natural resources through the involvement of communities in the management and use of land, water resources, forestry and wildlife for their own benefit[115]. In the sub section dealing with agriculture, the document lists a series of action plans in relation to the sustainable use of natural resources. Those of particular relevance include the following:

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[113] Resolution No. 4/2000 of 22nd March (Government's Five Year Plan for the Period 2000-2004)

[114] s2.7 "Realizar programas de capacitação das comunidades na gestão dos recursos naturais, com prioridade para as zonas rurais de maior sensibilidade e risco ambiental, incluindo a divulgação da legislação existente." All translations in this section are unofficial translations by the author

[115] s3.3 "Garantir o uso sustentável dos recursos naturais, através do envolvimento das comunidades na gestão e utilização da terra, recursos hídricos, florestas e fauna bravia, em seu próprio benefício."

- Guarantee security of tenure rights to land, in particular at the level of family producers and promote its better management[116];

- Improve the management of forest and wildlife resources, to ensure that local communities benefit from the use and enjoyment of natural resources and assist in their conservation[117];

- Assist forestry production and the development of harmonious activities, to guarantee a sustainable development of the forestry and wildlife industry, of hunting and of the restocking of wild animals[118];

In the sub section dealing with rural development, the following action plan is included:

- Initiate the development of a legal environment that permits collective management at a community level, emphasising the representative nature of its institutions and its capacity in obtaining and retaining income coming from public contributions[119];

In the sub section dealing with the fisheries sector [s3.10]:

- Promote associations of fishers and guarantee their involvement in the management of fisheries, including their regulation, investigation, extension and commercialisation with priority to artesian fishing[120].

Included in the government's objectives in respect of land [s3.11] are those that follow similar lines, namely:

- Ensure the greater involvement and participation by local communities through their own administrative and social organisations in the land use rights allocation process and conflicts arising there from[121];

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[116] s3.3 "Garantir a segurança e posse da terra, em particular, ao nível do produtor familiar e promover a sua gestão melhorada;"

[117] s3.3 "Melhorar a gestão dos recursos florestais e faunísticos, de forma a assegurar que as comunidades locais beneficiem do uso e aproveitamento dos recursos naturais e apoiem a sua conservação;"

[118] s3.3 "Apoiar a produção florestal e desenvolvimento de actividades cinegéticas, de modo a garantir um desenvolvimento sustentável da indústria florestal e faunística, de caça e pecuarização dos animais bravios;"

[119] s3.3 "Iniciar o desenvolvimento de um ambiente legal que permita a autogestão ao nível comunitário, enfatizando a representatividade das suas instituições e a sua capacidade de obtenção e retenção de receitas provenientes de contribuições públicas;"

[120] s3.10 "Promover associações de pescadores e garantir o seu envolvimento na gestão de pescarias incluindo a fiscalização, investigação, extensão e comercialização com prioridade para a pesca artesanal."

- Simplify the bureaucratic administrative procedures in order to make the right of land use and benefit a more accessible and effective right[122].

It is interesting to note, in the section dealing with tourism [s3.5], the absence of any action plans relating to the encouragement of local community involvement in the development of the tourist sector in Mozambique, despite its considerable importance as a potential income generator. The section dealing with water [s3.13] is similarly silent regarding local community involvement in the management of water resources.

Section 4 of the governments five-year plan deals with the area of State administration and highlights the importance of the State restructuring process that is ongoing in Mozambique. Amongst the general objectives outlined in this section are commitments to the central position occupied by processes of decentralisation and deconcentration to the modernisation of the State[123].

The creation of autonomous local governance institutions is identified as the fundamental method of decentralisation in the country and as constituting a way of improving citizens' ability to ensure that State administration realises their interests, manages conflicts and administers services appropriately[124].

Two further important commitments come in the same section:

- Improvement of civil participation in the formulation, implementation and evaluation of sector policies of the government[125];

- Development of local organs of the State, involving the participation of communities at the grass roots level[126].

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[121] s3.11 "Assegurar um maior envolvimento e participação das comunidades locais, através das respectivas organizações sociais e administrativas, nos processos de tomada de decisão sobre os pedidos de utilização da terra e os conflitos que daí advierem."

[122] s3.11 "Simplificar os procedimentos administrativos e burocráticos por forma a tornar mais acessível e efectivo o direito que os cidadãos têm de uso e aproveitamento da terra."

[123] s4.1 "A descentralização e a desconcentração da administração pública é um dos pilares do processo de modernização do Estado. A transferência de atribuições e competências específicas aos órgãos locais, legitimando-os e concedendo-lhes instrumentos para a execução dos serviços, constitui uma base importante para o processo de descentralização."

[124] s 4.1 "A autarcização, é o modo fundamental do nosso processo de descentralização e constitui uma forma de melhoramento de condições para os cidadãos gerirem o bem público para a realização dos seus interesses, a gestão dos conflitos e a administração dos services."

[125] s4.1 "Melhoria da participação cívica e política dos cidadão na formulação, implementação e avaliação de políticas sectoriais do Governo;"

1.6.2. The General Guidelines for Rural Development and Inter-Sectoral Co-ordination Mechanisms

The General Guidelines for Rural Development and Inter-Sectoral Co-ordination Mechanisms[127] provide a useful outline for analysis of rural land and natural resource development, as well as representing a broad-based commitment on the part of Government to local community-based development. In many aspects the topic headings of the policy mirror the analytical framework for reporting the experience and evaluation of persons working in the field with local communities and government administration.

For reference, the following are the main topic headings of the General Lines for Rural Development:

I. Rural Development in Mozambique and Mechanisms for Inter-sectoral Co-ordination.

- A. Promotion of community participation as a prerequisite of sustainability;
- B. Decentralisation as an administrative option which can respond to the diversity of rural situations.
- C. The Promotion of inter-sectoral co-ordination aimed at a wide spectrum of participants

II. Bases for Rural Development

- A. Recognition of the value of local resources
- B. Need to reduce the transaction costs in rural areas
- C. Favourable terms of trade for rural goods and services
- D. Adequate financial services for local initiative
- E. Inter- and Infra-community relationships
- F. Below to above identification of public investment

III. Rural development in the Government's Five-Year Program and the substantive components of a rural action plan

- A. Micro-Finance Programme
- B. Micro-Project Programme

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[126] s4.1 "Desenvolvimento dos órgão locais do Estado, envolvendo a participação das comunidades a nível de base."

[127] Council of Ministers Resolution No. 3/98 of 1st April, 1998

C. Community Based Natural Resource Management Programme

D. Rural Communications and local organisations support programme

1.6.3. The Poverty Reduction Strategy and Plan (PRSP)

The PRSP is in its 4th draft presently and contains significant references to natural resources. One of the most revealing comments in the document is made at paragraph 43.4 where it is stated that "land is not, therefore, a limiting factor for poor peasants, but rather their capacity (and therefore means of production) to work the land they have in order to achieve acceptable levels of productivity" (PRSP, 4th draft). This statement captures the prevailing feeling within the MADER that a concentration on land rights per se will not solve issues of poverty in the country and is an indication perhaps of why there is little in the PRSP relating to a programme of confirming and registering community land rights. Indeed, the document tends to approach the removal of constraints regarding land administration and management from the perspective of private sector users of land rather than local communities. Although there is reference to the need to "guarantee rights of access to land and reduce the bureaucracy associated with land registration" it appears that this refers more to the applications for the award of a DUAT to private users than to the requests for confirmation of the DUAT on behalf of local communities.

Para 171.2 contains key measures to be taken in the land sector and refer to the need to organise the national land register, to simplify the process of land attribution and to strengthen the capacity in both material and personnel terms of those institutions responsible for the management and granting of land concessions. Only at the end of this list of action points is there a mention of the need "to inform peasants about their rights regarding land, and consult communities".

In this section of the PRSP, which deals with "Fundamental areas of Action" (para 170), there is recognition of the importance of the issues faced in rural areas and the extent to which rural people are dependent upon the use of natural resources. The PRSP refers to the fact that "a large majority of the population, as well as producers and the poor, lives in rural areas and are engaged in agricultural activities, forestry and livestock rearing, and these therefore deserve priority. The initiatives and actions of these populations and producers should be facilitated and subjected to the necessary long-term structural changes as a means of substantially reducing absolute poverty and their vulnerability. Action in this field should not be restricted, given that it is intimately linked to human development, the development of infrastructure and markets, as well as financial services".

Similarly, issues of governance are highlighted: "the initiatives and actions of citizens and their institutions requires appropriate measures from the public sector in terms of carrying through the necessary changes in the attitudes of State institutions and workers. Therefore, actions in the field of good governance, legality and justice are of the highest importance... deconcentration and administrative and financial decentralisation to provincial and district level are vital, since they will contribute to better interaction at local level between public institutions and the population (including the poor) in the fight against poverty through socio-economic development." However, where natural resources are concerned there appears to be a shift away from this cooperative governance approach and towards a more powerful stance on the part of the State. The document refers, for example, to the fact that "the State has a duty to protect natural resources, *exerting its power throughout the country*" (para 180) and that "the State has the *duty to promote and enforce the sustainable use of natural resources for the benefit of the country as a whole*, to prevent its irreversible exploitation, and to encourage the cultivation of renewable resources" (para 181, our emphasis).

Forestry and wildlife issues are dealt with at para 170.2. Here, some of the key measures identified are the need to "operationalise the national and local resources inventory system; re-establish and rehabilitate, together with the involvement of local communities and the private sector, the hunting reservations, forestry and wildlife reserves and national parks; develop and adopt policies and programmes for reforestation and the restocking of wildlife with the participation of communities and the private sector."

1.6.4. Proagri

With a five-year timeframe, the key objective of PROAGRI is to "create improved institutional mechanisms to finance and provide agricultural, forestry and animal husbandry services to the family sector, as well as the capacity to provide, in an efficient and effective manner, the essential public goods of the Ministry of Agriculture and Rural Development". It is a public investment programme that presently operates with a projected expenditure of over US $200 million.

Interestingly, the PRSP contains reference to the PROAGRI process as being "a participatory process, above all in terms of the extension component, (which) involved civil society, the private sector and donors. At the same time, the Annual Action Plans and Budget (PAAO) of the agricultural sector at provincial level are likewise prepared with the participation of the beneficiaries of the agricultural development programmes". Anyone who has been involved in provincial planning processes would agree that this overstates the case significantly.

1.7. Some policy concepts examined

1.7.1. The recording and 'certification' of rights by the State

The most important point to be noted in relation to community rights of use is that communities have no *right* to register those rights or to force the State to certify them; their registration and certification is subject to administrative discretion. In terms of the land law a community may only delimit their land and request its registration in the cadastral atlas if the district administrator approves this. Although the wording in the regulations is positive ("…at the request of local communities…the right of use and benefit of land acquired by occupation…can be identified and registered in the national cadastral atlas[128]") and although there is nothing in the LT or the RLT that stipulates that the process is subject to State approval, the AT introduces this requirement through the 'back door', by including, within the pro forma documentation, an obligatory bureaucratic process that must be signed by the district administrator[129]. The AT, including the pro forma documentation, is a legal instrument and therefore represents a necessary legal step in the registration of land use rights acquired through occupation[130]. Similarly, in the LFFB local communities are permitted to register a zone as a sacred forest and have it declared as such (thereby imposing limits on its use by third parties) but this is also subject to administrative discretion, this time at the level of the Provincial Governor.

It could be argued that the registration of the right is an unnecessary step, since the law has already recognised the use right; subsequent registration of this right by the State adds no additional legal force to it. But these rights, unregistered, cannot be transmitted. In the RLT there are provisions that state that any form of transmission of rights in respect of *prédios rústicos*, (namely rights in land, improvements, fixtures, buildings, *natural resources*) requires the recording and approval of the state entity that recognised the original, underlying land use and benefit rights[131]. Implicit within this provision is the fact that rights acquired by occupancy cannot be transmitted to third parties unless they have been previously recognised and certified through demarcation and the issuing of a title deed (for a local community or any of its members this means the need to invoke the procedures in the technical annex in order to delimit their land and receive a certificate).

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[128] "Quando necessário ou a pedido das comunidades locais, as areas onde recaia o direito de uso e aproveitamento da terra adquirido por ocupação segundo as práticas costumeiras, poderão ser identificadas e lançadas no Cadastro Nacional de Terras, de acordo com os requisitos a serem definidos num Anexo Técnico" Article 9(3) [RLT]

[129] Formulário 2, [AT]

[130] The relevant Formulário and the need to obtain the District Administrators consent for delimitation are not mentioned in the Training Manual recently published by the Land Commission. Copies of the other 5 formulários required in the process of delimitation are included but the training manual excludes this particular one.

[131] Article 15 [RLT]

In addition, the transaction costs involved in the delimitation of land, where this is being done at the request of a community, have to be covered by the community members. These costs, where they include surveying, etc. can be quite considerable.

1.7.2. 'Ownership' in the LT and 'participation' in the LFFB

It has been said of the LT and the LFFB that they are essentially the same; both laws, rather than securing a role for local communities in the development and exploitation of natural resources, merely create an enabling environment in which this can happen (Garvey, 2000). This is true, but hides an important difference in approach. The LT recognises customary rights and gives them the force of formal legal rights, whilst also encouraging the growth of private sector 'take-up' of land use rights. The enabling environment that is created by the LT is aimed at allowing local communities and private sector investors to negotiate agreements around land use rights, with the State role limited to ensuring that certain minimum standards are applied in these negotiations, that rights' registration complies with technical standards and that the taxation system functions effectively. The benefits to local communities are envisaged as coming in the form of payments or benefits to them as a result of negotiating the third party use of 'their' natural capital.

Conversely, the LFFB creates an enabling environment that is aimed at drawing local communities and the private sector into decision-making forums that have management powers over resources. These resources are still owned by the State, however, which recognises no customary or inherent right to them, except in certain limited ways (for example, the right to subsistence level use). Here, the benefits to local communities are envisaged as coming from a royalty paid by the State from the revenue that it collects for use of the resources and a say in how the resources are managed.

This is a fundamental difference in approach. When a resource has multiple stakeholders with conflicting objectives and differential power, it is common for governments to work out co-management arrangements. In this way they seek to strengthen local organization, and to provide technical assistance and to mediate the overlapping and conflicting claims on the resource. Governments favour this approach as it enables them to continue to exercise a regulatory role (important where there are environmental considerations), and to retain control over components of the resource of direct value to the State (Singh and Gilman, 2000). In Mozambique, there are multiple stakeholders with conflicting objectives in land as much as in forest and wildlife resources and yet it is the forest and wildlife sector that has taken the classic co-management approach. The land policy has elements of co-management, but these are more closely linked to the specific allocation of use rights in community areas and integrated into systems that permit community registration of rights.

It remains to be seen which of the approaches has the most positive impact on the livelihoods of the poor in Mozambique. It is important to note that one of the conceptual shifts to be made by governments, identified as part of the review of the World Summit for Social Development, was that "Government [needs to] give the poor real ownership, not just sense of ownership. People cannot be fooled by efforts to give them "sense of ownership" if it is not backed up by real ownership. Transferring greater responsibilities to people can only succeed if it is balanced by greater rights. (Singh and Gilman, 2000)

1.7.3. Consulting communities

Both the RLT and the RLFFB contain provisions designed to impose a legal requirement of seeking a local communities' opinion on an application for use rights in their area. The different language used in the two laws is, however, possibly revealing of their different philosophical approaches. Whereas in the RLT the process is referred to as a 'consultation' ("*consulta*") with communities, the RLFFB refers to the process as a 'listening to' or 'hearing' ("*auscultação*"[132]). This distinction echoes that drawn between phrases such as "in consultation with" and "after consultation with". The implication of the use of the word "*ascultação*" in the RLFFB may be that the communities should be heard, but that their opinion may not necessarily count for anything.

Both laws do in fact require decisions made during these processes to be reduced to writing and signed by a number of community representatives[133]. However, the specific clause[134] in the RLFFB sits uneasily within the rest of the text and was, in fact, only introduced late on in the process of drafting the regulations. The requirements for documentation that must accompany a request for a simple licence, for example, make no reference to this signed document, but merely to a declaration from the district administrator regarding the communities' opinion, reinforcing the idea that the *ascultação* is just that, a diagnosis by others.

Perhaps more important is the fact that little or no attention has been given to the possibility of a community opinion changing over time. The consultation processes, which are central to the policy objective of ensuring that local community participation is realised, are ***one-off*** events in both the laws. Articles 25(4) and 33 of the RLFFB have no specific requirement for another consultation with communities on application for renewal of a simple licence or forestry concession. Similarly, a land concession can be renewed beyond its initial period (which can be up to 50 years) without any need for further community consultation to occur. If a land

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[132] It is interesting to note that in a Portuguese dictionary published in the 1960s the only definition of this word was "stethoscope", or "an instrument for listening to and diagnosing problems". Its use here is probably closer to a "hearing".

[133] The RLT requires at least three representatives' signatures, the RLFFB mentions the need for at least nine.

[134] Article 39(5) [RLFFB]

concession within a community area is initially awarded for the maximum permitted period of fifty years, it may therefore be *100 years* before a community gets an opportunity to review the terms under which they originally agreed to the ceding of their DUAT. This can hardly be said to encourage responsible and sensitive behaviour on the part of the applicant for the use rights, who will be able to manage and exploit natural resources independently of what the local community may think of that management. This is one key area where the policy commitments of the government have not followed through into the process of legislative development[135].

There is evidence also of a lack of commitment in the government departments and organs responsible for these processes, as well as a wavering of political will at the Ministry. Community consultation processes, if done properly, are time-consuming and potentially expensive. They are best achieved in situations where there has been adequate time for preparation, where the parties are clear about what needs to be achieved, where the parameters for the consultations are clearly drawn and understood and where there is equal access to important information by all parties. None of the regulations or technical annexes to the laws assists in fleshing out what is an effective process of community consultation in keeping with the spirit of the law[136]. In a legal system that depends upon the detail being developed through the drafting of different legal instruments rather than the common law process of judicial precedent, this is a significant gap. Whilst Mozambican laws are quite capable of specifying the colour of the stamp to be applied to certain documents, in the case of 'community consultation' processes these particular laws leave the concept very open and vague.

This vagueness, of course, allows for a situation in which the policies can be subverted. This can happen at various levels. It may be in the formal development of departmental procedures and training manuals or the actual practise of these procedures. For example, the draft version of the Norms and Instructions document of the DINAGECA, in referring to the legislated requirement to submit land applications to community consultation processes, contains this sentence:

"It is necessary to return the pending applications to consultations with communities, but certainly we ought to open an exception for the case of areas that are less and not greater than 10 hectares"[137].

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[135] The norm for the time period for which concessions are granted is the maximum permitted of 50 years. There have been no indications from DINAGECA or the Land Commission that the concession periods could, as a matter of course, be granted for shorter periods.

[136] The following section of the report contains further analysis of the practise of consulting communities in Zambézia.

[137] "É preciso devolver os processos em curso à consulta ás comunidades, mas certamente que devemos abrir excepção para caso de áreas inferiores e não superior á 10 has". Section 9(5) Norms and Instructions DINAGECA

This effectively amounts to an instruction to departmental officials to ignore the LT in certain cases (those smaller than 10 hectares); the law does not sanction this exception and although the department may protest that it had good reasons for adopting this approach the negative impact on a policy objective is just as severe.

Similarly, from the same document:

"The public notice should contain…the date and place of the meeting to be held with the local communities…"[138]

This is a good stipulation, except that the pro forma document for the public notice that forms part of these instructions[139] does not have a space for this information to be recorded. Officials are much more likely to follow the format of the form (as being the simplest and most basic expression of the requirements of the law) than the instructions in the departmental procedures.

[138] "O edital deverá muito claramente conter informação sobre o projecto que o requerente quer realizar e a data e local do encontro para a realização do trabalho conjunto de consulta as comunidades. O encontro devera ter lugar durante o periodo de afixação do edital. Caso se justifique a realização de mais de um encontro o prazo maximo a observar é de 45 dias." Section 1(6) Norms and Instructions DINAGECA

[139] Form DINAGECA-M12, [Norms & Instructions DINAGECA]

2. INSTITUTIONS AND THE IMPLEMENTATION CONTEXT IN ZAMBÉZIA PROVINCE

This section of the report describes briefly the provincial context of the study areas and is intended to give a perspective on the real challenges involved in the implementation of natural resource policies that are geared towards local benefit and participation.

Generally, the new resource use rights, particularly to land, are commendable but they "have moved ahead of the institutions and structures that link them to resource rights and endowments…this means that current arrangements are not supportive of poverty reduction and tend to provide perverse incentives for unsustainable use" (DfID, 2000). Thus, while community resource management appears to be at the centre of legal and policy frameworks, the envisaged decentralisation of resource management is moving forward in the context of weak civil society and a lack of clarity over the transfer of rights, responsibility and authority. In this context, resources are being degraded by legal concession and licensing arrangements that provide poor incentives for sustainable use relative to short term profits and "facilitate a high level of illegal natural resource extraction" (ibid).

The second mapping report will look in more detail at the impact of the present arrangements on the livelihood strategies of the rural poor, as well as providing a more detailed analysis of the role that the level of access to various natural resources plays in the adoption of these strategies.

2.1. The general context in Zambézia province

Of all provinces in Mozambique, Zambézia is probably the one facing the greatest challenge in the implementation of new natural resource use policies. It is, relative to the rest of the country, highly populated and the majority of the population live in conditions of extreme poverty. Zambézia does, however, have significant natural capital that could provide real opportunities for poverty reduction. In addition, there are few opportunities for poverty reduction not linked to the use of this natural capital. The nature of the resource exploitation that is taking place, however, means that it is outsiders or local elites that generally capture the benefits. This has been the case historically in Zambézia where there has been, and continues to be, a high level of pressure from the private sector on land (in high fertility areas) and timber (in tropical hardwood forest areas). The current rates of exploitation mean that the natural resource base is coming under pressure, with forest resources already threatened.

2.1.1. Livelihoods

Natural resources form an extremely important basis for the livelihood strategies of the majority of the population. Opportunities for employment are scarce except in areas of plantation crops (primarily old tea plantations being re-established under private sector management and newly

established cotton outgrowing schemes) and there are few other means of surviving that are not directly connected to natural resource use.

Forest products are of enormous importance in the informal sector. It is estimated that 80% of the energy consumed in Mozambique comes from woody biomass. Moreover, the rural population rely on the woodlands for numerous products such as building materials, fruits, mushrooms, honey, edible insects, medicines, fuel wood and game meat. The forests also provide crucial soil nutrients for subsistence farmers who practice slash and burn or shifting cultivation. Similarly, land is an indispensable part of rural livelihoods, mainly as a source of family sustenance but also as a means to produce a limited range of cash crops.

2.1.2. Economy

Zambézia contributes 10 percent to the Mozambican GNP and the main activity, agriculture, contributes 66.3 percent to provincial income. The good climate and high precipitation allows the practice of agriculture throughout the year. In contrast with this richness in terms of agricultural production and existing natural resources, this province is the poorest. More than 68.1% of the provincial population live below the poverty line, concentrated especially in the rural areas (over 2 million people). Market opportunity is the main constraint in Zambézia; that is, the lack of markets to sell agricultural surpluses, which could bring about advantageous profits for the peasants (Chilundo and Cau, 2000).

Timber, together with copra and shrimps, are the province's most important export products, with timber constituting 50% of the province's exports, yielding revenues of around US$ 8 million per year (Brouwer, 1999). According to DNFFB figures the log volume licensed in 2000 for Zambézia was around 24,000 m3, but 28,000 m3 were produced, out of 85,000 m3 for Mozambique as a whole. Productive forest areas generally occupy an east-west belt in the centre of the province, running between Morrumbala and Gilé.

2.1.3. Institutional context and the role and capacity of government

2.1.3.1. State Institutional framework

One of the most important aspects of livelihoods as determined by varying access to resources according to differentiated social groups is the question of who decides on resource allocation at what level. This is linked with the state structure and functions from the national to the local level as determined by the State Administration Ministry on one hand, and the representation of the various government departments from the national to the local level on the other. It is clear from the diagram overleaf that as we go down the structure of governance, the representation and the functions become rather ambiguous. In fact at certain points, especially at the local level, there are other structures that emerge, especially traditional authorities and related hierarchies. This

means that as we go down this ladder positive law is increasingly substituted or complimented by customary law.

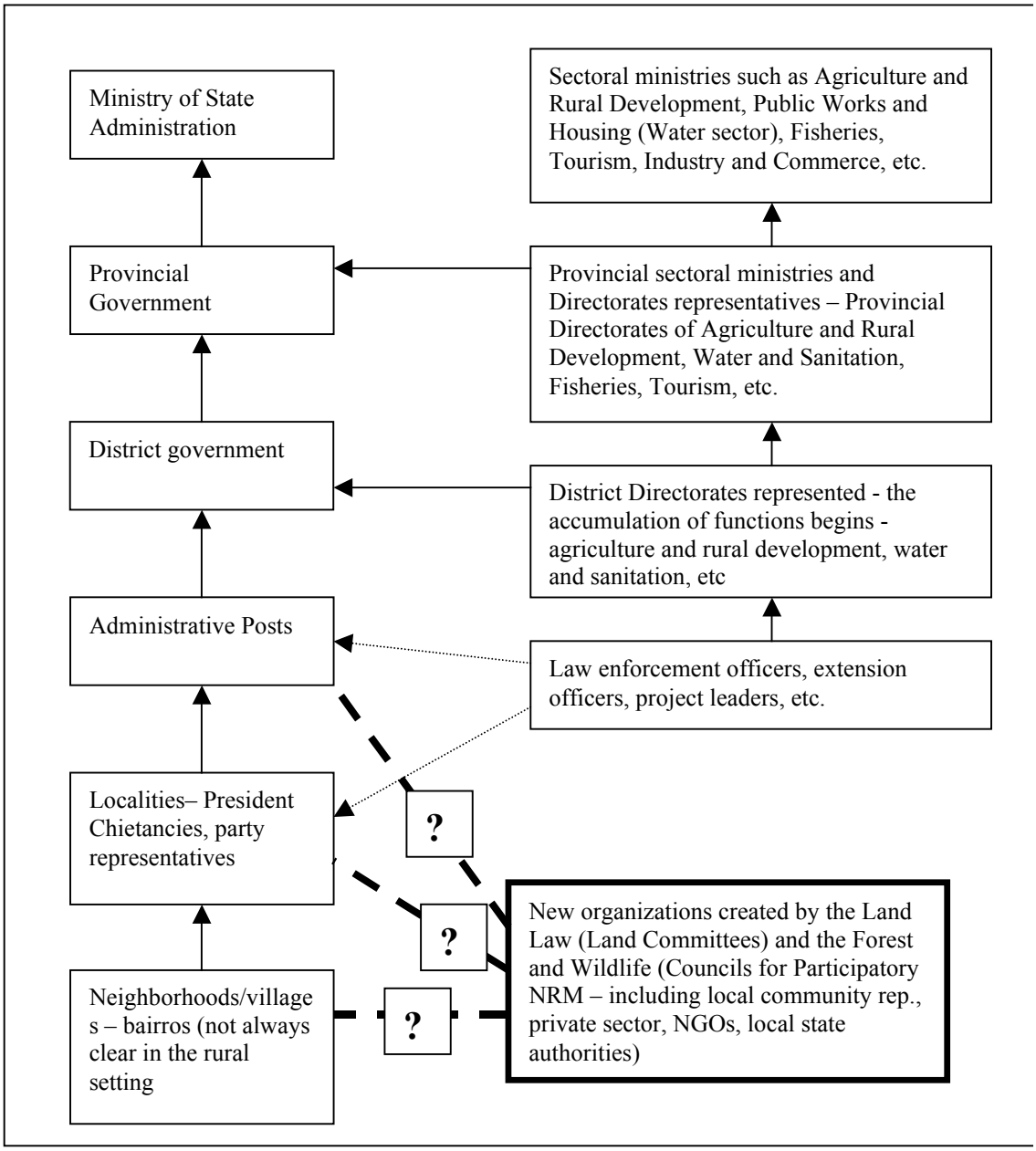
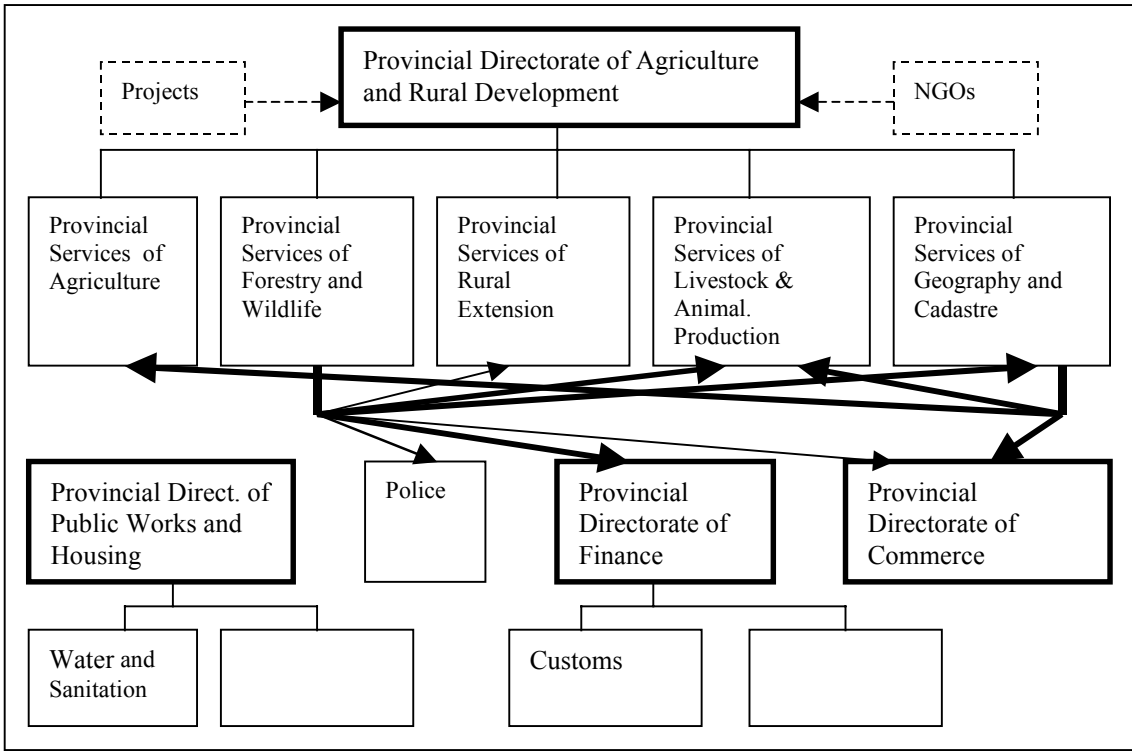


Figure 2 Illustration of state governance structures and subordination links, with local level institutions created under the decentralization of resources management policy

As with much of the rest of the country, there are two, often parallel systems of 'community' decision-making in the province. On the one hand there is a formal, government-established system from District to Administrative Post to Locality to *circulo* to *célula/zona*. On the other hand, there is a traditional hierarchy from a *muene* or *regulo*, down through the *samassua/mambo* and to the lower levels of c*apo de terra/fumo*. In some cases the *regedoria* (a zone of traditional authority, last formally mapped in colonial times but existing in many areas as contemporary zones of traditional influence) coincides with the locality; in other cases it may be contiguous with the

circulo or *célula* and in other cases a *regedoria* may straddle the formal administrative boundaries. In some cases the *regulo*, *muene* or *samassua* is also a representative in the formal government system, in other cases the two systems are antagonistic to each other.

Looking more closely at the pertinent directorates represented at the provincial level, particularly in Zambézia and the coordination of decision-making on resource allocation, the following diagram can assist to illustrate the relationships and level of coordination. It has to be noted that the diagram was designed with participation of the sectoral departments relevant to this research. Further discussions need to take place to explain the relationship between the provincial



departments and their counterparts at district level.

Figure 3 Institutional coordination for decision-making on resource allocation

The arrows indicate whether relationship and coordination on decision making for resources allocation particularly land, forest and wildlife resources is strong or not. As it has been indicated at the provincial level the mandate for land allocation and titling is with the Provincial Services of Geography and Cadastre (SPGC), while the forest concessions and licences are given by the SPFFB. Even though a thick arrow in the diagram indicates a strong coordination, in fact this is still being established. Other institutions such as finance, commerce and safety and security have sectoral policies that impact upon natural resource management.

2.1.3.2. Staffing levels in the provincial services

Both the provincial services in Zambézia have only poorly staffed offices in the provincial capital, Quelimane. Plans to establish 5 district offices of the SPGC in Gurue, Mocuba, Alto Molocué, Morrumbala and Milange were put on hold in September 2000.

The major constraints facing the SPGC in Zambézia are a lack of human resources and access to transportation, restricting their ability to effectively cover all of the tasks consigned to them by the law. They have a total of 18 staff for the province; 3 of these are qualified at the level of *técnico médio* (2 of the 3 have management responsibilities), a further 10 have qualifications to the level of *técnico básico*, and the remaining 4 are drivers and administrative staff.

SPGC staff are expected to perform a wide range of activities in relation to the land law and regulations. The LTC of the ZADP has provided some training in the last two years, primarily in the use of GPS equipment, mapping, English language and information management but in general the capacity of staff remains low. Technicians may be expected to be surveyors, convenors of meetings, facilitators of community processes, to resolve conflicts and negotiate agreements. Salaries are generally low (about 2,000,000.00MT per month for a *técnico médio* and 1,5000,000.00MT for a *técnico básico*.)

The SPFFB offices count on 11 staff and 9 forest and wildlife enforcement officers (*fiscais*) for the province. Of these, 3 are qualified at a level of *Engenheiro florestal*, 4 at *técnico médio* level and 4 at *técnico básico* level or below.

The issue of 'capacity' has emerged in discussions regarding the potential decentralization of the functions of these provincial services. MADER has used the issue of capacity to judge whether local institutions could be established in the district centres and be the holders of powers under the legislation. Central government actors often wrongly interpret local preference and choice that are different from their own and the inability of local jurisdictions to carry out unrealistic centrally imposed requirements as lack of capacity. The planned establishment of the district offices of the SPGC was put on hold ostensibly because of the need to consolidate the provincial office but may have been more due to fears at a central level regarding the decisions that would be taken at these lower levels. It has been noted, "governments and their line ministries take the conservative stance of withholding transfers…this has the unfortunate effect of delaying decentralizations and of denying local authorities the very powers they would need to hold in order to improve their technical and managerial skills." Ribot, 2001

2.2. Key issues and challenges for the implementation of natural resource use policies in Zambézia - Areas for future focus of research

This section briefly analyses some of the key issues that have been identified in relation to the implementation of the new natural resource tenure policies in the province.

2.2.1. Renewal, cancellation and restructuring of land and forest applications made under previous legislation – Private use pressure on land and forest resources

Both the LT and the LFFB introduce new regulatory procedures for private use of natural resources; the intention of which in both cases is to safeguard local community interests and encourage the sustainable use of the resources. The provincial context in which these new regulatory frameworks are being applied is one that is characterised by an historically high level of private sector pressure on resources, a very low level of enforcement of regulations, a weak state infrastructure outside the district centres, very limited participation from civil society and a lack of clear and transparent information on land and resource use. These factors combine to produce a situation in which there are extremely high levels of unregulated natural resource exploitation (particularly forest timber) and continuing efforts from outsiders and local elites to speculate on the award of user right concessions.

A more detailed analysis of the concession applications in the study areas will be included in the second mapping report and future research will include an analysis of the impact of private concession applications, the impact of the privatisation process as applied in the study areas, the nature and impact of the institutional environment and of the level of involvement of civil society and the private sector in the administration and adjudication of land and forest resource use rights.

2.2.1.1. Land

The provincial context in which the new land law came to be applied in Zambézia was a particularly complex one. The province had registered the second largest number of concession applications under the old 1987 regulations (compared to other provinces) and these accounted for a total amount of land that was in excess of 3 million hectares (over 30% of the total land area of the province). Most of this 'claimed' land was for areas of high fertility and suitability for agriculture, either in the low-lying delta area of rice and coconut production or in the high pasture and tea plantation zones.

A large number of these applications, despite having been made in the late 1980s or early 1990s had not received provisional authorisation by the end of 1998. Article 46 of the RLT, which came into effect on the 8th December of that year, introduced a 12-month period within which the pending applications under the old regulations had to be renewed. In addition, it made these

applications immediately subject to the new law and regulations. This requirement was broadly publicised in an official notice (*aviso*) published on the 14th May 1999 and in newspaper and radio campaigns.

However, a further period of three months for renewal of these applications was introduced in late 1999 after a very low rate of renewal and a further extension was permitted by default through the conducting of an information campaign, in June to September of 2000, by the SPGC office, involving the delivery of individual letters to applicants affected by the requirement and announcements on the radio. Both of these extensions of the legal time period were unsanctioned by law and introduced informally by DINAGECA.

In August 2000, under instructions from the Minister, the SPGC office 'archived' all those applications that had been pending as of 08/12/98 and which had not been renewed. However, applicants have been permitted to renew these applications to the time of writing this report and they have not yet been legally cancelled[140]. To some extent this is understandable, given that a large number of those 'archived' are for residential areas that are almost certainly occupied by the applicants and where the challenge is rather to legalise the occupation and bring the potential tax revenue on stream. However, there remains the danger of the further extra-legal renewal of large speculative applications in rural areas that could have a significant impact upon the land in rural areas. If the applications are cancelled, as they should already have been in terms of the law, the impact will be to reduce the area under claim by the private sector from over 3 million to approximately 1.4 million hectares. The second mapping report will look in more detail at the situation regarding these applications in the specific study sites and provide further details on the possible cancellations in general.

A total of 342 applications are registered in the land register of the SPGC as having been provisionally approved on a single day (01/01/99) – these all relate to 'adjudicated areas' where provisional authorisation of a DUAT was obtained through the (separate) 'privatisation process'. The operation of the privatisation process in the context of a changing legal framework for land rights acquisition has been a source of confusion and conflict in the province. If these land areas had not been part of state-owned assets that were tendered for purchase by private companies, applications for their use would have been submitted by law to community consultation processes. In the event, none of these applications was subjected to the provisions of the regulations. This was notwithstanding the fact that there was occupation of these areas that would have had some degree of recognition and protection under the LT. The Land Commission

[140] In July 2001 a list of all affected applications is due to be published in the national press giving notice that a further one week period for renewal would be permitted to the applicants, after which the applications would be cancelled.

has consistently pointed out that the privatisation process related only to that land on which there were improvements and infrastructure. However, in some cases (examples include some of the land holdings obtained by Madal in Maganja da Costa, Grupo Gulamo in Gurué, Boror Agricola in Namacurra and the Companhia da Zambézia in Gurué.) this has not been the case and the adjoining land areas have been included in the restructuring of the state operation.

New DUAT applications have been received at an average rate of 5 per month (65 new applications representing 33,000 hectares from January – December 2000 and 46 applications representing 54,000 hectares to the end of July 2001). Over 40% of these new applications (2000 – 2001) are for areas of less than a hectare, but 25% are for areas greater than 100 hectares. These applications will be completely subject to the new regulations, and therefore will need to be 'submitted' to a process of consulting with local communities; the extent to which this ensures that those communities will benefit from the concession award will therefore depend on the quality and nature of the consultations, an issue that is examined below.

2.2.1.2. Forest resources

Provisional inventory results for Zambézia, April 2001 from the current Sustained Forest Resource Management Project indicate that there are 2.8 million ha in the province with high or medium forestry potential suitable for sustainable forest management. Districts with greatest forest cover are Morrumbala (in the west; but with low forestry potential), Mocuba (centre), Pebane, Gilé & Maganja da Costa (in the east of the province).

The SPFFB offices in 1999 issued 36 simple licences for the cutting of timber in logs (in apparent contravention of the regulations, these licences are issued at district level, permitting the harvesting of the licensed amount of timber from any area in the district, rather than according to a demarcated area of less than 1000 hectares).

In the year 2000 the number of licences leapt to 126 licences ceded to 30 different operators. In addition there was a significant increase in the issuing of 'circulation licenses' (*Guia de Circulação*). The annual report from the SPFFB office states that one reason for this was the creation of the *Comissão Provincial de Exploração de Madeira*, a body that authorised an increased number of licences in order to deal with the large amount of timber that had been felled but never collected from the forests. The report states that this was a means of 'regularizing' the activities of illegal harvesters, who paid the standard fees for the licences and that it led to the collection of over 10,000 cubic metres of wood.

As elsewhere in the region (e.g. Zimbabwe) it is conventional to harvest timber according to size class rather than yield: the commonest approach to logging is to remove all the marketable trees over a period of a few years and then leave the area for several decades to facilitate regeneration.

This approach has been characterised as "fundamentally flawed in inhabited areas because it removes the assets that could provide incentives for community-based forest management for decades. Arguably this problem necessitates basic reform in the timber industry and forest sector: to ensure that recurrent annual extraction rates are sustainable" (ITTO, 2000).

2.2.2. Conflicts over natural resources and mechanisms for conflict resolution

In April 2000, the Land Tenure Component of the ZADP commissioned research into the existence and nature of land conflicts in the province and the potential for partnerships. The findings of this research show that the general characteristics of conflicts connected to land in Zambézia are as follows:

- Some of the conflicts concern the occupation by communities of areas of old concessions, which were previously operated by state-owned companies and have recently come under the control of new private sector investors. The occupiers themselves view their use of the land as legitimate, particularly since it was often sanctioned by representatives of the state.

- Some conflicts result from the re-establishment of colonial-era private concessions by individuals or company investors, or the establishment of new concession areas in competition with local resource use. This may lead in some instances to a conflict with neighbouring communities, where there is a clash between the subsequent uncontrolled grazing of newly-introduced livestock and local crop production. In other instances, old concession areas may have also been occupied since their abandonment, either spontaneously or with government approval. In either case, the lack of a common and systematic approach to application of the land law, or it's flouting altogether, has led to local conflict.

- In many situations the roots of some contemporary competing claims to land use rights have a long history and involve local community occupation of, and dislocation from, land in the early and middle parts of the previous century. These situations have sometimes led to the insistence of a community right to occupy in the face of a contrary legal position, where a community has 'invaded' land that was legitimately awarded to an applicant in terms of the previous 1987 land law regime.

- In a few areas, the application of the land law is 'held hostage' to a local political and administrative elite, who are often more keen to encourage unfettered private sector investment in an area than they are to ensure protection of local community land rights.

In other instances there can be powerful political figures who are involved themselves in attempts to register land.

Information regarding land conflicts in Zambézia from the District Development Profiles compiled by the United Nations in the mid 1990s is contained in Annex 3.

In addition it is clear that forest-based conflicts are occurring in many areas, although most local communities do not feel empowered to intervene in uncontrolled logging activities. These may be encouraged by the lack of effective monitoring and by unscrupulous behaviour on the part of local administrative structures.

Given this context, the mechanisms that are established to resolve conflicts and the extent to which these take into account the legitimate interests of local communities will have a significant impact on the realisation of policy goals. To date the approach to conflict resolution in Zambézia has been confused, ad hoc and opaque. Future research will focus in more detail on the functioning of the provincial body that was established to deal with land conflicts and its relationship to the planned establishment of a provincial *núcleo* of the national land commission.

2.2.3. Community land delimitation exercises - defining the "community"

In terms of the law a community may essentially define itself as a group within which people feel safe and can protect their common interest in a particular area. However, community definition is influenced both by pre-conceived ideas of outside facilitators on how communities should be defined, and by those in the community with whom the facilitators collaborate and plan the delimitation process.

The initial contact by outside facilitators with a community, the process by which leadership is identified, the community defined and the manner in which the rest of the delimitation process is done, can have a large impact on the realisation of the policy goals of the new laws and can result in conflicts between different interest groups and individuals in the community. Although internal conflicts appear not to have been a significant issue in community land delimitation processes in the province thus far[141], the impact that the delimitation exercises have had on livelihood strategies and capacities has not yet been evaluated.

2.2.4. Consultation processes with communities

The most significant threat to future access to land and forest resources by the rural poor in Zambézia undoubtedly lies within the 'institution' of community consultations. As we have seen, these are legislated processes designed to achieve policy objectives that are geared towards

safeguarding existing rights and future interests and are intended to provide an opportunity for the establishment of sustainable social and economic relationships between natural resource users. However, it is becoming increasingly apparent that the consultations are more concerned with legitimising a process of resource capture and the exclusion of local users.

2.2.5. Decentralisation of natural resource management powers

In Mozambique poverty dictates that economic incentives are the key to involving the forest and land using communities in resource management. It is improbable that people who are financially desperate will be able to put time and effort into formally structured management structures - the possibility of generating an income could provide a sufficient stimulus for communities to become involved in actively managing the resources.

Where legislation is in place to allow this envisaged decentralisation to occur (as with land but not yet with forest resources), its smooth and efficient implementation has been constrained by a number of factors. A report to the PROAGRI Joint Review Mission on Land (Liversage, 2000) included the following observations:

- There is a very limited understanding amongst members of the public, particularly applicants for land use rights, of the processes involved.
- There is an absence of an integrated approach between different government agencies, leading to confusion, delays and, in some cases, conflict.
- There is a general lack of resources within the SPGC-Z office and an absence of any comprehensive strategy to deal with the legislative processes (particularly community consultations) in a cost-effective manner.
- A large backlog of applications exists and there is a lack of clear information regarding these applications.
- There is an almost complete lack of information (e.g. maps, etc.) available to other government agencies, particularly District Administrations, regarding land applications that concern them.
- There is very limited involvement of civil society organisations and the private sector in assisting with some of the processes involved (e.g. community consultations, education & information programmes, etc.)

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[141] There have been, unsurprisingly, a number of disputes between communities and their neighbours over boundaries.

References

Anstey, S., 2000. *History Matters: Institutional Change and CBNRM in Sanga District, Northern Mozambique,* Paper presented at IASCP Conference, Bloomington, Indiana.

Chilundo, A., & Cau, B.M., 2000. *Literature Review on Policies and Legislation for Promotion of Security of Natural Resources Tenure in Frontier Areas*. Maputo.

Cuco, A., 2000. *Retrospectiva e desafios no sector de florestas e fauna bravia.* Paper presented at 11th National Forests and Wildlife Conference, Bilene, March 2001.

Devereux, & Palmero. 1999. *Creating a Framework for Reducing Poverty: Institutional and Process Issues in National Poverty Policy*. MOZAMBIQUE COUNTRY REPORT

DFIDCA. 2000. *Livelihoods and natural resources in Zambezia*, Paper for DfID Central Africa by D. Brew, T. Foy & J. Compton.

DFID Rural Livelihoods (Land Tenure) Department. 2000. Report on an FAO Workshop - Common Property Tenure Regimes: Methodological Approaches and Experiences from African Lusophone Countries. Rome, 12-13 December, 2000. by C. Tanner.

DINAGECA. 2000. *Normas e Instruções Técnicas para Execução da Lei de Terras e Regulamento (draft)*

DNFFB. 1988. *Estratégia de Desenvolvimento Florestal e Linhas gerais de Desenvolvimento de Fauna Bravia.* [Strategy for Forestry Development and Guidelines for the Development of Wildlife]

Garvey, J. A., 2001. *Legal and financial factors and requirements for the establishment of partnerships with local communities*. Land Tenure Component ZADP, Quelimane

Garvey, J. A., (undated). *English Translation of Land Law N.º 19/97 of 1 October*

GoM/UNICEF. May 2000. *Rural Water and Sanitation Programme (RWSP) Project Memorandum, Zambézia Province, Mozambique.*

Hugman, Thompson, Xavier, Bathazar, Ibraimo. May 2000. *Review Mission Final Report, Rural Water and Sanitation Programme, Zambézia Province*, *Mozambique*

Kumagwelo, G., Ministry of Agriculture and Rural Development, National Directorate of Forestry and Wildlife, Mozambique. 2000. *Strengths and Weaknesses of Local Institutions for Natural Resources Management: The case study of Goba.* Paper presented to 8th IASCP Conference, 2000, Bloomington, USA

Liversage, H., 2000. *Report to PROAGRI Joint Review Mission on Land*, Land Tenure Component

ZADP, Quelimane

McAuslan, P., 2000. *Only the name of the country changes: The Diaspora of "European" Land Law In Commonwealth Africa* in "Evolving land rights, policy and tenure in Africa", DfID

Mukani, B., 2000. *Local Institutions and Management of Indigenous Woodland Resources in Zimbabwe* in "Forest, Chiefs and Peasants in Africa: Local Management of Natural Resources in Tanzania, Zimbabwe and Mozambique"; Silva Cerelica 34. Finland: University of Joensuu.

Negrão, J., 1999. *The Mozambican Land Campaign, 1997-99*

Nhemuco, P. & Mussanhane, J., 2000. *A traditionally Protected Forest as a Conservation Area: a Case Study from Mozambique. Forest, Chiefs and Peasants in Africa: Local Management of Natural Resources in Tanzania, Zimbabwe and Mozambique*; Silvia Carelica 34. Finland: University of Joensuu.

Norfolk S. & Soberano D., June 2000. *From conflict to partnership. Relationships and land in Zambézia Province.* Land Tenure Component, ZADP. Quelimane

Ntsebeze, L., 1999. *Land Tenure Reform, Traditional Authorities and Rural Local Government in Post-Apartheid South Africa: Case Studies from the Eastern Cape*. Cape Town: School of Government – University of the Western Cape.

ORAM & Negrão, J., February 1999. *The Land Campaign in Mozambique*

Pontara, N., April 1999. *A Context and Poverty Analysis of Mozambique.* Action Aid Mozambique and Voluntary Service Overseas

SPFFB Zambézia. 2000. *Relatório Anual Dos Serviços Provinciais De Florestas E Fauna Bravia Da Zambézia*

Republic of Mozambique - *Enhanced Structural Adjustment Facility.* Policy Framework Paper for April 1999–March 2002
http://www.imf.org/external/np/pfp/1999/mozam/index.htm

Republic Of Mozambique - *Action Plan For The Reduction Of Absolute Poverty (2001-2005) (Strategy Document For The Reduction Of Poverty And The Promotion Of Economic Growth)* (4th draft 19/03/2001)

Singh, N. and Gilman, J. SEPED Conference Paper Series # 5, 2000. *Employment and Natural Resources Management: A Livelihoods Approach to Poverty Reduction*

Tanner, C., 2000. *Registering customary rights and demarcating customary land in Mozambique*

Thomson, A. M., March 2000. *Sustainable Livelihoods Approaches at the Policy Level*

UNDP [United Nations Development Programme]. 1998. *Mozambique. Peace and Economic Growth: Opportunities for Human Development, National Human Development Report*. Creda Press. Johannesburg:

Legislative Instruments

Constituição da República de Moçambique, 2nd November, 1990. [BR No 44]

Decree 6/96 of 3rd March (Creation of Inter-ministerial Commission for Revision of Land Legislation) [Boletim da República (BR) no. 9 - 3rd Supp., Series I – 5th March 1996]. Amended by Decree 2/2000 of 29th February.

Law 19/97 of 1st October (Land Law) [Boletim da República (BR) no. 40 - 3rd Supp., Series I – 7th October 1997].

Decree 66/98 of 8th December (Rural Land Law Regulations) [Boletim da República (BR) no. 48 - Supp., Series I – 8th December 1998].

Decree 77/99 of 15th October (Establishment of Land Title Use Fees for Certain Activities) [Boletim da República (BR) no. 41 - 2nd Supp., Series I – 15th October 1999].

Ministry of Agriculture and Fishing Ministerial Diploma no. 29-A/2000 signed 7th December 1999 (Land Law Regulations -Technical Annex for the Demarcation of land use and benefit areas) [Boletim da República (BR) no. 11, Series I – 17th March 2000]

Decree 15/2000 of 20th June (Local Community- Forms of Participation in Public Administration) [Boletim da República (BR) no. 24- Supp., Series I – 20th June 2000]

Ministry of State Administration Diploma 107-A/2000 of 25th August (Regulations of Decree 15/2000 - Local Community- Forms of Participation in Public Administration) [Boletim da República (BR) no. 34- Supp., Series I – 25th August 2000]

Law 20/97 of 1st October (Environment Law) [Boletim da República (BR) no. 40- 3rd Supp., Series I – 7th October 1997].

Decree 76/98 of 29th December (Environment Impact Assessment Regulations) [Boletim da República (BR) no. 51- 3rd Supp., Series I – 29th December 1998]

Resolution 10/97 of 7th April (Forestry and Wildlife Policy) [Boletim da República (BR) no. 14- Supp., Series I – 7th April 1997]

Law 10/99 of 7th July (Forestry and Wildlife Law) [Boletim da República (BR) no. 27- 4th Supp., Series I – 12th July 1999]

Ministerial Diploma No. 2642 of 20 September 1965, which approves the Forestry Regulations of Mozambique. Revised regulations are presently being considered for adoption by parliament:

draft of Regulations to the Forestry and Wildlife Law as submitted for Parliamentary approval (no citation).

Decree 16/98 of 16th April (Zambezi River Valley Special Fiscal & Customs Regime) [Boletim da República (BR) no. 15- Supp., Series I –16th April 1998.

Decree-Law 2/75 of 7th January (approves the Notarial Code) as amended by Decree 66/99 of 5th October (simplifying the procedures for the recognition of signatures for associations) [Boletim da República (BR) no. 39 - 4th Supp., Series I – 5th October 1999].

Presidential Decree No. 10/2000 of 23rd May (establishes the powers and authorities of the Ministry of Agriculture and Rural Development) [Boletim da República (BR) no. 20-Supp Series I – 23rd May 2000]

Ministerial Diploma No. 161/2000 of 15th November (establishes the internal structure, powers and authorities of directorates and other divisions within the Ministry of Agriculture and Rural Development) [Boletim da República (BR) no. 46 Series I – 15th November 2000]

Minister of Agriculture and Rural Development, Minister of Tourism and Minister of Planning and Finance Ministerial Diploma No. 17/2001 of 7 February, 2001 (transfers certain powers over wildlife reserves and areas of tourist interest to the Ministry of Tourism [Boletim da República No. 6 Series I – 7th February 2001].

Ministerial Diploma No. 133/2000 of 27th September (establishes the internal charter of MICOA) [Boletim da República (BR) no. 39 Series I – 15th November 2000]

Assembly of the Republic Resolution No. 4/2000 of 22nd March (Government's Five Year Plan for the Period 2000-2004) [Boletim da República (BR) no. 12- Supp., Series I – 22nd March 2000]

Council of Ministers Resolution 3/98 of 1 April (General Guidelines for Rural Development and Inter-Sectoral Co-ordination Mechanisms) Boletim da República (BR) no. 7- 2º Supp., Series I – 24 February 1998].

Decree-Law 31/76 of 19 August 1976; and Decree-Law 16/91 of 3 August 1991 (Regulation of the law of seas) which define the rights on the marine resources adjacent to the Coastal zone of the Republic of Mozambique and address the Law of seas as described in an international vision relating to the sector.

Portaria No. 547 of 23 July 1927, establishes the prohibition of cutting down of mangrove.

Law 2/86 of 16 February 1986 as amended by Law 5/94 (Mining Law) Decree 13/87 of 24 February 1987 [Boletim da República no. 8- Supp, Series I - 25 February 1987] as amended.

Council of Ministers Resolution 7/95 of 8th August, 1995 (National Water Policy)

Law 16/91 of 3 August 1991 (Water Law) [Boletim da República no. 31- 2nd Supp, Series I – 3 August 1991]. No implementing regulations were ever issued for this law.

Council of Ministers Resolution 60/98 of 23rd August, 1998 (National Water Tariff Policy)

Annex 1

COMPOSITION OF THE INTER-MINISTERIAL COMMISSION FOR THE REVISION OF LAND LEGISLATION:

- Prime Minister (Commission president)
- Minister of Agriculture and Fisheries
- Minister of State Administration
- Minister of Culture, Youth and Sport
- Minister for the Environment
- Minister of Industry, Commerce and Tourism
- Minister of Justice
- Minister of Public Works and Habitation
- Minister of Planning and Finances
- Minister of Mineral and Energy Resources
- President of the Institute of Rural Development

COMPOSITION OF THE TECHNICAL SECRETARIAT:

- A Director (appointed by the president)
- Representative of the Ministry of Agriculture and Fisheries
- Representative of the Ministry of State Administration
- Representative of the Ministry for the Environment
- Representative of the Ministry of Culture, Youth and Sport
- Representative of the Ministry of National Defence
- Representative of the Ministry of Industry, Commerce and Tourism
- Representative of the Ministry of Justice
- Representative of the Ministry of Public Works and Habitation
- Representative of the Ministry of Planning and Finances
- Representative of the Ministry of Mineral and Energy Resources

- Representative of the Institute of Rural Development

Annex 2

MEMBERS OF THE NATIONAL COMMITTEE OF THE LAND CAMPAIGN

Action Aid

AMRU (Association of Rural Women)

Association for Progress

CAA (Oxfam Australia)

CCM (Christian Council of Mozambique)

CEA (Centre for African Studies)

CEP (Centre for Population Studies)

Diocesan Commission for Justice and Peace

Swiss Cooperation

DANIDA

Netherlands Embassy

FDC (Foundation for Community Development)

Helvetas

KEPA (Centre for Services of Cooperation for Development)

Kulima

MS (Danish Association for International Cooperation)

NET (Land Studies Nucleus)

ORAM (Rural Association for Mutual Help)

Oxfam Belgium

Oxfams' Joint Advocacy Programme

SNV (Dutch Organisation for Development)

Trocaire

UNAC (National Union of Peasants)

[Source: The Mozambican Land Campaign, 1997-99, Prof Dr José Negrão]

Annex 3

INFORMATION RE LAND AND NATURAL RESOURCE USE IN ZAMBEZIA PROVINCE – SOURCE: UN DISTRICT DEVELOPMENT PROFILES, 1995

Alto Molocue

High population concentrations in and around the district capital have contributed to conflicts over resources, including land, water, wood and pastures. The total area cultivated in the family farming sector is estimated at 23,972 hectares which represents 3.8% of the district's land area. Farming is the dominant activity and involves the majority of households.

Access to land, water and grazing rights is mediated through provincial and district authorities, although, traditional authorities and religious leaders are often involved as well. In fact, the respondents to the survey cited traditional authorities as the principal mediator in disputes involving land, water, wood and pastures. Between 40% and 70% of the respondents cited village headmen as the principal mediators while less than half mentioned heads of administrative posts. This is probably because the heads of the administrative posts tend to be involved in cases involving private commercial interests.

Access to land is governed by customary kinship ties and commercial land transactions are not recognised. Thus, none of the sample households paid for the land they occupy. Nearly half of the land acquired by the respondents was virgin or unoccupied (40%) or acquired from another person (40%). Land may be inherited by male relatives of the household head, according to 30% of the sample, by sons or daughters (20%) or by any relative, depending on the circumstances.

Chinde

The total land area of the district is 440,800 hectares, of which 56,163 hectares are occupied by state, private, cooperative and peasant farms, according to DRS. The state sector occupies 10,000 hectares, while private commercial farming occupies 30,075 hectares. The former Sena Sugar Estates has long been established in Chinde district, although the war brought production to a standstill.

No information is available on the mechanisms for access to land nor on the extent of any land conflicts. However, none of the households in the MSF/DDM survey mentioned any payment to acquire their land holding. The land acquired by two thirds of the sample was virgin, while one third received land that had previously belonged to someone else. Once acquired, land may not be sold, although the land rights may be passed on through inheritance. Half of the sample said that land could be inherited by sons only and a fifth said both sons and daughters were eligible. Inheritance by relatives of the wife of the household head and other unspecified customs were each mentioned by two respondents.

With regard to improvements to the land once it has been acquired, three respondents had made none, while seven households built houses and three planted fruit trees. No respondents mentioned sinking wells, fencing the fields or erecting livestock enclosures.

In the event of disputes over natural resources, 70% of the respondents indicated that these were mediated by the traditional chiefs, although a few respondents also mentioned the village headmen or clan elders in the case of pasture, water and disputes between villages. The head of the administrative post and the leaders of political parties were indicated by a small number of respondents in cases of disputes over water, between villages or between small farmers and large commercial companies.

Gile

Gilé is a sparsely populated district with, in general, a land surplus. As a result, significant conflicts over land, water, wood or other resources are not common, according to district administration

sources. The total area cultivated in the family sector is 33,106 hectares which represents 3.7% of the district's land area. Farming is the dominant activity and involves nearly the entire district population.

Access to land, water and pasture rights is mediated primarily through the traditional structures of authority. The heads of administrative posts and political party leaders are also involved, although this is more prominent in cases involving large companies.

The allocation of land is governed by customary familial and kinship ties. Although land may not be sold, three respondents said they paid relatives or a friend for the use of some land. These transactions are considered symbolic rather than commercial. Half of the land acquired was virgin (50%) or unoccupied while 40% had previously belonged to someone else and a small amount (10%) was redistributed. Land is inherited by sons and daughters or by other relatives.

Gúruè

Gurué is a relatively densely populated district with extensive tea plantations and state farms. As a result, localised conflicts over wood and other resources have been reported. Conflicts over land for pasture have been reported in the areas around Murabue and Mucunha. The total area cultivated in the family farming sector is 63,761 hectares which represents 11.4% of the district's land area. Farming is the dominant activity in Gurué.

Access to land, water and grazing rights are mediated through traditional structures of authority, primarily the village headmen, and the head of the administrative post. In cases of disputes between large commercial farms and peasant farmers, the head of the administrative post is more likely to be called on to mediate. A number of respondents to the MSF/DDM survey (four in land rights, and two in grazing and water rights) also mentioned the participation of political party leaders.

Kinship ties primarily govern access to land. Only one respondent to the MSF/DDM survey made a payment to relatives for land use, a transaction considered largely symbolic rather than commercial. Most land acquired by the sample households in the survey was either virgin or unoccupied or was redistributed by the state. Land may be inherited by both sons and daughters, by male relatives of the head of the household and by male members of both sides of the family.

Ile

According to the district administration, significant conflicts over land, water, wood and pastures have not been reported. The dynamising groups normally mediate the few conflicts which do arise. The total area cultivated in the family farming sector is estimated at 70,990 hectares, which represents 13% of the district's land area. Farming is the dominant activity and involves nearly half of all the members of the households surveyed.

The respondents to the MSF/DDM survey cite traditional authorities as the main mediators in determining access to land, water and grazing rights. The head of administrative post and local party leaders may also be involved in these issues, most notably when there is conflict between a peasant household and a commercial enterprise.

Dynamising groups are responsible for granting access to land for housing and household farming. Once acquired, land may not be sold. Only one respondent to the MSF/DDM survey made a payment to relatives for land use, a transaction considered more symbolic than commercial. The majority of the land acquired by the respondents was virgin or unoccupied. In three cases, land was acquired from another person. With regard to the inheritance of land, 40% of the respondents allow both sons and daughters to inherit, 25% mentioned male relatives from both sides of the family, and smaller percentages indicated any relative of either sex or male relatives of the household head.

Inhassunge

The total land area of the district is 74,500 hectares, of which 15,553 hectares is cultivated by the

peasant family sector. According to the preliminary report of the Sectoral Resources Survey (DRS) conducted from March to May 1996 by the Provincial Directorate of Planning and Finance in conjunction with the UNDP, the private commercial sector occupies 9,500 hectares. The district authorities noted that much of the land is occupied by the coconut plantations of the Sociedade Agrícola do Madal, a major producer of copra in Mozambique.

Access to land is governed by the District Directorate of Agriculture and Fisheries. No payment is necessary to obtain a plot of land for farming and to build a house. Once acquired, the land may not be sold, although the rights to the land may be passed on through inheritance.

Conflicts over land have arisen between displaced people who are resettling and commercial landholders, according to district leaders interviewed in the DDM survey. District officials are the main mediators in land disputes. No conflicts over other natural resources, such as pasture, water and firewood are reported. The district authorities report that the traditional chiefs play little part in the mediation of disputes because their influence is weak.

Lugela

Lugela is a comparatively large and sparsely populated district with, in general, a land surplus. For this reason, no significant conflicts over local resources, including land, water, wood fuel, charcoal or other resources, are reported by the district administration. The total area cultivated in the family farming sector is estimated at 34,124 hectares which represents less than 6% of the district's land area. Farming is the dominant activity practised by virtually all households in the district.

Access to land, water and grazing rights is mediated through the head of the administrative post and traditional structures of authority, primarily village headmen. No payment is required for the acquisition of land, which may not be sold, although it may be inherited. However one respondent to the MSF/DDM household survey said he had made a payment to relatives for the use of his land. Most land acquired was virgin or unoccupied (70% of the sample households) or acquired from others (20%). Land may be inherited only by male relatives of the household head, according to 40% of the sample, only by sons (30%), while only 20% said both sons and daughters of the household head could inherit.

Maganja da Costa

Maganja da Costa is a relatively large and densely populated district. The total area cultivated by the family sector is 41,594 hectares, equivalent to 5.4% of the total land area of the district. With regard to commercial farming. the Madal company owns plantations of coconut palms covering 12,053 hectares (1.6% of the area of the district). Agriculture is the principal economic activity of most of the local population.

Information from the district administration indicates that land disputes exist in the Bajone administrative post between small farmers and two large companies, Madal and the Companhia de Zambezia. Where such disputes arise, the head of the administrative post is the main mediator, according to the responses in the MSF/DDM survey. However, where disputes over land or other resources involve only members of the local community, the village headmen and the heads of the households involved have the task of resolving the conflict. Moreover, some 38% of the respondents also mentioned religious leaders as playing a role in mediating disputes.

Access to land and other natural resources is determined mainly by ties of kinship. Although some respondents (about 13%) said they had paid relatives or the traditional chief for the use rights of their land, the payments were symbolic and no land market exists. Most of the land occupied by the households covered in the MSF/DDM survey had been virgin or uncleared bush (57%), but in a few instances (27%) it had previously been occupied by another person. The right to inherit land is

conferred on all members of the family by 45% of the respondents, but 35% reserve this right to male relatives only, while 32% allow inheritance only by direct descendants.

Milange

There are major land conflicts in the district of Milange, resulting mainly from the return of large numbers of people after the war. The number of households has increased substantially and farming areas are becoming increasingly scarce. Another factor giving rise to disputes over land is the way that some households who remained in the district occupied areas that had been abandoned and were thus considered free.

Land disputes arising from the high population density may be observed throughout the district. They are normally resolved by the District Directorate of Agriculture, influential local leaders or the district administration.

In principle, people do not have to pay in order to get land for farming, but neither can they sell the land. Only the children may inherit it from their parents. Of the 80 households interviewed, only two (3%) mentioned having paid a symbolic price to relatives for a piece of land to farm, while one household (1%) said it paid the State. Forty-four per cent of the sample said their land had been unoccupied bush, requiring much work before planting was possible. The land obtained by 19% of the sample had belonged to someone else.

Mocuba

Land is not a scarce resource in Mocuba. Nevertheless, the district administration notes that land disputes exist, although mainly localised in the vicinity of the district capital. This situation could be caused by the fact that about one third of the district population live in the capital.

The area cultivated by the peasant family sector is 58,550 hectares, which corresponds to 6.6% of the total area of the district. Farming is the main economic activity, involving the majority of the population.

According to most of the respondents in the MSF/DDM survey, conflicts over land rights and other natural resources are resolved by the traditional authorities, notably the village headmen, the traditional chiefs, the traditional healers and clan elders. Other figures of authority called on to intervene in conflict resolution are religious leaders and the heads of the administrative posts, the latter particularly in cases of conflicts between small farmers and large commercial companies.

The district administration indicated that access to land depends mainly on the traditional authorities and no market exists for the sale or exchange of land. However, 34% of the respondents in the MSF/DDM survey made symbolic payments for the land they use to traditional authorities, friends, relatives, the dynamising group or the State. Most of the land belonging to the survey respondents was virgin or unoccupied (62%), while 24% have land that previously belonged to someone else. With regard to inheritance of land, both sons and daughters are eligible, in the opinion of 48% of the sample, although 34% reserve the right of inheritance to sons, and 22% to male relatives of the household head.

Mopeia

The population of Mopeia is relatively sparse, with the result that no significant disputes over land, water, wood or pasture have occurred. However, the district administration noted that because land was abandoned during the war, some families occupied land that had belonged to displaced or refugee households, which has been a source of some social discord. The total area cultivated by the family sector is 25,113 hectares, representing 3.2% of the total area of the district. Farming is the main economic activity.

According to the District Directorate of Agriculture and Fisheries, people wishing to obtain land

apply to the district administration, to the district directorate itself and to the traditional authorities. The village headman is normally who mediates conflicts over land and other resources, according to the respondents in the MSF/DDM survey. The traditional chiefs and clan elders may also have influence in this type of situation. The head of the administrative post, representing the government, was also mentioned by the respondents as a mediator in disputes, particularly when the parties to the conflict are different villages or a small farmer and a large commercial farm.

Access to land is governed by kinship relations, and no market in land exists. Even so, 7% of the sample households made some symbolic payment to relatives and the traditional authorities for the land they now occupy, while 3% paid something to friends. For 70% of the respondents, the land they received was virgin or uncleared bush, while 27% received land that had previously been occupied and 3% obtained land from a former state farm. Almost half of the sample (47%) indicated that land could be inherited only by sons, although 17% also allow inheritance by daughters or relatives on both sides of the family, regardless of gender.

Morrumbala

Conflicts over land have arisen in certain regions in the district, namely: Chilomo, Chire, Pinda and along the length of the Chire River valley. These are more related to land rights or tenure than grazing or the search for firewood which sometimes spark off conflict. The resolution of conflicts is the task of both the local government and the traditional authorities. The other sources of conflict within the district are water and ownership of ruins. Conflicts over water occur mainly in the interior of the district, away from the border and are simply due to a dearth in sources of water supply. Conflict over the ownership of ruins are more likely to arise in the case of people looting sites of historic value or cross border ownership conflicts.

People wishing to obtain land or a house within the district need to consult the traditional leaders and the district authorities, more particularly the District Directorate of Agriculture. Technically there is no fee charged for the acquisition of land or land concessions, however a fixed tax is levied for the legalisation of documents pertaining to the transfer of title. In the interior of the district traditional leaders sometimes receive money or some other gift, for example farm produce or livestock, in return for land for farming or building a home. Once acquired, the land may not be sold. It may, however, be inherited by children from their parents.

Namacurra

Although Namacurra district has a relatively high population density at 65 inhabitants per square kilometre, no land disputes were reported by the district administration. The family sector farms occupy 24,625 hectares, which correspond to 14% of the total area of the district. Commercial farming is also important in Namacurra as the private company Madal owns 2,204 hectares of coconut palms. Agriculture is the main productive activity practised by the majority of the households in the district.

Half of the sample households said that access to land, water and pastures was mediated by traditional figures of authority, mainly village headmen and traditional chiefs. The head of the administrative post is the main formal authority referred to in case of disputes involving small farmers and large companies.

The local administration recognises that land may be passed on through inheritance, while further recognising that land rights may be sold. According to 34% of the sample households, rights to land may be inherited by both sons and daughters, 20% said only sons were eligible and 17% said they could also be inherited by male relatives of the head of the household. It was found that eight of the sample households paid a token price for their land, four to relatives, two to friends, one to the

traditional authority and one to the dynamising group. Asked about the condition of their land when it was acquired, 46% said it had previously belonged to someone else, while 36% said it had been virgin.

Namarroi

The area cultivated by the family sector in the district covers 22,293 hectares. This is 7% of the total area. Agriculture is the dominant activity and involves the majority of the district's population. Although Namarroi is a relatively densely populated district, conflicts over land and other natural resources are not frequent. According to the respondents interviewed by the MSF/DDM household survey, those disputes which do occur over land, water and pasture rights are normally mediated by the traditional structures (traditional chiefs, village headmen, heads of family and clan elders), by the heads of the administrative posts, or even by the local leaders of political parties. There is a slight predominance of mediation by village headmen.

Access to land is mainly determined by the local structures, and there is no market for the sale or exchange of land. None of those interviewed paid anything for the land they occupy. In half the cases the land was virgin or unoccupied bush, and in the other cases it had belonged to third parties. According to 30% of those interviewed, land is inherited by children of both sexes. Twenty per cent said that inheritance rights were also conferred on the male relatives on both sides of the family, or on the relatives of the wife of the head of the household.

Pebane

Since the population density in the district is low, land does not seem to be a scarce resource in Pebane. The local administration does not know of any significant conflicts over land tenure or over other natural resources such as water, firewood and pasture. The area cultivated by the family farming sector is 35,699 hectares, which is 3.4% of the total area of the district. For most of the population of Pebane, agriculture is their predominant activity.

According to those interviewed in the MSF/DDM survey, when conflicts over resources do take place, they are mediated preferably by the village headmen, by the heads of the households involved and by religious leaders. Intervention by the heads of the administrative posts is particularly relevant in cases where the parties to the dispute are a small farmer and a large company, According to 53% of the interviewees, in such cases the head of the administrative post is the arbitrator.

Although there is no (informal) market as such for selling or exchanging land, six of the households interviewed (15%) said they had paid a symbolic sum, mainly to relatives, for the land they were occupying. The majority acquired virgin or unoccupied land. Family links are determinant in transmitting land use rights. Forty-five per cent of the interviewees consider that male relatives on both sides of the family can inherit land, 33% give this right to all relatives, and 28% to children of both sexes.