

# Etc Terra



## Land Tenure Assessment for the ER-PD

Support to the preparation of the Zambézia Integrated Landscapes Management Program (ZILMP)

June 2017

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# Land Tenure Assessment

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Support to the preparation of Zambézia Integrated Landscapes  
Management Program

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## ACRONYMS

CBNRM	Community Based Natural Resources Management
CBO	Community Based Organization
CFL	Consultative Forum on Land ( <i>Forum de Consulta sobre a Terra</i> )
CFJJ	Legal and Judicial Training Centre of the Ministry of Justice
CRM	<i>Constituição da República de Moçambique</i> (Constitution of the Republic of Mozambique)
DFID	Department for International Development, United Kingdom
DUAF	<i>Direito de Uso e Aproveitamento da Floresta</i> (Forrest Use and Benefit Right)
DUAT	<i>Direito de Uso e Aproveitamento da Terra</i> (Land Use and Benefit Right)
ERP	Emissions Reduction Program
ERPD	Emissions Reductions Programme Document
FAO	Food and Agricultural Organization of the United Nations
FCPF	Forest Carbon Partnership Facility
HSRC	Human Sciences Research Council (Pretoria)
ITC	Community Land Initiative ( <i>Iniciativa de Terras Comunitárias</i> )
MASA	Ministry of Agriculture and Food Security
MCA	Millennium Challenge Account
MCC	Millennium Challenge Corporation
MITADER	Ministry of Land, Environment and Rural Development
NGO	Non-Governmental Organization
SESA	Strategic Environmental and Social Assessment
WB	World Bank
ZADP	Zambézia Agricultural Development Program (DFID)
ZSDP	Zambézia Sustainable Development Platform

## EXECUTIVE SUMMARY

Section One of the Land Tenure Assessment looks at documents produced during the preparation phase at national level, and responds to queries raised about the level of preparedness in relation to land issues in the ER Accounting Area. The main documents produced during this phase are the legal and institutional study done by Nemus/Beta<sup>1</sup>, the Strategic Environment and Social Assessment (SESA) carried out by Scott-Wilson<sup>2</sup>, the ER Program Idea Note (ER-PIN)<sup>3</sup>. A series of comments on these documents were also produced by other stakeholders, which include questions about outstanding issues.

The first two documents provide a comprehensive description of all available legal instruments, but do not explain how the various legal instruments address concrete land tenure problems. The two official documents include references to participation and community engagement, but looked at together, none of the preparatory material successfully captures how the policy and legal framework provides a clear legal basis for inclusive and transformational agrarian development.

The Assessment also notes that the Consultative Forum on Land (CFL), created in October 2010, is not mentioned in the preparation documents. The CFL provides a multi-stakeholder platform for discussing not only technical land issues, but how land governance and land tenure activities fit into wider development programs. It is now led by MITADER, and while still suffering from resourcing and organizational constraints, its relevance as an *already existing mechanism* for supporting the ER-PD process is clear.

Regarding the specific queries on land issues in the Accounting Area, the report provides a response based on additional interviews and material gathered during the consultant visit to Mozambique in November/December 2016. These queries, each with its respective Assessment response (*in italics*), are presented in full below.

### ***With regard to the legal and institutional assessment and SESA***

- The range of land and resource tenure rights (including legal and customary rights of use, access, management, ownership, exclusion, etc.).

*Constitutionally, all land is the property of the State and cannot be bought, sold or otherwise alienated. The State does however allocate a 'land use and benefit right' (the DUAT, or Direito de Uso e Aproveitamento da Terra) to those who need land for personal or commercial use. Legally there is only one type of DUAT, which is acquired in two ways: by occupation (most of these DUATs already exist), or by formal request to the*

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<sup>1</sup> Nemus/Beta 2015. *Análise do quadro legal e institucional para a implementação do REDD+ em Moçambique – Relatório Final*. Maputo, Fundo do Ambiente

<sup>2</sup> Scott-Wilson 2015. *Draft Strategic Environmental and Social Assessment (SESA) Report V5*. Maputo, UT-REDD+ and the National Environment Fund (FUNAB). Contract No: 05/C/UGEA-REDD+/FUNAB/14

<sup>3</sup> Republic of Mozambique 2015. *Emission Reductions Program Idea Note (ER-PIN), Zambézia Integrated Landscapes Management Program (ZILMP)*. Maputo, September 18

*State for a new DUAT. The Constitution establishes that pre-existing acquired rights must be respected; the Land Law also states that they retain this protection even if they are not registered. Occupation is recognized legally as either occupation based in customary norms and practices (i.e. customary land rights) which can include 'Local Communities' or individuals; or occupation in 'good faith' for ten years without challenge from third parties<sup>4</sup>. In all cases the DUAT is a private and exclusive right. There is no legal difference between a DUAT acquired by occupation and one acquired by formal request to the State. If a DUAT by occupation is claimed and can be proven on land where a new DUAT has been issued, the latter does not prevail. Most importantly for the collective DUATs of Local Communities, the boundary of the DUAT is open: others can acquire rights over land inside the Local Community, but they must first negotiate and agree with the rights holders.*

- Categories of rights-holders present in the ER-PD area (including Indigenous Peoples and other relevant communities).

*The State does not recognize the existence of indigenous peoples although Mozambique voted in favor of the 2007 UN Declaration on the Rights of Indigenous Peoples. It could be argued that the Local Community created by the 1997 Land Law is 'indigenous' insofar as it integrates people with historical rights over a specific area who are governed by their own customary rules and structures. Most land in the Accounting Area is occupied in this way. However, the indigenous nature of this 'customary' occupation does not imply a distinct ethnic or cultural group set within the wider mainstream society. They are simply Mozambicans with different cultural origins and customs, which are manifested through a plurality of normative systems that enjoy full Constitutional recognition<sup>5</sup>.*

*Following the Land Law then, there are essentially three 'categories' of rights-holders present: Local Communities, 'good faith' occupants (individuals), and holders of new DUATs requested for commercial activities. In addition, there are areas of public domain land in the form of the Gilé Reserve, where DUATs are not permitted by law, but investors and others can have use rights through special licenses. Any further categorization is according to the specific land use – agricultural, tourism forestry, etc.*

*Applying the Land Law definition of a Local Community, and with most rural communities having contiguous boundaries, it is reasonable to say that there is no 'free land' in the sense of land with no rights over it whatsoever. All land is likely to be covered by some form of DUAT, acquired either customarily or by formal request (except for reserves and other public domain areas). A 2016 study shows that by the end of 2014, a total of 223 Local Community delimitations had been carried out in Zambézia*

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<sup>4</sup> This is effectively a recognition of squatter rights over land that has been used without challenge.

<sup>5</sup> CRM, Article 4, Legal Pluralism



Province, covering 4,776,351 hectares<sup>6</sup>; this gives an average area per Local Community of just under 21,500 hectares. In the Accounting Area, official data show that a total of 102 Local Communities have been delimited up to November 2016, covering a total area of 3,254,663 hectares. This gives a much higher average size of just over 31,900 hectares, which could reflect the remoteness and population density of many of the communities delimited. No data have been provided on the number of DUATs by formal request (which in principle should include formally recognized and registered 'good faith' DUATs).

- The legal status of such rights, and significant ambiguities or gaps in the applicable legal framework, including where it applies to rights under customary law.

All DUATs - whether acquired by occupation or through a request for a new right – are legally recognized and formalized by the 1997 Land Law. Where rights are acquired by occupation, they retain this recognition and legal protection even if they are not registered. Registration is advisable however, as it makes them visible to outsiders, and will facilitate negotiations over land use and access by these outsiders. All DUATs can be inherited, effectively making inheritance a fourth way of acquiring a land right.

While there is no legal difference in the relative weight of DUATs acquired by occupation or by formal request, different conditions do attach to them. Firstly, there is the question of the duration of the DUAT: there is no fixed term for DUATs acquired by occupation (although those acquired by 'good faith' occupation must be for 'family use exercised by national individuals')<sup>7</sup>; newly-allocated DUATs (necessary for commercial projects) are valid for a maximum of fifty years, renewable.

Secondly, is the question of what can be done with the land. Holders of rights by occupation are assumed to be using it for their own housing, and for family or subsistence farming (which can include sales into markets to generate household income). Commercial use of land requires a project to be presented and approved, before a new DUAT is issued; holders of rights by occupation should request a DUAT title document and have their land demarcated if they want to begin a commercial activity.

Thirdly, are some legal grey areas. One is what happens when DUATs expire, or when a privately-held DUAT is annulled: does the land revert to the original Local Community or remain 'alienated' from the community as a discrete parcel on the cadaster, ready for re-allocation to a new user? Problems also arise when some senior policy and decision makers insist that radical title in the State over-rides the provisions of the Constitution and the Land Law. Also, most rights acquired by occupation have not been formally

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<sup>6</sup> Tanner 2016:25. *Community Land Rights Delimitation, Natural Resources Management and Rural Land Taxation in Mozambique: Significance and Implications for Sustainable and Inclusive Development*. Maputo, The World Bank. A Synthesis Report for the World Bank's Non-Lending Technical Assistance

<sup>7</sup> Law 19/97, Article 17, 2(c)

*identified on the ground and registered, and so are invisible to outsiders looking for land on official maps. Capacity and methodological issues also result in inaccurate surveying and recording errors when data is transferred to official maps.*

- The solutions that are proposed when land within the ER-PD area is subject to significant conflicts or disputes over contested or competing claims, and is critical to the successful implementation of the ER Program.

*Conflicts between neighbors are typically resolved by customary tribunals and resolution mechanisms. NGOs report many conflicts between local communities and private investors of various sizes and types. Most disputes involve national investors who get a new DUAT with the help of provincial land services. Field research shows that consultations with communities are usually cursory and held only with traditional leaders who can be corrupted by the land requestor<sup>8</sup>.*

*Disputes with outsiders usually go first to the District Administrator who asks sector technical staff to sort out the problem; if this fails, the dispute goes up to the Governor as representative of the State. An increasing number of land-related disputes now enter the formal tribunal structure, starting at District level. Paralegals trained by the Ministry of Justice Center for Legal and Judicial Training (CFJJ) work in NGOs and Community-Based Organizations (CBOs) in Zambézia, and provide conflict mediation and resolution support.*

*Large-scale projects like the Portucel forestry plantation<sup>9</sup> are guided by central government, which also approves the DUAT. These DUATs can cover huge areas, with little regard for pre-existing DUATs acquired by occupation. Poorly conducted consultations give a gloss of legitimacy to the process, which prioritizes the land concession rather than achieving a mutually beneficial, negotiated outcome<sup>10</sup>. The resulting conflicts can be resolved by going back to Land Law principles and doing a retroactive delimitation and consultation exercise. This is currently being tried by Portucel with support from the NGO ORAM and a national consulting firm.*

- The potential impacts of the ER Program on existing land and resource tenure in the Accounting Area.

*There are no identifiable negative impacts on existing land and resource tenure rights; there should be a positive impact that will enhance local rights if the land tenure*

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<sup>8</sup> See Tanner, C. and Baleira, S. 2006. *Mozambique's legal framework for access to natural resources: The impact of new legal rights and community consultations on local livelihoods*. Rome, FAO, Livelihoods Support Program Working Paper 28

<sup>9</sup> A multinational forestry company. In Zambézia it has been allocated a DUAT over 173,000 hectares spread in a mosaic over a much larger area; they intend to plant 60 percent of this area. Portucel also has a large concession in Manica Province.

<sup>10</sup> Tanner 2010. *Land rights and enclosures: implementing the Mozambican Land Law in practice*. In: Anseeuw, W. and Alden, C. (eds.), *The Struggle over Land in Africa: Conflicts, Politics and Change*. Pretoria, Human Sciences Research Council (HSRC) Press.

element of the ER program is fully implemented, in conjunction with land tenure activities in the Sustenta and MOZFIP projects, which both include delimitation activities.

**With regard to the ER-PIN<sup>11</sup>**

- The SESA was not concluded

*The SESA document does provide a sound assessment of the wider context of REDD+ activities in Mozambique; in relation to the accounting area, it recommends what is needed and underlines the need for an ‘inverted hierarchy’ focusing resources at local level and promoting strong community involvement from the outset.*

- No solutions were presented with regards to main issues identified:
  - Harmonization of DUAT

*‘Harmonization’ (or land tenure regularization (LTR)) is being addressed by the Sustenta and MOZFIP projects in five and four districts of the Accounting Area respectively). The legal basis is clear, but political and investor failures to correctly use the law must be addressed. These include not considering the full extent of acquired rights, and not devolving land and NR management tasks to community level (as specified in the 1997 Land and 1999 Forest and Wildlife laws).*

*‘Harmonization’ about NR is less clear, and is open to interpretation of how the Land Law and other NR laws intersect to provide a strong level of local control over the resources which others want to exploit. There are many issues here: weak institutional capacity, little respect for the law by vested interests and policy makers; land-grabbing and elite-capture behavior. It is also the case that NGOs often follow the Association route to secure local land rights as part of a development project because it is easier to ‘legalize’ an Association and do things like open bank accounts. This strategy can result in land and NR rights being denied to other community members, or in benefits being concentrated in small local groups.*

- Legal rights to use and benefit from land and forests (DUAF)

*The ‘ownership’ over resources on land occupied by a DUAT holder is clear and resides with the State (as indeed does ownership of the land itself). Subsistence use rights are clear and guaranteed in a way that is common to all the NR laws; this is similar to the vision of use and benefit enjoyed by the local community with a collective DUAT in the Land Law (communities do not need authorization for subsistence use but must seek approval from the State for new commercial use).*

*The intersection of the Land and the Forest and Wildlife Laws makes it clear that holders of DUATs by occupation have the use and benefit of the natural resources on ‘their’ land. Thus, a type of use right over local forest assets (DUAF) exists in all but name only.*

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<sup>11</sup>[http://rightsandresources.org/wp-content/uploads/2016/06/ER-Program-Assessment\\_Mozambique\\_2016.pdf](http://rightsandresources.org/wp-content/uploads/2016/06/ER-Program-Assessment_Mozambique_2016.pdf)

*Creating the DUAF in law should be explored in the new Forest Law that is under preparation. Given that the Land Law gives local community a clear NR management role in their areas (Article 24), the DUAF could be discussed at the next CFL meeting or the CBNRM Conference planned for late 2017.*

*The benefits to be gained by formally creating and regulating the DUAF in upcoming new legislation would be that it would clarify the link between the underlying land DUAT, and the use and management rights of Local Communities over the trees and other NR that exist within the delimited area of their DUAT.*

- Insufficient implementation of the legal recognition of community lands rights

*This is still the case although it must be noted that Zambézia has been the focus of significant bilateral support for community land rights delimitation since the early 2000s. A shift in GoM policy to include delimitation in its key ‘Terra Segura’ project is a good indicator, although clearly the focus of attention is on titling individual DUATs. As a GoM program is a significant departure from the usual lack of official support for delimitation work. With World Bank support, the ER program addresses the insufficient implementation of community land rights recognition through the Sustenta and MOZFIP projects which are included in the ZILMP. Sustenta will delimit 270 rural communities and generate individual DUAT title documents for 150,000 farmers who mainly hold their land under customary norms and practices; these farmers will engage in the value chain investment side of the project. MOZFIP will delimit approximately 160 communities and generate approximately 3,100 DUATs for small and medium landholders engaged in forest plantations and agroforestry<sup>12</sup>. In this way, the two projects will create the land rights platform and related local governance structures for the ER program.*

- Proposition of the creation of a “Land Registry and Registration of Community Areas” process but no follow up

*This assessment **does not support** creating a Land Registry and Registration of Community Areas. Firstly, there is already a Cadaster and a Legal Registry in the MITADER and Ministry of Justice respectively; and the National Land Policy implementation strategy has called for a ‘Single Cadaster’ to be created, integrating data from sectors that use land and natural resources<sup>13</sup> (mining, energy, etc.). This structure needs reform and investment, and must be made to work. Secondly, there is no such thing as a ‘Community Area’ in the Land Law or anywhere else. Local Communities and ‘good faith’ occupants are land rights holders like any other; and DUATs by occupation and by formal request can and do exist in the same landscape, even within Local Communities. All DUAT holders irrespective of how they get their right, should be on the same register. A separate Registry for ‘Community Areas’ would*

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<sup>12</sup> These figures are for the entire area covered by the two programs, in Zambézia and Cabo Delgado (“Sustenta” project) and national level (MozFIP)

<sup>13</sup> National Land Policy, Resolution 10/95 of 17 October. Part B (i), paragraph 67.

reassert the dualist view of the countryside split into commercial areas and ‘communal’ or ‘community areas’, and undermine the model of negotiated land and NR use by investors in areas already occupied by local people. This model is also critical for a successful ER program, which requires major changes in land and NR behavior by local people, and their integration into new value chains and markets.

- Land Tenure Assessment was not publicly vetted and endorsed by stakeholders

*The Assessment has still not been publicly vetted, although it has been appraised and approved internally by the World Bank. It is perhaps now advisable to discuss it in the context of the wider review of land policy and legislation that is soon to take place, led by MITADER. It is not necessary to create a new mechanism for this: MITADER could put the Land Tenure Assessment on the agenda of the next Consultative Forum on Land, as a contribution to the debate and to formally endorse it. This approach would underline the close link between land governance and a successful REDD+/ER program.*

- Land tenure was not assessed as an implementation risk for program

*A failure to correctly address land tenure issues is a major risk for the program. A successful ER strategy requires a radical change in the way local people use forest resources, including the ending of itinerant agriculture and its deforestation impact. Sharing in benefits generated by ERs, and diversifying their livelihoods or increasing the productivity of their land, are key elements of an ER strategy which must replace extensive forest use and deforestation with alternative sources of income. Having secure and recognized tenure rights over most of the land in the Accounting Area, and by extension, use rights over the forest and other NR found there, turns local people into direct stakeholders with a right to participate significantly in the financial benefits generated by the ER program, and engage with other economic actors in the wider ZILMP. Effective implementation of all aspects of the delimitation and land use planning activities under the Sustenta and MOZFIP Projects are therefore critical elements in the wider integrated ZILMP strategy which includes achieving the ER targets.*

*‘Delimitation’ in both cases includes not just the identification and certification of the limits of the community DUAT, but also the development of community land-use plans, creating and/or strengthening CBOs including the Community Natural Resources Management Committees (CGRNs), and the development of a Local Community development vision and agenda which will underpin and facilitate the ER program<sup>14</sup>.*

*Note too that while the GoM appears to prioritize the individual DUATs, this assessment concludes that **priority should be given to Local Community delimitation**, since it is at*

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<sup>14</sup> This process must be implemented by competent, experienced contractors who understand delimitation participatory appraisal methodology; few GoM and private surveyor teams have this experience, which is concentrated in the NGO sector.

*community level that both the land use plan and the implementation of measures to change land use behaviors will take place. Generating individual DUATs also requires the full involvement of local (customary) land managers, and delimitation both identifies these people and enhances their capacity, and identifies their area of jurisdiction (the delimited community). With their support, individual DUATs can be proven and confirmed by local leaders and others before they are formally titled, in line with the process of desmembramento (taking individual DUATs out of the collective Local Community DUAT), and following the respective provisions of the Land Law regarding proof of a DUAT, and the management of land and NR by the Local Community structures<sup>15</sup>.*

- No Grievance Redress Mechanism was designed

*It is suggested that the newly formed Zambézia Sustainable Development Platform (ZSDF) be given some form of mediation-based function to address grievances that cannot be resolved at District level. The NGOs also have paralegals working with them trained in a CFJJ/FAO program since 2006, and in the context of the ITC/MCA program that also ran in Zambézia until 2012; there is clear anecdotal evidence that these paralegals have been used by local governments as well as by NGOs to settle disputes and facilitate agreements.*

- No definition of the mechanism to address land tenure conflict was given.

*The rationale here is not clear: such a mechanism would seem to be the same as the Grievance Redress Mechanism (see above); if it is not, it should be. Land conflicts other than local boundary disputes (handled in the main by local structures) are invariably about the wider development decision making and implementation process.*

Having looked at preparation phase issues, the Assessment discusses in more detail the key question raised above: how the policy and legal framework provides a platform for a process of inclusive and transformational agrarian development that is predicated on secure local and rights (Section Two). A key instrument for doing this is community land rights delimitation, including developing Community Land Use Plans (CLUPs). Getting this right requires a clear understanding of how the Local Community is spatially identified with clear limits, through a systems analysis of how groups of people and villages occupy and use land and natural resources to sustain their livelihoods strategies.

Together with other instruments in the legal framework, delimitation can support an inclusive and transformational development model which is rights-based, but which quickly moves on to promoting dialogue and consensus over how private and State projects are implemented in areas covered by customarily-acquired DUATs. Delimitation secures and formalizes collective Local Community DUATs, and provides

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<sup>15</sup> See the Land Law, Law 19/97, Articles 13, 15 and 24.

the CLUPs that form a platform for SFM discussions and implementation. It identifies local structures that can be integrated into and work with the ERP, and which can then support the individual titling exercises conducted under the Sustenta/MOZFIP projects. And it prepares communities for negotiating with other actors and the State over a range of new economic as well as conservation-focused activities in other projects.

The Sustenta project will identify the more enterprising farmers, who will then get financial support to invest and create new value chains which in turn provide new markets and incentives for other farmers. The MOZFIP project will integrate selected farmers into its forestry activities. The goal is to induce a process of change-by-example, whereby farmers evolve into more efficient producers responding to new markets and improving their farming techniques<sup>16</sup>. The expectation in the ER context is that they will then cease to use (i.e. slash and burn) forested land so extensively. The behavioral change at the heart of the strategy to reduce carbon emissions is achieved through a mix of SFM and conservation messages, and measures to draw farmers away from practices that are unsustainable and cause deforestation.

To summarize, secure community and individual land tenure rights sit at the base of this model and underpin it. The *process of securing them* facilitates the development of Community Land Use and Development Plans, and creates new local capacity to engage with other actors including investors and legal forestry enterprises. This process creates new opportunities for enhancing and diversifying incomes away from shifting agriculture and engaging with clandestine interests to extract timber in a non-sustainable manner. Changing behaviors and enhanced incomes from sustainable activities then link with SFM messages to reduce deforestation and achieve ER targets.

Section Three looks at benefit sharing as a component of the development model discussed in Section Two. The focus is on how tenure rights over land used for investment or other activities – such as an ERP - intersect with the development of an effective mechanism for determining how benefits are shared. This sharing of benefits then contributes to the process of behavioral change described above.

A useful reference point is the '20 percent' scheme in which a part of revenues from commercial forestry and wildlife activities is channeled to local communities. This mechanism was created by the 2002 Forest and Wildlife Regulations, and regulated by a Ministerial Diploma in 2005<sup>17</sup> which provided more detail about how it should operate. It is widely accepted that 'the 20 percent scheme' has *not* worked well however, largely because a comprehensive study of how to implement the Regulation was never carried out, and it was then implemented in an *ad hoc* and poorly coordinated fashion that subsequently informed the drafting of the 2005 diploma.

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<sup>16</sup> This is a key long term goal of the Agrarian Policy, Resolution 11/95 of 31 October

<sup>17</sup> Diploma Ministerial n° 93/2005 de 4 de Maio, *Sobre os mecanismos que regulam a canalização dos 20% das taxas de exploração florestal e faunística às comunidades.*

Meetings held for this Assessment confirm that the scheme is poorly coordinated and fragmented across participating sectors. However, a study in 2012 does reveal the partial success of the scheme and its importance for ensuring a more equitable outcome from private investments and concessions that use NR which local people depend on<sup>18</sup>. The Beta/Nemus study also finds that ‘the communities manage in a satisfactory way, the 20 percent of forest revenues, especially if they have the support of the NGOs’<sup>19</sup>. Rather than abandon this scheme because it has been difficult to implement, the conclusion is that it now necessary to carry out a full review and redesign the whole mechanism<sup>20</sup>.

Land Law instruments such as Local Community delimitation and community consultations are core elements of this benefit-sharing process. They can identify and clarify which communities should participate in specific payments (generated by commercial activities inside the delimited area); they help to create a local structure that can receive and use the funds on behalf of the whole community; and by developing a local development plan as well, they can ensure that the funds are used for activities that have broad support and benefit the majority of community households.

Income from selling ERs to the FCPF or on global carbon markets can be seen as a ‘public revenue’ similar to revenues from forestry and wildlife concession operators. It makes perfect sense for any share of these revenues to be passed through a single benefit-sharing mechanism that amalgamates income streams from forestry, sport hunting, and tourism, and which also facilitates that most appropriate use for local development.

In addition, and particularly in the context of the Sustenta project, new revenues coming into Local Communities through partnership agreements with investors can also be channeled and managed through the same benefit-sharing mechanism. Together with the enhanced incomes coming from the investment process itself, these add up to a powerful force for behavior change away from present unsustainable practices.

Section Four looks at the wider context of the ER program within the ZILMP area. It notes that having a progressive land tenure framework is a necessary but not sufficient condition for program success. As local land rights are identified and secured, firstly at the collective Local Community level, and then at the sub-community level of households, individuals, and activity-based groups, other things must be happening.

Delimitation creates CLUPs that attract investors and create a framework for more intensive local agriculture alongside community involvement in NR management. Well-conducted *consultas* take place that are not just about getting a ‘no objection’ for a new land request or project to proceed; they are also intended to produce *negotiated*

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<sup>18</sup> Chidiamassamba, C. 2012. *Estudo do impacto do Diploma Ministerial n° 93/2005 de 4 de Maio sobre os mecanismos que regulam a canalização dos 20% das taxas de exploração florestal e faunística às comunidades*. Relatório Final. Maputo, Ministry of Agriculture, National Directorate of Land and Forests.

<sup>19</sup> Nemus/Beta 2015. T15002 – REDD+ Moçambique. *Apresentação do Relatório Final*, Slide 14

<sup>20</sup> Chidiamassamba, op.cit.



*agreements that enhance local incomes and food security.* These outcomes reduce the pressures on forests that are exploited using slash-and-burn itinerant farming techniques, illegal logging and inefficient charcoal production.

The ERP must therefore include other initiatives that promote the investment and facilitate the agreements between local communities, small farmers, and investors. It must also work with initiatives that have a more explicit SFM and conservation objective. The Land Tenure Assessment underlines how a focus on land tenure rights – both collective and individual – intersects with other projects and initiatives within the ZILMP, to produce the transformational process that is essential for achieving the target of a 40 percent reduction in emissions over eight years. These projects include the Sustenta project which both secures tenure rights and provides the economic linkages to transform local agriculture; the MOZFIP project which also starts with tenure issues to support its forest investment objectives; and MOZBIO which seeks to diversify local community livelihoods using income streams provided direct to community level, from the project and from benefit-sharing.

The ERP, Sustenta and MOZBIO projects are part of the GoM/WB cooperation program. Outside this program but still within the ZILMP framework, is the FAO project ‘Payment for Ecosystem Services to Support Forest Conservation and Sustainable Livelihoods’. This project aims to support a review of the 20 percent mechanism and devise a new and more effective system. It will then support beneficiary communities to use these funds to diversify their economic activities and change their behavior away from unsustainable forest use.

Zambézia also has a history of land rights delimitation set within rural development projects (starting with the DFID-funded Zambézia Agricultural Development Program (ZADP) of the early 2000s). Local NGOs have significant acquired experience, which is a valuable resource for the ER program. The Portucel project also overlaps with parts of the ERP footprint. This has caused some tensions and conflict, but the investment also opens up new opportunities for local people. The company is retroactively carrying out a delimitation exercise to address the tensions that have emerged since it began.

Section Five considers the discussion in the previous sections in the specific context of the ERP. It underlines the role of local community delimitation and the principle of consulting with local people and negotiating agreements with them, when it comes to implementing new projects. The question of partnerships is also identified as a key element of the land tenure framework, for a successful ERP. Given that it is necessary to also secure the collaboration of individual farmers in the ERP, and the inclusion of individual DUAT titling in the Sustenta project, delimitation is also seen as a prerequisite for ensuring that the titling activity is legitimate and endorsed by local leaders and neighbors of those receiving title documents. The question of community representation is also discussed. Section Five then looks again at the issue of the DUAF, and the link between land rights and rights over NRs. It underlines the fact that to date,

the traditional vertical separation between sectors has meant that projects rarely utilize the land and other legislation in a 'joined up' way, to ensure that the link between land rights and NR rights is fully established and understood.

This discussion is then extended to take in the concept of community public domain, which in effect gives local communities (seen as a form or hybrid entity with both a private and a public dimension) *de facto* ownership over natural forests and resources in their areas. This situation, together with the subsistence use rights that local people have over forests and NRs, means that the State must reach agreement with local communities when it comes to selling ERs and distributing the benefits (sale income) that results. The CLUP that is an outcome of the delimitation process is developed further in the specific context of the ERP. Finally, an outline of a new project to achieve ERs and channel benefit-share to local communities and their members, is presented.

Section Six concludes the report firstly with a presentation of the main steps that make of the project proposal developed in Section Five. It then summarizes the main points presented in the report, with specific reference to how the land tenure dimension intersects with the ERP and other activities. Finally, there is discussion of potential risks. The most serious relate to underlying capacity concerns and political tensions in the country at the present time. While an ER program can do little to address the latter, it can work to improve coordination at all levels, and introduce the 'reversed hierarchy' suggested in the SESA, with a strong focus on community and district level capacity building. It is important however, to include measures – effective M&E, regular stakeholder forums, etc. - that will ensure senior level policy and decision makers are fully supportive of the ER strategy, and help to mitigate the impact of corruption that has also been noted in the SESA.

Other more immediate concerns relate to legislative changes that are in the pipeline; the new Forestry Law, and the strong probability that the Land Law will also be revised during 2017/18. The report ends with a relatively positive assessment of how these might evolve, and the potential for consolidating the ER strategic approach.

Annex One provides some data on the status of delimitation nationally and at provincial level. Annex Two is a record of consultations and meetings conducted to support the discussions and conclusions presented in the main text.

## INTRODUCTION

This Report presents the assessment of land tenure issues in the context of the pilot Emissions Reduction project in the north of Mozambique (Zambézia Province). The project forms part of the Government of Mozambique (GoM)/World Bank (WB) project **Support to the preparation of the Zambézia Integrated Landscapes Management Program (ZILMP)**; and fits within the global Forest Carbon Partnership Facility (FCPF) and REDD+ program. Emission Reductions (ERs) achieved through the project will be purchased by the World Bank under the global Forest Carbon Partnership Facility (FCPF), generating a revenue stream for the GoM in return for its commitment to slow or prevent deforestation and forest degradation.

The ER element of the ZILMP is set within the context of Mozambique's application for funding support under the Forest Carbon Partnership Facility (FCPF). The FCPF global partnership is focused on reducing emissions from deforestation and forest degradation, and the role of conservation, sustainable management of forests and enhancement of forest carbon stocks in developing countries (REDD+). This facility is part of the wider REDD+ program to address deforestation and forest degradation and thus contribute to climate change mitigation and control, and related conservation and biodiversity objectives.

FCPF support is generally provided in two components:

- A Readiness Fund to help countries prepare for future financial incentives for REDD+;
- The FCPF Carbon Fund (Carbon Fund), which pilots incentive payments for REDD+ in countries that have shown significant progress with their readiness funding.

The Carbon Fund payments are intended to provide an incentive to recipient countries and various stakeholders, including forest dwellers, forest-dependent people, and the private sector, to achieve long-term sustainability in financing forest conservation and management programs and associated activities. This is intended to help reduce the negative impact on the global climate from the loss and impoverishment of forests.

The GoM has already received \$ 3.8 million and \$ 5 million from the FCPF Readiness Fund (in 2013 and 2016 respectively) to prepare for its participation in Carbon Fund support. The ZILMP is one of two national REDD+ pilot programs in Mozambique and has been proposed for inclusion in the Carbon Fund based on the preparatory work so far undertaken. The other is also in the north of the country, in an important coastal/continental landscape (the Cabo Delgado/ Quirimbas Landscape Program).

Reporting for the Carbon Fund indicates that initial slow progress in the preparatory phase (citing 'not so strong political leadership in moving the agenda forward' as one

reason)<sup>21</sup> has been overcome and that progress is now satisfactory. Concerns about political leadership have to some extent been addressed by the creation of a new 'super Ministry' for Land, Environment and Rural Development (MITADER). 'With a new Government fully committed to the promotion of sustainable natural resources management and rural development (Ministry of Land, Environment and Rural Development - MITADER), and the UT-REDD+ fully functional, significant and commendable progress has been achieved in the grant implementation'<sup>22</sup>.

MITADER integrates key sector departments responsible for land, environment, conservation areas, natural forests and rural development. This move has ended decades of institutional fragmentation and centralized, disconnected decision making which have not only held back progress on Carbon Fund activities; they have also held back effective implementation of Mozambique's widely regarded progressive legislation for land and natural resources.

The comment above about 'not so strong political leadership' underlines another issue alluded to in supporting documents and meetings, and in other projects which the author has supported. Corruption and vested interests with links to the political power structures have constrained the implementation not just of the 1997 Land Law, but of the whole regulatory framework for environmental and natural resources issues. While the creation of MITADER is a positive sign in this context, reinforced by significant policy measures such as a moratorium on new forest concessions, these problems are still present and must be considered as the ER-PD is developed.

Meanwhile, with the improvement in Readiness Phase delivery, the Emission Reduction Project Idea Note (ER-PIN) for the Emission Reductions Program in Mozambique was accepted into the Carbon Fund's pipeline in October 2015. Work then began on the ER program itself, with the development of the ER Program Document (ER-PD) as a critical step along the way towards full implementation by 2018.

Things have not stopped on the GoM side either: a key institutional development has been the creation of the National Sustainable Development Fund (FNDS) which integrates important financial and operational functions. These include managing and allocating cooperation funding, and integrating several separate GoM Funds supported by land and natural resources revenues. The FNDS also now hosts the national level REDD+ Technical Unit (UT-REDD+). Work has also continued on other key documents, including a new Forestry Law to replace the forestry elements of the 1999 Forest and Wildlife Law, and the finalization of the National REDD+ Strategy (the new draft law is nearing completion; the REDD+ Strategy was approved in early December 2016).

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<sup>21</sup> <https://forestcarbonpartnership.org/sites/fcp/files/2015/October/Mozambique%20GRM%20FY15%20-%20public.pdf>

<sup>22</sup> *ibid*

## REDD+ and rural development

In recent years, the focus of REDD+ has widened to include poverty alleviation and rural development. While REDD+ is still a key instrument in the fight to reduce carbon emissions and combat climate change, it is now seen as having an important role in achieving a social and economic SDG targets as well<sup>23</sup>. Thus, the ZILMP incorporates other elements, which together create a sustainable development strategy for the nine target districts in Zambézia province. These other elements include the Agriculture and Natural Resources Landscape Management project (hereafter, ‘the Sustenta project’); and MOZFIP (Mozambique Forest Investment Project). Both projects are World Bank-funded, and include land tenure regularization as a key activity. Sustena will delimit 250 local communities and generate title documents for about 150,000 individuals, while MOZFIP will delimit 160 local communities and generate 3,100 individual DUAT titles<sup>24</sup>.

These activities create the tenure security needed for local people to take part in new economic activities and value chains that are also supported by the project. They are also essential for a successful ER Program (Emissions Reduction Program). The link between land tenure, other economic and conservation activities, and the ERP, also reflects the evolution of the REDD+ program into a ‘holistic landscape management’ process<sup>25</sup>. Thus, ‘REDD+ could be an authentic rural development policy, attracting national and international funds for rural communities facing various difficulties. In this way, conservation of nature extends to include human development’<sup>26</sup>.

## Why Tenure Matters for REDD+ and ER programs

One thing that stands out in background documents and is confirmed in most ER discussions, is the challenge to overcome the poverty of local people who use and depend upon natural resources in the ER program area. As the SESA puts it, ‘the successful management and preservation of ecosystems and species is closely tied to providing communities who rely on these systems/species for...subsistence resources, or for commercial sales, with an alternative means of economic and food security’<sup>27</sup>.

Secure land tenure rights are the bedrock upon which ‘alternative means of economic and food security’ can be built. Indeed, land rights are identified in the supporting literature as a critical factor for successfully implementing this kind of project. Slowing or even halting deforestation and forest degradation in areas with significant population evidently implies a) an impact on local livelihoods that rely heavily on forest access and use; and b) a need to involve local people in project activities. Whilst land and natural

<sup>23</sup> UN-REDD Program Fact Sheet ABOUT REDD+. <http://www.unredd.net/documents/redd-papers-and-publications-90/un-redd-publications-1191/fact-sheets/15279-fact-sheet-about-redd.html>

<sup>24</sup> The distinction between delimitation and individual titles is discussed in detail in the following sections.

<sup>25</sup> Nemus/Beta 2015. *Análise do quadro legal e institucional para a implementação do REDD+ em Moçambique – Relatório Final*. Maputo, Fundo do Ambiente

<sup>26</sup> Ibid:208

<sup>27</sup> SESA pp263

resources are constitutionally State property in Mozambique, secure tenure rights in the form of recognized and if possible, registered DUATs can give local people a strong stake in any developments involving these resources.

A sense of having secure tenure that is respected by other parties also predisposes rights holders to negotiate over implementing activities which at first sight might conflict with their livelihoods strategies. One recent review of tenure security and REDD+ issues note that resource users ‘may have little incentive to protect the resource if they feel they have no stake in it. More secure tenure is therefore likely to give local people greater leverage in negotiations with the government and the private sector’<sup>28</sup>.

Respecting local tenure rights also imposes on others (the State, private sector actors, etc.) an obligation to follow more participatory and equitable strategies when they promote new initiatives, whether for economic or conservation and NR management purposes. The way tenure rights – and the consequent *right to participate* – are treated therefore establishes important parameters for the development and implementation of benefit sharing schemes (which if successful, completes a ‘virtuous circle’ that encourages local acceptance of and involvement in the ER program).

While the land tenure assessment focuses on tenure rights, how these link to corresponding rights over forests, and how they relate to future ER payments, it is important to look beyond tenure rights to see how a land rights program is a key input to a sustainable ER program. Land rights, governance, and benefit shares producing social and economic development then come together to support the ER program goal of achieving a 40 percent reduction in emission over the next eight years.

## Basic details of the ER Project

### Districts covered (‘the Accounting Area’)

Nine districts in the northern Province of Zambézia are included in the pilot ER initiative:

- Alto Molocue
- Gilé
- Gurué
- Ile
- Maganja da Costa
- Mocuba
- Mocubela
- Mulevala
- Pebane

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<sup>28</sup> Cotula, L. and Mayes, J. 2009. *Tenure in REDD – Start-point or afterthought?* Natural Resource Issues no 15. International Institute for Environment and Development (IIED), London, UK. Pp6.

## **Beneficiaries**

The beneficiaries of the ER-PD range from:

- The State of Mozambique as 'owner' of the land forests addressed by the project
- The Government of Mozambique in the form of the specific agencies and line sectors involved in the development and implementation of the project
- The populations who live in the project area and who should in principle benefit directly from the implementation of the ER program and subsequent payment for ERs by the World Bank within the FCPF
- Private sector enterprises working within the project area, which may be directly involved in implementing REDD+-related activities; and/or are partners in existing benefit-sharing or other resource-sharing agreements with local communities

While all the above are important for ultimate success, the focus group for this report is the population that lives in and directly use and/or benefit from the forests in question. Here, the issue of land tenure rights is directly relevant, as it can determine who has the right to benefit from any future ER payments, and how these benefits are channeled to beneficiaries. Benefit shares can be in the form of Government programs that aim to improve the well-being and livelihoods of local people (which may be fully or partially funded by ER payments); or some form of direct transfer to local people who engage in forest conservation and other activities that result in achieving the ER target.

## **Structure of the Assessment**

The assessment begins with a look at the preparation phase documents and how they have dealt with the land tenure question. This includes responses to concerns raised in relation to specific issues in the ER accounting area; and to criticisms made of the ER-PIN in relation to its treatment of community rights. This section ends with a discussion of the link between land and natural resources rights at community level.

Section Two brings the main elements of the Land Law together around the need to develop an inclusive and sustainable rural development strategy that can address the key goals of income diversification, behavioral and land-use change, and achieving the 'inverse hierarchy' of the SESA recommendations (community structures and capacity building at local government level).

Section Three looks at benefit-sharing and how this is linked to land tenure issues. This is done along two dimensions: the use of delimitation to determine how the local community share of revenues is distributed between participating communities; and the need to individualize the sharing of benefits in some way to provide incentives to individual households and farmers to change their present practices.

## 1 SECTION1: PREPARATION PHASE ASSESSMENTS

Mozambique has a progressive and well-regarded policy and legal framework for land, which can and should contribute centrally to a successful ER program. A full review of both the land framework and other relevant legislation is found in preparation phase documents that consider the specific context of a REDD+ program. The following discussion draws out some key features, before looking at how the main elements of the Land Law intersect with other laws and strategies in the rural development context.

### 1.1 The preparation phase assessments

The preparation phase included a full assessment of the legal and institutional framework for a REDD+ program in Mozambique, and a Strategic Environment and Social Assessment (SESA) that also assesses land tenure legislation and related issues<sup>29</sup>. Land is also discussed in the ER Program Idea Note (ER-PIN)<sup>30</sup>. These three documents provide a relatively complete picture of the legal framework for a REDD+ and ER program. There are gaps in the analysis however, and the studies do not really draw out the significance of key legal and operational instruments for achieving a successful ER outcome.

#### 1.1.1 The Nemus/Beta Study

This study provides a comprehensive description of all relevant legal instruments for a REDD+ program (see Table One below). It also notes that in terms of formal legislation, Mozambique has an extremely progressive framework which recognizes local rights over land and resources, guarantees the participation of local people in projects including those with REDD+ objectives, and conveys ‘an enormous preoccupation with the protection of the majority of land occupants, who are mostly peasants’<sup>31</sup>.

This preoccupation is echoed in other legislation regulating natural resources use, the environment, physical planning and, most recently, the implementation of REDD projects. Article 17 of the Decree detailing procedures for approving REDD+ projects requires (amongst various environmental and other safeguards) ‘respect for the rights of local communities, *permitting their effective participation in the design, development and implementation of the REDD project...with approved agreements*’<sup>32</sup>. REDD+ projects must also ‘ensure the distribution of benefits, including the local communities’<sup>33</sup>.

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<sup>29</sup> Beta/Nemus 2015. *Análise do quadro legal e institucional para a implementação do REDD+ em Moçambique – Relatório Final*. Maputo, Fundo do Ambiente; Scott-Wilson 2015. Draft Strategic Environmental and Social Assessment (SESA) Report V5. Maputo, UT-REDD+ and the National Environment Fund (FUNAB). Contract No: 05/C/UGEA-REDD+/FUNAB/14

<sup>30</sup> Republic of Mozambique 2015. Emission Reductions Program Idea Note (ER-PIN), Zambézia Integrated Landscapes Management Program (ZILMP). Maputo, September 18.

<sup>31</sup> Nemus/Beta 2015:71

<sup>32</sup> Nemus/Beta 2015:44, emphasis added

<sup>33</sup> Ibid:45



**Table 1 Main national laws and regulations relevant for the ERP and land tenure**

(Extracted from the ER-PD)

Acts	Description and relevance for ER Program
<b>Environment and biodiversity</b>	
<p><b>The Environmental Law</b> (n° 20/97)</p>	<p>The Environmental Law acts like a framework law, establishing the pillars of the system of legal protection of the environment. It aims at defining the legal basis for the improved use and management of the environment and its components to achieve a system of sustainable development in the country. The legislation prohibits the pollution of all environmental components (air, soil and water) as well as practices that may accelerate erosion, desertification and deforestation.</p> <p>Article 4 is especially meaningful regarding the ER Program. It establishes a range of basic legal principles, including the principle of rational use and management of natural resources, with a view to further improve the quality of life of the population and the maintenance of biodiversity and ecosystems. It also provides for the participation of local communities in the formulation of policies and laws related to natural resource management and the management of protected areas.</p>
<p><b>Pesticides Regulation</b> (Ministerial Diploma n° 153/2002)</p>	<p>This is a joint regulation between the ministries of agriculture, health and environment that aim at regulating the importation, distribution, production, disposal and use of agrarian pesticides for the protection of animal and public health purposes. It requires all operators active in the importation, distribution, and production of pesticides to be registered and classifies the various pesticides in three major categories according to their estimated danger.</p> <p>Although the ER Program does not provide for the introduction of any pesticide in the ER Program area, agriculture is one of its core component; should any product be introduced later, this regulation will have to be fully considered.</p>
<p><b>Regulation for the Control of Invasive Alien Species</b> (Decree N°25/2008)</p>	<p>This regulation provides for: (i) the protection of vulnerable and threatened species and ecosystems; (ii) the impeding of unauthorized introduction and dissemination of alien species and invasive alien species; (iii) the management and control of invasive alien species in order to prevent or minimize their damage to the environment and biodiversity; (iv) the eradication of alien species and invasive alien species that may damage ecosystems and habitats; (v) the carrying out of environmental impact studies under Decree No 45/2004 of 29 September prior to the introduction of exotic species.</p> <p>Although the ER Program does not provide for the introduction of any invasive species in the ER Program area, plantations are part of the ER Intervention and should, if necessary, respect this regulation.</p>
<p><b>The Environmental Impacts</b></p>	<p>Mozambique has developed a comprehensive regulation to cover the EIA process, which is included in the Regulation of the Process for</p>

<p><b>Assessment (EIA) Regulation (Decree n°54/2015)</b></p>	<p>Environmental Impact Assessment. The regulations are in line with the international environmental and social management best practices, including World Bank recommendations and procedures. The regulation details the procedures and criteria for ESIA and ESMP and implies the categorization of projects and subprojects (A+, A, B or C). Although the MITADER is responsible for regulating the EIA in Mozambique, it is the project proponent's responsibility to ensure that standards and identified mitigation measures are met.</p> <p>In the design of the ER Program, safeguard plans were accordingly developed, including SESA and ESMF.</p>
<p><b>The Physical Planning Law and its regulations (n° 19/2007)</b></p>	<p>The Physical Planning Law establishes key principles for environmental protection in the context of regional planning and establishes hierarchical responsibilities among central, provincial, district and local governments in land use planning processes. It also stipulates that expropriation for public interest will give rise to the payment of fairly-calculated compensation to compensate for the loss of tangible and intangible goods and productive assets as well as the disruption of social cohesion.</p>
<b>Forest</b>	
<p><b>The Forests and Wildlife Law (n° 10/99) and its regulations</b></p>	<p>The objectives to be pursued under this act are to protect, conserve, develop and rationally use sustainable forest and wildlife resources for the economic, social, and ecological benefit of current and future generations of Mozambicans. It promotes, <i>inter alia</i>, the protection and conservation of specific biodiversity components as well as specific flora and fauna species found in certain places. The law also identifies the principles of local community participation in sustainable natural resources management in and outside protected areas. It introduces Local Participatory Management Councils (COGEPs). The ER Program is fully aligned with this key Law and has been designed in full knowledge of it.</p>
<p><b>Requirements for Simple License Regimes, and the terms, conditions and incentives for the establishment of Planted Forests (Decree 30/2012)</b></p>	<p>Definition of the requirements for logging including the scheme, terms, conditions and incentives for the establishment of forest plantations, which are part of the ER Program interventions.</p>
<b>Land<sup>34</sup></b>	
<p><b>National Land Policy (Resolution n°10/95)</b></p>	<p>The Land National Policy defines the Land as the property of the State in compliance with the guarantee of access and use for population and investors, in full recognition of customary rights of access and</p>

<sup>34</sup> The legal framework associated to Land management is analyzed in section 4.4.

	management of land for rural population.
<b>The Land Law (nº 19/97) and its regulation</b>	<p>The Land Law defined the regulatory procedures for land management. It provides the basis to define access rights, land use rights and procedures for the acquisition and use of land title by communities and individuals. The same law and its regulation embody key aspects defined in the Constitution in relation to the land, such as the maintenance of the land as state property, which cannot be sold. It introduces <i>Direitos de Uso e Aproveitamento da Terra</i> (DUATs), which can be acquired by occupation according to customary norms and practices, the uncontested occupation of a land over a period of ten years or the attribution of discretionary concessions by the State. The law allows local communities to hold a collective DUAT over the area within which they have jurisdiction.</p> <p>The Land Law is an important component for the ER Program to consider, as it can impact on how ER interventions are implemented, on the involvement of stakeholders in the ER Program and on the benefit sharing mechanisms.</p>
<b>Technical Annex to the Regulation of the Land Law (Ministerial Diploma nº29- A/2000)</b>	This Annex defines the requirements for the delimitation of the areas that are occupied by Local Communities and individuals in “good faith”, as well as for land demarcation in the context of the issuance of titles related to the right to use and benefit from the land.
<b>Procedures for the Presentation and Appreciation of Projects involving more than 10 000 hectares (Resolution nº70/2008)</b>	These procedures define the approval mechanisms for the presentation and assessment of private investment projects involving land extensions of more than 10 000 hectares.
<b>Specific procedures for the Community consultation (Ministerial Diploma nº158/2011)</b>	This act provides for the adoption of specific procedures for consultation with local communities for the use of lands, recognizing their rights, in accordance with Regulation of the Land Law.
<b>Creation of the Consultative Forum on Lands (Decree nº42/2010)</b>	This act establishes the Consultative Forum on Land as a consultation mechanism for the GoM to discuss land and related matters.
<b>Benefit-sharing</b>	
<b>Ministerial Diploma 93/2005</b>	This key ministerial diploma established the mechanisms for channeling the 20% revenues from wildlife and forestry exploration, towards the benefits of communities that inhabit the areas where the exploration of such resources is taking place. Its stipulated that beneficiaries can only receive money if their community is organized in a legalized association with a bank account. This act is crucial in the designing of the benefit sharing mechanisms of the ER Program and was fully considered – see <i>sections 4.4 and 15</i> .

### Conservation areas

#### Conservation Areas Law (n°16/2014)

The 2014 Law on Conservation Areas provides for the legal establishment of Conservation Area Management Boards (CGAC), which advisory bodies covering one or more CA composed of representatives of local communities, the private sector, associations and local state bodies for the protection, conservation and promotion of sustainable development and use of biological diversity. It also legalizes public-private partnerships for CA management and for concession contracts and defined specific criteria and principles for CAS' management plans. It promotes the involvement of communities legally living inside CAs and their buffer zones, in income generating activities that promote biodiversity conservation.

The effects of this law are likely to be felt in various components of the ER Project. The communities living around the GNR will be engaged in the ER Program that promotes new income-generating activities. The RPF and its elements of the Process Framework (*see section 14 on safeguards*) will deal with the consequences related with restrictions to access and use of natural resources in and around the GNR.

### REDD+

#### Regulation on procedures for approval of REDD+ projects (Decree 70/2013)

The purpose of this Regulation is to establish the procedure for the approval of REDD+ projects and studies, as well as the setting of the institutional framework and competences. It deals, *inter alia*, with the institutional framework, approbation and issuing of license for the marketing of carbon credits. It also discusses the procedures for the approval of REDD+ projects and place emphasis on community consultations. The REDD Regulation states that the REDD+ projects should clearly contain measures to promote and support compliance with the safeguards guidelines. All projects should provide for the distribution of benefits, including local communities under terms to be set by ministerial decree. It also creates the CTR for REDD+ and the UT REDD+. It provides for all the principles and procedures to be respected for the design and implementation of the ER Program.

Similarly, the Policy and Strategy for the Development of Forests and Wildlife which also dates back to 1997, includes the social dimension amongst its immediate objectives, referring to the use and conservation of the [forest and wildlife] resource by the community, and with an emphasis on 'increasing the participation of the rural population and communities as direct agents in the integrated management, protection against [uncontrolled] burning, and the use and conservation of forest and wildlife resources'<sup>35</sup>.

Having established the principle of effective participation by local communities and their right to share in REDD-generated benefits, several questions arise: how is this

<sup>35</sup> Ibid:60

participation organized and who represents the community? What is the real nature of these rights over land and other resources? What *is* a 'Local Community' and how is it defined on the ground?

Some of these questions are answered in the 1997 Land Law, but it is the 1995 National Land Policy that lays the foundation for the radical policy shift towards a more participatory and rights-based approach by the GoM. The study briefly mentions the NLP, but this key document established the main principles underpinning the participatory and equitable approach of the Land Law and other sectoral legislation. These include:

- Maintain land as the property of the State;
- Guarantee the access to and use of land for the population as well as for investors; in this context, the customary rights of access and management of land by the population are recognized, promoting social justice in the countryside;
- Guarantee the right of access to and use of land for women;
- Promote national and foreign private investment without prejudice to the resident population and ensuring benefits for this [population] and the national treasury;
- The active participation of nationals as partners in private enterprises [that use land];
- The definition and regulation of basic principles and guidelines for the transfer of use and benefit rights (DUATs) between citizens and or national enterprises, whenever investments have been made on the land;
- The sustainable use of natural resources in such a way as to guarantee the quality of life of future generations<sup>36</sup>.

These principles are summed up in the NLP mission statement, which today is still relevant in a country where most land rights are held at local level but are not registered, and where private sector interest in land has constantly threatened these rights:

'Safeguard the rights of the Mozambican people over land and other natural resources, as well as promote investment and the sustainable and equitable use of these resources'<sup>37</sup>

Another feature of the NLP that established a new paradigm for how land resources are used and shared between different types of user is found shortly after the mission

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<sup>36</sup> Resolution 10/95 of 17 October, paragraph 17

<sup>37</sup> Ibid, paragraph 18

statement, in the discussion of ‘agrarian use’ of land. This deals with rights over ‘areas juridically allocated by the customary laws and cultural rules in their zones’, which are subject to identification, demarcation and registration in the National Cadaster’. The NLP goes on to say that ‘[t]his cadastral identification will serve to establish the rights of access and of management [over land] by the local community, *over a relatively vast area that will certainly be greater than the area currently exploited*’<sup>38</sup>. And finally, following on from this registration process, ‘any entity or person will be *obliged to negotiate with the local community*. In this way, for example, the community can enter as a partner in the investment, *sharing profits and the benefits resulting from that investment*’<sup>39</sup>.

This notion of partnership appears in many places in the subsequent 1997 Land Law and in a range of regulatory instruments that follow on from it. ‘The terms of partnership’ are to be established by the mandatory community consultation process established by Article 13 of the Land Law and Article 27 of its Regulations. It is also explicitly referred to in Resolution 70/2008 of 30 December, which sets out the requirements for investors seeking large areas of land (defined as over 10,000 hectares). The Nemus/Beta study in fact fails to pick up on this important element of the Resolution, when it says in Part C that ‘In line with Law 19/97, the Land Law, and its respective Regulation’, a range of documents must be produced, including the Minutes of the Community Consultation (line C), and the ‘Terms of partnership between the holders of the DUATs by occupation on the land required by the investor’ (line G).

This principle of partnership is most recently developed further, and significantly for the ER program, in the 2014 Law for Conserving Biodiversity. The Nemus/Beta study notes that this law allows the State ‘to establish partnerships with the private sector, local communities, and national and foreign civil society organizations, on the basis of contract...for the administration of conservation areas’, and that in this case ‘the possibility is underlined of celebrating contracts with the private sector and the local communities for the generation of income’<sup>40</sup>.

Finally, coming right up to the present, the recently approved National REDD+ Strategy also makes constant reference to the role of local communities and the need for the State to work closely with them in developing and implementing a REDD+ program.

This picture of respecting local rights, ensuring participation, and promoting various forms of partnership when it comes to using and managing land and natural resources, extends through the various natural resources laws presented in the Nemus/Beta document. All share a common provision for the free use of natural resources by local communities when that use is for subsistence purposes. The central concern is to

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<sup>38</sup> Ibid, paragraph 24, emphasis added

<sup>39</sup> Ibid, paragraph 25, emphasis added

<sup>40</sup> Nemus/Beta 2015:56

ensure that livelihoods are not compromised as new investment comes in, following the underlying principle of ‘sustainable and equitable development’ enshrined in the NLP declaration.

It is evident that a critical element in this picture is the figure of the Local Community (discussed in detail in Chapter Two). The key document in this context is the Technical Annex for delimiting rights acquired by occupation (known as ‘community delimitation’ although it also applies to DUATs acquired by ‘good faith’ occupation). While the Annex is referred to in the Nemus/Beta document, it is not fully analyzed and the *process* of delimiting acquired rights is not brought adequately into the discussion. This gap in the analysis is addressed below in Chapter Two.

The document also does not fully address the community consultation process and what it is meant to achieve. The relevant features of the Land Law are described, but the role of this important instrument for securing a negotiated settlement between local land rights holders and other interests – investors and/or the State – is not fully explored.

The study also fails to mention the Consultative Forum on Land (CFL), created in October 2010. The CFL has met nine times, initially led by MASA (then responsible for land), and now led by MITADER. While it has fallen short of expectations in terms of concrete outputs, it has evolved into an important open space for all stakeholders to meet and discuss not just technical land issues, but how land governance and administration contribute to wider social and economic development processes.

Most recently, the CFL has been looking at community-investor partnerships, and the detailed regulating of the so-called ‘ceding of exploitation’ by a DUAT holder (community or private investor) to a third party (in effect allowing for the leasing of land where rights holders are unable to make full use of it). This discussion has resulted in a draft decree being developed which, if approved, will give local communities the right to lease their land instead of always having to either say ‘no’ to incoming investment, or give up their rights over it definitively. This kind of discussion underlines the importance of the CFL as a forum linking sector policy to development goals. This role could easily be extended to discuss how land rights and management issues intersect with an ER program.

### **1.1.2 The Land Law in the SESA document**

In the SESA, the treatment of the Land Law has a different objective, to identify measures to mitigate against possible negative impacts of a REDD+/ER program in rural Mozambique. However, the document fails to analyze the land legislation in terms of its strategic potential as a framework for sustainable and equitable development, including REDD+ and ER activities. As well as some errors that need to be rectified, it should pay more attention to how to use this framework to fully support a successful ER program.

Firstly, it is important to note that the DUAT originates in the Constitution of the Republic of Mozambique and was not created by the 1997 Land Law as stated in the

SESA<sup>41</sup>. The constitutional underpinning of the DUAT (the *only* land use right allocated by the State) is important: although land is state property<sup>42</sup>, the DUAT is a private right that enjoys strong constitutional protection. Thus, DUATs acquired by inheritance or occupation must be considered when new DUATs are being allocated, for example to new private sector projects<sup>43</sup>. This principle can also be extended to State programs, which impact on DUATs that have already been acquired through occupation.

The DUAT gains its strength as a private right due to its constitutional basis, and the conditions and content created by the 1997 Land Law. In many respects, it resembles a freehold property right, being inheritable, and in the case of rights used for subsistence purposes, indefinite. Even private sector land users with a newly awarded DUAT enjoy the right to automatically extend their DUATs after the 50-year lease period has expired. And the DUAT cannot – or at least should not – be easily taken away. Strong public interest arguments are needed, and if revoked, the State must pay due compensation.

Other fundamental constitutional principles give further weight to the DUAT and the way in which the State then deals with rights holders:

- Article 4 (Legal pluralism): The State recognizes the various normative systems and conflict resolution systems that coexist in Mozambican society, provided that they do not contradict the fundamental principles of the Constitution<sup>44</sup>;
- Article 11 (Fundamental objectives), line (c): The Mozambican State has as its fundamental objectives, the edification of socially just society, the *material and spiritual well-being and quality of life* of [its] citizens [emphasis added];
- Article 35 (Principle of universality): All citizens are equal before the law, enjoy the same rights and are subject to the same duties, independently of color, race, sex, ethnic origin etc.

The constitutional underpinning of the 1997 Land Law adds up to a strong imperative on the part of the GoM to both respect existing land rights, and ensure that public programs that involve land rights in some way do contribute to the ‘material well-being and quality of life’ of those affected.

The SESA treatment of other elements of the land tenure legislation is also partial and fails to draw conclusions that are directly relevant for mitigation measures, or the preferable integration of land rights into ER program design and implementation. There is no effective discussion of the Local Community concept and definition; understanding

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<sup>41</sup> SESA pp12

<sup>42</sup> CRM, Article 109(1)

<sup>43</sup> CRM, Article 111

<sup>44</sup> This provision was *preceded* by the *de facto* legal recognition of pluralism contained in Article 12 of the 1997 Land Law, credited by some for establishing the principle in practice before the Constitutional revision.



it as a reflection of how local people use the land *and resources* in their surrounding territory – as a livelihoods and natural resources system – is an important insight for later using this concept in activities like the ER program which intentionally seek to alter this system to keep trees standing and prevent further deforestation.

The SESA assertion that the 1997 Land Law ‘seeks to define the relationship between the Concession program and customary systems of land tenure’ is partially correct, but it also misses an important point about how the law can transform the agrarian structure and integrate previously opposing land users within a shared view of how a territory or landscape should be managed. In fact, the Land Law does not talk about ‘concessions’, a term which historically has applied to issuing licenses to firms which then have a monopoly to exploit the resources (and peasant producers) in a specified area. Instead, the Land Law focuses on negotiation between local land rights holders and other actors, to generate agreements in which the former benefit from ceding their land to the latter.

These agreements have been shown to be vague and without much real positive impact on local livelihoods. Communities need legal and other support in the negotiation process to help them secure better deals<sup>45</sup>. In principle, agreements could include rents for ceded land or some share in the profits and benefits generated by new investment projects.

Some relationship with better resourced and experienced private operators does seem to be the best way forwards. Recent reviews of the GoM CBNRM program (which began in the mid-1990s) indicate that communities on their own have considerable difficulty in implementing these projects. Although there has been some support from NGOs and from FAO, the potential impact of CBNRM in Mozambique has been limited by a lack of consistent and adequate support, both material and technical<sup>46</sup>. CBNRM has instead evolved ‘not as an active engagement of communities in managing resources and deriving economic benefits, but rather into a system based on sharing for revenues [generated by private investments] from forests and wildlife’<sup>47</sup>.

The SESA also supports expert observations that ‘the best intervention for Sustainable Forest Management (SFM) in natural forests would be a well-functioning private forest concession system’<sup>48</sup>, even though this system still faces challenges that are similar in complexity and scale when a more community-based approach is followed (‘the weak

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<sup>45</sup> See Tanner, C., Baleira, S., et al. 2006. *Mozambique’s legal framework for access to natural resources: The impact of new legal rights and community consultations on local livelihoods*. Rome, FAO, Livelihoods Support Program Working Paper 28.

<sup>46</sup> World Bank 2015. *Community Based Natural Resources Management in Mozambique: Inception Report*. Maputo, The World Bank.

<sup>47</sup> Ibid:18

<sup>48</sup> SESA pp39

implementation and enforcement of the laws and policies that govern the forest concession system'<sup>49</sup>).

The private sector does indeed have a key role in areas where local skills and knowledge are inadequate for implementing successful 'CBNRM' or any other kind of unfamiliar project. Cases of partnership-based CBNRM projects, where the investor leads and communities participate in benefits in some way, indicate that inclusive development models rather than the more conventional concession model offer a useful way to get land and resources to be more productive, while ensuring real benefits to local people<sup>50</sup>. It is not a question of either community-based or private-sector based development; there is room and need for synergy between the two sides, working together. This underlying principle and the empowerment impact of using the Land Law as a practical development tool can be central element as well of a successful ER program.

The other development point about the 1997 Land Law is that it is essentially democratic, devolving power not only to Local Communities (Article 24), but within these communities as well. Through the principle of co-title (which is poorly discussed in both the Nemus/Beta and SESA documents), *all community members* should be involved in decisions about the use and management of their land and natural resources. This underlines the need to ensure that in any ER program involving changes to the way local resources are used and managed, there is a legal imperative to look beyond local leaders and chiefs, and ensure that everyone – men and women – are involved in the process. This goes far beyond 'defining a relationship', and is clear in the NLP declaration above.

The legal framework therefore both protects and empowers local people, through the device of the Local Community. This process starts with recognizing customary rights, is reinforced by delimitation according to the Technical Annex, and is given real content by the mandatory community consultation and subsequent agreements, or 'terms of partnership', that are then negotiated between local rights holders and third parties who want to use local land and resources. This powerful set of instruments brings local people into the development process as stakeholders with a potentially significant voice when it comes to making decisions about how their land and resources area to be used. All these aspects of the land tenure framework have important ramifications for the design of the ER program.

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<sup>49</sup> Ibid, pp39

<sup>50</sup> See World Bank 2016. *CBNRM Synthesis Report*; also, Tanner, C. 2012. *Mozambique: Engaging indigenous groups to develop sustainable business*. In: Xiaofang Shen and Xaiolun Sun (eds.). *Untying the Land Knot: Making Equitable, Efficient, and Sustainable Use of Industrial and Commercial Land*. Washington D.C., The World Bank, Directions in Development series of publications.

## 1.2 Land issues on the ER accounting area

### 1.2.1 The range of land and resource tenure rights

Legally there is just one land right in Mozambique, the DUAT, allocated by the State to all land users irrespective of how they have acquired this right. This is the case in the accounting area and it is incorrect to think in terms of ‘customary rights’ or ‘private rights’ over land. The key distinction is over *how the right (DUAT) is acquired*. This is discussed in more detail in Chapter Two, but here it is important to stress that whichever specific route is used to acquire or request a DUAT, the resulting right is the same in legal terms.

In the case of natural resources, ownership is retained by the State as is the case with land. As with land, Local Communities and their members enjoy automatic subsistence use rights over all natural resources (subject to various regulations on protected species, hunting seasons etc.). Commercial operators must request approval from the State to exploit natural resources (including logging). Presently this can be done with a *simple license*, which does not require a community consultation and requirements regarding processing and transport; or through a formal concession, which does include consultations and the processing capacity amongst its requirements.

Local Communities and their members can apply to the State for permission to commercially exploit the natural resources in their area, using the same system of licenses issued by provincial authorities. In most cases, they use the simple license. This however leaves them open to exploitation by unscrupulous traders in NR who work with local people with their own licenses to avoid the more onerous terms of a concession.

### 1.2.2 Categories of rights-holders present, including indigenous peoples

Officially there are no indigenous peoples in Mozambique using the official guidelines of the UN Permanent Forum on Indigenous Issues<sup>51</sup>. It could be argued that many local communities have elements of ‘indigenous’ peoples, insofar as they have ‘strong links to territories and surrounding natural resources’<sup>52</sup>. Many are descendants of the original historical occupants, and are still governed by customary rules and structures.

Most land in the Accounting Area is occupied in this way. Mozambique has a complex ethnic make-up generally, and this is reflected even at the lower level of a large province. Table 2 shows the variety of different groups that are found in the area, with the Macua being the most prevalent.

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<sup>51</sup> [http://www.un.org/esa/socdev/unpfii/documents/5session\\_factsheet1.pdf](http://www.un.org/esa/socdev/unpfii/documents/5session_factsheet1.pdf)

<sup>52</sup> *ibid*

**Table 2 Principal ethnic groups in the ERP area**

ZILMP Districts	Main Ethno-Linguistic Group
Alto-Molocué	Macua / Lomué
Gilé	Macua / Lomué
Ilé	Macua / Lomué
Maganja da Costa	Manhaua
Mocubela	Manhaua / Macua / Lomué
Mulevala	Macua / Lomué / Chuabo
Pebane	Macua / Lomué
Mocuba	Chuabo
Gurué	Macua / Lomué

The standard view in Mozambique is one of cultural diversity within a unified polity of state and people. Thus, the existence of these different ethnically-based 'customary' land use systems does not translate into distinct 'indigenous groups' set within the wider mainstream society. They are all Mozambicans, but with

different cultural origins and customs, and these are regulated through a plurality of normative systems that enjoy full Constitutional recognition<sup>53</sup>.

This diversity is also fully accounted for in the 1997 Land Law, not through the incorporation of written versions of the entire range of normative systems and rules regulating land access and use, but by the simple device of the Local Community. Thus, in Articles 12 and 24 of the 1997 Land Law, reference is made to how rights are acquired by customary occupation, and how local communities define their limits and manage natural resources, according to their respective 'norms and practices'. For this reason, it is not considered necessary in this Assessment to provide a detailed account of each system and its characteristics. What is important is to understand the relevance in this context, of the delimitation instrument and how it subsequently facilitates a range of subsidiary land management functions.

As already mentioned above, because there is one formal land right in Mozambique (the DUAT), any qualification of this right is then a function of how it has been acquired and what it is used for. Following the Land Law, there are essentially three 'categories' of rights-holders present: Local Communities, 'good faith' occupants (individuals), and holders of new DUATs requested for commercial activities. In addition, there are areas of public domain land such as the Gilé Reserve, where DUATs are not permitted by law, but investors and others can have use rights through special licenses. Any further categorization is according to the specific land use – agricultural, tourism forestry, etc.

Moreover, the implication of the Land Law definition of the Local Community is that there is no 'free land' in Zambézia Province and in the nine districts of the ER program. This is reinforced by field evidence that shows how most rural communities have contiguous, historically-based boundaries. It is likely therefore that all the land in the

<sup>53</sup> CRM, Article 4, Legal Pluralism

Accounting Area is already covered by a DUAT, probably acquired through customary norms and practices, but also acquired by formal request for an investment project.

The existence of all the DUATs acquired by customary occupation over the whole territory is not revealed in official archives, which include only those cases that have been formally delimited and certified. Official provincial level data used in a 2016 study shows that up to the end of 2014, a *total of 223 Local Community delimitations had been carried out in Zambézia, with a total area of 4,776,351 hectares*<sup>54</sup>. This gives an average area per Local Community of just under 21,500 hectares. Other data from the ITC project in Zambézia suggests that the average population per delimited community is just over 3,200<sup>55</sup>.

Within the Accounting Area of the ERP, official data show that a total of 102 Local Communities have been delimited up to November 2016, covering a total area of 3,254,663 hectares (Table 3). This gives a much higher average size of just over 31,900 hectares, which could reflect the remoteness and population density of many of the communities delimited. No data is available on the number of DUATs acquired by formal request, nor is it possible to get anywhere close to determining levels of land concentration in this sub-sector.

**Table 3 Number of delimited communities in the ERP Area (November 2016)**

ZILMP Districts	Communities Delimited Up to November 2016 [1]	Area in hectares
Alto-Molocué	27	259,847
Gilé	4	666,773
Ilé [2]	6	38,909
Maganja da Costa [2]	13	135,185
Pebane	11	837,500
Mocuba	14	1,169,198
Gurue	27	147,251
<b>TOTAL</b>	<b>102</b>	<b>3,254,663</b>

[1] Official data show that these communities have completed processes with Certificates of Delimitation issued

[2] Ilé includes Mulevala, Maganja da Costa includes Mocubela; these two new districts were created

from Administrative Posts upgraded in 2013; official land data does yet reflect this change

Source: MITADER/DNAT

<sup>54</sup> Tanner 2016:25. *Community Land Rights Delimitation, Natural Resources Management and Rural Land Taxation in Mozambique: Significance and Implications for Sustainable and Inclusive Development*. Maputo, The World Bank. *A Synthesis Report for the World Bank's Non-Lending Technical Assistance*

<sup>55</sup> Ibid:25, Table 2, delimitations funded by ITC since 2006

### **1.2.3 The legal status of such rights, and significant ambiguities or gaps in the legal framework, including how it applies to rights under customary law**

All rights acquired by occupation – customary and ‘good faith’ – are formally recognized in law by the 1997 Land Law, and enjoy strong Constitutional guarantees as well (for example when new land rights are being issued). All new rights (such as those given to new private enterprises) are also formally recognized and protected by the same Land Law, and in legal terms are no different to the DUATs acquired by occupation.

There are no ambiguities in the legal framework in this context, although there are some grey areas in relation to what happens to rights in specific circumstances (when DUATs expire, or when a privately-held DUAT is annulled, for example). Practical (operational) ambiguities occur because a) many senior policy and decision makers do not accept this reality and adhere to the idea that radical title in the State somehow over-rides the provisions of the Constitution and the Land Law regarding acquired rights; and b) because to date, the great majority of rights acquired by occupation have not been formally identified on the ground and consequently registered in formal archives.

### **1.2.4 Conflicts over land and how to address them**

Conflicts between neighbors always occur and are typically resolved by customary tribunals and resolution mechanisms<sup>56</sup>. NGOs report many cases of conflict between local communities and private investors of various sizes and types. These normally involve relatively small national investors who secure their new DUAT with the help of provincial land services. Field evidence and research shows that consultations with communities are usually cursory and held only with traditional leaders who can be corrupted by the land requestor. Disputes are usually taken first to the local District Administrator, who then calls in the technical teams for land and any other sector that might be involved. If this does not work, the dispute passes up to provincial level, where the Governor frequently assumes a quasi-judicial role as representative of the State.

An increasing number of land and related disputes are finding their way into the formal tribunal structure, which begins at District level. Land and natural resources issues are now included in the formal professional training for judges and public counsels at the Ministry of Justice Center for Legal and Judicial Training (CFJJ), after an initial FAO supported program trained just under 200 provincial and district level judicial officers in the then new Land Law, Environment Law and Forest and Wildlife laws.

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<sup>56</sup> Trindade, J-C, and Dos Santos, B. 2004. *A paisagem da justiça em Moçambique*. Coimbra, Center for Social Studies and Maputo, Center for Legal and Judicial Training (CFJJ)

More recently, a corps of paralegals has been created through a training program developed and implemented with FAO support by the Ministry of Justice Center for Legal and Judicial Training (CFJJ)<sup>57</sup>. The paralegal program was extended with funding from the ITC program, and many paralegals now work in organizations and CBOs in Zambézia province. Part of their training includes mediation skills and taking on a role as go-between in relations between local communities and new investors seeking local land and resources. Anecdotal evidence suggests that many have become effective resources for conflict resolution in the more complex context of community-external actor relations. The nature of their work also makes them effective educators and communicators, a useful resource for a program which seeks to change local behavior.

Large-scale projects like the Portucel forestry plantation are guided by central government, which also approves the DUAT. These DUATs can cover huge areas, with little regard for pre-existing DUATs acquired by occupation. Poorly conducted consultations give a gloss of legitimacy to the process, which prioritizes the land concession rather than achieving a mutually beneficial, negotiated outcome. The resulting conflicts can be resolved by going back to Land Law principles and doing a retroactive delimitation and consultation exercise. This is currently being tried by Portucel with support from the NGO ORAM and a national consulting firm.

### **1.2.5 Potential impacts of the ER Program on land and resource tenure**

There are no identifiable negative impacts on existing land and resource tenure rights; there should be a positive impact that will enhance local rights if the land tenure element of the ER program is fully implemented, in conjunction with land activities in the Sustenta project.

## **1.3 Land issues raised in the ER-PIN**

### **1.3.1 The SESA was not concluded**

While the SESA was not completed, it does contain useful insights and recommendations that can be incorporated into the ER-PD. The SESA objective was to identify opportunities for mitigating environmental and socio-economic risks associated with the implementation of REDD+ strategy. The analysis emphasizes five strategic options that are given in the REDD+ national strategy:

- Agriculture: the focus here is on more intensive, diversified agriculture using improved techniques to avoid the need for shifting agriculture; this will impact on both subsistence needs and contribute to cash incomes and local economic growth through cash crops;

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<sup>57</sup> Tanner, C. and Bicchieri, M. 2014. *When the law is not enough: Paralegals and natural resources governance in Mozambique*. Rome, FAO, Legislative Study 110.

- Energy: this option increases access to alternative sources of biomass in urban areas and the efficiency of production and use of biomass energy (use of gas, improved charcoal kilns, better cooking stoves etc.);
- Conservation areas: attention here focuses not only on conserving the forests in reserves, but also on generating income streams for local communities from conservation activities, again lessening the need to follow shifting farming practices;
- Sustainable Forest Management: more efficient commercial use of forests and adding value to forest products at source or at points in value chains that impact on the local economy;
- Forestry Plantations: improving the business environment for forest plantations and the relationship between forestry companies and local communities.

Discussion of the drivers of deforestation shows clearly that itinerant agriculture is by far the biggest problem; however, between them, charcoal production and illegal logging also account for some 20 percent of overall deforestation and forest degradation. A combination of activities aiming at both sets of issues is recommended.

Achieving ERs through a reduction in deforestation and restoring degraded woodland requires major behavior change by those living in and using the forests that are the target of the ER program. Educational levels are very low however, and rural populations in Zambézia have little knowledge of alternative practices and how to exploit their environment in a more sustainable way. There are few jobs for the young, other than getting involved in clandestine supply chains for a range of valuable resources, and the SESA notes that it is mainly young men who are involved in illegal logging activities. This is partly because they can endure the physical and heavy work, but it is also a response to social needs like dowries and having to look after young families. In this difficult context, an ER program that seeks to reduce emissions by leaving trees standing and controlling unsustainable forest use practices will have serious consequences for local livelihoods. It will face a major challenge to change behavior that is likely to be considerably more profitable than any foreseeable participation in ER payments.

The SESA also underlines the scale and complexity of the challenge in governance terms. The institutional structures and material resources available for implementing a multi-activity and well-coordinated ER program are already very weak; this weakness is compounded by the long-standing vertical and compartmentalized nature of Mozambican governance structures. Most technical capacity is concentrated at central level; provincial structures exist but must cover vast areas with few resources, and capacity at district government level is even weaker. All of this is compounded by the disregard for laws and regulations, and the corrupt practices of elites and related vested



interests, who exploit the institutional weaknesses and the vulnerability of the local population to pursue illegal extraction of timber and other forest products.

The SESA recommendation of focusing on a ‘reverse hierarchy’ is entirely appropriate in this context. The focus must be local – local communities, and local government – with support from the provincial level REDD+ team and working closely with experienced NGOs. The message should not be directly on REDD+ and ERs – these are concepts that it will be difficult to get across to local people. But it is nevertheless essential to involve local communities from the outset in program design as well as in program implementation. The full use of instruments provided by the land tenure legislation can then be of great use. Securing community land rights through community delimitation and involving local leaders in the allocation of individual DUATs will empower community structures and give everyone a stake in the ER process. Developing a benefit-sharing scheme so that they begin to gain directly from the changes expected of them will reinforce this process.

### **1.3.2 Harmonization of DUAT**

Assuming that ‘harmonization’ means ‘land tenure regularization’, this is being addressed by the land component of the Sustenta and MOZFIP projects; all other aspects of the DUAT are clear but there is still political and interest-group resistance to the more progressive elements of the Land Law and the devolution of land and NR management that is inherent in the joint-application of the Land and 1999 Forest and Wildlife laws.

‘Harmonization’ in relation to rights over NR is another matter, and is open to interpretation of how the Land Law and other NR laws intersect and together provide for a strong level of local control over resources use by outsiders. See the discussion below on this issue. The essential and missing ingredients are institutional capacity and a respect for the rule of law on the part of both vested interests and policy makers who do not agree with the legal framework.

### **1.3.3 Legal rights to use and benefit from land and forests (DUAF)**

The ‘ownership’ over resources on land occupied by a DUAT holder is clear and resides with the State (as indeed does ownership of the land itself). Subsistence use rights are also clear and guaranteed in a way that is common to all the NR laws; this is similar to the vision of use and benefit enjoyed by the local community with a collective DUAT in the Land Law (communities do not need authorization for subsistence use but must seek approval from the State for new commercial use).

The intersection of the Land and the Forest and Wildlife Laws makes it clear that holders of DUATs by occupation have the use and benefit of the natural resources on ‘their’ land. Thus, a type of use right over local forest assets (DUAF) exists in all but name only. Creating the DUAF in law should be explored in the new Forest Law that is under preparation. Given that the Land Law gives local community a clear NR management

role in their areas (Article 24), the DUAF could be discussed at the next CFL meeting or the CBNRM Conference planned for late 2017.

The benefits to be gained by formally creating and regulating the DUAF in upcoming new legislation would be that it would clarify the link between the underlying land DUAT, and the use and management rights of Local Communities over the trees and other NR that exist within the delimited area of their DUAT.

### 1.3.4 Insufficient implementation of the legal recognition of community lands rights

This is still the case although it must be noted that Zambézia has been the focus of significant bilateral support for community land rights delimitation since the early 2000s. A shift in GoM policy to include delimitation in its key ‘Terra Segura’ project is a good indicator, although clearly the focus of attention is on titling individual DUATs. As this is an official GoM program, it signals a significant departure from the usual lack of official support for delimitation work.

With World Bank support, the ER program underlines the need for community land rights recognition, working with the Sustenta and MOZFIP projects which are part of the ZILMP. Sustenta will delimit 270 rural communities and generate individual DUAT title documents for 150,000 farmers who mainly hold their land under customary norms and practices; these farmers will engage in the value chain investment side of the project. MOZFIP will delimit approximately 80 communities and generate approximately 1,500 DUATs for small and medium landholders in Zambézia Province<sup>58</sup> who are engaged in forest plantations and agroforestry. In this way, the two projects will create the land rights platform and related local governance structures for the ER program.

### 1.3.5 Creation of a “Land Registry and Registration of Community Areas” process

This assessment **does not support** creating a Land Registry and Registration of Community Areas. Firstly, there is already a Cadaster and a Legal Registry in the MITADER and Ministry of Justice respectively; and the National Land Policy implementation strategy has called for a ‘Single Cadaster’ to be created, integrating data from sectors that use land and natural resources<sup>59</sup> (mining, energy, etc.). This structure needs reform and investment, and must be made to work.

Secondly, there is no such thing as a ‘Community Area’ in the Land Law or anywhere else. Local Communities and ‘good faith’ occupants are land rights holders like any other; and DUATs by occupation and by formal request can and do exist in the same landscape, even within Local Communities. All DUAT holders irrespective of how they get their right, should be on the same register.

A separate Registry for ‘Community Areas’ would reassert the dualist view of the countryside split into commercial areas and ‘communal’ or ‘community areas’, and

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<sup>58</sup> MOZFIP will carry out roughly the same number of each activity in Cabo Delgado Province as well.

<sup>59</sup> National Land Policy, Resolution 10/95 of 17 October. Part B (i), paragraph 67.

undermine the model of negotiated land and NR use by investors in areas already occupied by local people. This model is also critical for a successful ER program, which requires major changes in land and NR behavior by local people, and their integration into new value chains and markets.

### **1.3.6 Land Tenure Assessment was not publicly vetted and endorsed by stakeholders**

This is still the case; as ER-PD development proceeds the ER team might consider putting the ER program land tenure assessment on the agenda of the next Consultative Forum on Land (there is no need to create a distinct forum, holding the discussion in the CFL would underline the close link between land governance and a successful REDD+/ER program).

### **1.3.7 Land tenure was not assessed as an implementation risk for program**

Land tenure is a major risk to the program if it is not adequately dealt with. It is the bedrock of a successful rural development strategy to diversify incomes and reduce pressures on forests due to itinerant agriculture and inappropriate other practices. In this context, the land component of the Landscape is a critical element in the wider integrated ZILMP strategy. There is an evident focus on achieving the ambitious target for individual DUATs, but this assessment concludes that in fact **priority should be given to the Local Community delimitation work.**

It is extremely important that this work is well implemented by a competent and experienced contractor (not by GoM or private surveyor teams which do not have the relevant experience); and that delimitations includes all the 'extras' – a Community Land Use Plan, creating and training a local CGRN or equivalent, developing a Local Community development vision/agenda, etc. Once all this is done, attention can then turn to identifying and certifying individual DUATs through the Local Community structures/CGRN, in line with the existing provisions of the Land Law for 'delinking' (*desmembramento*) from the Local Community DUAT and the devolved land management power of the Local Community (Articles 13 and 24 respectively)

### **1.3.8 No Grievance Redress Mechanism was designed**

The Provincial Forum could be given some mediation-based function to address grievances that cannot be resolved at District level; the NGOs also all have paralegals working with them trained in a CFJJ/FAO program since 2006, and in the context of the ITC/MCA program that also ran in Zambézia until 2012; there is clear anecdotal evidence that these paralegals have been used by local governments as well as by NGOs to settle disputes and facilitate agreements.

### **1.3.9 No definition of the mechanism to address land tenure conflict was given.**

The rationale here is not clear: such a mechanism would seem to be the same as the Grievance Redress Mechanism (see above); if it is not, it should be. Land conflicts other

than local boundary disputes (handled in the main by local structures) are invariably about the wider development decision making and implementation process.

#### **1.4 Linking land rights to natural resources**

A major concern of those working on the natural resources side of the rural development challenge is that possessing a DUAT does not give an automatic right of ownership over the resources found on their land. Neither of the two assessments above fully explores how the Local Community concept acts as a key device which does in fact give local people considerable rights over how 'their' natural resources are used.

The Land Law Local Community - defined and understood as a land holding and resource use system - is replicated exactly not only in the 1999 Forest and Wildlife Law, but in all other natural resources legislation. This precise overlap is of fundamental significance for making the link between land tenure rights, rights over forests, and the development of an effective ER program that includes a benefits-sharing mechanism. The Land Law process of delimitation establishes the spatial dimension not of the right of ownership, but of the *right of use and benefit (i.e. the DUAT)*. Article 24 of the Land Law also gives significant management powers to the Local Community, covering both land *and the natural resources* that are located within it. This management is carried out using, amongst other things, 'customary norms and practices'.

While it is true that there is no legally defined equivalent to the DUAT when it comes to forests – a 'DUAF', as proposed in the ER supporting literature – the right to use and benefit from forests and other natural resources within the area of a Local Community is clear in all the relevant laws. The DUAF is there in all but name only. And as with land, if the community wants to move out of subsistence-based production into more commercial activities, the approval of the land owner (the State) must be sought. Licenses are granted, and the community or a sub-set of it (for example a Women's Association) can proceed to exploit their resources commercially.

The Nemus/Beta study makes the very relevant observation that it is difficult for local communities to do this in practice. However, this is not principally due to legal constraints, but to practical problems to do with capacity, documentation (most rural people do not have ID documents for example), and material constraints. Evidently communities need support to navigate through the process; working with experienced NGOs can overcome these obstacles.

Further affirmation of the basic rights of local communities over the natural resources in their areas is found in Forest and Wildlife law principle that 20 percent of State revenues from commercial forest and wildlife projects is distributed to the communities where the resources are located. Further, all the natural resources laws require a community consultation to be carried out between commercial enterprises wanting to use resources, and the Local Community. As with the Land Law, the objective here is not simply a local 'no-objection' which allows investment to proceed; it is to secure an

agreement through which the community gains when 'its' resources are used by an external third party.

The SESA fails to capture the full potential of this process, facilitated and regulated by the Land Law used in tandem with the other laws. One problem to date has been precisely that the Land and other NR laws have *not been used in this way*. If it is a farming project, then the Land Law is used. If it is forestry, no attention is given to land rights, and the consultation is merely about the resources in question. But evidently there is a close and important link between having an acquired DUAT over the land where forest resources stand, and the way in which those holding the DUAT and those who want to use the resources interact. If the land issue is ignored because it is a 'forestry project', the chance to establish the limits of the Local Community and its legal jurisdiction over the land and natural resources it 'uses and benefits from' is lost. And so is the chance to negotiate decent agreements which ensure that local people do not just have to stand at the side of the road watching as 'their' trees are carried away to distant export markets.

## 2 SECTION 2: LAND TENURE RIGHTS AND DEVELOPMENT

This section looks beyond the descriptive preparation phase assessments and the SESA, and discusses how key instruments in the legal framework can be used to support an integrated rural development strategy and to achieve ER targets. The first of these is the community land rights delimitation tool; this results in an acquired collectively-held DUAT being proven and registered over what are often very large areas.

The second is the mandatory community consultation that must take place whenever an investor or indeed the State wants to use local land for new activities and projects. Linked to this is the way the legal framework allows for working partnerships to be established between local land rights holders and these other external interests.

Before looking at how these instrument work, it is important to understand their origins, in both legal and technical terms. In the operational context, it even more important to understand how they can and should all be used together to create an inclusive and sustainable rural development process. Later in the document (Chapter 5), discussion will turn to how the land policy and law intersect with ERs and efforts to control deforestation and forest degradation.

### 2.1 The Policy and Legal Framework

The defining parameter of the policy and legal framework is that under the terms of the 2004 Constitution of the Republic of Mozambique (CRM), land is the property of the State and cannot be bought and sold, mortgaged or otherwise alienated. In its Article 110 however, the CRM confers a land use and benefit right (or DUAT, its Portuguese acronym) to all who want to use land, ‘taking into account their social or economic purpose’. Furthermore, under Article 111 of the CRM, this right when already acquired by occupation is given strong constitutional protection and must be considered when new rights are being allocated (to investors for example).

Earlier constitutions had also established the principle of state ownership of land and natural resources found on it or under it, and the concept of the DUAT. In 1995, faced by the need to bring the then Land Law (dating from 1978) into line with the reality of a new market economy and surging demand for land created by the end of civil war in 1992, the Government embarked on a path of policy and legislative reform.

#### 2.1.1 The 1995 National Land Policy

The 1995 National Land Policy marked a watershed moment in Mozambican land law and has impacted on African land issues in general. It addressed the key challenge of securing largely customarily-acquired land rights, while also promoting the entry of new investment into a countryside full of villages and customary land rights. It does this not by identifying separate areas for each kind of land user, but by providing the basic elements for a model that would integrate the two across a single and shared territory (or landscape). The key principles established by the NLP are:

- Maintain land as the property of the State;
- Guarantee the access to and use of land for the population as well as for investors; in this context, the customary rights of access and management of land by the population are recognized, promoting social justice in the countryside;
- Guarantee the right of access to and use of land for women;
- Promote national and foreign private investment without prejudice to the resident population and ensuring benefits for this [population] and the national treasury;
- The active participation of nationals as partners in private enterprises [using land];
- The definition and regulation of basic principles and guidelines for the transfer of use and benefit rights (DUATs) between citizens and or national enterprises, whenever investments have been made on the land;
- The sustainable use of natural resources in such a way as to guarantee the quality of life of future generations<sup>60</sup>.

These principles are summed up in the NLP mission statement which is still valid today in a country where most land rights are held at local level but are not registered, and where private sector interest in land has constantly threatened these rights. It is worth repeating again here:

*‘Safeguard the rights of the Mozambican people over land and other natural resources, as well as promote investment and the sustainable and equitable use of these resources’<sup>61</sup>*

Another feature of the NLP is how it established a new paradigm for sharing land resources between different types of user, sanctioning negotiations between local rights holders and others who want their land for projects (‘the agrarian use of land’). This involves two important steps: the ‘cadastral identification, demarcation and registration’ of ‘areas juridically allocated by the customary laws and cultural rules in their zones’ which ‘will serve to establish the rights of access and of management [over land] by the local community, *over a relatively vast area that will certainly be greater than the area currently exploited*<sup>62</sup>; and secondly, following on from this registration process, ‘any entity or person will be *obliged to negotiate with the local community*. In

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<sup>60</sup> Resolution 10/95 of 17 October, paragraph 17

<sup>61</sup> Ibid, paragraph 18

<sup>62</sup> Ibid, paragraph 24, emphasis added

this way, for example, the community can enter as a partner in the investment, *sharing profits and the benefits resulting from that investment*<sup>63</sup>.

### 2.1.2 Acquiring a Land Use and Benefit Right (DUAT)

The State-allocated DUAT is acquired in three ways<sup>64</sup>:

- Through customary occupation according to customary norms and practices;
- ‘Good faith’ occupation over ten years (uncontested use of land which the occupant settles on and begins to use);
- Formal application to the State through its land agencies at provincial and central level, and municipalities.

The right that results in each case is the legally the same - no path has preference over another. In the case of rights by occupation, the great majority are likely to be unrecorded. However, the law says that the ‘absence of registration does not prejudice the DUAT acquired by occupation...as long as it can be proved in the terms of this law’<sup>65</sup>. It then defines what other forms of proof are acceptable if there is no Title document:

- Testimony presented by members, men and women, of the local communities;
- Expert investigation (*peritagem*) and other means permitted by law<sup>66</sup>.

DUATs are inheritable, whether acquired by occupation or by request. There are however specific conditions attached to DUATs acquired by occupation or by request. The most important is that a DUAT by occupation (understood to be for subsistence and household economy purposes) is indefinite, whereas a DUAT by request (for a project) has a fixed term of 50 years. This fixed term is renewable for a further 50 years, giving the holder of the DUAT plenty of time to invest and secure a return.

### 2.1.3 The Local Community<sup>67</sup>

A critical element in the overall land and NR framework is the figure of the ‘Local Community’, created by the Land Law and serving as the basic unit of natural resource occupation and use in the 1999 Forest and Wildlife Law. The ‘Local Community’ is defined in Article 1(1) of the Land Law as follows:

*“A grouping of families and individuals, living in a circumscribed territorial area at the level of a locality [the lowest official unit of local government in Mozambique] or below, which has as its objective the safeguarding of common interests through the protection of areas of habitation, agricultural areas, whether cultivated or in fallow, forests, sites of socio-cultural importance, grazing lands, water sources and areas for expansion”.*

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<sup>63</sup> Ibid, paragraph 25, emphasis added

<sup>64</sup> 1997 Land Law, Article 12

<sup>65</sup> Article 14(2)

<sup>66</sup> Article 15

<sup>67</sup> Parts of the following discussion are extracted and adapted from Tanner 2016



There are important elements in this definition. Firstly, a community under the Law cannot be larger than a locality (*localidade*), the lowest official unit of local government in Mozambique (although in fact the boundaries of the localities have never been demarcated and gazetted<sup>68</sup>).

Secondly, it includes the principle of safeguarding common interests as an objective of protecting the areas indicated in the definition. And thirdly, these areas include all the resources that form an important part of extended farming and livelihood systems, including resources for the future.

The definition derives from an understanding of occupation that includes not just currently used resources – fields of crops and fenced in grazing for example – but also other unused and more extensive other resources that are essential for a sustainable land use strategy through time. These might include forests, used and managed on a collective basis by a group of households or villages, and extensive areas reserved for future use as current fields lose their fertility.

The 1995 NLP recognized customary occupation and the rights that it gives rise to, as equivalent to ‘use’ and thus as equivalent to DUAT. Customary occupation *is* a system of resource use however, and these systems also involve people who live and work together to manage and use the resources they depend upon. Analyzing which people and households collectively manage and benefit from the land and resources in a given landscape results in the Local Community definition above. In systems analysis terms, it is possible to see the Local Community as a *socio-economic representation of a system of land use and livelihoods strategies across a specific territory inhabited by groups of households and villages who share a common interest in operating and benefitting from the system (normally via kinship and the labor exchanges required to maintain it)*.

The occupation and use of this much larger area of land and natural resources gives rise to an acquired DUAT in the name of a specific Local Community. This DUAT extends over the entire territory within which the local production system operates, and includes all the resources that are essential for it to work. The system also incorporates important management roles, dealing with *internal* resource allocation, and communal areas.

#### **2.1.4 Community Delimitation**

The next step is to identify the extent of the system of ‘occupation and use’, and to draw a boundary line around it. The Land Law Regulations required a technical annex to identify and register the spatial dimensions of the Local Community DUAT (i.e. its land use system). The Technical Annex approved in 2000 provides the still-in-force legally

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<sup>68</sup> A USD\$10 million program within the Ministry of State Administration (MAE) is reportedly being considered to do this on a national basis. It was not possible to confirm this during in-country missions. If this does happen, it could have important implications for already delimited areas, such as the division of existing community lands that are ‘larger than a locality’. Notice however that the Local Community in the Land Law is not a unit of public administration, but a land-holding unit.

prescribed methodology for doing this, commonly called ‘community delimitation’. This methodology was developed through extensive field testing of a participatory rural appraisal methodology<sup>69</sup>. A Manual was also developed by the Land Commission for carrying out delimitation, in clear language and with supporting graphics (GoM 2001)<sup>70</sup>.

The methodology is well described in a World Bank Policy Note on delimitation and development<sup>71</sup>. Trained teams work closely with community members to a) *prove the DUAT* acquired by occupation according to customary norms and practices; and b) *spatially identify* the area of the DUAT by analyzing land use and the social ties between different groups of people and villages. The resulting unit is not just any community; it is a ‘Local Community’, a specific land holding and land management unit defined in law and identified using a legally-defined tool that establishes its specific territory (and thus its use rights over the resources within it).

Several points should be underlined here:

- Delimitation is community-driven – local people who occupy and use land – do it with *support from* external technical teams trained in the methods employed (most of which are not surveying techniques, but involve interactive diagnostic tools and community meetings);
- The methodology is far more than just a surveying and Land Tenure Regularization (LTR) tool; most of the work is at community level using interactive diagnostic tools that also enhance awareness of rights under law, how local used is used, and what its potential for other uses might be in the future. It also strengthens community organization and prepares people to interact with the outside world more effectively;
- Community delimitation is not mandatory, but is ‘a priority’ in certain contexts defined in the Technical Annex: where there are conflicts over land, when an investment project is proposed, and when the community itself requests it (to defend its rights or because it may be developing ideas about how to use its land more productively);

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<sup>69</sup> Led by Paul De Wit. See Tanner 2002, where the genesis of this approach is described in more detail.

<sup>70</sup> Manual para a Delimitação dos Direitos sobre a Terra. Maputo, Comissão Interministerial para a Revisão da Legislação sobre a Terra and FAO. Since published in 2<sup>nd</sup> and 3<sup>rd</sup> editions to reflect regulatory changes by the Centre for Legal and Judicial Training, CFJJ.

<sup>71</sup> World Bank 2010. *Policy Note: Community Land Delimitation and Local Development*. Washington DC, The World Bank, Agricultural and Rural Development Sector Unit, Africa Region, November 2010. A report by Simon Norfolk and Paul De Wit. See also Tanner, De Wit and Norfolk 2009. *Participatory land delimitation: an innovative development model based upon securing rights acquired through customary and other forms of occupation*. Rome, FAO Land Tenure Working Paper 13. [www.fao.org/publications](http://www.fao.org/publications)

- Given the number of households and individuals who are given formal cadastral protection by delimitating a collectively-held and managed DUAT, it is a low cost and rapid process.

### 2.1.5 The Open Border model

The nature of the delimited boundary around the Local Community is a critical element of land policy in Mozambique. In systems theory, the border around a system can be open or closed. An open border allows things to pass through it to maintain the system inside; a closed border contains a system that can survive with relatively little interaction with the world around it. An example of a *closed* border is the communal areas in Zimbabwe at the time of Campfire. Local rights were protected by not allowing land concessions inside the border, but the closed border also blocked new private investment coming in. The only real movement through the border was from *inside to outside*, as local people had to go out and look for wage labor in the ‘modern’ economy on the other side of the fence.

By contrast, an open border around a local community allows interactions between community members and outsiders. Most importantly, it allows outsiders *into the community* to access and use land and resources if the community agrees – *negotiated access to land and NR already legally on the possession of local rights holders*. And in principle, the agreement brings concrete benefits to local communities that cede their land rights, and gives them a voice in development and land management decisions.

The line identified around the Land Law Local Community through the process of delimitation was defined as an ‘*open*’ border in a national meeting in 1998. In terms of managing the relationship between local rights holders and external actors wanting land for investment, this concept is critically important, but is perhaps the least understood part of the policy and legal framework for land. The open border principle allows for the *sharing of a common landscape*, rather than the more conventional separation of a landscape into customary and ‘formal sector’ land. This in turn underpins the principle of the ‘sustainable and equitable use of resources’ as foreseen in the NLP.

Applying the systems-based concept of the Local Community to different agro-ecological contexts produces Local Communities of different shapes and sizes. Neighboring communities normally share borders, which also means that acquired local DUATs exist almost everywhere in Mozambique. Thus, the countryside is not a patchwork of ‘community land’ and other land – it is *all community land*. This is why the 1997 Land Law makes community consultation mandatory – it is highly likely that a DUAT of some sort – individual or collective - will exist wherever a new investment project is proposed.

Delimiting a Local Community with an open border is therefore not just a land rights process, but is also an instrument for promoting a constructive and functional dialogue with the outside world. Delimitation protects rights and livelihoods but it also improves the way the system functions, including how those inside it manage their resources. It is

a transformational process that can radically change the rural landscape, while ensuring that systems evolve instead of breaking down and creating social and economic problems.

### **2.1.6 Partnerships between Communities and other actors**

Consultations are mandatory between communities as holders of acquired DUATs and investors or even State entities implementing projects. Article 13 of the Land Law states that a new DUAT request must include a statement from the local administrative authorities (District Administration) ‘preceded by a consultation with the respective communities, to confirm that the area requested is free and does not have any occupants’ (emphasis added). Article 27 of the Land Law Regulations then takes this a stage further, saying that ‘if there are other rights over the land requested, the statement [of the Administrator] will include the terms that will regulate the partnership between the title holders of the DUAT acquired by occupation [i.e. the Local Community and its members] and the requesting party’.

This idea of partnership is central to the NLP vision of sustainable and equitable development. When combined with the open border concept, it provides the framework within which agreements can be negotiated that allow investors to come ‘inside’ a community and occupy and use its land. This may seem a simple idea but it is in fact complex to achieve, especially if a delimitation has not been carried out and the community and its leaders are then poorly organized and prepared.

Many people involved in Mozambican land management still do not fully understand how this works. They see delimitation as a cost and an obstacle, putting off investors instead of promoting a more inclusive rural development model. The approach is however gaining ground, with a recognition of the need for new detailed regulations for partnerships and related measures.

More recent legal instruments underline this point. Resolution 70/2008 requires investors seeking large land awards (over 10,000 hectares) to present the Minutes of community consultations, and the partnership terms negotiated during the consultation process.

## **2.2 Other Land Law instruments**

### **2.2.1 ‘Withdrawing’ from the Local Community**

Article 13(5) of the 1997 Land Law also allows individuals in a Local Community to ‘withdraw’ (in Portuguese, *desmembramento*) from the Local Community and seek a DUAT title in their own name. This instrument is little understood and rarely used by the official cadastral services. The local rights holder who wants to take his or her land out of the collectively-managed community DUAT must first go to the respective Local Community leadership and secure approval, as if he or she was conducting an ‘internal’

community consultation. With this approval, they then initiate a ‘titling’ process like any other private individual or entity seeking a new DUAT from the State.

Because this procedure is little used in practice – the usual approach is to resort to the ‘good faith’ instrument – it is not yet clear if the conditions that normally apply to a DUAT acquired by occupation still apply (its indefinite term, the need to produce an approved project, etc.). In principle, this would depend upon the reason being given to withdraw from the Local Community DUAT – if the proposed activity is essentially for subsistence and household income needs, it is likely to be indefinite; if it is for a commercial venture, then the 50-year rule is likely to be applied<sup>72</sup>.

### 2.2.2 Ceding Use

The concept of ‘ceding of use’ is included in the Land Law regulations but has never been used due to a lack of detail and clarity in the regulations about how to use it in practice. This is now being recognized as a valuable tool for allowing local communities with large areas of land to lease their land for a fixed term and in return for payment. Ceding of use (*cessão de exploração*) has been on the agenda of the CFL in its last two meetings, and a draft decree has been prepared and submitted to MITADER. This document is currently on hold pending a decision on a possible full review of the land legislation, which would then integrate this instrument as an integral part of any new law or regulations<sup>73</sup>.

### 2.2.3 Community representation and organization

The overlap between the land and the Forest and Wildlife legislation also has important implications for how local people participate in the implementation of NR, and by extension how they can participate in an ER program.

The reality is that the question has never been fully addressed, as first required by Article 30 of the 1997 Land Law. In the absence of this key legislation however, important parameters can be found in existing laws and regulations that indicate how communities should organize themselves to engage in Land Law and Forest and Wildlife activities.

There is in fact a wide range of ad hoc or ‘single purpose’ bodies that nominally exist to ‘represent’ their communities. The Land Law, its Regulations and Technical Annex all refer to (s)elected committees for Land Law purposes, with significant female membership. Different projects come up with different names - ‘Land Committees’ or

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<sup>72</sup> This is one of several grey areas in the legal framework that can only be determined and decided upon through practical attempts to use the law, feed information back to the CFL, and reach a consensus about any new regulations or instruments as required.

<sup>73</sup> This comes from the Legal Advisor to MITADER who also underlines the need for specific regulations for community-investor partnerships.

Community Development Committees – but most NGOs now call them the ‘G9’, or *Grupo de Nove*, following provisions laid out in the Technical Annex.

The 1999 Forest and Wildlife Law creates COGEPS – Participatory [Natural Resources] Management Committees – which bring together several Local Communities and other stakeholders (the State, private sector interests, civil society), in a given area (which may be a District but can equally be the ‘landscape’ which is the operational focus of the ZILMP). Thus, in principle a COGEP should include all the representative ‘G9s’ of the Local Communities in its area, along with other key stakeholders, underlining its coordinating and consensus-building role.

CGRNs – Natural Resources Management Committees – were created as part of the CBNRM program, but they have been mostly used as a vehicle for facilitating the payment of the 20 percent of public revenues from forestry and tourism activities. Because they not linked in any formal way with the delimitation process, it is difficult at times to perceive which village and groups of households they really ‘represent’.

Addressing the need for a new over-arching law that addresses the central concern – local community governance and how it is represented and functions – there is also an important underlying principle established by the Land Law and Regulations. This is the principle of co-title, which in its operation follows the provision of Article 1403 the Civil Code covering the regime of shared property (*compropietade*). A key feature of Article 1403 is that decisions over assets held by the Local Community *must be taken by all its members*, and not just by its (traditional) leaders acting alone. This underlying principle should apply whichever specific entity is used in a specific situation.

## **2.3 A strategy for development using delimitation at its base**

The discussion indicates that the Local Community, duly identified and recognized and with its organizational capacity created and/or enhanced, should be at the center of a strategy for achieving ER targets through a process of rural development and activities to regulate and control unsustainable forest use. Local Community delimitation sets the stage for a constructive engagement between local people and new investment partners. It can also set the stage for discussions over natural resources management, improved and more permanent agricultural systems, and the diversification of incomes away from itinerant agriculture, inefficient charcoal production, and the temptation of working with illegal commercial logging interests. It also provides an opportunity to sit down with local leaders and residents and agree a relatively detailed development plan or CLUP that meets their needs and aspirations, and responds to external concerns.

### **2.3.1 Community land use plan (CLUP)**

During the delimitation, local community members are encouraged to analyze how they use their land resources, and to consider their long-term needs and priorities. The result of this process is the CLUP, which can result in some areas being identified as available for investors through properly negotiated agreements, and others being clearly set

aside as conservation areas or reserves. The CLUP then forms the basis for a series of processes that can attract new investment in a more orderly and negotiated fashion, and create the basis for a program of community-based natural resources management and conservation. The outcome of the delimitation and community land use plan process is indicated in the diagram below. Community-investor partnerships and agreements for either genuine CBNRM or CINRM initiatives can then be considered and developed (for example for the blue and green areas which are jointly 'owned' by more than one Local Community).

### Delimited Communities with Basic Land Use Plans

- Forest (commons, forest products) 
  - Areas for investment (partnerships) 
  - Traditional agriculture rotates through landscape (and forest)
    - current plots 
    - abandoned plots 
-  DEFORESTATION

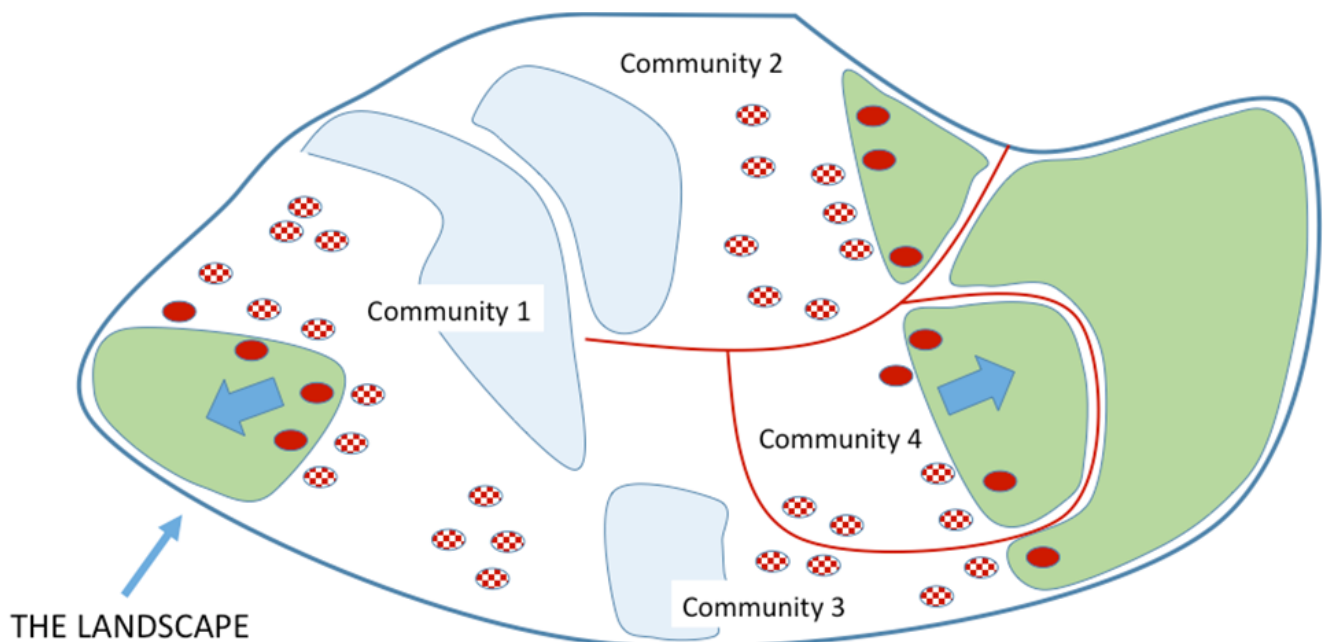


Figure 1: Example of simple CLUP

#### 2.3.2 Other impacts of delimitation

The other major result of delimitation is its impact on community organization and capacity to take on devolved land NRM tasks. There are two distinct levels here:

- The Local Community 'G-9' or 'CDC'; this could also be or incorporate the community CGRN;
- The COGEP and other structures that exist at the 'landscape' level (local statutory bodies such as the Locality Assemblies and District Consultative Councils).

Each of these bodies has distinct roles. The G9/CDC/CGRN will conduct the delimitation process, and subsequently be involved in, and provide legitimacy to, the identification and titling of individual or family-group DUATs within the delimited area. It will also be the body that represents the Local Community (land holding unit) in negotiations with investors over sharing or ceding pieces of the Local Community defined in terms of the area over which it holds a collective DUAT. Note however that in this last case, under the principle of 'co-title', all members of the community should have a say in any final decision over what happens to a piece or pieces of the common asset – the land held by the community and the resources that exist upon it. This could flow from the statutes of the association or the Local Community. It depends on how the community wants to structure this mandate.



### 3 SECTION 3: BENEFIT SHARING AND LAND RIGHTS

Mozambique already has a benefit-sharing scheme to devolve a portion of public revenues derived from local resource use, back to the communities which depend upon and use those resources. This is established in the 1999 Forest and Wildlife Law and implemented via the Forest and Wildlife Regulations (Decree 12/2000 of 6 June), and there is a specific instrument detailing how these funds should be channeled to recipient local communities (Ministerial Diploma 93/2005 of 4 May).

The justification of this distribution of this share of revenues is not clear in the relevant laws. However, the consultant participated in many of the discussions that surrounded the development of both the Land Law and the 1999 Forest and Wildlife Law, and can confirm that the spirit of the regulation was to compensate local people for lack of access to the natural resources being exploited (taken away in fact) by the concession holders. In this context, the payment is a right and is not tied to any performance in the NR management context.

This innovation opened the way for a similar provision to be made in the context of tourism and conservation revenues (entry fees in national parks and reserves, other charges levied on tourists, etc.). There are also other provisions for channeling other public revenues down to local level, such as the payment of 50 percent of fines covered for illegal forestry and hunting activities that are identified and controlled by community-based rangers and guards.

No recent studies of this system have been identified, but a good study was carried out in 2012 with some positive and not-so-positive results<sup>74</sup>. In the first instance, the 2012 study established that over the period 2005-2011, a total of MZM 103,908,364 (about USD 3.89 million at the time) had been distributed to 861 communities across the country. To receive their payment, communities must be organized with a Natural Resources Management Committee (CGRN); this committee is then able to open a bank account with three signatories who are members of the committee. At the time of the study, a total of 1089 communities had been identified as potential beneficiaries, and 896 has successfully organized themselves with a CGRN and bank account.

While these are relatively small sums of money in real terms (about USD 4520 per community over 6 years, or USD 750 per year, the number of communities involved at that point is impressive. Moreover, if these funds are well targeted on priority needs or to unblock economic constraints (repairing a small bridge for example), they can have a significant knock-on impact. Most of the projects supported by these funds were for social infrastructure (schools, health posts, wells etc.). Nevertheless, the report notes

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<sup>74</sup> Chidiamassamba, C. 2012. *Estudo do impacto do Diploma Ministerial No 93/2005 de 4 de Maio sobre os mecanismos que regulam a canalização dos 20% das taxas de exploração florestal e faunística às comunidades*. Maputo, Ministry of Agriculture, National Directorate of Land and Forests, Final Report September 2012.

that ‘there is a general feeling in the communities that the projects implemented [using these funds] had not had significant effects on the lives of families and of the community in general’<sup>75</sup>. And in some cases, the funds had been used for personal gain by member of the CGRNs or community leaders.

Nevertheless, the 20 percent mechanism is established and working well enough in places to learn lessons from and improve it. Indeed, the Nemus/Beta study finds that ‘communities manage the 20 percent of fees and taxes (*taxas*) in a satisfactory way, principally if they have support from NGOs’<sup>76</sup>. The main issues appear to be in fact located not at community level, but higher up in the institutional structures that receive, manage, and implement the funds. The 2012 report captures well the different channels used to get the funds to the local communities, and shows evidence that in some cases the funds go no further than a District Administration or some other lower level entity charged with then passing them downward. A wide variety of organizations also get involved in the process, to help organize the communities and to facilitate the payment of the funds. In the case of Zambézia, 9 different government agencies and civil society organizations were identified as ‘intervening’ in the process of getting the 20 percent to recipient communities, ranging from the Provincial Services for Forestry and Wildlife, to national NGOs such as ORAM and several smaller local NGOs<sup>77</sup>

### **3.1 Land tenure issues and benefit-sharing**

Before looking at how this situation can be adapted and used for the benefit-sharing of future ER payments, it is important in the context of this assessment to understand how land rights issues and the use of the Land Law can contribute to a more effective system. Not all forest and wildlife concessions are preceded by a community land rights delimitation, and indeed this is not a legal requirement in the forest and wildlife context. Attention then focuses on the resources in question, and how to determine which communities have rights over them and use them, and are therefore eligible to share in the revenues that derive from these resources.

The discussion above shows how the delimitation of the Local Community DUAT intersects with the right to subsistence use and management roles of the Local Communities *viz à viz* natural resources. Indeed, the inclusion of the Local Community as core legal entity and concept in both the Land Law and the Forest and Wildlife law underlines the fact that a community delimited according to the Land Law is then also the one that will form a CGRN and conduct consultations with forest investors in the Forest and Wildlife context.

Carrying out community delimitations ahead of any investor interest can therefore preempt several of the requirements of the 20 percent legislation (organization and

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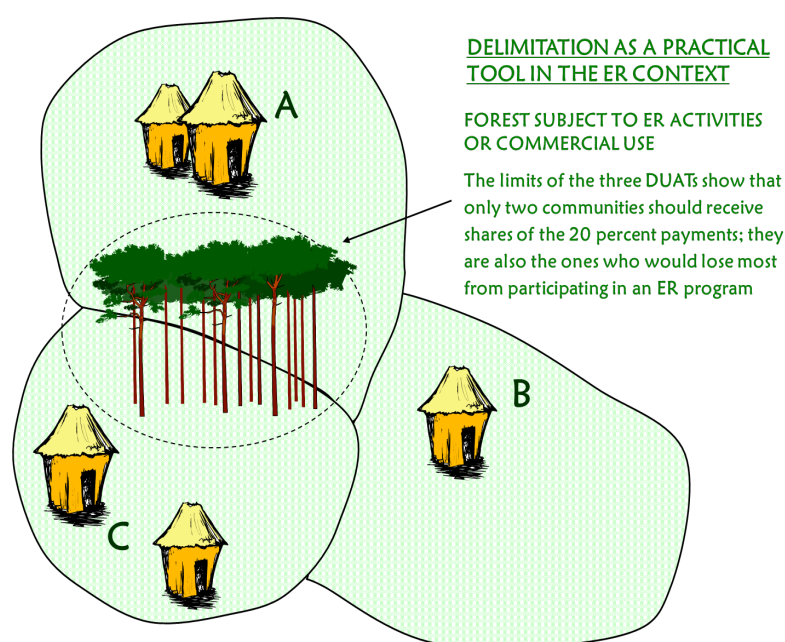
<sup>75</sup> Ibid:12

<sup>76</sup> Nemus/Beta presentation to the World Bank, slide 14, November 2015

<sup>77</sup> Ibid:38

creation of a CGRN or similar as an outcome of the delimitation process); and then serve to guide how the devolved resources should be allocated to the one or more communities whose resources are being exploited by the commercial concession-holder.

This is shown in the Figure below, where three communities have been delimited prior to any external interest in using their forest resources. Without a delimitation process, it is impossible to determine if indeed the forest ‘belongs’ to one or all three communities; and it is difficult to determine what share of any revenue payments each community should get. With a delimitation carried out, these questions are resolved relatively easily.



**Figure 2: Delimitation and ER Benefit Sharing**

Delimitation should therefore be a necessary first step in a benefit-sharing scheme. Local people need to see a clear advantage in participating in the ER program, which may impose constraints on present livelihoods strategies (both ‘legal’ and clandestine). Going on to develop an appropriate Benefit-Sharing after developing appropriate measures to control forest degradation for example, is then a critical element of the overall ER project. And at this point other outcomes of the delimitation process come into play (the organization of a CGRN, development of a community development agenda, a Community Land Use Plan, and the regularization of individual DUATs acquired by occupation).

### **3.2 Benefits at sub-community level**

The discussion in Section Two underlines the existence also of individual DUATs at sub-community level. If one objective of the sharing of benefits is to change behaviors over

land and forest use to achieve ER targets, the benefits of these changes will have to be felt by individual households where the food security and livelihoods impacts will be directly experienced. It will therefore be necessary to find some way of allocating some part of the resources coming through a benefit-share arrangement, to individual households, and especially to those most involved in the measures to control deforestation and improve NRM.

Local community delimitation plays its part here too, as the process will identify the local structures responsible for customary land management systems and the rights that are allocated and then legally recognized as DUATs acquired by customary norms and practices, and by 'good faith' occupation. These same structures will logically then play a role in determining how benefits are used and distributed at the sub-community level, bearing in mind the internal community 'map' which will include the relevant permanent areas that are occupied and used by each family (over which a DUAT title can be issued if the holder requires), and the other areas that are collectively used – 'community public domain' land, as established in the 2004 constitutional amendment.

### **3.3 Building on the 20 percent model**

Without a successful approach to ensuring that ER payments find their way to the local people living in the target areas, it is very unlikely that the underlying forces driving deforestation and forest degradation – poverty, clandestine logging, corruption and weak governance in general – can be overcome.

The discussion above shows how the use of Land Law instruments establishes both rights and responsibilities over forest resource that might be considered for an ER program. The process of doing so builds the capacity of local people to engage with outside interests (the investors who come to carry out the community consultation). And the overall package also creates the conditions for a smoother and more efficient benefit-sharing process, both between different local communities, and at the sub-community level.

Whilst a scheme to allocate shares of some already-generated public revenues, it is clear from the 2012 report and from meetings held as part of this assessment that the whole approach to the 20 percent scheme needs a thorough rethink. Indeed, the 2012 report calls for the then National Directorate for Land and Forests to 'carry out an urgent and deep reflection to take measures that will permit the operation of the process of channeling 20 percent payments'<sup>78</sup>.

This would also be the right moment to consider a more radical reform that can bring the various sources of present and future revenues together within one system. This would result in larger payments reaching local communities, which can then make a greater impact by funding larger and more widely beneficial projects. The potential for

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<sup>78</sup> Chidiamassamba, C. 2012:13

such an aggregation of public revenue shares just from forestry and wildlife activities (currently managed in different ways) was made very clear in a meeting at ANAC.

If the scope is widened and it is possible to predict that new revenues sources will come online in the medium term, a revised 20 percent scheme could produce and managed significant resources for local development needs. Box 1 below shows the potential from present and future revenue streams, if it was possible to retro-fit the 20 percent principle to the payment of land fees and taxes, and the sharing of future ER payments.

The task of creating such a unified system with revised and clear procedures for channeling the funds and working with local communities, is made much easier by the creation of the National Fund for Sustainable Development (FNDS) within MITADER. This new fund integrates a range of funds coming from sectors that were once within the remit of MASA, as well as resources from the Environment Fund, the resources used to finance the District Development Fund (the so-called '7 millions' allocated to each district in the country every year to promote new economic activity). Shares of public revenues coming from land taxation, forest and wildlife projects, and other activities are also to be channeled to and managed by the FNDS.

Whatever the outcome of this process it is clear that doing community land rights delimitation is an essential and functionally useful activity to carry out as part of both an ER program, and as part of a new system for aggregating and managing the benefits-shares that will be devolved to local communities.

#### **POSSIBLE FUTURE SOURCES OF REVENUE FOR LOCAL COMMUNITIES**

Existing sources of revenue share:

- Commercial forestry fees and dues paid to the State by firms
- Concession fees and charges for sports hunting
- National park and reserve revenues (entry fees etc.)

To these it is possible to add:

- Shares in ER payments from the FCPF to the GoM
- Land fees and taxes
- Fees and revenues paid by agricultural enterprises that make agreements to occupy and use local land

Additionally, a new system for administering and using these resources at local community could also include revenues deriving from partnership agreements made with investors; and lease payments made to communities in the context of new 'ceding use' legislation now in the pipeline.

Aggregating all these payments within a single system for allocating benefit share and other revenues, and managing them at community level, could result in larger and more useful sums being available for local development. This would mitigate the impact of ER-focused livelihoods changes; and help to consolidate this change in a longer-term process of agricultural and agrarian transformation.

## 4 SECTION 4: THE ER PROGRAM CONTEXT

### 4.1 Land tenure, the ER program and the ZILMP

The ER program is located within the Zambézia Integrated Landscape Management Program (ZILMP) which is the GoM's main program to 'promote sustainable rural development through forests conservation and management, conservation agriculture, biomass energy management and land use planning'. The Program will 'implemented through a cooperative approach combining policies, programs and actions across different levels of the government (national, provincial and districts) and multiple stakeholders (government, farmers, communities, private sector, NGOs, etc.) to maximize funds and institutional capacity....It will combine the development and implementation of effective land use policies with incentives to local communities and others who succeed in achieving objectives such as lowering deforestation rates (thus realizing ER targets), and adopting sustainable production systems (for example, moving from itinerant agriculture to more fixed and higher-yielding farming practices)<sup>79</sup>.

The concept of 'landscape' fits well with the analysis and approach proposed in Sections Two and Three. A 'landscape' is a unit of analysis that incorporates a variety of land users and resources. The scale of the landscape changes in relation to the focus of the analysis. Thus:

'Landscapes, being human constructs, may be defined from the perspective of a farmer, a family, a village or a larger social unit. As the scale increases, goals may become broader and perspectives more divergent. The *social structures concerned as well as the types of ecosystems present* will determine the scale of the landscape and the scope of landscape uses, and therefore options for management. Furthermore, *boundaries within and between landscapes will tend to shift over time owing to changes in use or policy*. For example, as cultivated agriculture increases in area, land for conservation, hunting or pastoral use will become more limited<sup>80</sup>.

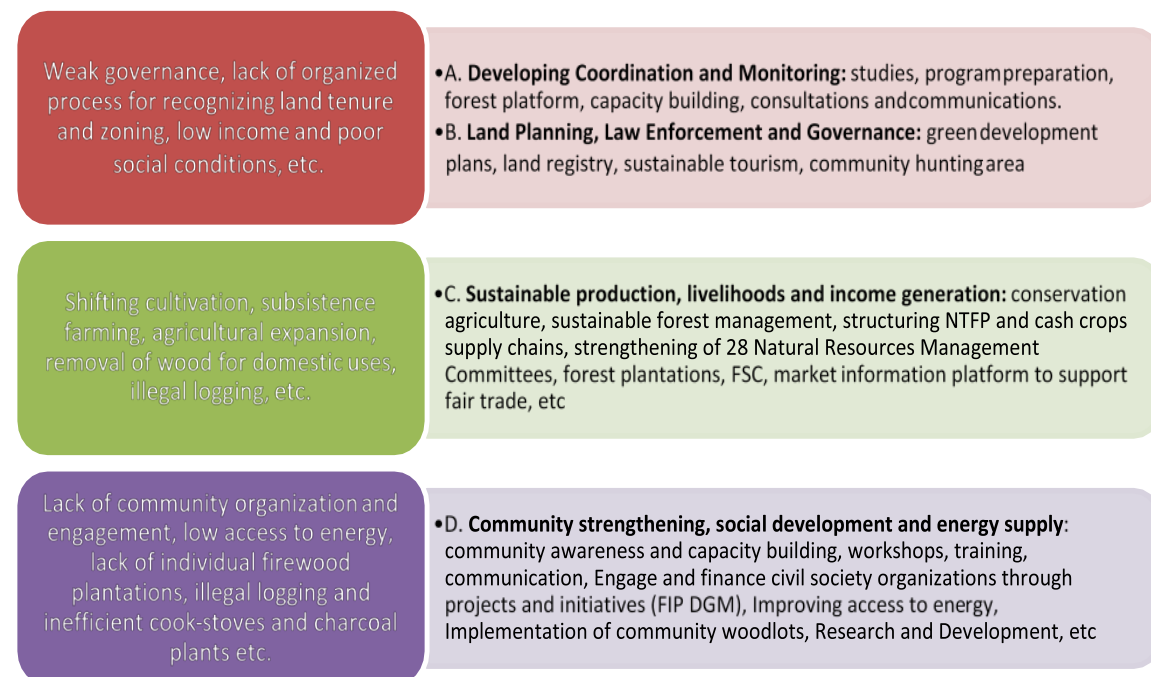
Such an approach allows a wide range of stakeholders to be integrated into a program, which can include several lines of activity which may have distinct objectives, but are implemented and managed with a clear idea of the linkages between them and how these impact on the performance of each one. In particular, issues of environmental sustainability and conservation can be introduced alongside activities that focus more on economic growth and investment.

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<sup>79</sup> ER-PIN Executive Summary, pp1-2

<sup>80</sup> Kozar et al 2014:5. Kozar, R., Buck, L.E., Barrow, E.G., Sunderland, T.C.H., Catacutan, D.E., Planicka, C., Hart, A.K., and L. Willemen. 2014. *Toward Viable Landscape Governance Systems: What Works?* Washington, DC: EcoAgriculture Partners, on behalf of the Landscapes for People, Food, and Nature Initiative.

This is precisely the philosophy underlining the ZILMP, which seeks to boost growth and thus impact on key social and economic indicators, while also ensuring that the environment in the nine target districts is better managed. The various activities to be implemented are indicated in the chart below<sup>81</sup>.



Land tenure activities with a related component of community organization and capacity building form a key element of this program. The discussion above has explained how the Local Community is defined on the ground by analyzing the land use and livelihoods system in a given area (territory), which in turn gives rise to the collective DUAT enjoyed by the Local Community. The instrument of community land rights delimitation emerges as a key part of any strategy to address the issues outlined above in the diagram. The ZILMP includes projects that focus precisely on this activity and build in measures that also address the organizational and other challenges indicated in the diagram.

#### 4.1.1 The Sustenta and MOZFIP Projects

There are two projects also funded by the World Bank which will address land tenure issues in the ER Accounting Area (as part of the ZILMP). The first of these is the Agriculture and Natural Resource Landscape Management project, now known as the Sustenta project. This project has a total value of \$40 million over five years and will work across the 5 ZILMP districts. Its central objective is to support new private sector investment in agriculture and develop value chains that can integrate local farmers and thus diversify and enhance their incomes. Selected farmers will receive different levels

<sup>81</sup> Ibid:2

of grant and loan funding to establish new enterprises that will become the focus of new value chains; each is then expected to work with a number of other local farmers to integrate them into the new value chains as well.

The MOZFIP project works with small farmers and investors to promote a sustainable and inclusive forest investment model. Land tenure security is an important element for both projects, as it facilitates contractual and other agreements between communities, small farmers and other actors. All these activities must be sustainable environmentally, and complemented by other measures to build capacity at local government and community level to manage the surrounding environment more effectively. This is why the Sustenta budget includes \$10 million for land-related activities, \$1 million for building a 'landscape management capacity' and supporting the Provincial REDD+ Forum and platforms with stakeholders, and \$4 million for forest restoration.

These activities will take place within various 'landscapes' extending across the nine target districts. Each landscape will incorporate several villages and the land they use, as well as large areas of forest, some private sector commercial farms, and urban and peri-urban areas around the local towns where local government is based. Some border or even include the Gilé Reserve, and in the northwest the Portucel plantation project also extends into the project area. Local Community delimitation then appears as a logical mechanism for a) identifying and registering the acquired collective DUATs that exist in the area and the local structures that manage them; and b) developing land use and local development plans that can include a range of ER-related activities.

Both the Sustenta and MOZFIP projects will support a campaign of local community delimitations as part of its 'land component' (carrying out 250 and 80 delimitations respectively). This activity then intersects directly with the economic and environmental management components by creating the base for organizing and implementing the other activities. Delimitations also identify local structures which can then support the identification and confirmation of individual DUATs acquired by occupation at community level. The targets for generated DUAT titles at individual level are 250,000 and 1,500 for the Sustenta and MOZFIP projects respectively.

The land tenure and related NR management activities must first set up the entities that already are legislated for in both the land legislation and in the 1999 Forest and Wildlife Law and its regulations: the G9/CDC/CGRN structure at local community level, and the COGEP at a higher level to integrate several Local Communities and other stakeholders. Other local government bodies like the District Consultative Councils are also involved, with each project supporting relevant capacity building at District Government level.

A key strategy of the Sustenta project is to promote partnerships between the farmers with secured land rights, and the various new farming ventures and other enterprises established with project grant and loan funding. It is anticipated that these activities will contribute the overall goal of enhancing local incomes, modernizing and 'fixing' local



agriculture within permanent areas, and thus supporting the goal of achieving a 40 percent reduction in ERs by reducing forest degradation and deforestation.

In this context, it is important to note the direct overlap between the Land Law and the Forest and Wildlife legislation, through the figure of the Local Community. The *delimited* Local Community is the vehicle for linking the economic and NRM sides of the project, and for achieving the REDD+/ER objectives as well.

Delimitation will also guide the benefit-sharing schemes to be developed through the ERP and working in collaboration with the existing 20 percent structures.

#### **4.1.2 MOZBIO**

The focus of MOZBIO is on conservation areas, across the country. At present, it is working with 7 reserves and parks across Mozambique, including the Gilé Reserve in Zambézia Province which is also within the ZILMP area. The underlying rationale of MOZBIO is that to participate in conservation-oriented activities and adhere to their goals (for example, not opening new fields in conservation areas, ceasing illegal hunting and cutting trees), local people must gain in some from the conservation program. The project therefore aims to enhance the economic benefits from tourism and other development activities to the communities in and around targeted conservation areas. In this context, it is effectively the main instrument for implementing the 2009 Conservation Policy and recently 2014 Conservation Areas Law.

For the purposes of the present analysis, the focus on providing communities with alternative livelihoods choices is important (in this case some way to participate in conservation revenues). This can then sustain longer-term behavioral change away from currently unsustainable land and NR use (itinerant agriculture, illegal logging, inefficient charcoal production etc.). It will be important to conduct community delimitation exercises of the communities that live close to and around the Gilé Reserve, to determine more effectively how they should be organized around key activities and how they are then able to participate in the distribution of roles and responsibilities, and in the distribution of benefits that accrue from the conservation activities that will be developed over the life of the program.

## **4.2 Other projects in the ZILMP and ER area**

### **4.2.1 The FAO 'Payment for Eco-system Services' Project**

This project aims to increase and improve provision of goods and services from agriculture, forestry and fisheries in a sustainable manner. It aligns well with the strategy to be adopted by the ER-PD, namely focusing on changing behaviors and improving the organization and awareness of local households around REDD+ objectives without necessarily focusing directly on these in its interaction with local communities and producers. The project therefore includes as outcomes, having 'producers and natural resource managers adopt practices that increase and improve agricultural sector

production in a sustainable manner; promote conservation and enhancement of carbon stocks through sustainable management of land use, land use change and forestry; and reduce pressures on forest resources and generate sustainable flows of forest ecosystem.

The project operates at the landscape level, aligning well with the activities of the Sustenta project and the ZILMP. It will run over 5 years up to 2021 with a budget of just over USD3.6 million.

The project has four components:

- Improving the existing national forest and wildlife revenue sharing mechanism to become more transparent and equitable and integrate Payment for Ecosystem Services (PES);
- Institutional capacity development for Ministry of Land, Environment and Rural Development (MITADER) so that it can better work with and manage its sectoral and civil society partners to manage the improved revenue sharing mechanism, including the PES element;
- Detailed design and practical testing of the improved government forest and wildlife revenue sharing mechanism Zambézia Province;
- A sound monitoring and evaluation framework – to track project progress and measure impacts on the health of ecosystems and on people’s wellbeing. Special attention will be given to women’s roles in decision-making and benefit sharing in all components.

The direct Global Environmental Benefits (GEBs) to be generated by the project are ‘avoided deforestation’ of 6,840 ha of diverse *miombo* forest ecosystems and 1.49 million tons CO<sub>2</sub> equivalent worth of emissions related to deforestation and degradation. The project will also generate indirect GEBs, through integrating payment for ecosystem services in a national forest and wildlife revenue sharing mechanism. This will contribute to mainstreaming biodiversity conservation into the country’s development policy framework.

Directly, the project will support at least 26 natural resource management committees (CGRN) representing a total of around 150,000 rural dwellers (12.5% of the project area’s population). The project will also train 30 MITADER and NGO staff working on PES and at least 10 officials of other government sector funds (agriculture, mining, tourism, fisheries, infrastructure) and revenue sharing mechanisms in developing operational procedures for integrating Payment for Ecosystem Services into their respective mechanisms.

Indirectly, the project, through mainstreaming payment for ecosystem services in 5 government sectoral funds and revenue sharing mechanisms, will support the majority of Mozambique’s rural population of 17.2 million.

The project focus on benefit-sharing is central to its success. The underlying assumption in all the project and other documents discussing the REDD+ and ER challenge in Zambézia is that behavior changes will require some form of compensation for giving up the use of forests as key element of current livelihoods strategies. Links to other projects that provide new income opportunities – the Sustenta project is the most important at this stage – also underline that the PES approach is necessary but not sufficient.

The strategy being proposed is first to assess the current systems and then consider how to integrate the various strands of benefit sharing into a single framework with common rules and procedures. This can produce ‘a common set of rules for investing in provision of and compensation for ecosystem services, and promote their adoption by existing government sector funds and revenue sharing mechanisms, including forestry, mining, tourism, agriculture, fisheries, energy, environment and infrastructure’. The overall impact should be a strong contribution towards ‘mainstreaming biodiversity conservation into the country’s development policy framework’<sup>82</sup>

The FAO project then moves to a full design and testing of a pilot system for integrated benefit-sharing. A fundamental departure from earlier activities will be that *payments will become conditional on environmental performance of communities*. This has long been a concern of some in GoM senior circles, as to date the payments of the ‘20 percent’ and other revenues does not appear to have resulted in much improvement by local people in the conservation and NR context. There are legal queries that can be raised about the new approach – as indicated above, the 20 percent payment of revenues is a *de facto* right under law, and should not conditional upon some element of ‘good NR behavior’ (no matter how desirable that may be). The development of an improved benefit-sharing mechanism across the 7 Districts, covering a total area of almost 4 million hectares including 2.1 million hectares of forest, offers an excellent opportunity to revisit both the regulatory framework and the operational issues surrounding the 20 percent and other related payments. On-the-job training for district and provincial government officials involved in implementing this component would further enhance institutional capacity developed under the second component.

#### **4.2.2 Portucel plantation forestry**

Portucel Moçambique is part of a large multinational (the Navigator Company) investing in large-scale plantation forestry in two locations: the west of Manica Province, and in the northwestern corner of the ZILMP/ER program area. Portucel was awarded very large DUATs by the previous GoM to carry out this project. In Zambézia the total area involved is 173,000 hectares spread over a much larger area in a mosaic-like pattern; the objective is to plant across 60 percent of this area.

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<sup>82</sup> FAO 2016:3

Clearly this will impact severely on local livelihoods that use and depend upon access to a wide range of resources beyond the immediate confines of villages and *machambas*. The company has an active community Social Development Program to mitigate this impact. According to the company website, all communities that reside in the DUAT areas are included in the program and benefit from its three main aims, which are:

- Food security: Preserving and improving means of subsistence;
- Economic development: Supporting opportunities for economic growth;
- Quality of Life: Help improve the well-being of families.

In addition, the project also sets out in general to help communities to develop and move towards self-sufficiency<sup>83</sup>.

The reality of any large land award is that it will cover a large number of communities with long-settled residents who depend upon access to land and natural resources for their livelihoods (in other words, who have DUATs acquired by occupation under both the CRM and the 1997 Land Law). The initial DUAT award did not involve a prior delimitation of existing acquired DUATs following the Land Law and provisions of the Technical Annex<sup>84</sup>. These appear to have been little real negotiation in line with the requirement of Resolution 70/2008 either. In the initial phase of implementation, it was quickly evident that reconciling project expectations with the reality of local land occupation was creating serious conflict.

What is interesting for the ZILMP/ER process is the response that Portucel is now putting into place to carry out a process of retroactive delimitation and re-negotiation with local people. It is hoped that this will result in a workable and consensus based agreement that will allow the firm to proceed with its planting program and leave local people with a set of new options:

- Participating in various ways in the new opportunities linked to the plantation;
- Developing updated and more intensive forms of agriculture on areas of land that are left under their jurisdiction and covered with full DUAT title documents;

The retroactive delimitation and re-negotiation of agreements with the delimited local communities and their members is being supported by a national NGO with a provincial representation and long-term presence in Zambézia (ORAM), with technical support from a Maputo-based land and development firm (Terra Firma Lda.).

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<sup>83</sup> <http://en.portucelmocambique.com/Community/SOCIAL-DEVELOPMENT-PROGRAM>

<sup>84</sup> The Annex indicates in its Article 7(1) that delimitation is done as a priority in a) areas where there are conflicts over land and natural resources [i.e. it has a conflict resolving function as well]; and b) in areas of local communities where the State and/or other investors intend to launch new economic activities and/or development projects and plans.

It is evident that a process of 'prior delimitation' followed by negotiation and agreement ahead of the DUAT award could have avoided many of the problems so far encountered<sup>85</sup>. This insight has important implications for the ER program working in tandem with the Sustenta project, where a process of prior delimitation ahead of new investment, and as part of wider strategy to involve local people in the management of the Sustenta project, is key element of the program. Following this approach can be instrumental and securing the rights of local people (making them into legitimate stakeholders and potential partners), facilitate enhancement of community structures, and promote discussion of longer-range objectives with a transformation agenda in mind. The process can also produce the kind of Land Use Plan that Portucel describe as a 'mosaic', with areas indicated for local agriculture alongside others that might be set aside for conservation as part of the ER program.

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<sup>85</sup> This view was shared by the Portucel representative interviewed Mr. Johnny Colon, interviewed in Mocuba on 29 November 2016

## 5 SECTION FIVE: LAND TENURE ISSUES AND THE ER PROGRAM

There is not a great deal of technical literature that directly links land tenure issues in Mozambique with REDD+ and other elements of carbon reduction and carbon credits. This discussion above however makes a strong case for placing land tenure issues at the heart of a sustainable NRM strategy. In this context, the instrument of community land rights delimitation is especially important for establishing local rights over land and NR, preparing local communities and their leaders to interact with government and outside interests, and to work with private sector partners in new development opportunities.

The principle of consultation with local stakeholders has also been extended to the 1997 Environment Law, the 1999 Forests and Wildlife Law, and to all subsequent laws that deal with natural resources in one form or another. Significantly for the ER program, the partnership principle is most recently developed further in the 2014 Conservation and Biodiversity Law. This law allows the State ‘to establish partnerships with the private sector, local communities, and national and foreign civil society organizations, through contracts...for administering conservation areas’, and that in this case ‘it is possible to celebrate contracts with the private sector and the local communities for the generation of income’<sup>86</sup>.

Finally, coming right up to the present, the recently approved National REDD Strategy also refers to the need for the State to work closely with local communities in developing and implementing a REDD+ program. The principle of partnership is clear in the following:

‘The GoM proposes to introduce reforms in the forestry sector [with the objective of addressing a range of improvements in NRM and creating the conditions for a REDD+ program]’, including ‘devolving management power to the local communities and the sharing of benefits with all actors who contribute to the effective implementation of its strategy [for improving the forestry management regime]’<sup>87</sup>.

The REDD+ strategy document goes on to include in its list of proposed actions:

*‘improve the economic integration of communities and concession holders and guarantee the forming [formalization] of public-private-community partnerships in the co-management of forest resources’<sup>88</sup>.*

These fundamental features of the 1995 land policy framework can be used together with the inclusive approach espoused in the REDD+ program to provide a powerful platform for constructing an ER program that is participatory and inclusive, and which can enable local communities – as rights holders and as users of the resources in

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<sup>86</sup> Nemus/Beta 2015:56

<sup>87</sup> República de Moçambique 2016:27. *Estratégia Nacional para a Redução de Emissões de Desmatamento e Degradação Florestal, Conservação de Florestas e Aumento de Reservas de Carbono Através de Florestas (REDD+) 2016-2030*. Maputo, 2 November 2016.

<sup>88</sup> Ibid:28

question – to share in the benefits that come from storing carbon through improved NRM techniques and triggering ER payments as a result.

### **5.1 Securing individual land rights and engagement with the ERP**

There are of course hundreds of individual land rights at a sub-community level, held by households and other kin-based groups, or by entities such as producer Associations. In the accounting area, the majority of these will also be DUATs acquired by occupation, either through customary norms and practices, or by so-called ‘good faith’ occupation. For an ER program, it will be important to secure the collaboration of individual households and to ensure that they participate in some way in any benefit-sharing that arises from the successful outcomes planned by the program. To do this it necessary to secure individual rights as well as the collective right at community level.

Article 12(a) of the Land Law which deals with rights acquired by customary norms and practices is often referred to only in the community or collectively-held DUAT context. However, it is worth repeating it again here: ‘occupation by individuals and by local communities, according to customary norms and practices’. The legal implication of this is that all sub-community rights that are allocated and managed through the prevailing system of the particular community – this will vary depending on ethnic group and cultural rules – is also a DUAT in law.

Like the collective DUAT, this DUAT is very unlikely to have any form of documentation attached to it. ‘Records’ of its occupation and possession by a specific person or household will be held in the verbal or mental memory of the customary leaders and land chiefs; and in the shared ‘social register’ of neighbors and others who will be able to verify and support any land claim and intervene in small disputes over boundaries etc. The terms of Articles 14 and 15 then also apply to these individually held DUATs as well: the lack of registration does not prejudice the right; and ‘testimony from members, men and women, of the local communities’ is accepted as proof of possessing the DUAT by occupation.

In the case of ‘good faith’ occupation, this refers to instances where someone has occupied a piece of land without seeking formal approval from anyone, and has lived on and used the land for more than ten years. If they have done this without any other person contesting the occupation, then after 10 years have passed the occupant also has a DUAT by occupation. And this DUAT is similarly secure in the absence of documentary proof, and subject to proof provided by neighbors and others.

It is highly likely that in the accounting area of the ER program, all individual DUATs will be derived from one of these two channels. It follows then that proving them and recording them (and then issuing a formal DUAT title document) will require working with local leaders and others in the community to secure the necessary proof.

This observation again underlines the importance of carrying out a prior delimitation of the local community ahead of any LTR program to prove and register individually held DUATs. Delimitation will identify which local structures are the ones to work with if evidence is needed of possession and occupation. This is entirely in line with Article 24 of the Land Law, which gives the local community powers to manage natural resources, resolve conflicts, and participate in titling. The same local structures will also be able to manage and oversee the sub-community distribution of benefit-shares.

## 5.2 Community representation and organization

The overlap between the land and the Forest and Wildlife legislation also has important implications for how local people participate in the implementation of NR, and by extension how they can participate in an ER program. The discussion above has shown the plethora of different bodies that have been created through the Land Law, its Technical Annex, and other legislation including the 1999 Forest and Wildlife Law and later local government and association legislation. What is clear is that for a program like ZILMP, it will be useful to have just one principle body representing community interests, with a well-defined mandate and perhaps working through a series of lower level committees covering specific areas of activity.

There are indeed still many question marks over the details of community representation. The Land Law left this to be clarified in specific legislation (Article 30), but this has never been addressed. Although this law has not yet been developed, important parameters are provided in the existing legislation, indicating how communities should organize themselves to engage in Land Law and Forest and Wildlife activities. The Land Law, its Regulations and Technical Annex committees stipulate the needs to have women members in the G9 or similar local development committees. A similar requirement applies to the CGRNs.

Underlying all of this however is the co-title principle included in the Land Law and Regulations. This covers the internal management of the Local Community, and it is laid down in the Land Law Regulations that it is regulated in accordance with the provisions of Article 1403 of the Civil Code which deal with shared property (*comproriedade*). Thus, all decisions over assets held by and affecting the Local Community *must be taken by all its members*, and not just by its leaders acting alone. Whatever structures are created and supported at local level by the ZILMP, this underlying principle of participation at *intra-community level* must be respected and applied.

## 5.3 Community Consultations and Partnerships

Promoting partnerships between local people and other actors is central to the NLP vision of sustainable and equitable development. When combined with the open border around a delimited community, it is possible to negotiate agreements that allow investors to come 'inside' a community and occupy and use its land.



This mechanism can also be used to develop a strong model of collaboration between the Local Communities in the ZILMP area, and the ER program which requires significant levels of cooperation and engagement with local people if it is to achieve its objectives.

The concept of ‘ceding of use’ (*cessão de exploração*) may also be resorted to in an imaginative way, so that land currently being occupied and used to be left its occupants and included in plans for reforestation and forest recovery. Ceding of use is now being recognized as a valuable tool for allowing local communities with large areas of land to lease their land for a fixed term and in return for payment. Ceding of use has been on the agenda of the CFL in its last two meetings, and a draft decree has been prepared and submitted to MITADER. This document is currently on hold pending a decision on a possible full review of the land legislation, which would then integrate this instrument as an integral part of any new law or regulations<sup>89</sup>.

#### **5.4 Linking land rights to natural resources**

A major concern of those working on the natural resources side of the rural development challenge is that the possession of a DUAT does not give an automatic right of ownership over the resources found on a given piece of land. However, the conjunction of different elements of the legal framework does work to give local people – organized and recognized as Local Communities – considerable rights over how ‘their’ natural resources are used.

The Land Law Local Community defined and understood as a land holding and resource use system is replicated exactly not only in the 1999 Forest and Wildlife Law, but in all other natural resources legislation. This precise overlap is of fundamental significance for making the link between land tenure rights, rights over forests, and the development of an effective ER program that includes a benefits-sharing mechanism. Local Community delimitation establishes the spatial dimension not of the right of ownership, but of the *right of use and benefit (i.e. the DUAT)*. Article 24 of the Land Law also gives significant management powers to the Local Community, covering both land *and the natural resources* that are located within it. This management is carried out using, amongst other things, ‘customary norms and practices’.

While it is true that there is no legally defined equivalent to the DUAT when it comes to forests – a ‘DUAF’, as proposed in the ER supporting literature – the same right to use and benefit from forests and other natural resources within the area of a Local Community is clear in all the relevant sectoral laws. The DUAF is there in all but name only. And as with land, if the community wants to move out of subsistence-based production into more commercial activities, the approval of the land owner (the State)

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<sup>89</sup> This comes from the Legal Advisor to MITADER who also underlines the need for specific regulations for community-investor partnerships.

must be sought. Licenses are granted, and the community or a sub-set of it (for example a Women's Association) can proceed to exploit their resources commercially.

The preparation phase studies note that it is difficult for local communities to do this in practice. However, this is not principally due to legal constraints, but to practical problems to do with capacity, documentation (most rural people do not have ID documents for example), and material constraints. Evidently communities need support to navigate through the process; working with experienced NGOs can overcome these obstacles.

Further affirmation of the basic rights that local communities have over the natural resources in their areas is given by the provision in the Forest and Wildlife law, that 20 percent of State revenues from commercial forest and wildlife revenues is distributed to the communities where the resources are located. Further, all the natural resources laws require that a community consultation be carried out between commercial enterprises seeking to extract timber, for example, and the Local Community. As with the Land Law, the objective here is not merely to get a local 'no-objection' so that the investment can proceed; it is to secure an agreement between the two side which in principle will allow the community to gain from the commercial exploitation of 'its' resources by an external third party.

Another problem to date is that the Land Law and the Forest and Wildlife Law have not been used together in an integrated programmatic way. If it is a farming project, the Land Law is used; if it is forestry, no attention is given to the land rights issue beforehand, and the consultation is merely about use of forest resources. Little attention is paid to establishing the limits of the Local Community and its legal jurisdiction over the land and natural resources it 'uses and benefits from'. This weakens any possibility of negotiating decent agreements which ensure that local people do not just have to stand at the side of the road watching as 'their' trees are carried away to distant export markets.

## 5.5 Community Public Domain

Finally, it is necessary to consider the concept of *community public domain*, created in the 2004 Constitutional revision. Even before the 2004 constitutional revision, the Local Community exhibited elements of what has been termed a 'hybrid' entity with both a private and public character. The 1997 Land Law attributes DUATs to the Local Community on a collective basis, and these are legally private rights held in the name of the respective Local Community. The same law however also gives the Local Community a series of roles in the management of land NRs, thus:

- Participating in mandatory community-investor consultations when new economic projects are proposed (Article 13)
- The allocation and management of land rights (DUATs) inside its borders, according to customary norms and practices (Article 12 (a))

- The *management of NR within its borders* (Article 24, Clause 1 (a))
- The allocation of new DUATs to outside interests (titling) (Article 24, Clause 1 (c))

Especially given that all forests and NRs are State property, these management tasks give the Local Community a clear *public character* as well. This public face is given even greater weight by the 2004 CRM revision, which created the related concept of *community public domain*. Thus Articles 98 and 263 of the CRM state:

*The law shall regulate the legal regime of property in the public domain, as well as its management and conservation, and shall distinguish between the public domain of the State, the public domain of local authorities and the **public domain of communities**, with due respect for the principles of imprescriptibility and immunity from seizure (Article 98, Clause 3, emphasis added).*

And:

*The law shall establish institutional mechanisms for liaison with local communities, and it may delegate **certain functions that are within the powers of the State** to local communities (Article 263, Clause 5, emphasis added).*

The community public domain concept allied with the existing public functions specified in the 1997 Land Law introduces an entirely new level of right over NRs and the products of their 'use and development'. These are State resources, and the State therefore has the right to negotiate and transfer the title to ERs that are produced from them. However, as public assets these resources are also within the community public domain, and are managed by the respective Local Community.

Since the community public domain concept was introduced in 2004, no further legislation has been approved relating to how it works in practice. In the absence of detailed legislation however, it is possible to deduce how this constitutional principle can profoundly affect the way that ERs are treated, during ERP implementation and when ERs are sold and transferred to the World Bank:

- The community public domain is a subset of the wider 'public domain of the State', and extends across an area that is identified as 'a local community'
- This area can be assumed to equate to the Local Community of the 1997 Land Law and 1999 Forest and Wildlife Law, as this also has specified 'functions that are within the power of the State'
- The local community referred to in the CRM can then be identified on the ground using the community delimitation instrument laid out in the Technical Annex of the Land Law Regulations
- As a sub-set of the State public domain, the hybrid 'private-public' Local Community can be deemed to hold and manage the radical property right over 'its' land and NR, on behalf of the State

- These resources include natural productive and conservation forests within the Local Community that have not been subject to any form of license or concession agreement, either with the Local Community or a private investor
- The application of the community public domain concept means that the carbon in these forests forms part of the patrimony of the Local Community;
- By extension, the ERs that derive from State-projects like the ZILMP in these areas are also part of the patrimony of the respective Local Community

This conjunction of local land rights, subsistence use rights over NR and forests, and the *de facto* community ‘ownership’ of local level public domain resources (natural forests), has important implications for how the rights over any ERs produced are marketed by the State. A series of agreements will have to be negotiated with all local stakeholders; and this must include clear agreements over the share of benefits accruing from ER conversion into marketable CERs and their subsequent sale in external markets<sup>90</sup>.

### **5.6 Community land use plan (CLUP)**

All the above comes together in a more evolved and refined form of CLUP. While the CLUP does yet exist in formal terms, it is easy to see from the discussion so far how important this instrument can be in the context of the ERP. Although it is now firmly established as a key output of the delimitation process.

During a delimitation, local community members are encouraged to analyze how they use their land resources, and to consider their long-term needs and priorities. This may result in some areas being identified as available for investors through properly negotiated agreements, and others being clearly set aside as conservation areas or reserves. Bearing in mind the key element of behavior change with relation to itinerant agriculture, as an essential element of a successful ERP, a well-prepared CLUP can identify areas for community-investor collaboration (thus contributing to a more diversified and intensive agriculture in smaller, fixed areas of land), and identify areas of standing and degraded forest that can then become the focus of ER activities. When linked to the empowerment and civic education impacts of delimitation, the CLUP can create the conditions for a shared and equitable use of a particular landscape, and a greater local level awareness of the conservation objectives of the ER program.

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<sup>90</sup> This issue is discussed in detail in a separate report, which should be read in conjunction with this document. See: *Tanner C., 2017. Assessment of the government capacity to transfer title over emissions reductions. Preliminary synthesis of findings. Maputo, Etc Terra.*

The result of this kind of process should be a more evolved form of the simple CLUP presented at the end of Chapter Two. In Figure Three below, several local communities are delimited across an extensive landscape. In this case however, in addition to areas identified for fixed agriculture, investment with partnerships, and NRM activities, forest restoration on degraded and abandoned farm land can be included, alongside conservation activities in the designated forest areas.

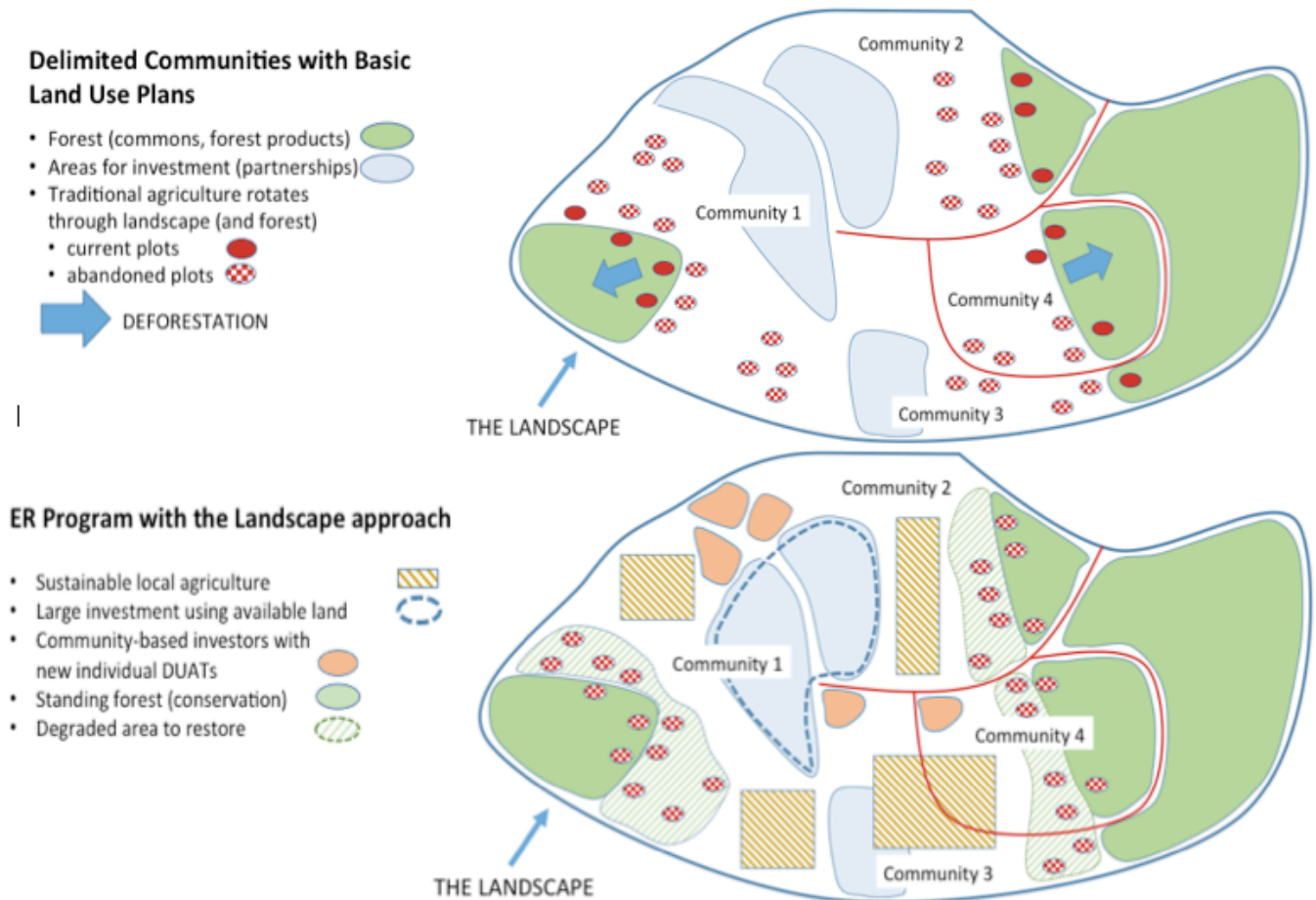


Figure 3: Example of CLUP – bis

## 5.7 A new project to achieve ERs and channel benefit-shares Local Communities

The discussion above shows that an effective ER program must work closely with those who are focusing on land issues, including both carrying out a full delimitation exercise in the ZILMP areas, and proving and confirming individual DUATs that have been acquired through customary and informal channels.

Delimitation then becomes the first in a sequence of steps that will link land rights and tenure activities with NRM management and the achievement of ER objectives:

- Delimitation;
- Community Land Use Plans;
- Community Capacity Building;
- Investor and local government training and advisory services;
- Individual DUAT titling (small holder/family investors) done by community committee (CDC);
- Development of NRM management plans that include ER objectives and strategies (working Local Community structures and the COGEPs);
- External investor – community agreements drawn up and economic support provided and implemented, to fix and diversify local agriculture.

The ER should also include resources and activities to support the development of a new and unified benefit sharing system. A starting point would be to update the 2012 assessment of the 20 percent system, followed by development of a full proposal for new integrated system that can aggregate revenues from a range of sources, develop clear procedures and systems based on lessons learned since 2005.

Aggregating resources from a range of sources can result in a larger pot of money that can then be used to better effect and have a more visible impact on local livelihoods and well-being. If it is made clear to local people that a part of this money comes from their efforts to control deforestation and thus generate ER payments, the impact of ER payments 'magnified' by being boosted by revenues from other sources, would be that much greater. This in turn will feed back into a more sustainable ER program as the benefits genuinely begin to compensate for the costs of giving up certain profitable behavior and unsustainable but presently logical use of available resources for subsistence needs.

In this context, it will be necessary to align with the FAO PES project, which already has developing the procedures and designing a new integrated benefit sharing system as one of its four project activities.

## 6 SECTION 6: CONCLUSIONS

Land tenure matters. It gives local people the confidence to invest in their land and conserve the natural resources on it and around them in the wider environment. It turns peasants into stakeholders and development partners. It empowers people and provides the basis for new relationships with a range of investment and development partners, including those implementing a future ER program.

The assessment above has identified key features of the land legislation and other relevant NR legislation which provide a solid foundation for a strategy of behavioral-change with relation to how land and forests are used in the ZILMP area. A set of sequenced and interlinked activities is proposed based on the assessment of land tenure rights and legislation, as follows:

The delimitation of collectively-held Local Community DUATs, following the methodology laid out in the Technical Annex of the Land Law Regulations, to include the extensive natural resources systems including standing and degraded forests that are part of the long-term production system base of the delimited community

The development as part of the delimitation process, of Community Land Use Plans (CLUPs), to identify areas for conservation purposes; areas to be allocated to agricultural investors on the basis of negotiated partnerships; areas for community agricultural and livestock use including areas for expansion in improved rotation systems and/or to allow for population growth.

The creation of CGRNs and/or other community structures that can be charged with basic land and NR management functions, and which form the channel through which the following ER-mitigating activities can be implemented:

- a) Distribution of community shares in ER payments (aggregated with other revenue shares through a new payment and programming system developed as part of the ER-PD);
- b) Transmission and promotion of new measures to enhance local agriculture (using some of the resources generated by the revenue share scheme);
- c) Negotiating with new investors on behalf of the Local Community and its members, to achieve a more diversified agriculture based around new value chains and/or partnership agreements with the investors.

Other issues such as the so-called DUAF may require policy and technical debate, and it is suggested that this question is scheduled to be included in the agenda of the next CFL.

This approach will achieve the ER targets *without specifically focusing on the question of carbon emissions and how the 'non-use' of a resource can generate money for local people*. This is a complex discussion and all those consulted and in particular at local level, consider that the best approach is to focus on activities to change long-standing

resource use strategies and modernize and intensify agricultural production on existing cleared land.

The overall strategy is fully in line with the over-arching philosophy that is already clear in the global literature on REDD+ (see above) and on land tenure issues in general (such as the FAO Voluntary Guidelines (VGGT), and the Principles for Responsible Agricultural Investment). The landscape vision is also captured in the FAO 'Green-NTD' methodology for achieving sustainable and equitable development strategies over a landscape or territory. In this context, the inclusion of an ER element into the ecosystem services and other conservation objectives of the methodology becomes an integral part of the broader development plan which is negotiated between local people (as local rights holders), investment interests, and the State.

Land tenure rights over an extensive landscape or territory are at the heart of this approach. The bottom line throughout is that a successful ER program (defined as one that also achieves social and human development objectives) must have full local support; and that a key condition is that real benefits accrue to local residents who are both legally and culturally the holders of rights of 'use and benefit' over the forests in question. A key condition of success for the ER-PD will therefore be the successful and correct (in legal and methodological terms) implementation of the community delimitation activity of the Sustenta project.

## **6.1 Summary**

There is clear evidence still that even at the highest levels, the full implications of the 1997 Land Law and its manifestation via the concept of the Local Community are still not accepted by those who adhere to the right of the State as owner to have control over how land and resources are used and managed. This is changing after many years of civil society pressure but there is a lot to be done still; achieving concrete results on the ground through an ER program within the ZILMP and its other activities, and feeding these back to Forums at provincial and national level will be an essential element to the strategy to overcome this essentially political constrain.

At the institutional level, there is also a strong technical orthodoxy at central level where norms and standards are developed. They are greatly exacerbated by other practical constraints at provincial and local level, centered on the extreme weakness of public land governance institutions in material, equipment and human resources terms.

Fortunately, as already referred to above, the 2015 reforms that created MITADER now offer an institutional framework that is far more amenable to the 'landscape' approach and an ER project which builds on the Land Law, F&WL law, and other legal instruments. The details of this institutional structure are well described in the Legal Review report. In addition, the recent establishment of the long-discussed National Fund for Sustainable Development and related administrative structures also present a good opportunity for innovative proposals with respect to the ER-PD. All of this is set within



the wider rural development vision of REDD+ referred to above, where ER activities are part of a progressive and sustainable strategy of human development which has conservation and climate mitigation objectives fully integrated into it.

Mozambique also has an active and capable civil society capacity that has evolved in the last two decades around land and natural resources rights and management issues. The assessment underlines the need for the GoM to work closely with its experienced civil society partners to make full use of the progressive policy and legal framework to deliver on the promises of REDD Plus ER activities in Mozambique.

The outcome of a properly implemented 1997 Land Law should in fact be a negotiated and equitably shared access to land and natural resources by both local people and other actors (investors, projects, the State). This outcome can be adapted to the objectives of the ER-PD to produce agreements between local communities (as the holders of land rights), and 'incoming' entities that wants to use local land, create the basis for a territorial development plan which also incorporates eco-system services and other conservation issues<sup>91</sup>.

The consensus view confirmed in the preparation phase studies and repeated in all interviews conducted as part of this assessment is that the legal framework for land in Mozambique provides a near-perfect platform for implementing a REDD+ and ER program with the full support of the local population.

Although holding a land use and benefit right (DUAT) does not give automatic ownership over the resources that exist on the land, there are elements in both the Land Law and in the various natural resources laws which give local people, through the Local Community created by the 1997 Land Law, significant, freely available use of these resources. Article 24 of the Land Law intersects with provisions in the current Forest and Wildlife legislation for local level management of resources, to underline the fact that Local Communities do already enjoy a *de facto* 'DUAF'; moving from this position to a formal recognition of this in law (in the new Forest Law for example), should not be difficult if it is well presented and adequately debated. Given the links with the underlying DUAT and the process of community rights delimitation, it would make sense for this debate to be placed on the agenda of the Consultative Forum on Land.

The Local Community concept, when properly applied and respected, establishes a form of jurisdictional area managed by community structures and used by local households as the basis of their livelihoods strategies. The process of delimitation serves to both secure local rights, and to create and/or reinforce existing community structures for managing land and other natural resources. The inclusion of a Community Land Use Plan (CLUP) as an outcome of the delimitation process should be made mandatory in

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<sup>91</sup> PNTD is a term coined by FAO as it has developed a methodology for inclusive and sustainable rural development with local rights recognition as a cornerstone and starting point. Reference will be made to this later in the text.

law; a definition is already available in the draft decree for Ceding Use [of Land]; it is suggested that this is integrated as a concept into the new Forest Law, and is similarly integrated into the revision of the Land Law if and when this takes place.

The inclusion of 270 community delimitations in the Sustenta project is a key element of the wider ZILMP that can form the platform for an integrated rural development strategy that achieves ER as well as social and economic development objectives. The process of carrying out these delimitations will empower local people and enhance their commitment to environmental and conservation activities. Delimitation also creates a matrix of Local Communities that when overlaid on a map of the natural resources (forests) that are the focus of the ER program, can guide the distribution of public revenues down to recipient communities. The other element to the Sustenta land component, namely the regularization of the customarily and informally ('good faith') acquired DUATs of individual families and other community-based groups, can also serve to facilitate the redistribution of at least a part of these resources to individual households and families, thus helping to offset the impacts of a reduced dependence on forest resources and securing their commitment to the goals of the ER and related conservation programs.

The land tenure component of the Sustenta project is thus an especially important element of the ER-PD in the wider ZILMP context.

## **6.2 Potential risks**

The most serious risks facing the ER hinge around underlying capacity concerns and deeper political tensions in the country at the present time. While an ER program can do little to address the latter, it can work to improve coordination at all levels, and introduce the 'reversed hierarchy' suggested in the SESA. The land tenure activities that are proposed in conjunction with the Sustenta project will contribute directly to community-level capacity building and empowerment, with hoped for impacts on community take up of conservation messages including a growing understanding of the ER program itself.

Whilst the focus is on local level challenges however, it will also be important to ensure that senior level policy and decision makers are fully on board with the ER program strategy. This will require effective feedback as the ER program and related ZILMP activities are implemented; and regular dialogue and discussion involving all stakeholders. It is suggested that the Consultative Forum on Land be considered as a vehicle for discussions where land tenure issues intersect with the other natural resources and REDD+ activities that are an integral part of overall ER strategy.

Other more immediate concerns relate to legislative changes that are in the pipeline; the new Forestry Law, and the strong probability that the Land Law will also be revised during 2017/18. At first sight the draft Forestry Law does not pose any threat, in fact quite the opposite. There is no change to the inclusion of the Local Community concept

as one of its basic building blocks, which is central to the arguments presented above that link land tenure issues to the rights that Local Communities also have to use and manage forests and other natural resources inside their delimited DUATs. The new law will also formally introduce the concept of Free, Prior and Informed Consent into the Mozambican forest legislation.

As for the Land Law, a Road Map for the revision process was produced in mid-2017 and is still being considered by MITADER. A key condition of this Road Map is that a policy discussion takes place before any revision to the law is attempted. The 1997 Land Law is effective because it was designed to implement a widely discussed and coherent policy framework; the new law – if indeed a full revision is needed – should do the same. Discussions with a range of stakeholders underlines the commonly-held view however that the present legal framework for land is still appropriate and best suited to the current challenges facing the country. A meeting with the MITADER Legal Advisor also indicated that key features such as the Local Community and the community consultation mechanism would be retained. The review process then offers the opportunity to improve and consolidate, rather than embark on radical changes. It will be important for those implementing and monitoring the ER program to both track this process, and where appropriate, contribute to it with feedback from program implementation on the ground.

## ANNEX 1: TABLES

Table One: Community delimitations up to 2014 (official data, presented in Tanner 2016)

PROVINCE	To end 2008		2009		2010		2011		2012		2013		2014		Total	
	#	Area	#	Area	#	Area	#	Area	#	Area	#	Area	#	Area	#	Area
<b>Maputo</b>	22	154,123.00	0	0.00	1	18,000.00	4	36,473.52	0	0.00	3	3,000.00	0	0.00	30	211,596.52
<b>Gaza</b>	20	472,484.00	4	27,658.73	16	3,824.60	23	51,869.47	16	58,202.17	0	0.00	27	852,030.00	106	1,466,068.97
<b>Inhambane</b>	11	575,712.00	0	0.00	5	5,238.55	5	80,739.94	2	11,443.55	0	0.00	1	6,158.00	24	679,292.04
<b>Sofala</b>	14	1,426,987.00	5	1,040,801.35	7	130,358.04	17	1,018,058.97	4	119,041.99	12	223,402.45	3	127,313.21	62	4,085,963.01
<b>Manica</b>	14	780,030.00	6	223,451.80	4	132,384.70	3	70,849.13	1	14,406.00	18	118,021.43	6	26,870.08	52	1,366,013.14
<b>Tete</b>	27	3,928,912.00	1	105.43	0	0.00	0	0.00	0	0.00	8	38,790.00	17	62,412.24	53	4,030,219.67
<b>Zambézia</b>	91	4,205,012.00	9	2,241.06	10	26,954.48	13	6,824.85	27	61,234.20	63	416,036.00	10	58,048.00	223	4,776,350.59
<b>Nampula</b>	95	747,936.00	2	36,765.75	1	44,461.00	18	89,649.42	6	87,433.17	23	141,509.34	0	0.00	145	1,147,754.68
<b>Cabo Delgado</b>	0	0.00	4	112,648.78	7	54,626.45	9	42,360.00	4	29865.7	24	167273.2	18	216607.95	66	623,382.08
<b>Niassa</b>	9	357.23	0	0.00	0	0.00	12	671,029.10	48	1,217,081.66	75	725,084.00	10	218,296.93	154	2,831,848.92
<b>Total</b>	<b>303</b>	<b>12,291,553.23</b>	<b>31</b>	<b>1,443,672.90</b>	<b>51</b>	<b>415,847.82</b>	<b>104</b>	<b>2,067,854.40</b>	<b>108</b>	<b>1,598,708.44</b>	<b>226</b>	<b>1,833,116.42</b>	<b>92</b>	<b>1,567,736.41</b>	<b>915</b>	<b>21,218,489.62</b>

Table Two: Community delimitations funded by ITC since 2006 (from Tanner 2016)

Province	# communities	Area delimited	% area total	Sum of Pop <sup>n</sup> (Total)	% of total Pop <sup>n</sup>
Cabo Delgado	50	461,832.87	8.50%	148,376	9.94%
Gaza	18	69,852.39	1.29%	15,454	1.04%
Manica	53	788,023.09	14.51%	170,300	11.41%
Nampula	111	587,066.35	10.81%	359,103	24.06%
Niassa	123	2,456,104.94	45.21%	179,332	12.02%
Sofala	12	227,560.41	4.19%	135,389	9.07%
Tete	34	104,620.36	1.93%	91,727	6.15%
Zambézia	122	737,315.48	13.57%	392,857	26.32%
<b>Grand Total</b>	<b>523</b>	<b>5,432,375.89</b>	<b>100.00%</b>	<b>1,492,538</b>	<b>100.00%</b>

## ANNEX 2: PERSONS AND INSTITUTIONS MET AND MEETINGS HELD

### NOVEMBER-DECEMBER 2016

<b>Government of Mozambique</b>	<b>Post and Institution</b>	<b>Contact</b>
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