Access to land and other natural resources for local communities in Mozambique:
Current Examples from Manica Province

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Setting the scene

Mozambique is still one of the poorest countries in the world. Given that poverty remains overwhelmingly rural in nature, measures to effectively address it should therefore be targeted to the areas were the rural poor live, and should be based on the resources within their control.

A programme to achieve these objectives began after the end of the civil war in 1992, and as the Government of Mozambique (GoM) embarked on a more market oriented rural development model after a period of socialized agriculture. The GoM realized that despite being marginalized, the rural communities continued to play a crucial role in the development and land management process. Old beliefs and assumptions that the local communities only produce for subsistence and do not invest and respond to market dynamics had to be revised.

The end of the war and the new market economy were also stimulating investor interest in apparently unoccupied land, threatening local rights and production systems still recovering from the war. Encouraged by international calls and by civil society to improve access by the rural poor to land and to secure their tenure over resources, the GoM initiated a review of land policy involving a wide range of stakeholders, leading to the new National Land Policy approved in September 1995 (Tanner 2002).The new policy established a clear, rights-based approach to guaranteeing land for the poor, as well as being a strong development instrument designed to promote new investment. These aspects are well summed up in its central 'mission statement':

'*Safeguard the diverse rights of the Mozambican people over land and other natural resources, while promoting new investment and the sustainable and equitable use of these resources'*

The basic principles of the National Land Policy are:

- State ownership over land , as laid down in the Constitution;
- Guaranteed access to land for the population as well as for investors;

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- Guaranteed rights of access to land by women;
- Promotion of private investment – national and foreign;
- The active participation of nationals as partners in private enterprises;
- The definition and regulation of basic guidelines for transferring State-allocated land use rights;
- The sustainable use of natural resources that guarantees the quality of life for present and future generations.

Most importantly, the new policy recognized explicitly the reality of small farm agriculture and land occupation, in which local or customary land management systems continue to play a key role. It was also apparent that these systems were carrying out an important 'public' service at very low cost for the State, and were the *de facto* land administration for the vast majority of Mozambicans. Customary land law and management therefore had to be incorporated somehow into the new legislation also called for by the policy document (Tanner 2002). A new Land Law was subsequently approved in 1997. The new law went an important step further in relation to the family sector[2], by recognizing customary rights of access and management as being equivalent to the State-allocated 'land use and benefit right' (or DUAT, to use the Portuguese acronym). The law also confers legal validity upon the various indigenous systems of transferring and inheriting rights, and recognises the role of local communities in the prevention and resolution of conflicts.

The mechanism integrating these systems into the new law is the 'local community', an extensive land holding and resource management unit reflecting local production and social systems involving a wide range of resources and dynamic patterns of land use. Through the local community, local people were also given a right, and duty, to participate in the legalization (demarcation and registration) of new DUATs allocated to investors. A key element in this context is the requirement that investors have to consult local people and secure their approval before they are able to obtain a new DUAT.

Implementing regulations for the Land Law were approved in 1998, followed by a Technical Annex for delimiting community land rights. A new National Forest and Wildlife Policy was also approved in 1998, followed by a new Forest and Wildlife Law[2] approved by the National Assembly in 1999. The Forest and Wildlife Law uses the same definition of 'local community' as the Land Law, and thus in legal terms the spatial unit in question *should* be the same as that covered by the Land Law DUAT. There are also similar requirements for investors to consult the local community when seeking forestry exploitation concessions. In the Forest and Wildlife Regulations approved in 2002, a significant step forward was made in the fight against poverty, with the requirement that 20 percent of public revenues from commercial forest and wildlife ventures are given to local communities to support local development.

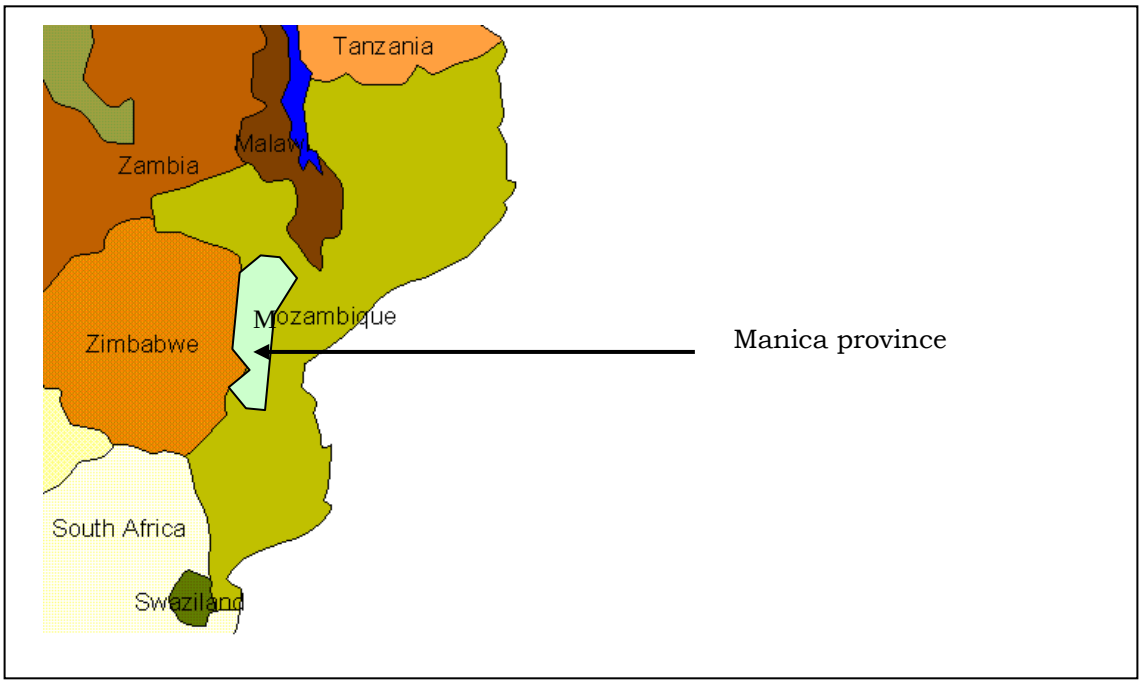
Through these innovative pieces of legislation, local leaders and the family sector have become important partners and decision-makers in the allocation and use of Mozambique's natural

[2] The term family sector (*sector familiar*) is used in Mozambique to indicate the smallholder sector. It includes community members who depend mainly on agrarian activities to meet livelihood goals.
[2] Law 10/99, de 07 de Julho

resources (land, forest and wildlife). In this context, the effective and beneficial management of these resources represents a practical and realistic means to help alleviate rural poverty.

Several years after these new laws were approved however, competition between local people and outsiders over land and natural resources is still a high profile issue. The provinces are under a huge pressure from the Ministry of Agriculture and Rural Development (MADER) to promote both national and international private investment in rural areas. Inevitably, local land rights are increasingly threatened by these more powerful interests. A series of measures are therefore being promoted – mostly by civil society – to secure local rights under the Land Law, and to allow local people to participate fully in the new development process.

This paper examines some of these measures as they are being applied in Manica Province, or in other words, to see in practice how 'the diverse rights of the Mozambican people over land and other natural resources are being secured, while promoting new investments and the sustainable use of these resources.



Secure resource tenure and poverty alleviation

One of the essential criteria for natural resource sustainability is the security of tenure over land and other natural resources. Without security of tenure, local farmers and other users of natural resources have little or no incentive to alter their subsistence practices. Poor people in particular have no incentive to invest their very scarce resources in the protection and conservation if some third party can obtain the rights to reap the benefit of their sacrifice and hard labour.

Private business investment also requires security for project development, both during the period of recovering the investment and during the period of profit. If the land tenure and property rights are insecure, an investment project, regardless of its technical or theoretical long-term profitability will employ practices to take out their profit in the quickest way regardless of the environmental consequences.

Secure tenure for all – local people *and* the new investors whose capital and know-how are essential inputs to local development – is therefore at the heart of the rural and social development model built into the 1997 Land Law (Tanner 2002).

Today, the GoM poverty alleviation programme, the PARPA[3], also recognises that land tenure security and giving local communities a role in the land allocation process are of critical importance. And while the new Forestry and Wildlife law (10/99) addresses conservation and sustainable resource use objectives, it too aims to involve all sectors of society, including the local communities, in the management and conservation of natural resources. The role of local people is further reinforced in new environmental legislation that promotes local community participation in environmental management.

Acquiring Rights over Land and Natural Resources

The State, as owner of the land, allocates a single type of land use right or DUAT that can be acquired in three distinct ways:

- Through local community occupation (customary norms and practices);
- Through good faith occupation (when a Mozambican citizen has used the land without any objections or counterclaims for over a period of 10 years);
- Through a formal request to the State (this is the only option for an 'outside' investor with an interest to develop economic activities on the land. The formal request is a lease – contract with the Mozambican State for a right to use the land for a period of 50 years).

As customary land access and management are fully integrated into the formal land law of the State, a community consultation process is legally required when investors seek land through the formal request procedure. And while all forest and wildlife resources are also owned by the State and are subject to state licensing for commercial use, the new laws also transfer certain use rights and a resource management role to the family sector. Again, when granting logging rights to

[3] PARPA, Plano de Acção para a Redução de Pobreza Absoluta

commercial companies for example, adequate consultation with the local communities in the area concerned also needs to be undertaken first.

In legal terms therefore, it seems that the rights of local people – over their land and to participate as partners in the development process – are firmly established. Private investors also enjoy secure rights, obtained with the consent of local people, and are thus in principle able to invest without worrying about conflicts with neighbouring communities.

How this looks at field level

The new land law in Mozambique is viewed by groups as diverse as the World Bank and Oxfam as being one of the best on the continent and offering significant opportunities for poverty alleviation and stability in the rural areas. It guarantees customarily acquired and other local rights, *and* strengthens property rights for investors. The expectation is that it will foster confidence and therefore investment. Is this happening in practice?

Investments in the rural areas are an explicit part of the development strategy summed up in the Mozambican land policy. Complex and inefficient land administration procedures were later identified however as a serious obstacle to new investment. To simplify and speed up investment, a decision was taken by the Ministry of Agriculture and Rural Development (MADER) in 2001, to have all new land requests processed within 90 days. This period was also to include the time needed for community consultation.

While a very large number of new DUATs have indeed been processed, this decision and the widely varying effectiveness in its implementation have not however helped to directly resolve problems at field level[4].

In Manica Province, the time pressure has certainly meant that local consultations between the investors and local communities seldom exceed half a day of dialogue. This is a very short period to discus all the details of what are often complex proposals for local people, who are then asked to give up their rights for at least a 50 year lease period. And while the consultation should result in some compensatory benefit for local people, this is very much a secondary objective for the land administration services compared with the need to secure a community 'no-objection' and give the investor his or her new DUAT in less than 90 days.

[4] A recent estimate is that over ten thousand DUAT's have been processed since 1997, compared with just 180 local communities delimited (CTC 2003)

The reality is that:

- The local communities are poorly prepared to receive the investor (previous knowledge on the investment proposal is often lacking, and awareness of their rights under the new laws is very weak);
- The borders of the concession request are indicated on maps or in conversation but are seldom physically verified (walked) during the consultation;
- Consultations are done only with a limited number of 'community representatives', and it is rarely clear whether these really represent the community in question.
- In only one meeting it is in any case impossible to consult all the members of the local community, in accordance with the legal concept of co-titularity which determines how the State-allocated DUAT is shared by all community members.
- And most of the agreements that are reached in the consultations involve one-time and quite small costs to the investor (a grain mill, a local shop) that do not necessarily result in a good *long-term* relationship with the local community.

Agreements between local communities and investors should be registered in a document that records the details of the consultation (*acta de consulta*). This document should subsequently be included with the documentation supporting the new investor land request. Field evidence indicates however that implementation of this agreement by the investors, and its monitoring by the public sector services present at the consultation (district administrations and provincial land administration service) is usually very poor.

Thus, where the participation of traditional leaders and representatives of the local communities has been promoted in the allocation and use of Mozambique's natural resources (land, forest and wildlife) the outcome of the consultation process is still unsatisfactory. Furthermore, as consultations are considered by the State land administration[5] to be the key *and sufficient* mechanism for protecting land rights, this reality is worrying indeed.

Local community delimitation

The community land delimitation process is a separate process that can be initiated by local communities or a private investor to delimitate and register land over which a local community has a DUAT acquired by customary occupation. The procedures are described in detail in the Technical Annex to the Land Law Regulations. These procedures centre around a participatory rural diagnosis in which local people draw upon their own knowledge of their history, land use, and local socio-political organisation to define their community[6].

[5] The National Directorate of Geography and Cadastre, DINAGECA, quoted in CTC 2003
[6] Land Commission 2000

The objectives of this process in the Land Law and development context are twofold:

- prove the existence of the DUAT acquired by customary occupation;
- determine where local rights exist and where their limits (borders) extend to

An important third outcome is the creation of a kind of community land committee that represents the local community in all subsequent processes that involve the disposal of or shared use of its DUAT (CTC 2003, Tanner 2004).

The vast majority of delimitations have to-date been done by NGOs concerned to protect local rights as part of longer term development projects (CTC 2003). The law requires however that technical staff from the provincial land administration services[7] participate to guarantee the technical accuracy of the process. District administration officers also participate at key points along the way. Most importantly, the borders identified by the community must also be discussed with and agreed to by neighbouring communities.

The final product is a geo-referenced map showing the agreed local community borders together with a description of the community (history, structure) and its resources (forest, water sources, production areas). This considerable body of information is then registered by the SPGC and the community borders recorded in the maps of the official Cadastral Atlas (a process known as '*lançamento').* The SPGC then issues a Certificate (*certidão)* that proves a delimitation exercise was carried out according to law, and which certifies the existence and extent of the local community DUAT.

In cases of a land dispute, this certificate will empower the communities to defend their rights. More importantly however, in a world where the *avoidance* of conflict and *development and poverty reduction* are important goals, the process establishes a clear working map that can guide investors and local people alike when it comes to determining where resources are available for investor use. The delimitation also clearly establishes with whom the investor should negotiate – which community or communities, and the newly created land committee within that community.

The community can go a step further and apply for a full title document. This requires a more complex and expensive *demarcation exercise* which in strictly legal terms does not confer any greater security over the rights in question. Once a community land right is proven through a delimitation, any investor is obliged by law to consult and agree terms with that community, as title-holder of the DUAT covering the land in question.

It is also important to note that the delimitation and its attached documentation does *not* define *new use rights.* The exercise confirms existing community use rights, recognised and protected by the Land Law. A local community without a certificate (or title) still has rights that enjoy the full protection of the law. The only difference is that it is not immediately clear where they extend to, and with whom an outsider should negotiate when requesting access to local land and resources.

[7] Serviço Provincial de Geografia e Cadastro, or SPGC

Finally, the delimitation process is also an excellent *de facto* resource inventory that sets the stage for future development initiatives. It offers considerable potential for using the community delimitation exercise as a basis for participatory land use planning, which can feed into a development planning process at the local level.

The conclusions to be drawn from these extremely positive aspects of the delimitation process are that:

a) it offers a far more secure form of protecting local rights than the consultation process on its own; and

b) it provides a far stronger basis for promoting local development built around the positive impact of new investment in which local people participate as stakeholders.

Sustainable natural resource management initiatives

The sustainable management of natural resources focuses on bio-diversity preservation and protection of forest and wildlife. There are currently more than 50 initiatives of community based natural resources management (CBNRM) projects in Mozambique. These are supported by FAO with financial support from the Dutch government, and are implemented in co-ordination with the National or Provincial Forestry and Wildlife departments (DNFFB and SPFFB respectively) A common goal is the setting-up of a natural resource management plan for the area in which the communities live, and in which they can actively participate.

The legal framework for Forestry & Wildlife is clear and supports the involvement of local communities when it comes to managing these resources. A new technical annex to the law is currently under preparation, for devolving management powers down to local communities. Meanwhile, there are many uncertainties about precisely what local people can and cannot do, and whether or not they must be consulted.

These problems arise in two distinct contexts: firstly the law allows local communities to use forest and wildlife resources freely, provided that this use is for 'subsistence purposes' and does not directly infringe other environmental and wildlife laws (e.g. those that prohibit the hunting of endangered species). Questions then arise over what constitutes 'subsistence use', and whether or not *communities* need permission to enter into contracts with others who want to use resources commercially.

Secondly, the law introduces a distinction between a 'simple licence', and a 'concession'. Both are commercial activities, but the former does not demand a full resource inventory and plan of implementation, nor does it necessarily require a community consultation. A simple licence is however limited to a period of just one year. Needless to say, many commercial interests are using the simple licence to reduce costs and avoid the need to consult local people (which in turn might raise their costs or block their activities altogether).

In both these contexts, the carrying out of a delimitation has concrete benefits. It raises awareness at local level of both rights *and obligations* under the law. It strengthens local structures that have to deal with outsiders seeking to use or bypass the licencing regulations. And it facilitates a participatory land use planning process that in itself provides a matrix for facilitating a more sustainable and equitable use of resources without the risk of future conflict. Finally, local people informed about the law become excellent local level monitors of correct use, and can play a key role in policing the implementation for a State that is still woefully short of material and human resources.

Sharing resource access and use benefits

Private investment in the rural areas in Manica Province is slowly expanding and the majority of requests for agricultural investments are concentrated along the Beira corridor that links Zimbabwe to the Mozambican deep water port of Beira.

The absence of a comprehensive land use policy, weak or ineffective coordination between national directorates and provincial services, and the lack of practical knowledge about how land resources are used, have already resulted in various administrative problems with immediate implications for local people and investors alike. These include the granting of multiple concessions for the same physical space or natural resource; granting simple licences for activities that are far more commercial and long-term in nature; and allowing 'investors' who fail to implement their projects to continue occupying 'their' land even after the DUAT is officially cancelled.

The other reality is that there is no 'unoccupied' land, following the Land Law use of the term 'occupation'. Anthropological research, and the carrying out of over 150 delimitation since the Land Law was approved, shows that all local communities have contiguous boundaries established through generations of land occupation and use. In other words, *all* the land has customarily acquired DUATs over it, and there are no unused or unoccupied areas that the State can then allocate to investors without a local consultation

This view of rural reality has alarmed some Government and private sector interests. They fear that delimitations can result in private investment being excluded or prohibited by newly empowered local communities, while huge areas of arable land remain unused because local people do not have the capital or know-how to use them. The resulting tendency to short-circuit or bypass legally prescribed procedures results in the administrative confusion described above, and in turn generates new conflicts that block the better designed and more serious investment initiatives.

Increasingly however, all sides – government, investor, and community – are learning how to use the Land Law and other natural resources legislation to promote the kind of participatory model foreseen in the 1995 Land Policy and 1997 Land Law. In Manica Province at least, several meetings have been organised involving all these groups and the NGOs that work mainly with communities, to discuss how to promote the joint use of land and resources by competing interest groups. Discussion focuses not just on sharing out the physical area, but also on contracts

determining a series of benefits accruing to both sides (such as royalties or a rent paid to local communities in return for ceding a part of their DUAT to the investor).

Partnerships and other forms of shared resource use

By registering community land it is expected that the family sector will feel secure enough to safe to invest what resources it does have in new or expanded forms of production. Typically however, local communities will still holds DUATs over large areas that they are unable to exploit, either because they do not have the capital or because they are not aware of the potential of a resource that does not normally figure in their own production systems.

In these latter areas, the holding of a DUAT does however empower local communities to negotiate with potential investors, through the consultation process as foreseen in the Land Law. Legal doubts do remain over whether such *de facto* rental and other forms of contract are allowed under present Constitutional arrangements. Recent reviews of the legal framework do however appear to conclude that such arrangements are possible[8]. DNFFB amongst others are also promoting the idea of effective partnerships in its more recent CBNRM projects, such as the Mahel Game Ranching proposal in northern Maputo Province.

The DNFFB Mahel case identifies four types of possible partnership arrangement in this specific case, where a delimited community has identified a large area that it is prepared to concede to an investor on some kind of contractual basis. These are as follows:

Option A	- A straightforward rental agreement between the local community and the investors.
Option B	- A joint venture between the community and the investor
Option C	- The local community contracts a manager to manage the identified resource, receiving a fixed payment for his or her services
Option D	- The conventional (until now) approach of a consultation resulting in the DUAT being ceded more or less permanently to the investor, with no direct economic return to the community (although the community *might* get a tax-share or some other to-be-defined benefit in the public sector context).

The first three options are real partnerships where significant benefits could be transferred to local people as the result of a negotiation over access to and use of their natural resources. But how much control do local communities really have over resource use (before and after a community delimitation)? How many delimitations have resulted in successful partnership relations? And what has been the political willingness of Government to promote delimitation which, as discussed above, is an essential and effective precondition for any meaningful partnership.

[8] See for example CTC2003, Garvey 2001, Tanner 2003. New DINAGECA documents supporting a proposed new National Land Strategy also appear to endorse partnerships as both legally feasible and as an important way of promoting sustainable local development.

The Mahel case has failed to move ahead successfully for a range of institutional and capacity reasons, largely located in the public service sectors responsible for its implementation. The basic model is sound in principle however. Proof of this is found in other experiments in Manica Province that of huge potential importance for the equitable, poverty alleviating model of the Land Law.

In Manica, a total of 10 community delimitations have been initiated over the last 5 years. Eight of these have so far been finalised, while in 2 cases in the Penhalonga region the community certificates have not yet been issued. While this is still a pitifully low number of delimitations, together they represent the vanguard of what could emerge as a powerful rural development process. For present purposes, three case studies will now be presented to illustrate the potential that is being blocked by the so-far unevenly implemented Land Law and other natural resources legislation.

In the Penhalonga case, the communities involved have undoubtedly grown in stature and confidence as a result of their delimitation exercise. Problems are due not to the process itself, but because a large forestry plantation occupies a substantial part of the area delimited. A history of conflict characterises relations between local people and the several forestry firms that have been given State concessions to exploit the timber resources, and have sooner or later either pulled out or failed altogether.

The Pindanyanga exercise supported by the SPFFB Community Management Unit (UPMC) is the most successful and complete community delimitation in the province. Though the entire support exercise has been expensive, which makes it difficult to ´apply´ the entire package to other communities in the region, it contains good elements (participatory methods tested and promoted) from which other community delimitations will benefit.

A third and quite distinct approach to partnerships involving natural resources use is the case of Coutada 9 in Macossa District. As a Coutada (official hunting reserve), the area comes under the jurisdiction of the Ministry of Tourism rather than MADER, but the SPFFB retains an important technical support role. The investors concerned have themselves proposed a contractual settlement with local communities residing in the hunting area, and who to date have been accused of illegal hunting and other activities that impede the successful development of the investor business plan.

Experiences at provincial level

Case A - Penhalonga (Manica district)

- an unfinished delimitation exercise

In 1999, a pilot land delimitation exercise carried out by the Inter-Ministerial Land Commission with FAO support was initiated with a local NGO (Kwaedza Simukai Manica, KSM) together with the rural communities of Chadzuca (occupying an area of some 16,000 hectares) and Nhakwanikwa (with an area of some 12,000 hectares). Part of the exercise involved introducing and presenting the Land Law and its regulations; the other part involved the delimitation and registration of the community border using the participatory approach laid out in the Technical Annex of the Land Law Regulations.

The Penhalonga region includes one of the largest plantation forests (Eucalyptus and Pine) in Mozambique (known popularly as IFLOMA, its name when functioning as a State enterprise). The plantation itself overlaps large parts of the delimited areas of Chadzuca and Nhakwanikwa communities. When the IFLOMA State company was taken over by a South African company in 1998, the rules for the local population dramatically changed. Agricultural plots were no longer allowed within the plantation borders. And at a certain stage the timber company actually proposed to remove all the population from the forestry concession area (10.250 hectares).

The region is also rich in gold and other minerals such as silver, copper and bauxite. In 1990, a private Zimbabwean company started to produce bauxite in an area along the Mozambique–Zimbabwe border. There is also small–scale mining, mainly of gold, involving hundreds of local miners (called *garimpeiros*) using very crude extraction techniques.

The insecurity over land tenure progressively translated into inappropriate land use practices. The timber company decided to cut down trees instead of launching reforestation programs at the same time. Bush fires some caused by the local population causes much damage in the forest plantation. Current agricultural practices and gold explorations on the steep slopes surrounding (and inside) the mining and plantation concession destroy the environment (native forest, erosion and pollution).

At district level, various meetings were organised with the district forum during which representatives of both communities, the IFLOMA timber company and public sector bodies (agriculture, mining and district administration) to discuss the different land use conflicts. Representatives of the local communities, now understanding their legal rights defined by the land law accused the GoM of neglecting the local consultation procedures. Representatives of IFLOMA accused GoM for not securing the entire plantation area (including some villages etc.) at the time of privatisation.

Economic development in the region stagnated. The IFLOMA timber company closed due to financial problems outside Mozambique, but was also beset with problems with local people that constantly upset their replanting and investment plans.

The delimitation exercise did however serve to clearly show where the major problem areas were in spatial terms, and offered an effective – but unused – mechanism for possibly resolving the conflicts. In spite of these positive effects of the delimitation exercise, the Manica SPGC made a radical decision and decided not to issue the community certificates until the problems are solved.

Case B - Pindanyanga (Gondola district)

- *a finished delimitation exercise*

The Pindanyanga exercise started as a NRM community project (initially supported by GTZ and later on by SPFFB with FAO technical support and Netherlands funding) The initial focus was not so much the community borders, but the potential for the local community in terms of natural resources. At the time of the delimitation exercise however, no other investors had an authorized DUAT in the area.

Members of the local community were trained to make a natural resource inventory and huge amounts of natural resource data (forest and wildlife inventory) were collected this way over a period of approx. 2 years. The inventory data formed the base line information for a community forestry management plan elaborated in collaboration with the Maputo University, Eduardo Mondlane.

Several infrastructure projects were carried out for the local Natural Resource Management committee (storage areas, a meeting room etc.), and bicycles for controlling forest use, as well as equipment for forestry maintenance and exploitation were supplied to the community. The limits of the community were measured using participatory techniques and GPS readings; these were later registered by the SPGC and a calculation of the area was made (31,300 hectares).

In November 2002, the community certificate (*certidão*) and the community natural resources management plan were handed over to the local community. Specific areas have been identified within the community border for:

- Firewood and charcoal production (approximately 10 000 bags of charcoal can be produced on a sustainable basis);
- Agricultural plots;
- Timber (a community owned saw mill is currently installed);
- Wildlife and hunting purposes.

In 2003, the first contracts were signed between the local community and two logging companies (Inchope Madeira and Lorena Lda.) to harvest timber. These contracts represent perhaps the first concrete examples of this kind of partnership, and if successful will serve as important models for similar initiatives elsewhere.

Case C - Coutada no.9 (Macossa District)

- *a proposed delimitation exercise*

Macossa District is in the northern part of Manica province and is dominated by two large hunting reserves (*coutadas)* which occupy over 70% of the district. Due to the presence of extensive areas of still relatively undisturbed wildlife habitat and low population densities, the district offers a considerable potential for conservation and wildlife management. A game inventory carried out in Coutada 9 in 2003 has indicated a good variety of wildlife, although the game numbers are considered low.

The Coutada 9 area is large (3763 km^2). As an official hunting reserve it comes under the jurisdiction not of MADER but of the Ministry of Tourism (MITUR)[9]. MITUR is empowered by law to issue commercial contracts in the coutadas, and in the case of Coutada 9, a Zimbabwe-Mozambique joint-venture has been granted the concession to manage the resources and run a sports-hunting safari business.

Coutada management and exploitation contracts are signed at national level between MITUR and the investor. There is no formal requirement to carry out a local consultation, as there is a premise that no communities can – or at least should be allowed to – live inside a Coutada and use its resources. The contract instead focuses on issues such as the licences to kill certain animals, quotas set by MITUR and the payment of taxes to the State per animal killed, and agreements over permitted hunting seasons.

The reality in Coutada 9 - and in all others in Mozambique – is that a significant local population is living inside its borders. These people are engaged in a combination of activities such as agriculture, beekeeping and hunting. The expansion of these activities in the coutada areas has already resulted in a number of serious conflicts (local population versus animals and local population versus safari operators). Some local people are accused of using spring traps, snares and modern rifle guns for commercial hunting purposes. Also some of the agricultural plots around the permanent water streams have been destroyed by wildlife.

The provincial government (DPADR Manica and MITUR) together with the NRM component of a FAO food security project are now studying the various alternatives to reduce these types of tensions. Last year, a proposal was presented to the various stakeholders *by the safari operator*, focussing on the co-management of natural resources and subsequent sharing of hunting revenues with the local communities.

This proposal represents an important and innovatory way forward, based upon a shared use of the natural resources base in return for a series of agreements about illegal hunting and appropriate land use practices that will benefit all concerned. The investor concerned has demonstrated a positive and progressive attitude that in itself has opened the way for a new type of solution to an acute problem found in many part of Mozambique.

The investor and the public sector bodies discussing the future partnership and the attached conditions have to answer a crucial question first however - who are the communities, and who represents them? Linked to this is the equally crucial question of the legal personality of the community(ies), with whom the investor seeks to sign a binding contract.

During meetings in Macossa in February 2004, involving local community leaders, the investor, district administration and provincial service staff (tourism, land, forest & wildlife), the possibilities for a community delimitation exercise were presented and discussed. The meeting concluded that this was the best way forward for several reasons:

[9] Management of National Parks, official reserves and other conservation areas was transferred from MADER to MITUR in 2000 by decree 9/2000 of the Council of Ministers.

- it would establish how many communities are involved (it seems there are three)
- it would establish where there respective borders are (and thus perhaps facilitate the way in which they will sub-divide future income)
- it would establish the communities as legal entities without the need for expensive and time-consuming additional moves such as creating Associations
- it would make local people far more aware of the resources and the kinds of conservation and resource use issues that are as stake

The Macossa case is now poised at a delicate stage while the investor and the public institutions involved decide how to go forwards. A critical issue is who will pay for the delimitation(s). The involvement of FAO, with substantial donor funding alongside, *might* provide an answer, but in line with the Land Law Technical Annex, agreement should be reached with the parties involved over who supports this cost. Certainly in the long term, a clear precedent needs to be established whereby the investor and/or the public sector supports the delimitation cost as an essential input into a potentially powerful and dynamic development and poverty alleviating process.

An evaluation of the first two exercises

There are important differences between the first two delimitation exercises, Chadzuka and Nhakwanikwa (Case A) and Pindanyanga (Case B):

i. While the local community delimitation exercise in Case A was initiated by a local NGO, the outcome of the Case B delimitation exercise was supported by the SPFFB, which considerably speeded up the process at the start of the exercise;

ii. Case B started as a NRM community project, with an initial focus not so much on recording the community borders, but on the potential for the local community in terms of its access to and control over natural resources;

iii. At the time of the delimitation exercise in Case B, no other investors had as yet been authorized either to exploit resources with a forest concession or licence, or through a land use DUAT. In stark contrast, the presence of outside investors is usually given as the main reason for confusion and conflicts in case A.

A comparison between these two approaches is very useful, for it shows how the access to land and other natural resources may differ among local communities in Manica Province, and how this affects the living conditions in which each community finds itself. Other important factors are the presence of non-community land users, and the way in which they have imposed changes on the natural resource equation, limiting the options for local people whose production systems traditionally require extensive use of a range of resources.

The type and purpose of the institutional support provided during and after the exercise is also important. All of these factors in turn can influence the way in which a delimitation exercise is used to promote local development. The different mix of factors in each community is shown in the table below.

	Chadzuka / Nhakwanikwa	**Pindanyanga**
Food security	(-) limited access to land and other natural resources	(+) a balanced access to land and other natural resources
Sustainable resource management	(--) destruction of the environment	(+ + +) establishment of environmental monitoring
Security	(---) land long occupied by foreign investors	(+) investors are welcomed
Poverty alleviation	(-) limited response to improvements in land management	(++) response to forest management

Penhalonga

The Penhalonga delimitation exercise shows clearly the overlap of economic interests (legal and illegal) within a relatively small area. The communities are forced to survive in a restricted space in a mountainous region, with increasingly negative impacts on the environment as they plant food crops higher up on ever steeper slopes. The large forestry plantation in their midst must also have brought its own negative impacts on the environment, although to date there has been no attempt to systematically assess these. In this context what Penhalonga clearly shows is the long-term impact of imposing a large-scale investment without any form of consultation that takes into account:

a) the local production system and its resource needs
b) the long-term economic and social development needs of local people, beyond perhaps superficial assumptions about the positive impact of jobs created in the plantation industry
c) pre-existing local rights over plantation land that in other countries and legal systems would give the 'landowner' some right to participate in the enterprise (if only by selling their land to the new firm)

In the current context, a delimitation was carried out by an NGO precisely to try and help local people get out of the trap they find themselves in. But with opposing economic interests already on the ground before the delimitation (including the State as owner of the plantation) any thought of enthusiastic support from the provincial cadastral and forest services would have been hard to imagine.

The other interesting aspect about Penhalonga is that with the decision to privatise the plantation, an opportunity arose to carry out a consultation with local people and thus put right the historical wrong that is still at the heart of the dispute. It is evident from fieldwork and conversations with senior IFLOMA staff at different times, that the range of potential options available through the new Land Law was never really explored or considered in this process. Discussions simply focussed on securing IFLOMA access to the land it legally is entitled to based upon the original colonial land demarcation. Later in the process the possibility of community forestry on IFLOMA land was discussed, but apparently with little real enthusiasm and without significant

institutional support from the public services involved (whose skills in this kind of approach were certainly weak at the time of the original consultations).

This is a pity, as senior executives in the management firm expressed interest in some kind of profit share or other partnership arrangement as one way out of the impasse, in direct face-to-face interviews. They did not know that this was an option, believing that 'the State is the land owner' and that it was not possible to have discussions with local people as if they too had some kind of real right over the resources in question. The lack of appropriate (and here we mean 'development-focused and socially aware') legal advice on both sides is an important issue in this context.

With a perception that the public services, when they did get involved, were on the side of the investor, and look only for ways of getting local people off forestry land, it is not surprising that the local communities are still accusing the Government of neglecting the procedures requiring local consultation when IFLOMA was privatised. Similar arguments were raised when the limits of the bauxite mine were changed at the request of the investor concerned.

A good delimitation should be able to help resolve acute conflicts of this sort, but instead the existence of the conflict is given as a reason why the Certificate cannot be issued. It is equally plausible that interests higher up in the decision-making chain are blocking the process, as they fear that the Certificate will give the community some kind of exclusive right, making it even harder to find a new buyer or manager for the IFLOMA enterprise.

There are several lessons to be learned:

⇒ Different and more imaginative alternative land use scenarios must be presented by the public sector, that can resolve the main problems (space and a sense of some kind of return from land historically considered to be part of the community resource base) for *all* the stakeholders.

⇒ New potential buyers for the IFLOMA plantation must see the situation on the ground in detail *before* reaching agreement with both the State and local people (striking a deal on the basis of lines on maps alone is not the way forward)

⇒ Some belated recognition of long-term historical rights lost before Independence must be part of the solution, through an imaginative approach to resource and income sharing (for example, as there are a number of villages with permanent structures, cultivation and grazing of livestock within the forest estate, outreach programs to encourage local communities to grow woodlots of pine and eucalyptus in partnership with the company should be promoted)

⇒ The public services must be *seen and felt* to serve the interests of both sides and to facilitate a consensual agreement, not just promote the interests of the major player (in this case, behind the scenes, the State itself).

At the present moment, as the entire procedure for selling the plantation concession is still being handled at national level (with a limited input from the province and district), there is yet again a high risk that the same mistakes will be made again. The Land Law does place responsibility for areas of the size of IFLOMA with MADER and the Council of Ministers. While this is reasonable given that the State *is* after all, the owner, this should not mean that the *process* should not be carried out at local level – consultations, resource inventory, a stakeholder based land use plan, proposals for income share or community foresty, etc. Neglecting the potential of the community delimitation exercise in this context is a big mistake.

Pindanyanga

By comparison, the Pindanyanga exercise supported by the SPFFB (UPMC) is the most successful and complete community delimitation in Manica Province. Though the entire exercise has been expensive, which makes it difficult to ´apply´ to other communities in the region, it contains good elements (participatory methods tested and promoted, promotion materials) from which other community delimitations will benefit.

The fact that no investor pre-existed the delimitation is of course a major difference with the Penhalonga case. The public sector services had no other master to server other than their commitment to a high-profile donor-funded programme that itself sought initially to promote sustainable resource use rather fight the land rights battle. The SPFFB was involved from the outset, and understood the situation of the community from the beginning.

It quickly became clear however that a delimitation would provide a more secure platform for the activities proposed, for the reasons given above:

- it provides a clear idea of where community rights (resources) extend to
- it raises local awareness of the potential of these rights
- it facilitates a stronger community representation mechanism
- and it establishes the legal personality of the community

These factors together have resulted in a positive exercise that is still developing, with new contracts being signed between the local community and investors wanting to exploit community managed resources.

At this point it is not clear how these contracts will work out, and in this context a worrying aspect is the lack of effective mechanisms for policing them and – should they *not* be adhered to – the probability that there will be little chance of resorting to effective and impartial judicial support.

Nevertheless this is an interesting and important example that reveals clearly the benefits of combining delimitation, a land use and resource inventory and stakeholder plan, and a consultation process, within a single and forward-looking development process.

Coutada 9 - A New Way Forwards?

The case of Coutada 9 in Macossa District offers the possibility of establishing an important precedent for the kind of combined approach advocated above. The key ingredients are:

- like Penhalonga, the major part of the historical land base of the communities was taken out of their hands by the colonial State long ago (in this case in the 1930s)

- the State, as owner of the Coutada resource, now wants to see it used for its intended purposes, to generate income for the public purse while also achieving conservation objectives

- the community is constrained by the presence of a new investor who wants them to stop using the resources in a non-sustainable manner that undermines the very foundation of his business plan (referring here to both hunting, and the spread of agriculture at key points inside the Coutada)

In other words, this case is very much Penhalonga, except of course that the natural resource base has not itself been altered irretrievably by the incoming investment, a process that in itself limits the options available for discussion. Nevertheless, the fact is that the investor wants the *existing* resource base to a) remain as it is, and b) provide him with the income necessary to get a good return on his investment.

There are also several key institutional players involved:

- The Ministry of Tourism, represented at Provincial level by a newly created Provincial Directorate
- MADER, through its Provincial Directorate (DPADR)
- Within the SPADR, the Provincial Cadastral Service (SPGC) and the Provincial Forest and Wildlife Service (SPFFB)
- The District Administration
- Most recently, FAO, through a new food security project that has identified community access to natural resources as a key element in the food security situation of the local population.

Amongst this group of actors are several with long acquired experience in the issues facing them. The provincial services have learned lessons from the cases described above; District Administrations nationally are acquiring new prominence in local district planning through the public administration reform programme; and FAO, throught its long-term support to the Land Law and the Forest and Wildlife Law, offers an excellent pool of skills and experience, including a field officer with direct personal experience of the other communities discussed here, in earlier FAO/NGO/SPFFB programmes.

In addition, DANIDA technical support has been involved in the exercises above, and is now able to provide its own acquired knowledge and experience to help resolve the situation on the ground. Local NGOs are also more knowledgeable and perhaps now more open to a positive collaboration with provincial services as well.

In other words, while the situation is very similar to Penhalonga, there are many institutional and other factors at work that should promote a very different outcome. Not the least of these is an explicit concern on the part of higher-level government structures that community interests should be taken into account in any decision, with the principles of the PARPA standing firmly in the background.

Nevertheless what is interesting is that next door to Coutada 9 is another Coutada, number 13, where even though the same factors apply, there is currently little prospect of achieving a workable solution. There are serious levels of conflict between the investor and the community. What distinguishes the two is perhaps the most important final ingredient in the Coutada 9 recipe - a *progressive and intelligent investor.*

Instead of simply trying to get the community out and insist on having access to all the area defined in his contract with MITUR, the Coutada 9 investor has recognised the reality on the ground – considerable community occupation – and has come up with their own proposals for a compromise solution. The details in brief are:

Subdividing the Coutada into 3 areas:

- a core area where the investor manages all the resources and from which, eventually but of their free will, the community should leave
- a kind of buffer zone that is managed for two years jointly by the investor and the community, and thereafter by the community alone
- a third area that is just for the community, to practice its agriculture and other non-hunting related activities

Attached to each of these zones are specific economic proposals:

- core area: the community will receive 25 percent of the trophy from animals killed by sports hunter-tourists
- buffer area: the community will receive 76 percent of the trophy fees
- community area: no obligations on either side

The investor also undertakes to train community members in correct conservation and wildlife management skills, to help them understand the underlying nature of the business activity in the Coutada as a whole, and to allow them to assume full management of the buffer zone after two years. They will also organise educational visits by local children to the hunting areas, beginning early with environmental and sustainable development messages.

The challenge now facing all those concerned is to determine precisely who the communities are, and how they can legally enter into the kind of contract proposed by the investor. In recent meetings, the proposal to carry out community delimitations in the Coutada area was fully discussed, and ultimately accepted as the best way forwards.

This will achieve the following as important next steps to a successful agreement:

- establishing how many communities are involved (in this case it seems there are 3)
- determining where their borders are (thus establishing a basis for deciding later who will manage what and how the returns from the contract will be divided)
- establishing the legal personality of the communities
- making the communities aware of their resource base (shared with the investor through the proposed agreement) and how this can best be used through the kind of agreement and activity proposed
- creating and strengthening a community representation structure that involves a range of people other than (but not excluding) local traditional leaders

A well done delimitation will also provide the moment for establishing the details of the community-investor contract; and will provide the right opportunity for determining how the communities themselves will be organised (in separate contracts with the investor, or collectively agreeing to one contract). Several meetings are planned, organised and hosted by the District Administration, to facilitate this process.

This situation represents a wonderful chance to move ahead with the kind of development partnership foreseen in the original Land Law model, and yet which has proved so elusive to date. The two other cases above show why it has been elusive in certain areas of Manica.

<u>The Macossa case offers a chance to apply lessons learned:</u>

- use the Land Law and related legislation in a positive way to try and address historical wrongs, but in a way that does not necessarily undermine the original (often laudable) objectives) conservation and/or economic development objectives
- treat local people as stakeholders with real rights, as people who can be negotiated with and with whom agreements can be reached
- look for agreements that are not simply a cheap 'buy-off' to secure a local 'no-objection' to a process that in itself has the seeds for longer term conflict if not handled correctly
- involve all institutional players, yes, but be clear about the roles and contributions of each one

In the Macossa case, the District Administration is emerging a key player, as organiser and host to meetings, as facilitator of what is still a complex and challenging process. The DA is not doing this alone of course: significant support is now coming in through FAO, DANIDA, and the public technical services involved. But the meetings organised to date have revealed a clear desire by all concerned to make this work, and achieve a result that:

a) provides the investor with what they want
b) ensure that the community benefits in a substantial and long term way

Perhaps the major lesson here however is that the Government should first of all find the *right kind of investor*. The primary role and duty of a State with a document like the PARPA as a core part of its macro-policy, is to find an investor and a proposal that will bring real income-enhancing benefits to local people that can then be used to transform their lives, lifting them out of poverty.

In the IFLOMA case for example, the State has a duty to find an investor who will accept the underlying obligations to take into account local needs and invest in a way that is socially as well as environmentally or technically responsible. Profit sharing or community outgrowing schemes are just some of the possible solutions.

In Macossa Coutada 9, the community is indeed lucky to have the investor they have. It is evident however that this is more a question of luck, and is not the result of a conscious strategy on the part of the State institutions involved in securing the contract.

Conclusion: An Ideal Case Scenario

The diagram below draws on all three cases, but represents specifically the situation now evolving in Macossa District, and more specifically Coutada 9. It is by no means a unique prescription for how to proceed elsewhere, where each case has its specific characteristics and requires a specific solution. The specific solution lies at the centre of the diagram however – the agreed land and natural resources plan – while the range of activities in the *process* outlined could probably serve as a guide in most other cases.

In the first instance, and as an increasingly important backdrop, is the decentralised district planning process that is now being implemented across Mozambique. The role of the District Administration is crucial here, and the future training of DA officers – both in government and in the technical services – must be strong future focus of GoM and donor development efforts. Macossa, like many other districts, is also fortunate to have new, better educated District officers. This new generation with its new attitudes and a clearer understanding of the need to plan around local needs, will be at the heart of many similar initiatives in the future.

Secondly, the process clearly involves a series of inter-linked steps that establish a series of essential 'databases':

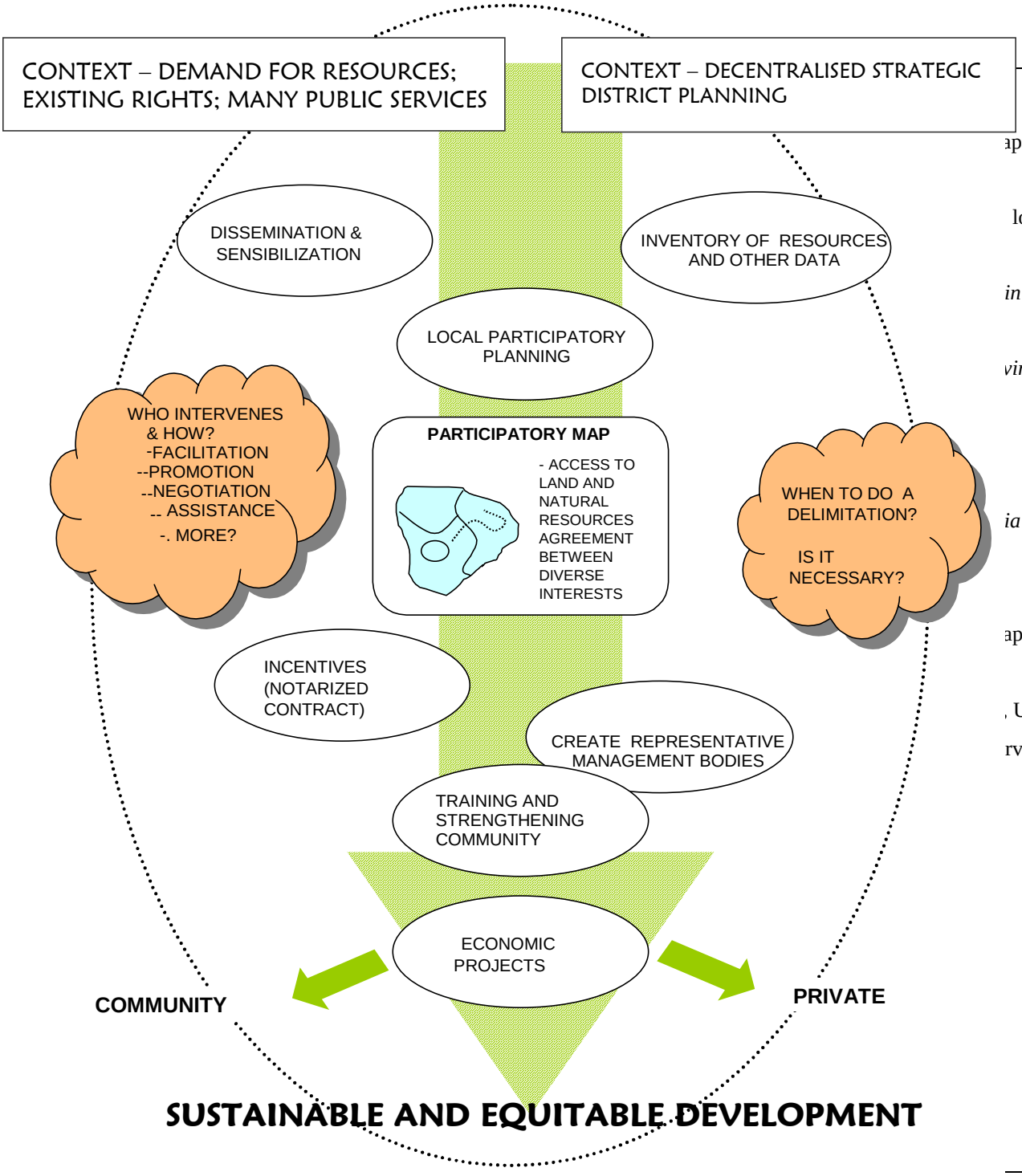
- what resources are involved
- what rights (DUATs and others) currently exist
- what are the main institutions involved
- what is the best use of the resources in the proposed area, and why

A process of what is called 'sensibilization' in Mozambique is also a key start-up ingredient. Here is a role for NGOs and donor projects, working together with public services where appropriate.

This model is offered to both sum up the discussion above, and to guide future situations where a community and in investor are faced with the prospect of using the same resource, but in a productive and non-conflictual way. The evidence strongly points to delimitation, together with a

more thorough and socially aware form of consultation, and land use discussions built into the process, as the way to move ahead.

THE PARTICIPATORY PLANNING PROCESS (NEGOTIATION) [1]



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