

# REVIEW OF NATIONAL LAWS AND POLICIES THAT SUPPORT OR UNDERMINE INDIGENOUS PEOPLES AND LOCAL COMMUNITIES

MOZAMBIQUE



**NATURAL JUSTICE**



**FORD FOUNDATION**

“Land is the foundation of the lives and cultures of Indigenous peoples all over the world... Without access to and respect for their rights over their lands, territories and natural resources, the survival of Indigenous peoples’ particular distinct cultures is threatened.”

*Permanent Forum on Indigenous Issues  
Report on the Sixth Session  
25 May 2007*

**Authored by:** Dr Carlos Serra

**Published by:** Natural Justice in South Africa

**Edited by:** Lee Middleton and Stephanie Booker

**Date:** December 2014

**Cover Photo:** Barra, Mozambique, © Quintin Brooks

## TABLE OF CONTENTS

	Page
<b>LIST OF ACRONYMS.....</b>	<b>7</b>
<b>INTRODUCTION.....</b>	<b>8</b>
 <b>PART 1: COUNTRY, COMMUNITIES &amp; INDIGENOUS PEOPLES' AND LOCAL COMMUNITIES' RIGHTS .....</b>	 <b>9</b>
<b>1.1 COUNTRY .....</b>	9
<b>1.2 COMMUNITIES &amp; ENVIRONMENTAL CHANGE.....</b>	9
1.2.1 INDIGENOUS PEOPLES, LOCAL COMMUNITIES AND LIVELIHOOD STRATEGIES.....	9
1.2.2 DRIVERS OF BIODIVERSITY LOSS AND LAND/RESOURCE APPROPRIATION.....	10
1.2.3 INITIATIVES TO CONSERVE AND SUSTAINABLY USE BIODIVERSITY.....	10
<b>PART 2: HUMAN RIGHTS .....</b>	<b>11</b>
2.1 HUMAN RIGHTS LAWS AND POLICIES THAT SUPPORT OR HINDER LOCAL COMMUNITIES' RIGHTS IN RELATION TO NATURAL RESOURCES .....	11
2.2 STATE AGENCIES MANDATED TO DEVELOP AND IMPLEMENT LAWS AND POLICIES.....	12
2.3 EFFECTIVENESS OF IMPLEMENTATION.....	12
<b>PART 3: LAND, FRESHWATER AND MARINE LAWS AND POLICIES.....</b>	<b>13</b>
3.1 LEGISLATION RECOGNISING FORMS OF COMMUNITY TITLE OR TENURE.....	13
3.2 SPECIFIC PROVISIONS THAT RECOGNISE COMMUNITY TERRITORIES.....	13
3.3 RIGHTS OVER SUBSOIL RESOURCES .....	17
3.4 STATE AGENCIES MANDATED TO DEVELOP AND IMPLEMENT LAWS AND POLICIES.....	17
3.5 RECOGNITION OF NATIVE OR ABORIGINAL TITLE.....	17
3.6 CUSTOMARY LAWS AND PROCEDURES FOR LOCAL STEWARDSHIP OR GOVERNANCE .....	19
3.7 EXISTING FRESHWATER/MARINE TENURE ASPECTS THAT UNDERMINE OR HINDER COMMUNITY CONSERVATION AND STEWARDSHIP .....	19
3.8 PROCESSES AND PRESSURES THAT INFRINGE UPON DE JURE OR DE FACTO TERRITORIAL OR TENURE RIGHTS .....	20
<b>PART 4: PROTECTED AREAS, ICCAS AND SACRED NATURAL SITES .....</b>	<b>22</b>
<b>4.1 INDIGENOUS PEOPLES' AND LOCAL COMMUNITIES' CONSERVED TERRITORIES AND AREAS (ICCAS).....</b>	<b>22</b>
4.1.1 THE RANGE, DIVERSITY, AND EXTENT OF ICCAS IN MOZAMBIQUE.....	22
4.1.2 COMMUNITY GOVERNANCE AND MANAGEMENT OF ICCAS .....	22
4.1.3 MAIN THREATS TO LOCAL GOVERNANCE.....	22

4.1.4	MAIN INITIATIVES UNDERTAKEN TO ADDRESS THE THREATS TO ICCAS.....	23
<b>4.2</b>	<b>PROTECTED AREAS .....</b>	<b>23</b>
4.2.1	LAWS AND POLICIES THAT CONSTITUTE THE PROTECTED AREA FRAMEWORK.....	23
4.2.2	DEFINITION OF PROTECTED AREA.....	24
4.2.3	STATE AGENCIES MANDATED TO DEVELOP LAWS AND POLICIES .....	28
4.2.4	PROTECTED AREA FRAMEWORK & RECOGNITION OF LOCAL COMMUNITIES' RIGHTS .....	29
4.2.5	MULTI-STAKEHOLDER BODIES .....	30
<b>4.3</b>	<b>SACRED NATURAL SITES.....</b>	<b>30</b>
4.3.1	LEGISLATION WITH PROVISIONS FOR LOCAL COMMUNITY STEWARDSHIP OF SACRED NATURAL SITES .....	30
<b>4.4</b>	<b>OTHER PROTECTED AREA-RELATED DESIGNATIONS.....</b>	<b>31</b>
<b>4.5</b>	<b>TRENDS AND RECOMMENDATIONS.....</b>	<b>31</b>
4.5.1	DIRECTION OF LAWS AND POLICIES .....	31
4.5.2	RECOMMENDATIONS .....	32
<b>PART 5:</b>	<b>NATURAL RESOURCES, ENVIRONMENTAL AND CULTURAL LAWS AND POLICIES.....</b>	<b>32</b>
<b>5.1</b>	<b>NATURAL RESOURCES &amp; ENVIRONMENT .....</b>	<b>32</b>
5.1.1	LAWS AND POLICIES SUPPORTING COMMUNITY OWNERSHIP OF NATURAL RESOURCES .....	32
5.1.2	STATE AGENCIES MANDATED TO DEVELOP AND IMPLEMENT LAWS AND POLICIES.....	33
5.1.3	OTHER LAWS AND POLICIES RELATED TO COMMUNITY STEWARDSHIP OR MANAGEMENT.....	33
5.1.4	LEADERSHIP .....	33
5.1.5	LOCAL MANAGEMENT .....	33
<b>5.2</b>	<b>TRADITIONAL KNOWLEDGE, INTANGIBLE HERITAGE AND CULTURE .....</b>	<b>34</b>
5.2.1	LAWS & POLICIES RELATING TO TRADITIONAL KNOWLEDGE OR COMMUNITIES' INTANGIBLE HERITAGE OR CULTURE.....	34
5.2.2	GOVERNANCE AND LOCAL MANAGEMENT .....	34
5.2.3	STATE AGENCIES MANDATED TO DEVELOP AND IMPLEMENT LAWS AND POLICIES .....	34
<b>5.3</b>	<b>ACCESS AND BENEFIT SHARING .....</b>	<b>34</b>
5.3.1	LAWS AND POLICIES WITH RESPECT TO ACCESS AND BENEFIT SHARING .....	34
5.3.2	FREE, PRIOR AND INFORMED CONSENT .....	35
5.3.3	FAIR AND EQUITABLE SHARING OF BENEFITS .....	35
5.3.4	STATE AGENCIES MANDATED TO DEVELOPMENT AND IMPLEMENT LAWS &	35

POLICIES .....	
<b>PART 6: NATURAL RESOURCE EXTRACTION, LARGE-SCALE INFRASTRUCTURE AND AGRICULTURE .....</b>	<b>37</b>
<b>6.1 NATURAL RESOURCE EXPLORATION AND EXTRACTION.....</b>	<b>37</b>
6.1.1 LAWS AND POLICIES WITH RESPECT TO NATURAL RESOURCES EXPLORATION AND EXTRACTION .....	37
6.1.2 ENVIRONMENTAL AND HUMAN RIGHTS CONSIDERATIONS .....	38
6.1.3 INTERACTIONS WITH OTHER LEGISLATION .....	38
6.1.4 NATURAL RESOURCES BEING EXPLOITED .....	38
6.1.5 IMPACT OF NATURAL RESOURCE EXTRACTION ON OTHER NATURAL RESOURCES.....	38
6.1.6 NATURAL RESOURCES EXTRACTION LAWS AND THE RIGHTS OF COMMUNITIES' .....	39
6.1.7 EFFECTS ON LOCAL COMMUNITIES .....	39
6.1.8 CONFLICTS WITH DOMESTIC PROPERTY LAWS .....	39
6.1.9 FREE, PRIOR AND INFORMED CONSENT .....	39
6.1.10 FAIR AND EQUITABLE SHARING OF COSTS AND BENEFITS .....	40
6.1.11 IMPACT ASSESSMENTS .....	40
6.1.12 COMMUNITY ENGAGEMENTS IN ASSESSMENTS .....	41
6.1.13 RELATIONS BETWEEN INTERESTED PARTIES.....	41
6.1.14 STATE AGENCIES MANDATED TO DEVELOP AND IMPLEMENT LAWS AND POLICIES.....	42
6.1.15 RECOMMENDATIONS.....	42
<b>6.2 LARGE-SCALE INFRASTRUCTURE/DEVELOPMENT PROJECTS .....</b>	<b>42</b>
6.2.1 IMPACT OF LARGE-SCALE INFRASTRUCTURE/DEVELOPMENT PROJECTS ON NATURAL RESOURCES .....	42
6.2.2 IMPACT OF LARGE-SCALE INFRASTRUCTURE/DEVELOPMENTS PROJECTS ON LOCAL COMMUNITIES' .....	42
<b>6.3 LARGE-SCALE AGRICULTURE .....</b>	<b>43</b>
6.3.1 PREVELENCE OF LARGE-SCALE AGRICULTURE .....	43
6.3.2 IMPACT OF LARGE-SCALE AGRICULTURE ON NATURAL RESOURCES.....	43
6.3.3 LAWS AND POLICIES FOR LARGE-SCALE AGRICULTURE .....	44
6.3.4 RELATION TO LOCAL COMMUNITY RIGHTS .....	45
6.3.5 EFFECT OF LARGE-SCALE AGRICULTURE ON LOCAL COMMUNITIES' .....	45
6.3.6 STATE AGENCIES MANDATED TO DEVELOP, IMPLEMENT AND MONITOR LAWS AND POLICIES .....	46
6.3.7 FUTURE DIRECTIONS AND RECOMMENDATIONS .....	46
<b>PART 7: NON-LEGAL RECOGNITION AND SUPPORT.....</b>	<b>46</b>
7.1 NON-LEGAL GOVERNMENT SUPPORT.....	46

7.2	NON-LEGAL NON-GOVERNMENTAL SUPPORT .....	46
7.3	KEY ISSUES.....	47
<b>PART 8: JUDGEMENTS.....</b>		<b>47</b>
<b>PART 9: IMPLEMENTATION.....</b>		<b>47</b>
9.1	KEY FACTORS .....	47
9.2	RECOMMENDATIONS .....	48
<b>PART 10: RESISTANCE AND ENGAGEMENT.....</b>		<b>48</b>
10.1	COMMUNITY ENGAGEMENT WITH OR RESISTANCE OF LAWS AND POLICIES.....	48
10.2	MAIN CONFLICTS .....	48
10.3	BROAD SOCIAL MOVEMENTS AND TRENDS.....	51
10.4	COMMUNITY AWARENESS OF LAWS AND POLICIES .....	53
10.5	DO SOME COMMUNITIES MANAGE BETTER THAN OTHERS?.....	53
<b>PART 11: LEGAL AND POLICY REFORM.....</b>		<b>53</b>
11.1	INSTITUTIONAL REFORMS REQUIRED.....	53
11.2	SPECIFIC RECOMMENDATIONS .....	53
11.3	IMPLEMENTATION OF REFORMS .....	54
<b>PART 12: CASE STUDIES .....</b>		<b>54</b>
CASE STUDY 1: TCHUMA TCHATO .....		54
CASE STUDY 2: RESETTLEMENT OF COMMUNITIES' LIVING ON TOP OF COAL .....		64
<b>REFERENCES.....</b>		<b>71</b>

## LIST OF BOXES

Box 3.1: Alterations in Article 35 of the Regulation of the Land Law (1998) .....	14
Box 10.1: San Sebastiao, Wildlife Sanctuary Case.....	48
Box 10.2: Open letter to the President of the Republic.....	51

## LIST OF PHOTOS

Photo 3.1: Traditional Boat, Vilanculos (2014).....	19
Photo 4.1: Flamingos, Barra (2014).....	25
Photo 5.2: Sunset, Barra (2014).....	32
Photo 11.1: Sand dollar, Barra (2014).....	54

## LIST OF ACRONYMS

AIA	Environmental Impact Assessments
ANAC	National Administration of Conservation Areas
CBNRM	Community-Based Natural Resource Management
COGEP	Local Natural Resource Councils
DNTF	National Land and Forest Directorate
DUAT	Duration of the right to profit from the land
FIR	Rapid Reaction Force
ICCA	Indigenous Peoples' and Local Communities' Conserved Territories and Areas
LOT	Land Planning Law
LFFB	Lei De Florestas E Fauna Bravia
ORAM	Organização Rural de Ajuda Mútua
PCEI	Conservation Policy Strategy of Implementation
PEDFFB	Policy and Development of Forest and Wildlife
PEOT	Plano Especial de Ordenamento do Território
PNDT	Programa Nacional de Desenvolvimento Territorial
TEIA	Teia National Forum of Mozambican NGOs
WLSA	Women and Law in Southern Africa

## INTRODUCTION

This report provides a holistic review of Mozambique's laws and policies relating to the recognition of indigenous peoples' and local communities' rights. It identifies the legal and policy measures and mechanisms that are useful to indigenous peoples and local communities and the impact natural resource exploration and extraction, large-scale agricultural land use and infrastructure and/or development projects have on their rights. It is intended to help the reader to understand the ways in which different legal and institutional arrangements either support or undermine such rights. It also explores strategies for promoting community participation in the management of these resources and in the local and national development process. The review covers the following key sectors and thematic areas:

**Part 1** - General background on the country, communities, indigenous peoples and local communities;

**Part 2** - Human Rights;

**Part 3** - Land and water laws and policies;

**Part 4** - Protected Areas, Indigenous Community Conserved Areas (ICCAs) and Sacred Natural Sites;

**Part 5** - Natural Resources, Environmental and Cultural Laws and Policies;

**Part 6** - Natural Resource Exploration and Extraction, Large-Scale Infrastructure/ Development Projects and Agriculture;

**Part 7** - Non-Legal Recognition and Support;

**Part 8** - Judgements;

**Part 9** – Implementation;

**Part 10** - Resistance and engagement;

**Part 11** - Legal and Policy Reform; and

**Part 12** - Case studies;

For each thematic area, the report highlights relevant provisions of Mozambique's Constitution, as well as general environmental and sector specific laws and policies, as appropriate. Institutional arrangements for natural resources governance, ownership, use and access are also addressed. Case studies are provided for particular thematic areas.

The review seeks to:

- Deepen understanding of the dynamics of environmental, cultural, and human rights law and policy as they relate to the local level, particularly regarding recognition of communities' rights in the context of large-scale agriculture, natural resource extraction and infrastructure/development projects;
- Provide relevant and easily understood recommendations for local-level engagement with national laws and policies;
- Provide a resource for national policy recommendations in the future;
- Be used more widely by individuals and groups from or working with local and mobile communities on issues related to self-determination, governance, and customary sustainable uses of natural resources for a variety of purposes.



## **1. COUNTRY, COMMUNITIES & INDIGENOUS PEOPLES AND LOCAL COMMUNITIES RIGHTS**

### **1.1 Country**

The Republic of Mozambique is located in south-east Africa with the Indian Ocean on its east, a border to the north with Tanzania, Malawi and Zambia in the north-west, Zimbabwe in the west, and Swaziland and South Africa in the south-west. In total, Mozambique covers an area of 801,537 square kilometres.

North of the Zambeze River the topography is mountainous – as is typical of the interior areas of the Great Valley Rift – with coastal plains and coral reefs. The south is described as a wide coastal alluvium plain covered in savannas, valleys, and various rivers. The location is particularly vulnerable to extreme climate phenomena such as droughts, floods, and cyclones.

Currently at 24 million, the predominantly Bantu population has grown exponentially. By region, the main ethnic groups include: north of the Zambeze River: the Swahilis, Macuas-Lomues (the largest group in the country), and Ajauas; south of the Zambeze: the Chona, Angoni, Tsonga, Chope, and Bitonga (Cultural Diversity Toolkit 2014).

Mozambique is rich in various natural resources, namely: forests, fauna, fisheries, water, energy sources, mining (coal, gold, iron, heavy sands, precious and semi-precious stones), natural gas, and petroleum. Since the early 2000s, the country's extractive industries have grown and gained a larger space.

Though the country's economy is based mainly on agriculture, diversification is occurring. The industrial sector, which includes food, beverage, chemical products, aluminium, and petrol, has begun to grow, and both the wholesale and retail trade sectors have improved, contributing to dynamic economic growth. Development in the tourism sector has been weak by comparison. Overall, however, the country has made notable advances as per its economic plans at the macro, a reality reflected in its economic growth indicators set out by the World Bank.<sup>1</sup> The country's human development indicators remain slow to show success, however, meaning that Mozambique is growing but not developing.

### **1.2 Communities & Environmental Change**

#### **1.2.1 Indigenous Peoples, Local Communities and livelihood strategies**

Indigenous people, as characterised in international law, under the United Nations Human Rights system, no longer exist in Mozambique. The land's original bushman hunters and gatherers were forced to flee the land as a result of Bantu immigration, especially in the years 200-300 AD. With a majority population of Bantu origin, the country's cultural mosaic is composed of various ethnicities, outlined in 1.1 above. The country has numerous national

---

<sup>1</sup> See <http://www.worldbank.org/pt/country/mozambique>

languages, all of Bantu origin. These include: Cicopi, Cinyanja, Cinyungwe, Cisena, Cishona, Ciyao, Echuwabo, Ekoti, Elomwe, Gitonga, Maconde (or Shimakonde), Kimwani, Macua (or Emakhuwa), Memane, Suaíli (or Kiswahili), Suazi (or Swazi), Xichangana, Xironga, Xitswa, and Xulu (Cultural Diversity Toolkit 2014).

The country's primary livelihood activity is subsistence farming, combined with extraction of forest products such as firewood and charcoal, used for household consumption and for sale. Fishing is also practiced on the coast and bodies of water in the country's interior.

### **1.2.2 Drivers of biodiversity loss and land/resource appropriation**

Further detailed research is required to reveal the current state of biodiversity in Mozambique. This would include a systematic and rigorous mapping of the current level of environmental degradation. According to the observations made and studies that do exist, however, it is possible to conclude the following:

- Leading threats to biodiversity include: agriculture, forest fires, unsustainable forest exploitation (including firewood collection and charcoal making), and the growing urbanisation that is currently taking place in the country (Serra 2012);
- With the advent of large-scale industrial agricultural projects in recent years, forest plantations (biofuels) have been established and the extractive industry (with respect to forest products) has grown. This has resulted in new threats to biodiversity as green areas are being transformed into plantations or mines.

### **1.2.3 Initiatives to conserve and sustainably use biodiversity**

Since the mid 1990's, following the passing of the **Constitution of the Republic of Mozambique** (hereafter "**Constitution**") in 1990 and the creation of a progressive and pro-community legal framework for natural resources from 1995, various natural resource management initiatives have been launched in various parts of the country, especially with regards to forest and fauna resource management (Serra 2014). One such example is the Tchuma Tchato Project (literally "our wealth"). Begun in 1995 in the district of Magoé, Tete Province, this was the first experience of community-based natural resource management in Mozambique (see case study in Section 12).

However, for reasons linked to lack of support and State resistance in supporting initiatives that transfer power to communities, history has shown few positive impacts recorded either in biodiversity conservation or producing significant benefits for local communities from such initiatives (Serra 2014). Despite the existence of legal instruments that clearly call for community involvement in the relevant decision-making processes, natural resource use decisions continue to be made at the higher levels, far from the communities from whose lands they are being extracted.

## 2. HUMAN RIGHTS

Human rights deserves special mention with respect to the formal legislative frameworks that have been established, and will be further discussed in the sections of this review pertaining to the **Constitution**, national legislation, adherence to international instruments, and institutional creation or strengthening. As will be discussed, whilst a number of human rights-related instruments and institutions exist, the realisation of human rights at the local level is still very slow, with numerous cases indicating gross and vulgar violations of these rights (see, for example, the case studies set out in Part 12).

### 2.1 Human rights laws or policies that support or hinder local communities' rights in relation to natural resources

When discussing human rights in regards to communities, it is important to refer firstly to the range of fundamental rights included in sections 35 to 95 of the **Constitution** which are applicable to every citizen, specifically fundamental rights to life and land (**Articles 40 and 109(3)**). The text of Mozambique's **Constitution** was in part inspired by international instruments such as the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights,<sup>2</sup> and the African Charter on Human and Peoples' Rights,<sup>3</sup> as ratified by the Mozambican State.

There is not, however, a Constitutional chapter specific to indigenous peoples and very few provisions relating to local communities, only several rights and norms set out that are of importance to the lives of communities.

In terms of the human rights of local communities, notable advances were achieved in the construction and development of natural resource legislation in the late 1990s, as mentioned above. Those legal frameworks include a special focus on land, forest, and fauna, as well as a greater focus on local communities' rights. The latter are guided by a humanist vision, which provides for a range of rights in access, use, and benefits from the land and other natural resources. The **Land Law (Lei de Terras n. 19/97)** deserves special mention, recognising the right to use and benefit from land in two vital situations:

- (i) Per **Article 12(a)**, through occupation by individuals and by local communities, according to customary norms and practices, as long as they do not contradict the **Constitution**; and
- (ii) Per **Article 12(b)**, through occupation by citizens who, in good faith, have been using the land for at least 10 years.

---

<sup>2</sup> Adopted by the United Nations General Assembly, in December of 1966. Resolution n. 5/91, December 12<sup>th</sup>, Assembly of the Republic.

<sup>3</sup> Ratified by Resolution n. 9/88, August 25<sup>th</sup> of 1988, from the Assembly of the Republic.

The right to land is therefore recognised in a separate legislative document, independent of the **Constitution**.

## **2.2 State agencies mandated to develop and implement laws and policies**

Promotion and defence of human rights in Mozambique is attributed by law to various state organs, including the **Attorney General of the Republic**, who is the legal monitor and defender of fundamental rights (**Constitution, Article 236**). In addition, **Mozambican Police** must, in exercising their functions, “respect legality, impartiality, exemption, objectivity, equal treatment, respect for human rights, non-partisanship, and involvement in all sectors of the State in preventing and combating crime” (**Article 2, Law n. 16/2013, August 12<sup>th</sup>, Policy Law of the Republic of Mozambique**). However, the Mozambican police have a long history of human rights violations, and remain one of the main factors complicating the country’s human rights scenario.

A **National Directorate on Human Rights and Citizenship** was created at the Ministry of Justice level. One of its many functions is to “promote compliance and respect for human rights and exercising these rights and liberties of citizens individually considered, with involvement from civil society”; to “promote and disseminate civic rights and duties of citizens”; and to “promote necessary activities to implement various human rights legal instruments” (**Article 12 of the Organic Statute of the Ministry of Justice, approved by Resolution n. 23/2012, December 3<sup>rd</sup>**).

The biggest innovation in terms of human rights bodies was the creation of the **National Commission of Human Rights** (established in 2009 but operationalised in 2012), whose function is to defend, monitor, and promote human rights in Mozambique. The Commission has 11 members, with government responsible for selection of four members, civil society responsible for three, Parliament responsible for three, and the Bar Association responsible for the selection of one (VOA 2014).

## **2.3 Effectiveness of Implementation**

A host of factors hinder the efficient implementation of human rights in Mozambique. These include:

- Citizen knowledge and understanding of rights is still very weak or non-existent;
- The State and its organs often resort to aggression (as seen by the actions of the police);
- Rights are violated through omissions by the State (the State not acting when, by law, it should – whether by promoting or protecting rights); and,
- The organs of the justice administration are weak, distant, or too slow.

There is a long road ahead in terms of disseminating and bringing awareness of human rights to citizens, as well as ensuring that the State assumes and acts in defence of human rights.

### 3. LAND, FRESHWATER AND MARINE LAWS AND POLICIES

#### 3.1 Legislation recognising forms of community title or tenure

With respect to communities in the Mozambican judicial-legal framework, it is important to first highlight how the innovative **Land Law**, Law n. 19/97, October 1<sup>st</sup>, established the concept of local community, and how this concept was transferred to other legal instruments. The **Land Law** defines “local community” as:

*“A grouping of families and individuals, living in a territorial area that is at the level of a locality or smaller, which seeks to safeguard their common interests through the protection of areas for habitation or agriculture, whether cultivated or lying fallow, forests, places of cultural importance, pastures, water sources, and areas for expansion” (Article 1, n. 1, Land Law).*

This definition was replicated in the **Forest and Wildlife legislative framework**, which was equally influenced by the **Land Law**’s chapters about consultancy, partnership, and community-based natural resource management. The **Forest and Wildlife legislative framework** includes **Forest and Wildlife Law (Law N.10/99, July 9<sup>th</sup>)**, **Forest and Wildlife Regulation (approved by Decree no. 12/2002, July 6<sup>th</sup>)**. These defined and regulated the basis for forest resource exploitation by foreseeing two regimes: a simple license and forest concessions.

Relevant to water resources, Mozambique uses a law established before the creation of the previously mentioned **Land Law** and, as a consequence, the **Water Law of 1991**, Law n. 16/91, August 3<sup>rd</sup>, suffers from a lack of harmonisation in many aspects related to the Land and Forest and Wildlife frameworks.

The **Fisheries Law, (Law n. 23/2013, November 1<sup>st</sup>)**, provides for a model of participatory management for local community participants and other key actors in fisheries management, in order to ensure the rights of fishing communities in accessing fishing resources, as well as their participation in planning and management (**Article 23(2), Fisheries Law**).

#### 3.2 Specific provisions that recognise community territories

A local communities’ right to use and benefit from land (known as the DUAT) has some essential characteristics worth noting.

Firstly, the DUAT acquired through occupation exists independently of acquiring a title issued by the **Cadastre Services (Article 13, Land Law)**. This means that the right to customarily use and occupy land exists prior to approval by law and before the issuance of titles by competent government institutions such as the Council of Ministers, the Ministry of Agriculture, the Governor of the Province or the President of the Municipal Council, depending on the size of the area.

Secondly, the absence of registration does not hinder the existence of the DUAT acquired through occupation, as long as it can be proven according to the requirements set out in the **Land Law (Article 14, Land Law)**. It would be unrealistic to suddenly require that local communities or respective members register their DUATs, taking into account the implications of such a process – including the physical distance of the rural population to public services in general, including the registration institutions, as well as the costs associated with registration procedures that preclude a majority of the population from registration (Serra 2014).

Finally, the right to the use and benefit of land (the DUAT) by communities can be proved not only through presenting a formal document (i.e., a title), but also through testimonies from members of the local community, as well as any other means of evidence that is legally admissible (**Article 15, Land Law**). In this way the **Land Law** ensures provision of land rights, having removed excessively formal legal procedures and proceedings, and put in place mechanisms allowing for different forms of evidence to be used, including testimony from individuals and those in the process of delimitation (addressed below).

Although the **Land Law** protects a majority of the Mozambican population occupying land without a title or documentation, there are various signs that the legislature, through Decree, are embarking on a road that could gradually weaken the legal position of vulnerable occupants. In recent years, the Mozambican Executive has used decrees from the Council of Ministers to alter some vital aspects of the **Land Law**, revealing a clear tendency to remove obstacles around liberalizing land.

Unlike the transparent campaign preceding the original adoption of the **Land Law**, the revision process of this regulatory framework has been carried out in deep secrecy, without any public participation or feedback from society in general, or organisations working in land and natural resources specifically (Norfolk 2004). As a result, the achievements of this significant legal instrument have gradually been constricted, as will be shown (see Box 3.1 below). These alterations reveal a need to rethink the legislative revision process in the country, as they do not dignify the original efforts made in creating a law that is democratic, balanced, and just (Serra 2014).

#### **Box 3.1: Alterations in Article 35 of the Regulation of the Land Law (1998)**

Since 1998, the system that the **Land Law** had established for local communities to obtain DUAT title to occupied land has been complicated by the approval of an alteration in article 35 of the Regulation of the Land Law (1998), Decree n. 50/2007, October 16<sup>th</sup>.

In the past, DUAT titling for local communities occupying land required only an order from the Provincial Governor, which community leadership would take along with proof of payment for expenses related to the process, to then go through the technical process to demarcate the land, regardless of dimensions. Without many bureaucratic difficulties, this relatively simple system allowed local communities to obtain a DUAT title through occupation, according to customary norms and practices, as per the terms found in **Land Law, Article 12(a)**, together

with **Article 35** of the **Regulation of the Land Law** (1998) in its original version. All parts of the process were carried out at the local level (along with necessary provincial and district organs of the State), with approval coming from the district administrator, and the final order from the province governor (Chiziane 2011).

By Decree 50/2007, October 16<sup>th</sup>, a line was altered in **Article 35** of the **Land Law Regulations**, bringing about a radical change to the system described above. This change required that the DUAT titling process must contain, aside from other requirements, a “decision by the competent entity in the area, as is defined in line a) of n.1, line a) of n.2 and line a) of n. 3 of **Article 22 in Law n. 19/97**”. This means that pieces of land beyond a certain dimension fall under the administrative control of the Council of Ministers, which must authorise DUATs (**Article 22, Land Law**).

In addition, a new requirement held that a “competent entity” must decide if the land was an existing DUAT in relation to its dimensions, nullifying the previous recognition through occupation, regardless of dimension. This entity is determined according to the dimensions of the land in question: thus the Provincial Governor for pieces of land up to 1,000 hectares; the Minister of Agriculture for areas between 1,000 and 10,000 hectares; and the Council of Ministers for areas above 10,000 hectares.

While this situation generally makes sense with relation to requests for the DUAT, it does not make sense when dealing with recognition of the DUAT acquired through occupation, thus exposing a real deviation from the intention of the **Land Law** to make the right to land more accessible to communities. The alteration effectively gives decision-making power to entities in **Article 22** of the **Land Law**, thus allowing them the opportunity to refuse local communities’ processes for fundamentally opportunistic reasons (Chiziane 2011). This seems contrary to the intent of the current **Land Law**, which recognises rights to access and use of land by local communities by law, without restrictive conditions (Chiziane 2011).

Chiziane (2011) points to this alteration as paradigmatic of the recentralising tendency that characterises recent actions of the Mozambican State. This recentralisation contradicts the **Constitution** (as amended in 2004),<sup>4</sup> which establishes the principle of decentralising power, as well as the **Law of Local State Organs (Law n. 8/2003, May 19<sup>th</sup>)**, in relation to the principles of administrative de-concentration and de-bureaucratisation<sup>5</sup>. According to Chiziane, “the rule these days is to promote de-concentrated management, especially the Council of Ministers, in the use of its normative power, and they have ‘toasted’ us with approval of normative texts

---

<sup>4</sup> According to Article 250, n. 1, 2004 Constitution, “Public Administration is structured based on the decentralisation principle, and effectiveness of their services without jeopardising unified actions and powers from the government”.

<sup>5</sup> See n. 1 of Article 3 of the **Law of Local State Organs** (Principles of organisation and functioning), being one that “Organisation and functioning of local State organs obey the principles of decentralisations and administrative debureaucratisation, with the aim to decongest the central level and bring public services closer to population, with the aim to guarantee celerity and decision making adequate to local reality”.

that promote more concentration, thus we speak about ‘re-concentration’, an option forbidden in the 2004 Constitution” (Chiziane 2011).

According to a report produced by the Organização Rural de Ajuda Mutua (hereafter ORAM), the alteration of the land law resulted in an almost complete standstill of community land title processes:

*“Since the alteration of article 35 of the Regulation of the Land Law in October 2007, the process of delimiting local land has been stagnant, with many communities still waiting for official certificates of use and benefit from land. In other words, no local community has received a certificate of land use and benefit since the alteration of article 35. This situation not only slowed down the community delimitation process, but is also hindering the sustainability of legal rights of local communities and compromises economic growth of rural communities”* (ORAM 2010).

ORAM further highlights that the alteration of **Article 35** of the **Land Law Regulations**, as well as the approval of Circular n. 009/DNTF/09, October 16<sup>th</sup>, restricts rights attributed to communities, thus violating the principle of hierarchy of laws.

For Tanner (2011), the revision originates from the government’s concern that local communities, under the **Land Law’s** protection, could control vast areas that are not being used or that are not being used intensively for production purposes, showing that the government did not fully understand the idea of “open borders”, having wrongly understood delimitation as a way to exclude a range of determined areas open for national and international investment.

According to De Wit and Norfolk (2010), it was more severe that there was a legally insecure situation and an alteration in the way Provincial Services for Geography and Cadastre deal with local communities who benefited from the delimitation process (understanding that one is dealing with a “retroactive interpretation of this alteration, which is legally incorrect), as well as with relation to communities with ongoing processes.

De Wit and Norfolk continue, “lately, it seems that the government is not opposed to the law’s alterations and is content with contemplating its retroactive application, so as to deprive local communities of their rights. There are probably a series of reasons explaining this reluctance from the State in delegating land control. These include: (i) State agents’ economic interest in valuable natural resources; (ii) the lack of political will to allow control at the local level in areas who sympathise with the opposition; (iii) the fear that, by guaranteeing local rights to land in the name of community groups, private investment could be blocked in these areas.

Whatever the reasons, the State’s reluctance to decentralise power is driving a situation that has resulted in few examples of successful, long-lasting, and positive impacts from Mozambique’s Land and Forest legislation, despite the legislations’ generally solid and clear policies and principles (De Wit & Norfolk 2010)



### 3.3 Rights over Subsoil resources

A new threat has emerged to community land rights in the approval of a **Mining Law** in 2002, (Law n. 14/2002, June 26<sup>th</sup>). According to **Article 43(2)** of the **Mining Law**, “The use of land for mineral operations has priority over all land uses when economic and social benefit relative to these mineral operations is superior”. This legal norm is unconstitutional (Serra 2012), as the prevalence of mineral rights over other land rights and benefits is disputable. Fundamentally, this norm allows that all or any mining projects can be implemented in communities’ areas where, for instance, a community-based natural resource management project is taking place, for the sole reason that the social and economic benefits of the extractive industry may be higher.

### 3.4 State agencies mandated to develop and implement laws and policies

The legal institutional framework that deals with access, use, and benefit from land and natural resources is vast and complex, with numerous intervening State entities at various governmental levels. Speaking to that complexity, the framework exhibits two differing tendencies: on the one hand, one delegation of authority in the framework of a decentralisation policy, and on the other hand, those of a recentralisation policy, where the State plays an increasingly central role, holding absolute power over where the natural resources are attributed (Serra 2014).

In terms of competencies related to land administration and management (as well as forest and wildlife) the role of the **National Land and Forest Directorate** (DNFTF), under the Ministry of Agriculture, is important to mention. At the local level, there are also the provincial and district governments, with some cases, the Municipal Councils, where Local Authorities were created (and elected by local communities). The functions of these authorities include land administration.

With respect to water, the **Ministry of Public Works and Housing** (through the **National Water Directorate**) takes a leading role, as well as the **Regional Water Administrations**. In fisheries, the role of the **Ministry of Fisheries** emerges, as does that of the **National Fisheries Administration**. In this sector, significant steps were taken to allow for community participation (see Ministerial Diploma n. 49/2007, May 24<sup>th</sup> – Approves Regulation for Functioning of Fisheries Committees of Co-Management).

In summary, the Mozambican legal and institutional framework is currently characterised by a dialectically strong relationship between the State and communities in the access to natural resources, where, in most instances, the weaker party, i.e., the local communities, have and will continue to lose.

### 3.5 Recognition of Native or Aboriginal title

Native or Aboriginal title is not recognised in Mozambique. However, collective title is arguably

a feature of the Mozambican land tenure system.

According to **Article 111** of the **Constitution** (as amended in 2004), “In titling the right to use and benefit from land, the State recognises and protects rights acquired through inheritance or occupation, unless there is legal reserve, or if the land has been legally attributed to another person or entity”.

Calengo defends the existence of an authentic principle of recognising rights acquired by local communities and national citizens as a kind of transmission of power (2007), stating that it was “State recognition of the nature of things, meeting reality in the sense that these rights exist and are exercised independently of the State proclaiming it as owner of the land” (Calengo 2007). It is also a “reconciliation of the State with local communities”, as a function of previous actions, which were a sort of “encroachment” on citizen’s rights, “an encroachment on the minds and intelligence of these people who never assumed the State to be the one that is above local powers with relation to land,” (*ibid*). The right to land for communities ultimately exists independently of any form of State acknowledgment – the right existing even without formal documentation.

Accordingly, the **Land Law** (1997) reinforced constitutional understanding about modalities in acquiring rights to use and benefit from land, consecrating it beyond the formal modality absent in authorising a request that is made through competent institutions, as well as occupation by individuals who, in good faith, are using the land for at least 10 years, notoriously inspired in the statutory institute of adverse possession, a third modality which recognizes customary norms and acquisition of land (**Article 12, Land Law (1997)**).

Underlying the above is the need assumed by the legislator to protect the weakest or most vulnerable part of the population against negative collateral effects given the dynamics of development, including land grabbing. For this reason an innovative solution translated into the recognition of rights over land with a basis of occupation through customary norms and practices that do not contradict the law was originally recognised (**Article 12(a), Land Law**).

At the base of recognising rights acquired by occupation is the understanding that in Africa generally, and in Mozambique specifically, land is an essential part of food security and the livelihoods of poor people, and in the decades to come, we are unlikely to see a structural change in the African economy that will guarantee formal employment for all through transformation of small farmers into service sector employees. Given sub-Saharan Africa’s high demographic growth, there is an even lower chance that the agricultural sector will be capable of integrating millions of new farmers, even with substantial investments (Negrao 2002).

Although Mozambique has constitutional and legal recognition of customary rights with special relevance to land management and administration, there is a culture of resistance in accepting the loss of the public monopoly in this area, especially by government and State institution employees, as well as by some private entities. Accordingly, Baleira states that the “domain of statutory law over imaginary social agents of competent State entities in land administration

and management and the formal legal culture of private investors and its lawyers have constituted a factor in neglect and non-observance of customary rights, especially in disputes over land and other natural resources” (Baleira 2012).

### 3.6 Customary laws and procedures for local stewardship or governance

As previously mentioned, the original **Constitution of 1990** began a decentralisation process, which, among other things, served as a base for empowering local communities, as well as launching the first programmes in community-based natural resource management.

In addition to its progressive definition of the what constitutes a “local community”, the **Land Law** included natural resource management as one of the functions of local community (**Article 24(1)(a)**). The **Forest and Wildlife Law** (Law n. 10/99, July 7<sup>th</sup>) also provides for the creation of **Local Natural Resource Management Councils**. Consisting of local community representatives, the private sector, associations, and local State authorities, these Councils have the objective of promoting protection and conservation of sustainable natural resource use. Furthermore, the participatory management framework requires that local communities be involved in exploitation of forest and wildlife resources (**Article 33, Forest and Wildlife Law**).

At the local level, **Local Committees for Natural Resource Management** were created, mainly for management of the 20% tax received from forest and



wildlife exploitation that should go back to local communities, where these resources are being extracted (see Ministerial Diploma n. 92/2005, May 4<sup>th</sup>). Similar structures were created for fisheries in the participatory management framework called **Co-management Fishery Committees** (see *Ministerial Diploma n. 49/2007, May 24<sup>th</sup> – Approves Regulation for Functioning of Fisheries Committees of Co-Management*), who have power to make decisions and monitor.

### 3.7 Existing freshwater/marine tenure aspects that undermine or hinder community conservation and stewardship

The regulatory framework, as well as proceedings and practices, reveal great difficulties in bringing about good participatory management of, and delegating rights to, local communities. In practical terms, the State has not only resisted transferring power to communities, but it has also systematically taken away the central nucleus of local community rights.

The colonial principle of State ownership of the country's natural resources as well as land (to the exclusion of community ownership) continued after independence. This principle, literally interpreted by the decision makers and implementers, has served to justify serious violations of local community rights, and communities have often been relocated with the (usually empty) promise of future benefits.

In analysing natural resource legislation, some findings reveal that a minimalist choice was made. This means that local communities were perceived as mere users of resources, with little power over the destiny of existing resources, except with respect to personal consumption. This is evident in the concept seen in the **Forest and Wildlife Law**, which excuses the need to obtain a license to exploit forest and wildlife resources that are for local communities' own consumption rather than commercial ends (**Article 9, Forest and Wildlife Law**).

### **3.8 Processes and pressures that infringe upon *de jure* or *de facto* territorial or tenure rights**

Current legal frameworks in Mozambique can and have been manipulated to allow for land grabbing or exploitation of other natural resources by external actors, and a clear example of this is demonstrated in the **community consultation process** set out in the **Land Law** and its **Regulations** (discussed below). In Mozambique, a community consultation is generally understood as a formal requirement void of any relevance, with the resulting effort rarely a truly participatory process. That is, community consultation in Mozambique is not a process that collects opinions from community residents in areas where natural resource exploitation is taking place, with the goal of contributing to a real fight against poverty and promotion of desired local development, as it should be. The current practice of community consultation and flawed understanding behind it exposes a misguided interpretation of the law, as well as the weakness of knowledge and preparation on the part of government officials, who are meant to drive the consultation process in a democratic manner (Knight 2003; Norfolk 2004).

For certain players in the public sector, community consultations are seen as obstacles in the development process because, according to them, land is State property and thus it does not make sense to place conditions on the use of such land by observing formalities that are of questionable necessity (Serra 2014). Thus in many cases, at the community level, there is the feeling that that local government is aligning more with investors than with the communities it is meant to serve (Knight 2003). For many local communities, the local government and investors are on the same side, particularly where government officials are involved in illegalities, leaving communities in an isolated, vulnerable and helpless situation, devoid of a place to go to call for justice (Knight 2003). In cases where consultations are more or less contrived, the investment process (by way of a project) is vertically imposed on local communities, without providing just benefits for natural resource exploitation in the communities' areas. This brings a risk of conflict, triggering the need for communities to access justice to claim their remedy for the violation or threat to their rights.

It is not rare that a consultation is held without care being taken to clearly explain the investor's objectives, due to the desire to rush this formality and with the intention of leaving aspects unexplained so as to avoid the proposal's rejection, or the introduction of other obstacles from local communities. This means that communities only realise that they have lost their land when fencing is put up around an area, or when machines are moved in (Bernardino 2007). There is also a tendency to hold community consultations as a mechanism to obtain, by negotiation, a declaration that proves that the land is free from occupants, habitation, or other infrastructures or improvements that populations might wish to claim benefits from in the area – resulting in a transfer of private goods (as opposed to communal land, customarily held) to the investor (Tanner & Baleira 2009).

More frequently, consultations are held only at the level of community leadership, under the mistaken assumption that this meets the legal requirements (Nhantumbo & Macqueen, 2002). Thus in many cases communities do not truly participate in the consultation process, and are only told by their leaders what decisions were made, even if those decisions could significantly affect them (Bernardino 2007). In other instances, leaders are manipulated and give community land away after payment in money or wine.

Community consultations occur, therefore, according to a mistaken interpretation of the **Land Law** legislation. They are confused with consultations with community leadership, or with quick public meetings, meaning only one isolated meeting that is often badly run (Tanner, Baleira, 2009). It is important to emphasize the concept of participation as a continuous and long-lasting process and not as a mere consultation that is only one moment, in one place and does not guarantee a real conversation and negotiation with communities.

Instead, to comply with formal requirements in the **Land Law**, a consultation need only be held once (even though this is inadequate to generate real understanding and feedback), in only one physical space (even if it is not possible to get the necessary participation by the local community) and with community representatives who are supposed to represent and speak for the community (because information could not reach all at the ground level). As a result, the consultation process does not allow for true legitimacy, thus generating an air of mistrust, and often resulting in conflict, with numerous negative consequences for all parties involved. Conflict between investors and communities normally starts with silent defence, translated into forest fires, poaching, and illegal logging of forest resources.

As a result of such critiques around community consultations, a new legal instrument was approved – the **Ministerial Diploma** n. 158/2011, June 15<sup>th</sup> – which set specific procedures for community consultations (Baleira 2012; Tanner 2011). Under these new procedures, consultations should no longer be held only in one instance, but should take place in two stages. The first stage consists of a public meeting with the goal of providing information to the local community about the request to acquire the right to use and benefit from land, and identifying limits of the plot of land. The second stage is a meeting held up to 30 days after the first meeting, with the objective of obtaining the community's pronouncement about the availability of the area where the project would be implemented or exploitation would occur

(Article 1, Ministerial Diploma n. 158/2011, June 15<sup>th</sup>). If it is necessary, more meetings can be held, “as long as there is complementary information for the local community” (Articles 1 and 2, Ministerial Diploma n. 158/2011, June 15<sup>th</sup>).

#### 4. PROTECTED AREAS, ICCAS AND SACRED NATURAL SITES

##### 4.1 Indigenous Peoples’ and Local Communities’ Conserved Territories and Areas (ICCAs)

###### 4.1.1 The range, diversity, and extent of ICCAs in Mozambique

It is important to note the difficulties and complexities that mark the history of community conservation in Mozambique. It is currently very difficult to claim that there is any portion of the national territory that could be considered an ICCA for the following reasons:

- (i) Lack of power in natural resource management and administration by the local communities;
- (ii) Lack of support by government at the central, provincial, and local levels for local conservation initiatives by communities;
- (iii) Decision-making by government over access, use, and exploitation of existing natural resources in what are supposedly community reserves; and
- (iv) Weak community institutions, incapable of confronting external and internal threats.

###### 4.1.2 Community governance and management of ICCAs

In legal terms, norms exist which could be used in favour of local communities in natural resource management. One must especially highlight the principle of **legal pluralism** in the **Constitution. Article 4**, on legal pluralism, states:

*“The State recognizes the different normative and dispute resolution systems that co-exist in Mozambican society, insofar as they are not contrary to the fundamental principles and values of the Constitution.”*

The **Land Law** and the **Forest and Wildlife Law** contain various provisions that protect customary norms and practices in land and natural resource administration. These include **Articles 11, 12, and 24** of the **Land Law**, as well as **Articles 3** (principles), **13** (historical-cultural value and land use), **15** (exploitation under a simple license), and **21** (hunting under a simple license) of the **Land Law**. This legal base could serve potential laws that support the management of ICCAs, but would need to be accompanied by a strong commitment from the State/Executive, without which there would be no success.

###### 4.1.3 Main threats to local governance

There are a number of threats to communities’ local governance of territories, areas and natural resources. Firstly, the relevant legal frameworks contain gaps and contradictions,

defending processes of decentralisation while also delegating power over community natural resource management to others, especially power concerning decisions of access, use, and benefit from land, as well as benefits from exploitation. The legal framework suffers from a lack of necessary mechanisms to guarantee, by law and in practice, the realisation of community natural resource management, as well as a real and effective process that delegates management of power to local communities.

As such, efforts made by communities to protect, conserve, and manage natural resources are, in the end, compromised by the intrusion of external parties (such as companies) who receive licenses by the State. Big decisions are consistently made very far from the communities and without their involvement.

#### **4.1.4 Main initiatives undertaken to address the threats to ICCAs**

At this stage, there are no formal initiatives that are being undertaken to address the threats to ICCAs as posed by the insufficient legislation in place to protect the local management of ICCAs.

### **4.2 Protected Areas**

#### **4.2.1 Laws and policies that constitute the protected area framework<sup>6</sup>**

The ***Policy and Development of Forest and Wildlife (1997)*** (PEDFFB), (Resolution n. 8/97, April 1<sup>st</sup>), defined as a general long-term objective to: “protect, conserve, develop, and sustainably use forest and wildlife resources for economic, social, and ecological benefit for current and future Mozambican generations”.

In addition, in 2009, the ***Conservation Policy*** and its respective ***Strategy of Implementation*** (PCEI) (through Resolution n. 63/2009, November 2<sup>nd</sup>), was developed with a fundamental objective to “develop and consolidate a national system of conservation for biological natural resources and its water and land biodiversity, contributing to sustainable life, economic growth, and eradication of absolute poverty”. The following specific objectives were defined: (i) increase national capacity for conservation, including the use of new technologies for natural resource conservation; (ii) establish a national network of conservation areas that is representative and balanced; and (iii) guarantee a balance between costs and benefits of conservation.

Work is on-going in establishing the **Conservation Law**, which will bring provisions for the **Conservation Policy** (see 4.2.3 below), and include categorisation of existing conservation areas, set out norms of conservation areas already dispersed in existing Mozambican legislation and respond to the need to align the current legal framework to dynamic national and international needs and obligations. Reference is made to the **Forest and Wildlife Law** and its Regulation, approved by Decree n. 12/2002, June 6<sup>th</sup>, later altered by Decree n. 11/2003, March

---

<sup>6</sup> Note the terms “protected areas” and “conservation areas” are used interchangeably.

25<sup>th</sup>, by Decree n. 76/2011, December 30<sup>th</sup>, and by Decree n. 30/2012, August 1<sup>st</sup>.

There are also conservation areas that still adhere to colonial legislation, as is the case with official hunting, game farms, and forest reserves. This has all been altered with the approval of the **Biodiversity Conservation Law**, revoking previous legislation with respect to conservation areas.

Lastly, there are conservation areas established by fisheries legislation, especially in the **Regulation of the Fisheries Law**, approved by Decree n. 43/2003, December 10<sup>th</sup>.

#### **4.2.2 Definition of “protected area”**

The first definition of a conservation area is found in the **Tourism Law** n. 4/2004, June 17, as: “Areas for maintenance of ecological processes, ecosystems, and natural habitats, as well as maintenance in recuperating species population in natural locations”.

The **Conservation Policy**, approved in 2009, defines an area of conservation as: “An area delimited and established through a specific legal instrument, whose management is mainly for preservation or conservation of an ecosystem, one or more species, one or more landscape elements, or for an archaeological, cultural, or geological monument”.

##### **a) Biodiversity Conservation Law**

The **Biodiversity Conservation Law, Law n. 16/2014 June 10<sup>th</sup>**, has the following objective: “establish principles and basic norms on protection, conservation and sustainable use of biological diversity in conservation areas, as well as to establish an integrated administration framework for the country’s sustainable development” (**Article 2, Biodiversity Conservation Law**).

The following fundamental principles were established: ecological heritage; sovereignty; equality; citizen participation in benefits management; environmental responsibility; development; public-private partnerships; caution and informed decision; and international cooperation (**Article 4, Biodiversity Conservation Law**).



The law foresees the existence of a national system for conservation areas made up of administration bodies for conservation areas, finance mechanisms for conservation areas and a national network for conservation areas. The main goals include the following: (i) join public, private or mixed institutions in administration and financing for conservation areas, so as to guarantee ecological, economic, social and institutional sustainability of these areas; (ii) contribute to biological diversity and genetic resource maintenance in national territory and jurisdictional waters; and, (iii) promote sustainable development through natural resource use and conservation of biological diversity in development processes (**Article 5, Biodiversity Conservation Law**).

Within the institutional framework of conservation (**Article 6, Biodiversity Conservation Law**), apart from the role of administration bodies for conservation areas, there is also the role of the **Conservation Areas Management Council**, as the advisory body, chaired by the Conservation Areas Administrator, made up of representatives from local communities, private sector, associations and local State bodies who, under the supervision of the implementing body of conservation areas administration, supports management of the respective areas of conservation with implementing management plans; monitoring of conservation areas; responding to community development needs that legally reside in conservation areas and buffer zones; producing strategy plans for conservation area development; finding new income-generating activities that will decrease excessive pressure by local communities on biodiversity, including businesses using biodiversity; supervising implementation of concession contracts with operators under development of public-private and community partnerships; and, taking measures to strengthen the capacity of conservation in the community based natural resource management context (**Article 7, no.1, Biodiversity Conservation Law**).

The legislator established a legal base for financing mechanisms for conservation areas that must be adopted to minimize losses and increase benefits at the local, national and



Photo 4.1: Flamingos, Barra (2014). Source: Quintin Brooks

international level, through: establishing public-private and community partnerships; creating institutions that support conservation activities; capitalizing on genetic, wildlife and other natural resource history and local and traditional knowledge about biological material; and compensation for conservation efforts, by ecological services and others that have been established by the Council of Ministries (**Article 8, Biodiversity Conservation Law**).

According to the **Biodiversity Conservation Law**, “the State may establish partnerships with the private sector, local communities, national and foreign civil society organizations by contract and by financing, partially or in full, from the private partner for administration of conservation areas, creating synergies in favor of biological diversity conservation, without hindering and/or sharing of responsibilities in costs and benefits of management areas of conservation (**Article 9, no. 1, Biodiversity Conservation Law**). Accordingly, there is a possibility of partnerships under a concession of rights contract to the private sector for local communities for income generation (**Article 9, no.2, Biodiversity Conservation Law**).

Another important new feature in this law was in defining **compensation mechanisms for conservation efforts**, by foreseeing that the public or private entity that is exploiting natural resources in conservation areas or in the buffer zones, benefiting from a conservation area, must contribute financially to protecting biodiversity in the respective conservation area, as well compensate for its impacts so as to ensure that there is no loss in biodiversity (**Article 11, no. 1 and 2, Biodiversity Conservation Law**).

The new **Biodiversity Conservation Law** also has a new feature in reference to the **national network of conservation areas**. It is made up of a group of conservation areas, and has the following fundamental objectives:

- i. Contribute to biological diversity and genetic resource maintenance in national territory as well as in Mozambican jurisdictional waters;
- ii. Protect endangered, rare and endemic species at the national, provincial, district and municipal level;
- iii. Contribute to preservation and restoration of diversity of natural, land and aquatic ecosystems;
- iv. Promote sustainable development through the sustainable use and benefit from natural resources;
- v. Economically and socially value biological diversity, promoting sustainable activities including hunting, concessions for tourism and fishing, so as to financially endow conservation;
- vi. Conserve natural resources necessary for local community subsistence, respecting and valuing the communities’ knowledge and culture;
- vii. Promote the use of principles and practices of conservation and natural resource management in the development process, especially with regards to local communities;
- viii. Protect the natural and cultural landscape of special beauty as well as natural and cultural heritage, representative of national identity;

- ix. Protect and repair waters and wetlands;
- x. Incentivize and develop scientific research activities;
- xi. Promote environmental education and understanding of nature, leisure and recreation, as well as ecotourism in conservation areas (**Article 12, Biodiversity Conservation Law**).

In this context, protected areas were defined as delimited territories, representing natural national heritage, destined for conservation of biological diversity and fragile ecosystems or animal and vegetable species (**Article 13, no.1, Biodiversity Conservation Law**).

An important new feature was the classification of total conservation areas (destined for preservation of ecosystems and species without any resource extraction, and is only for indirect use of natural resources with some foreseen exceptions) and sustainable use conservation areas (areas for public and private use, for conservation, subject to integrated management with permission to extract resources, respecting sustainable limits in the management plans) (**Article 13, no. 2 to 5, Biodiversity Conservation Law**). The goal was to respond to the national situation, where total or complete areas of conservation have communities within them.

Among categories of total protection there is the integral natural reserve, national park and cultural and natural monument (**Article 14, Biodiversity Conservation Law**). The sustainable use categories include: special reserves; environmental protection areas; official Coutada; community conservation areas; sanctuaries; game farms; and municipal ecological parks (**Article 15, Biodiversity Conservation Law**).

Another important feature is provisions for community conservation areas on the path to devolution of power to local communities. The **Biodiversity Conversation Law** states that “sustainable use of conservation areas, of public community domain, delimited, under management of one or more local communities where these have the right to use and benefit from land, with the goal to conserve flora and wildlife and sustainable natural resource use,” (**Article 15, no.1, Biodiversity Conservation Law**) with the following objectives:

- (i) Protect and conserve natural resources, sacred forests and other areas of historical, spiritual and religious importance and for cultural use by the local community;
- (ii) Guarantee sustainable natural resource management so that it results in sustainable local development; and
- (iii) Ensure access and sustainability of plants used for medicinal purposes and for biological diversity in general (**Article 15, no.2, Biodiversity Conservation Law**).

It is important to note that licensing for resource exploitation activities to third parties may only be done with previous consent of local communities, after the respective process of consultation leading up to creation of the necessary partnership contract (**Article 15, no.3, Biodiversity Conservation Law**).

With regards to conservation area management, there are some bases for safeguarding its values, maintaining environmental quality and, where possible, restoration of the environment;

there is a special focus on catalogued species, with the goal to recover its population and eliminate threatening factors; the statute for genetic resources of interest for preservation of biological diversity and its consequent inventory and special attention to special autochthonous flora and wildlife species; controlled benefit and sustainable natural resources, when authorized; and management in collaboration with local communities, fostering and supporting what contributes to a better quality of life for the communities whilst allowing for conservation (**Article 42, Biodiversity Conservation Law**).

Furthermore, there is the **management plan**, a technical document that contains the foundation of general objectives for conservation areas, establishes planning and norms that must hold and natural resource use and management, including implantation of infrastructures necessary for management areas, including (**Article 43, no. 1 and 2, Biodiversity Conservation Law**):

- (iv) Objectives of management and range;
- (v) Classification of the area and its geographic limits and the map of the area with zoning, if it is applicable;
- (vi) The uses considered forbidden and those submitted to authorities as a function of the needs of protection areas, without loss of those already present by Law;
- (vii) Urban dispositions, architectural norms and complementary protection measures, according to what is stipulated by Law, of which exempts compliance of those already existing;
- (viii) Guidance of natural resource management and its eventual measures for restoration of the environment or if species are in a critical situation;
- (ix) The infrastructures and measures fostering traditional activities and other improvements to the local population's lives;
- (x) The norms for visiting the area, when necessary, security for visitors, information aspects and understanding of nature and, in general, all public use;
- (xi) Necessary infrastructure for management of the area;
- (xii) Special plans that should be produced to deal, in detail, with whatever aspect of infrastructure or necessity for management of the area;
- (xiii) The necessary studies to better understand the area, tracking environmental conditions and necessary use to support management and economic estimates of corresponding investments if there are any;
- (xiv) The regime of management and involvement of partners.

According to the **Biodiversity Conservation Law**, the management plan of a conservation area has the same vigor as the environmental management plan and the special planning plan (**Article 43, no.3, Biodiversity Conservation Law**).

#### **4.2.3 State agencies mandated to develop laws and policies**

In Mozambique, the key role of government in relation to conservation areas is given to the **National Administration of Conservation Areas (ANAC)**, created by Decree n. 11/2011, May

25<sup>th</sup>. This institution is currently supervised by the Minister of Tourism, who is the superintendent for conservation areas.

ANAC has the following objectives: (i) Conservation of biodiversity, landscapes, and related heritage sites, through the national conservation areas system; (ii) Defining priority administration areas and sustainable use of conservation areas; (iii) Establishing infrastructure in conservation areas for biologic diversity management and for economic activities so as to guarantee self-sustainability; and (iv) Establishing partnerships for management and development of conservation areas (**Article 4, Decree n. 11/2011, May 25<sup>th</sup>**).

The **Councils for Conservation Areas Management** are intended to act as consultative organs in conservation areas, participating in preparation of business plans, management plans, and development of partnerships between private operators with local communities (**Article 5, Decree n. 11/2011, May 25<sup>th</sup>**).

Analysing the Conservation Policy with an inclination towards participative management and the role of local communities, the creation of the ANAC constitutes another recentralisation of power, where the State's power at the central level is strengthened to the detriment of any tendency to transfer power to local communities.

Finally, there are competencies divided between the **Ministry of Agriculture** (under the forest reserves) and the **Ministry of Fisheries** (under the marine protected areas).

At the central level of the Mozambican Executive, efforts reflect a state option of benefits from tourism opportunities that are not based on empowering communities.

There is still hope for approval of the **Conservation Law** (which will include a community conservation area category) as “an area for sustainable conservation use, under public community domain, delimited, under management of one or more local communities where these have the right to use and benefit from land, with the goal to conserve fauna and flora and sustainable natural resource use”.

#### **4.2.4 Protected area framework and recognition of local communities' rights**

Mozambique's history of conservation is largely influenced by its colonial inheritance. Before independence, local communities had no rights to any conservation area. Rules were imposed on communities, and in at least one case (in Gorongosa National Park in Sofala), populations were forced to resettle.

According to the **Forest and Wildlife Law** (1999), two of the three categories of conservation areas — national parks and reserves — are based on strict restriction of the right to use and benefit from national resources (**Article 11 and 12, Forest and Wildlife Law**). According to the **Land Law**, the right to use and benefit from land will not be granted in completely protected areas (**Articles 6, 7, and 9, Land Law**). This understanding of the law has been used to refuse

recognising the existence of acquired rights in conservation areas.

One cannot speak of an organised intervention by communities in claiming historic rights over their ancestral areas, with the exception of the case of the Limpopo National Park, where communities have been supported by various civil society organisations in disputes against the government. The experience from the Limpopo National Park and the problems resulting from the resettlement programme of groups living inside the park revealed the extremely centralistic tendency and non-humanist way in which conservation is conceived. Numerous cases in Mozambique illustrate situations of tactical resistance or boycotting of conservation efforts, through poaching, illegal fishing, and forest exploitation or forest fires.

#### **4.2.5 Multi-stakeholder bodies**

Regarding the question of multi-stakeholder bodies, one sees a clear regression in the State's will to decentralise and delegate power to communities. The **Forest and Wildlife Law** defined principles and norms in participative management, in the form of **Local Natural Resource Councils** (COGEPs), intended to be composed of various stakeholders, including local communities, with real power in conservation area management. However, the **Regulation for the Forest and Wildlife Law, Decree 12/2002, July 6<sup>th</sup>** did not properly follow these norms, practically stripped the COGEP of its management function, leaving it with only a consultative and monitoring role. In the following years, no COGEP was created in the country, further evidence of the central State's reluctance to delegate and decentralise management powers.

### **4.3 Sacred Natural Sites**

#### **4.3.1 Legislation with provisions for local community stewardship of sacred natural sites**

Outside of community-based natural resource management in the 1997 **Forest and Wildlife Development Policy and Strategy**, there is only one reference to a legally applicable provision for conservation of sacred sites led by local communities: the so-called **Historic-Cultural Use and Value Areas** in the **Forest and Wildlife Law**.

This category of conservation area was defined as areas for “protection of forests in the interest of religious and other historical importance and cultural use, in accordance with customary norms and practices respective to communities” (**Article 13, n. 1, Forest and Wildlife Law**). According to this law, forest and fauna resources that exist in these areas can be used under customary norms and practices (**Article 13, n. 2, Forest and Wildlife Law**). In the **Forest Wildlife Law Regulation**, the legislator attempted to define the conceptual scope of areas of Historical-Cultural Value by referring to forests situated close to rural cemeteries or areas of worship that are used for extracting traditional medicine, or are habitats for fauna species used in worship (**Article 7, n. 1, Regulation of the Forest and Wildlife Law**).

Contrary to many categories of conservation areas, especially those that are the State's public domain, national parks and reserves (**Articles 11 and 12, Forest and Wildlife Law**), and those

created by the Council of Ministers, areas of Historical-Cultural Value exist independently of State creation, by virtue of historical-cultural meaning, where local communities identify, create, manage, and develop these areas with a protected statute.

The State intervenes in these areas only for purposes of recognition, through a Provincial Governor's order, which is a mere formality translated into a declaration act confirming such areas as areas of protection. This means that these areas become objects under a special regime of legal guardianship, in the national context of conservation areas (Serra & Chicue, 2005). According to the **Forest and Wildlife Law Regulation**, if such a declaration does not take place or is not emitted, there will be no loss of rights with respect to use of forest and fauna resources by local communities, for economic, social, cultural, and historical ends, under the respective customary norms and practices (**Article 7, n. 5, Regulation of the Forest and Wildlife Law**).

In the aforementioned Regulation, there are two possible paths in declaring areas of Historical-Cultural Use and Value: (i) by the State's initiative, represented by the Provincial Governor, when these areas are popularly known as such; (ii) or by local communities' initiative, through a written request containing signatures from at least 10 community representatives, proof of the request, and delimitation of the area (**Article 7, n. 3, Regulation of the Forest and Wildlife Law**).

With the consecration of areas of Historical-Cultural Use and Value, the legislator made a great leap to pluralistic rights.

The incentive to declare areas of Historical-Cultural Use and Value, and the resultant support for management, valorisation, optimisation, and development, would be a practical and effective way to guarantee legal security of community-based natural resource management. However, for unknown reasons, this category of conservation areas is not often mentioned, though it constitutes a sociologic reality in many Mozambican locations (Serra 2014)

#### **4.4 Other Protected Area-related Designations**

Mozambique currently has two wetlands of international value declared under the Ramsar Convention: the Marromeu Complex in Sofala Province (via **Resolution n. 45/2003, November 5<sup>th</sup>**), and Niassa Lake in Niassa Province (**Resolution n. 67/2011, December 21<sup>st</sup>**, adding Lake Niassa to the List of Wetlands of International Importance). According to our data, there is no on-going conservation programme led by local communities at either site.

#### **4.5 Trends and Recommendations**

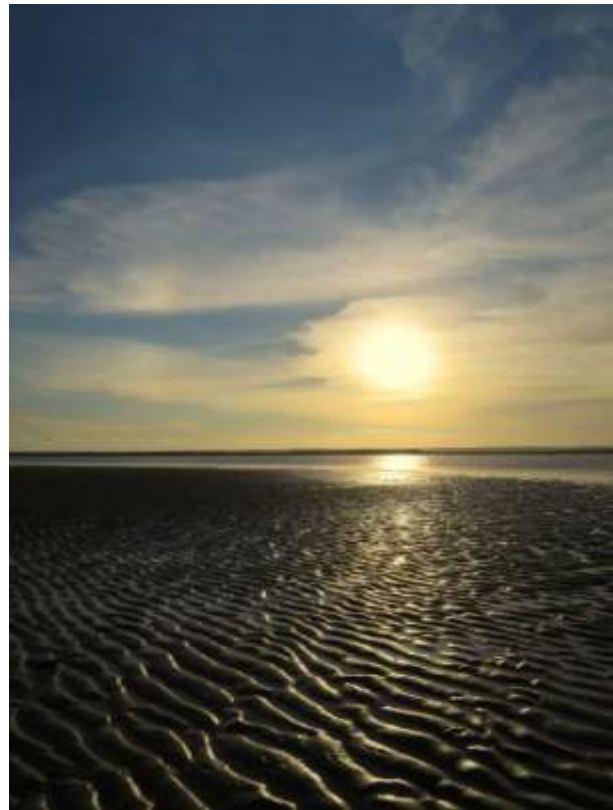
##### **4.5.1 Direction of laws and policies**

Given the current legislative state and based on the practices registered throughout the country, there is little opportunity for success in community-led conservation. However, the

**Conservation Law** includes some important legal provisions that, if implemented, could translate into a new dynamic, empowering communities in protecting, conserving, and sustainably managing their areas.

#### 4.5.2 Recommendations

It is vital that the legislative reform process includes the necessary foundations for real and effective decentralisation of power in favour of local community management: reinforcing the rights to access and benefit from natural resources, and recognising customary institutions, norms and practices, and the relationship between the State and communities. Without these components, it will be impossible to solidify any situation of power delegation.



*Photo 4.2: Sunset, Barra (2014). Source: Quintin Brooks*

## 5. NATURAL RESOURCES, ENVIRONMENTAL AND CULTURAL LAWS & POLICIES

### 5.1 Natural Resources & Environment

#### 5.1.1 Laws & policies supporting community ownership of natural resources

In general the many instruments concerning natural resources are strongly influenced by the constitutional and legal principle that the State is the exclusive owner of natural resources. The 2009-approved **Conservation Policy** (discussed above) is clearly the most important of the policies and strategies with respect to providing local community empowerment in the conservation context.

The **National Land Policy** of 2005 and the **Land Law** of 1997 with its aforementioned limitations are important with respect to land.

In the area of territorial management, the **Territorial Management Policy** (approved by **Resolution n. 18/2007, May 30<sup>th</sup>**) and the **Territorial Management Law (Law n. 19/2007, June 18<sup>th</sup>)** both strengthen the principle of acquisition of rights to land use and benefits through occupation, should the territorial management activity respect pre-existing rights.



### 5.1.2 State agencies mandated to develop laws and policies

There is no one entity with competencies to address this area. Previously highlighted were the roles of the **Ministry of Agriculture**, through the **National Land and Forest Directorate (DNTF)**, as well as the **Ministry of Tourism**, through the **National Administration of Conservation Areas**, which inherited previous functions of the National Directorate for Conservation Areas, relative to protected areas where there exists or will exist community initiatives for community-based natural resource management. For reasons previously mentioned, the role of these two organisations has been strong due to a highly central State role.

### 5.1.3 Other laws and policies related to community stewardship or management

In the biodiversity field, the **Regulation of Access to Genetic Resources and Benefit Sharing and Associated Traditional Knowledge**, approved in Decree n. 19/2007, August 9<sup>th</sup>, established a principle for recognising and valorising traditions and knowledge from local communities in the Environment Law (**Article 4 (b), Environmental Law**).

There are also some constant provisions in the fisheries and forest and wildlife legislation, more in line with a minimalist understanding of rights, where the concept of consumption constitutes a paradigmatic example (Serra 2014).

### 5.1.4 Leadership

The issue of community leadership is not directly addressed in natural resource legislation, but is left in the State's local organs, and is a topic deserving of further investigation and debate.

Traditional leadership was integrated in the category of **Community Authorities**, side by side with institutional figures created in the revolutionary period since 1974 – e.g., Neighbourhood Secretaries - that, during that time in the country's history, were meant to substitute for traditional administration of territories and their people.

There is the controversial Decree n. 15/200, June 20<sup>th</sup>, which approves forms of articulation of local State organs with community authorities. Without going into detail, aside from defining who the Community Authorities are, and including Traditional Power in this category, this Decree established criteria for legitimising local leadership, thus opening space for manipulation by traditional structures (Fumo 2007; José 2007; Serra 2014).

### 5.1.5 Local management

The biggest recommendation that could be directed at the legislator is in strengthening local community power in natural resource management and administration in their territories. This stems from the **Constitution**, which envisages a community public domain figure, lacking in the regulation's definition. In our understanding, this is a vital opportunity to clarify the structures of a real transfer of power to local communities.

## 5.2 Traditional Knowledge, Intangible Heritage and Culture

### 5.2.1 Laws and policies relating to traditional knowledge or communities' intangible heritage or culture

The **Regulation of Access to Genetic Resources and Benefit Sharing and Associated Traditional Knowledge** approved in Decree n. 19/2007, August 9<sup>th</sup> must be highlighted here. This instrument is still in the process of being implemented, and thus we lack cases to help come to conclusions regarding its success or challenges in its effectiveness.

It is equally important to highlight the **National Environment, Land, Forest and Wildlife**, and **Conservation policies**, as these contain pertinent aspects about the role of communities in natural resource management, especially in conservation.

### 5.2.2 Governance and local management

Regarding governance and local management of resources, the **Land Law** goes the furthest by including a legal local community figure, recognising rights to land use and benefits, and opening an important space for customary norms, practices, and institutions in natural resource management. The **Forest and Wildlife** legal framework follows up with, in a less bold manner, empowerment (at least in the formal plan) of local communities.

### 5.2.3 State agencies mandated to develop and implement laws and policies

As previously mentioned, the roles in this area are divided between the National Land and Forest Directorate from the Ministry of Agriculture, and the National Administration for Conservation Areas under the Ministry of Tourism. In practice, a very centralist perspective is in play, resistant to allocating power to local communities. This has limited any success in conservation programmes.

## 5.3 Access and Benefit Sharing

### 5.3.1 Laws & Policies with respect to access and benefit sharing

As previously discussed, we refer to the **Regulation of Access to Genetic Resources and Benefit Sharing and Associated Traditional Knowledge**, approved in Decree n. 19/2007, August 9<sup>th</sup>, in force. This instrument is still in the process of being implemented, and thus we lack cases to help come to conclusions regarding its success or challenges in its effectiveness. The instrument aims to regulate access, use and benefit from genetic resources, as well as grant local communities a central role in access to benefits from the use of resources in their territories.

### 5.3.2 Free, prior, & informed consent

According to the Regulation above, it intends on regulating: (i) The access component of genetic resources existent in national territory, in the continental platform and in exclusive economic areas for scientific ends, technological development, or bio-prospecting; (ii) The access to traditional knowledge associated with genetic resources, related to conservation of biological diversity; (iii) The just and equal division of benefits from exploitation of genetic resource components and associated traditional knowledge; and (iv) Access to technology and transferring of technology for conservation and biological diversity use (**Article 2, n. 2, Regulation on Access and Sharing of Benefits from Genetic Resources and Associated Traditional Knowledge**). It does not address or allow for the free, prior and informed consent of communities with respect to the access and benefit sharing of traditional knowledge and/or genetic resources.

### 5.3.3 Fair & equitable sharing of benefits

Firstly, one must highlight the provision of a set of local community rights, understanding that any traditional knowledge associated with genetic resources can be owned by the community, even if just one individual member of the community holds this knowledge. The Regulation recognises local communities that develop, hold, and conserve traditional knowledge associated with genetic resources. Also recognised are the rights in indicating the origin of access to traditional knowledge in all publications, use, exploitation, and research; prevention of third parties that are not authorised to use, hold tests, research, and carry out exploitation related to traditional knowledge or to disseminate, transmit, or retransmit data or information that integrates or constitutes associated traditional knowledge; and reception of benefits by economic exploitation by third parties, directly or indirectly, from associated traditional knowledge, whose rights belong to them (**Article 15, Regulation on Access and Sharing of Benefits from Genetic Resources and Associated Traditional Knowledge**).

According to the Regulation, the resulting benefits from economic exploitation of the product or a process developed from the sample component of the genetic resource and associated traditional knowledge, obtained by national or international institutions, will be divided, in an equal and just manner, between the contracted parties (**Article 20, Regulation on Access and Sharing of Benefits from Genetic Resources and Associated Traditional Knowledge**).

### 5.3.4 State agencies mandated to develop and implement laws and policies

The **Minister for Coordination of Environmental Affairs** is the **National Authority in the Benefit Sharing from Genetic Resources**, managing the **Institutional Group for Genetic Resource Management**. This Group is composed of representatives from the Ministries for Coordination of Environmental Affairs; of Science and Technology; of Agriculture; of Tourism; of Mineral Resources; and of Industry and Commerce (**Article 5, Regulation on Access and Sharing of Benefits from Genetic Resources and Associated Traditional Knowledge**).

It is under the National Authority's competency, or the Inter-institutional Group for Genetic Resources, among other functions, to:

- Grant authorisation to access existing genetic resource samples in-situ, on national territory, on the continental platform, on the sea, territorial sea, or on exclusive economic zones, and to associated traditional knowledge;
- Grant authorisation for delivery of samples in the genetic resource component and associated traditional knowledge for national, public, or private, or for an institution with headquarters abroad;
- Monitor any delivery of samples in the genetic resource component and associated traditional knowledge;
- Disseminate lists of species exchange so as to facilitate international agreements of which the country has signed;
- Grant a public or private national institution that is conducting research and development in biological area, special access authorisation;
- Authorise delivery of samples in the genetic resource component to institutions abroad;
- Accredite national public or private institutions for faithful samples representative of the component of genetic resources to be submitted to national public or private institutions, or institutions abroad;
- Authorise access to components of genetic resources and associated traditional knowledge, which contributes to advancing knowledge that is not associated to bioprospecting, when involving participation of a foreign legal entity (**Article 4, n. 2, Regulation on Access and Sharing of Benefits from Genetic Resources and Associated Traditional Knowledge**).

For this area, it is under the responsibility of the Inter-institutional Group of Genetic Resource Management to: assist the National Authority in decision-making under terms in the Regulation; monitor and implement the reference terms for material and contracts for genetic resource and associated traditional knowledge use as well as benefits awarded or approved by the National Authority; coordinate and update norms about access and sharing of benefits from genetic resources and associated traditional knowledge at the national level; ensure, in coordination with other competent institutions, implementation of norms about access and benefit sharing of genetic resources and associated traditional knowledge in Mozambique; produce annual technical reports on the state of access and benefit sharing of genetic resources and associated traditional knowledge in Mozambique; serve as a vehicle in information exchange about benefits from genetic resources and associated traditional knowledge at the national, regional and international level; promote programs for disseminating and public awareness on questions related to access and benefit sharing of genetic resources and associated traditional knowledge at the national level (**Article 6, n. 2, Regulation on Access and Sharing of Benefits from Genetic Resources and Associated Traditional Knowledge**).

## 6. NATURAL RESOURCE EXTRACTION, LARGE-SCALE INFRASTRUCTURE & AGRICULTURE

### 6.1 Natural Resource exploration and extraction

#### 6.1.1 Laws and policies with respect to natural resource exploration and extraction

The **Geologic and Mining Policy** of 1998 (approved by **Resolution n. 4/98, February 24<sup>th</sup>**) and the **Strategy for Concession of Areas for Petroleum Operations** of 2009 (approved by **Resolution n. 27/2009, June 8<sup>th</sup>**) are the existing policies. These instruments were created to facilitate private investment in extractive industries in Mozambique.

The **mining sector** uses the following laws/decrees:

- The **Mining Law, Law n. 14/2002, June 26<sup>th</sup>** - defines the access, use and benefit norms for natural resources. This law was revoked by Law N.20/2014, August 18<sup>th</sup>, the new **Mining Law**, which resulted in “the need to adapt the legal framework for mining activities to the economic order of the country and the registered mining sector developments, so as to ensure more competitiveness and transparency, guaranteeing protection of rights and definition of obligations of those with mining rights, as well as safeguarding national interests and benefit sharing by communities (Preamble, new Mining Law);
- **Decree n. 62/2006, December 26<sup>th</sup>** – approves the Mining Law Regulation;
- **Decree n. 61/2006, December 26<sup>th</sup>** – approves **Regulation of Technical and Health Security in Geological-Mining Activities**;
- **Decree n. 16/2005, June 26<sup>th</sup>** – approves **Regulation on Commercialization of Mining Products**;
- **Decree n. 26/2004, August 20<sup>th</sup>** – approves **Environmental Regulation for Mining Activity**.

The **petroleum (oil) sector** contains the following laws/decrees:

- The **Petroleum Law, Law n. 3/2001, February 21<sup>st</sup>** – defines access, use and benefit of oil resources. The law was revoked by Law 21/2014, August 18<sup>th</sup>, by the new **Petroleum Law**, as a result of the “need to adapt the legal framework for oil activities in the country in the economic order of the country and the registered oil sector developments, ensuring competitiveness and transparency and to safeguard national interests;
- **Decree n. 24/2004, August 20<sup>th</sup>** – approves **Regulation of Petroleum Operations**;
- **Decree n. 56/2010, November 22<sup>nd</sup>** – approves **Environmental Regulation for Petroleum Operations**; and
- The **Ministerial Diploma n. 272/2009, December 30<sup>th</sup>** – approves **Regulation on Licensing Oil Facilities and Activities**.

### 6.1.2 Environmental and human rights considerations

With relation to environmental protection, generally, both legislative packages (mining and petroleum) have legal protection norms for conservation and sustainable exploitation of mineral and petroleum resources. For instance, inclusion of various environmental norms in the Mining and Petroleum Law, as well as approval of specific environmental regulations for a specific mining or petroleum activity, respectively. With respect to human rights, there is no explicit reference made to human rights, but various provisions condition mining and petroleum operations with respect to the acquired rights that exist in exploitation areas. In both cases there is a need to strengthen the legislative packages to improve present and future protection of environmental and human rights.

### 6.1.3 Interactions with other legislation

Strengthening the interaction of the mining and petroleum legislation with environmental legislation is necessary, specifically the **Environmental Law and its set of fundamental principles in article 4**. These fundamental principles, and must be developed in mining and petroleum legislation, with the **precautionary principle** in particular needing to be highlighted.

The same is the case with relation to national and international human rights laws. The primacy of mining rights over human rights of those living in extraction areas will be further addressed further below (see 6.1.6), but existing gaps in the referred legislation include the existence of human rights that should mandatorily be included. It is hoped that the legislator takes these values into consideration in the revision process that is coming to an end.

### 6.1.4 Natural resources being exploited

Mozambique's extractive industry has been growing rapidly, especially in the central and northern provinces, with the government stating that mining production has increased by 34% (Mozambique Noticias 2013). With respect to large-scale projects, there is: coal mining in Tete Province; heavy sands mining, especially in Moma, Nampula Province; natural gas with large reserves which will be exploited from 2018 in Palma, Cabo Delgado Province, as well as smaller reserves whose exploitation had been taking place since 2004 in Pande and Temane, north of Inhambane Province.

In various northern provinces from the Centre and North, smaller scale mining for gold, precious and semi-precious stones, clay and limestone, as well as other materials. Various explorations and research projects for these and other mineral resources are on-going, with the expectation that discoveries will be made and announced in the future.

### 6.1.5 Impact of natural resources extraction on other natural resources

Extractive projects in the country have already had proven impacts, especially on water but also on land. In the first case, systematic reports have found mercury in Manica Province

waterways, a result of gold extraction on riverbeds that jeopardises the health of river users. The second case speaks to the increasing demand on land, to the detriment of local communities occupying rich lands where there are mineral and petroleum resources. These communities are seen as pieces to be moved on a chessboard thanks to the economic model adopted by the Mozambican State which has opted for resettlement of populations as a rule.

#### **6.1.6 Natural resources extraction and the rights of communities**

The **Mining Law** contains the most paradigmatic case of limitation of community rights, in force, with controversial **Article 43, n. 2** stating that: “Land use for mining operations has priority over other land uses when economic and social benefits relative to mining operations is greater”. Fortunately, no similar clause was created in the **Petroleum Law**.

The unconstitutionality and illegality of this norm has previously been highlighted (Serra 2012). The consequences of this legislative option negatively reflects on the legal sphere for local communities and respective individual members. They are the foundation of an economic model that favours the relationship between a central State and multinationals, over and to the detriment of local communities.

#### **6.1.7 Effects on local communities**

Following the legal understanding that mining rights trump all other rights as long as their economic and social benefits are found superior, local community rights in practice tend to yield to extractive industry projects, following the expropriation process by paying a just indemnity and/or compensation (at least in theory).

#### **6.1.8 Conflicts with domestic property laws**

The **Mining Law’s** provision of a clause giving it prevalence over all other rights has compromised the achievements made by the Land Law’s inclusion of acquired rights through occupation. When the two are at odds, the mining enterprise will always win, thus resulting in resettlement and expropriated rights of the land titleholders, who are given just indemnity or compensation, and relative fairness come implementation time.

#### **6.1.9 Free, prior, and informed consent**

In formal terms, extractive industry projects are equally conditioned to principles and norms included in land legislation with respect to obligations to inform and consult local communities. For example, **Article 32 (Involvement of communities)** of the new **Mining Law** states:

1. Previous information concerned with the beginning of the prospecting and research activities must be provided to communities as well as the necessity of their temporary resettlement for this purpose.
2. Communities must be previously consulted before the granting of an authorisation for

the beginning of mining exploration.

3. The Government shall create mechanisms in order to allow the engagement of communities in the mining projects located where they are settled.
4. The Government is responsible for assuring the organization of the communities in order to promote their engagement as mentioned above.

#### **6.1.10 Fair and equitable sharing of costs and benefits**

In the mining legislation there is a reference to benefits for resident populations in extraction areas in Law n. 11/2007, June 27<sup>th</sup> (**Allusive to Specific Taxes from Mining Activities**). However, the legislation has been conceived in such a way that it invalidates the rights and reality of benefit attribution to communities.

According to the legislation, a percentage of generated revenue from mining extraction is to be channelled to the development of communities in areas where extractive industry projects are located. This percentage is fixed in the State Budget, based on predicted revenue related to extractive activities (**Article 19, Law n. 11/2007, June 27<sup>th</sup>**). In most cases the result of this model is that mineral resource exploitation develops without benefits being channelled, for a long period, to local communities where extraction occurs. It was only in 2013 that an amount was included in the State Budget for allocation to some local communities.

#### **6.1.11 Impact assessments**

The mining legislation (**Lei de Minas anterior**) includes an instrument for evaluating environmental impacts (AIA) (where social and cultural impacts are also taken into account), but only for the so-called level 3 activities, which are those activities involving mechanized equipment that is not classified in level 1 or 2 (**Article 36(a), Mining Law**).

Level 1 activities include small-scale artisanal mining and mineral exploration activities not involving mechanized equipment; level 2 activities include mineral exploration that involves the use of mechanized equipment, quarrying, and the mining of construction materials, as well as pilot projects.

Therefore, in the case of mining legislation, contrary to what is found in the **Environment Law**, there is no rule for all activities, that in their nature, location, and dimension could cause environmental impacts, are preceded by an environmental license over a mining license (see the Environmental Regulation for Mining Activities).

The new Mining Law addresses these subjects in **Articles 69** (Environmental Classification of mining activities) and **70** (Environmental Management Instruments). A quick analysis reveals that there are similarities with the Environmental Law.

According to the new Mining Law, mining activities are classified in category A (Activities under a mining concession), B (mining activities in quarries, prospecting and research for a pilot



Project, mining certificate) and C (mining activities under a mining pass and prospect and research that do not involve mechanized methods). The first category activities are subject to an Environmental Impact Assessment, the second and third category activities must have an environmental management program.

The **Petroleum legislation** has more proximity relative to Environmental Law. For petroleum activities categorized as A, B, and C, corresponding to large, medium and small-scale environmental impacts, the first two must have an environmental impact assessment previous to project implementation (including a study of environmental impact and a simplified environmental assessment, respectively) (see the Environmental Regulation of Petroleum Operations).

#### **6.1.12 Community engagement in assessments**

As set out in 6.1.9 above, with respect to the new **Mining Law, Article 32 (Involvement of communities)** is relevant. With respect to the new **Petroleum Law (Law no. 21/2014, 18 August), Article 11** is relevant:

- 1. The communities must be given prior notice of the beginning of exploration activities, as well as the need of temporary re-settlement for that purpose.*
- 2. The communities must be previously consulted for the obtaining of authorisation for the beginning of petroleum activity.*
- 3. The Government shall create mechanisms for involvement and ensure the organisation and participation of the communities in the areas where petroleum enterprises are set up.*

#### **6.1.13 Relations between interested parties**

Aside from general provisions in the land legislation, the **Environmental Regulation for Mining Activities** includes an important provision concerning Memorandums of Understanding between operators and communities. **Article 28 (Memorandum of Understanding)** states:

- 1. Those that carry out mining activities at level 3 are encouraged to establish agreements about methods and proceeding for management of environmental, biophysics, socio-economic, and cultural aspects during validity of the project and after its decommissioning, which must be between the central government, Provincial Government, local community, and the proponent, corresponding to interest and involving all parties.*
- 2. The agreements referred to in the previous number will be made after negotiations with all parties involved, and will be formalised in a memorandum of understanding.*
- 3. These agreements will have a limited duration, with a maximum of five (5) years, and may be extended.*

**Note: this will be altered when regulations of the new Mining Law are approved.**

#### **6.1.14 State agencies mandated to develop and implement laws and policies**

The **Ministry of Mineral Resources** plays the key institutional role for exploitation of mineral and petroleum resources. In the case of petroleum resources, **Decree n. 25/2004, August 20<sup>th</sup>** created the **National Petroleum Institute** as a collective body of public law provided with legal personality, administrative, financial, and patrimonial autonomy. It carries out its functions conforming to applicable legislation, ensuring necessary prerogatives with a base of exemption, technical capacity, and impartiality, and is overseen by the **Minister of Mineral Resources**.

#### **6.1.15 Recommendations**

The legislator has opted for an economic model that makes local communities secondary actors and subjects in relation to the State and multinationals, especially when it comes to participation in concession contracts in large-scale mining and petroleum projects. By reducing communities to the role of mere spectators of big decisions about the end, use, and benefit from natural resources, and objects to be moved (with existing controversial resettlements), a crucial opportunity to truly integrate them in development is lost.

### **6.2 Large-scale Infrastructure/Development Projects**

#### **6.2.1 Impact of large-scale infrastructure/development projects on natural resources**

Various projects are on-going in the country, mostly associated with the race to locate mineral, petroleum, and energy resources. Only projects in the execution phase are mentioned, leaving aside those that are in a study or search-for-funding phase. Our focus thus includes all operations linked to mineral coal exploitation, which has significantly transformed the Tete Province, where various multinationals are already exploiting and transporting the so-called black gold. In relation to coal, investments made in railway and port infrastructure, specifically in the Beira and Nacala corridors and their respective ports, are important to note.

In Cabo Delgado Province, various operations exploiting natural gas will begin in 2018, involving several consortia, and with various preparatory activities and infrastructure building already commencing, including those related to erecting refineries and pipelines.

#### **6.2.2 Impact of large-scale infrastructure/development projects on local communities**

Due to the scale of the projects mentioned, there was, is, and will continue to be serious and significant impacts on local resident communities in the implementation areas, including resettlement in the framework of expropriation upon payment of an indemnity and/or compensation.

There are no specific laws with respect to infrastructure and/or development projects, its relationship with domestic property laws, free, prior and informed consent, fair and equitable sharing of benefits, provision of environmental, social and impact assessment, relevant state

agencies etc. For general provisions, see section 6.1.

## 6.3 Large-scale Agriculture

### 6.3.1 Prevalence of large-scale agriculture

In recent years Mozambique has become a destination for investments that require vast areas of land, including biofuel and agricultural production, forests, and wildlife (Nhantumbo & Salomão, 2010; Oakland Institute, 2011). In terms of large-scale agricultural production, cotton and tobacco must be highlighted, along with agriculture for household production, biofuel production, as well as soya, corn, wheat, and others.

The Triangular Cooperation Program for Agricultural Development of the Tropical Savana in Mozambique (ProSAVANA) project is the most popular and controversial large-scale agricultural project, due to its national and international reach. It is a governmental program, in partnership with the Brazilian and Japanese governments, aiming to improve the lives of the people in the Nacala Corridor through sustainable and inclusive regional agricultural development. According to government, it intends to achieve two big objectives: (1) improve and modernize agriculture with the aim to improve productivity and production as well as to diversify agricultural production; and (2) generate employment through agricultural investments and to establish value chains.<sup>7</sup> This program has been heavily criticized by NGOs and community organizations, because it compromises rural community and citizen's land rights. According to the National Peasants Union (UNAC), the most important peasant/farmers organization in Mozambique, ProSAVANA aims to transform 14.5 million hectares of arable land in the Nacala Corridor in the North of Mozambique and currently being used by small scale farmers, into industrial monocrop agriculture to be owned by companies for exportation purposes. According to UNAC, ProSAVANA does not aim to bring development in the region but rather destruction of local systems of food production and small scale subsistence agriculture.<sup>8</sup>

It is unknown what the level of discussion is around the use of GMO's, however, it is important to mention that GMO legislation was approved in the form of the **Regulation about Biosecurity relevant to Management of Genetically Modified Organisms**, via Decree n. 6/2007, April 25<sup>th</sup>.

### 6.3.2 Impact of large-scale agriculture on natural resources

Large-scale agricultural projects have impacted on local communities' rights to land use and benefit acquired through occupation as recognised by the **Land Law**. There is little information on the impacts of genetically modified food crops (such as maize and soy) on natural resources in Mozambique.

---

<sup>7</sup> See <http://www.prosavana.gov.mz/index.php?p=pagina&id=27>

<sup>8</sup> See (<http://www.unac.org.mz/index.php/artigos/nacional/94-campanha-nao-ao-prosavana-mocambicanos-pedem-solidariedade-regional>) for more information.

### 6.3.3 Laws and policies for of large-scale agriculture

The volume of requested areas for large-scale agricultural projects are of concern, as the Government has to balance those requests so as to not lose investment opportunities but also ensure land rights for farming populations. Even if community consultations take place this situation has a potential for conflicts as the stakes are high for all sides (Almeida 2010; Associação De Comércio E Indústria 2012).

In the 19<sup>th</sup> Ordinary Session of the Council of Ministers, held June 24<sup>th</sup>, 2007, the Minister of Agriculture Erasmo Muhate presented a general status of land administration in Mozambique (Summary Document 2007). In this meeting land requests for large-scale projects were discussed; until that point, a total of 3,030,774 hectares of land had been requested, with 13,638 hectares granted. Seeking a position by the Council of Ministers with relation to agricultural zoning and possible suspension of new DUAT requests for large areas of land whilst zoning takes place, Minister Muhate said: “in this situation, there is an urgent need to carry out agrarian zoning in the country so as to define location of populations, parks, forests, grazing, agriculture, and other activities” (*ibid*: 3).

In the subsequent debate, the President of the Republic Armando Emílio Guebuza stated that land management is a policy issue, and it is not enough to zone, but the government must fundamentally “reflect over policy elements that regulate land legislation, taking into account maximisation of benefits for the country”, as well as “gain information about the investor relative to its financial capacity, including audited bills and bank information, before any decision is made about land concession” (*ibid*: 4-5). In the end it was decided that the Ministry of Agriculture in coordination with the Ministries of Science and Technology, Energy, and Industry and Commerce, must proceed in preparing elements of the land management policy and its respective agricultural zoning (*ibid*: 5).

The Inter-ministerial Commission of Biofuels was addressed (composed of the Ministries of Agriculture, Energy, Science and Technology, Planning and Development, and Environmental Coordination), reinforcing the decisions taken in the Session of the Council of Ministers, to proceed in designing a proposal of norms and proceedings that will assist decision makers in deciding on land requests over 10,000 hectares, as most of these were for biofuel production. Thus through Resolution n. 70/2008, December 30<sup>th</sup>, proceedings were approved, and investment proposals are considered involving land over 10,000 hectares.

#### a) Environment and human rights

In addition to reinforcing the environmental legislation with respect to mandatorily acquiring an environmental license, there are land and socioeconomic aspects that must also be considered. These considerations arose in the context of a large number of requests for land arising for large biofuel projects. In the first case, the investor must present the following elements:

- (i) Map of the area encompassing the land use plan or map of land use/agricultural zoning;
- (ii) Nature and dimension of enterprise;
- (iii) Minutes from community consultations;
- (iv) Process seen by the District Administrator;
- (v) Process seen by the Provincial Governor;
- (vi) Exploitation and technical advice;
- (vii) Partnership terms between those with the DUAT holders and the investor; and
- (viii) Process seen by the Minister of Agriculture for projects to be submitted to the Council of Ministers.

With respect to socioeconomic aspects, the investor must provide the following information:

- (i) Existing population in the project implementation region;
- (ii) Resettlement program for the affected population;
- (iii) Social infrastructure that will be provided by the project to the population, including education, health, roads electricity, water, and other;
- (iv) Impact on food production;
- (v) Involvement of local producers, designated technical assistance, provision of inputs, provision for production means, and access to the market.

The issue of community empowerment is of concern; allusions are made to the negotiation process (in the form of consultations) and partnerships (essential for promoting social justice), but caution must be taken to safe-guard the economic and social conditions of the effected populations.

#### **b) Interaction with other legislation**

There is no doubt that the aforementioned initiative (Resolution 70/2008) was an attempt to reiterate the links between provisions in the environmental law, human rights, and land rights.

#### **6.3.4 Relation to local community rights**

There is no legal rule about large-scale agriculture preceding local community rights. On the contrary, formally the legal framework greatly protects small-scale farmers. The main problem is implementation (though this is not the reality).

#### **6.3.5 Effect of large-scale agriculture on local communities**

Requiring vast areas of land, large-scale agricultural projects threaten food security and land tenure. Use of water and pesticides also means adverse environmental impacts on communities as well.

There are no specific laws with respect to large-scale agriculture, its relationship with domestic

property laws, free, prior and informed consent, fair and equitable sharing of benefits, provision of environmental, social and impact assessment, relevant state agencies etc. For general provisions, see section 6.1.

### **6.3.6 State agencies mandated to develop, implement and monitor laws and policies**

The Ministry of Agriculture plays the central role through the National Directorate of Agriculture.

### **6.3.7 Future directions and recommendations**

To balance the various competing economic, social, and environmental interests on land, priority must be given to land planning, particularly in the wake of the principles and norms established by the **Law of Territory Planning**. In addition, in-depth work to decentralise and especially to delegate power to local communities is also required. It is thus important to strengthen rights found in the legislation, and to include other rights that are not currently listed, with the view to consolidating the role of communities in protecting, conserving, exploiting, and accessing benefits from natural resource exploitation.

## **7. NON-LEGAL RECOGNITION & SUPPORT**

### **7.1 Non-legal government support**

It is very difficult to comment on support given by government authorities via non-legal means, governance, and administration of programs and community areas. Since 1994, history has revealed a “love—hate” relationship between the State and communities. There are cases of commitment from authorities that supported efforts made by communities to conserve, with help from partners, especially at the local level of governance (districts, administrative posts, and localities). Given the scarcity of resources for effective land administration, the involvement of local communities in this matter represents an important support for governance. Thus, it is necessary to strengthen the role of Traditional Authorities in territory administration. However, other cases show government resistance in delegating power to local communities, especially at the central level.

### **7.2 Non-legal non-governmental support**

The history of community-based natural resource management in Mozambique shows that various international partners and non-governmental organisations support dozens of community programs throughout the country, financially, logistically, and technically (through training), including an incentive to use customary norms and practices. However, in most of these cases, the projects in question were designed to operate for a relatively short period, with the assumption that the State would continue these efforts to support community-based management – a situation that did not happen.

Meanwhile, it is also important to highlight support from partners and non-governmental organisations to the Mozambican State in designing pro-community legislation, at least in the early years after the establishment of the 1990 Constitution with the new democratically elected government, which resulted in the Land, Environment, and Forest and Wildlife Laws.

### **7.3 Key Issues**

To summarise, it is fundamental to completely rethink the current state of decentralisation and to delegate power to local communities.

## **8. JUDGEMENTS**

We do not have a case study to exemplify this kind of work, as it is rare for a community in Mozambique to access justice through the judicial system (Tanner & Baleira, 2004). This is one of the biggest problems in the current system of justice administration, which tends to materially distance itself from the country's majority farmer population. We are aware in relation to the evolution of cases of resettled communities by mining companies in Tete; of the farming populations that could be harmed by implementation of the Pro Savana in Nampula; or by other related operations in natural gas exploitation in Cabo Delgado. Various organisations from civil society have provided legal assistance to communities, namely the Human Rights League (LHD), the General Farmers Union (UGC), and Centro Terra Viva (CTV).

## **9. IMPLEMENTATION**

### **9.1 Key factors**

In terms of key factors that contribute to preventing correct implementation, we can refer to the following:

- Excessive centralism characterising the Mozambican State, which has escalated in recent years;
- The adoption of an economic model that is centred on the extractive industries and role of multinationals;
- A deficit in good governance, especially in transparency and participation indicators;
- Short-term support that lacks continuity for community-based natural resource management;
- Weaknesses in local community leaders, exacerbating the already weak position of local communities;
- A monitoring system that does not suit the objectives to guarantee sustainable natural resource management.

## 9.2 Recommendations

Among many things, the following are crucial recommendations:

- The legislator must review legal instruments so as to strengthen the implementation component. A law is only good when it is implementable;
- The Executive must completely rethink the system of control and monitoring in the context of strengthening decentralisation and transferring power to local communities;
- Partners and civil society organisations must equally reinforce their support to community-based natural resource management programs, including a strong focus in control and monitoring by communities.

## 10. RESISTANCE AND ENGAGEMENT

### 10.1 Community engagement with or resistance of laws and policies

It is important to mention that throughout Mozambique's history of state-building, rural communities have gone through various stages of engagement and resistance in terms of defending their rights to natural resources. Recently there have been numerous cases of community engagement – with and without non-governmental organisations – where they have defended their lives and access to ancestral lands and respective resources. The means employed vary from place to place and moment to moment, and have included passive resistance (for instance not exercising their civic right to vote), using legal means (e.g., petitions, protests), and actions of sabotage as protest (e.g., starting fires in a plantation).

### 10.2 Main conflicts

In terms of the main types of conflict, we can highlight the case of São Sebastião, Vilanculo District, Inhambane Province. The Council of Ministers created a completely protected zone in this region, while at the same time attributing the right to use and benefit from land to an investor for creation of a game farm (Tanner & Baleira, 2004, Serra & Cunha, 2008). Meanwhile the local community was blocked from using the forest through customary norms and practices (see Box 10.1 below for more detail).

#### **Box 10.1: São Sebastião, Wildlife Sanctuary Case**

Despite lacking the correct legal framework, the Council of Ministers created a total protection area via Decree n. 18/2003, April 29<sup>th</sup>, outside of all the figures we have discussed and analysed. The project area, *Vilanculo Coastal Wildlife Sanctuary*, is managed by a private company, and its investors are the East African Wildlife Pro Ltd., registered in Mauritius, and a Mozambican citizen. According to field data, the company is dedicated to land management for tourist ends, yielding titles, and plots to third parties, who are normally foreigners. The category of “total protected area” lacked any fixed regime by law with regards to activities that are allowed or prohibited in the area's respective limits, and very little is known about how it



differs from various other categories of conservation areas. In addition, it was unclear which ministerial organ was responsible for it: the Ministry of Tourism, Ministry for Environmental Coordination, or the Agricultural Ministry.

### Background

Given the requested area of 25,500 hectares, the project was approved at the Council of Ministers level, through Internal Resolution n. 4/2004, October 17<sup>th</sup>. According to the project's authorisation terms, its objectives were to: Establish and manage a wildlife game farm for conservation and preservation of indigenous species, marine, fauna, and forest; installing and establishing low density tourism, commercial and private tourist camps, and property developments; establishing infrastructure that permits aerial, land, and sea access; improving economic and social infrastructure for the local community through creation of jobs, building a school and health centre, and supporting the local community in developing small businesses.

In the approval of the referred project, there were, on the government's side, two types of initiatives. Firstly, the São Sebastião Cabo Delgado Total Protection Zone was created, as we saw, whose area coincides with the aforementioned project. In legal terms, there are a few reservations. The preamble of the Decree alludes to the **Land Law** and the **Forest and Wildlife Law**. Overall, there are scarce reasons to justify the creation of an area that is neither a national park, national reserve, nor area of historic-cultural value, which categories constitute recognised protection areas by the Mozambican legislator.

Secondly, the Governor of Inhambane Province allowed an order on January 7<sup>th</sup>, 2003 that nullified all land rights to use and benefit of pre-existing areas under the Sanctuary Project, including those areas acquired through occupation by local communities in residence. However, one of the clauses of the document that approves the Sanctuary forces the project to safeguard "in written observance, recognising and respect to rights legally acquired by other singular or collective entities in the regions where the project will develop".

However, according to **Article 18** of the **Land Law**, referring to cases of extinguishment of the right to land use and benefit, it is difficult to find legal backing for the Inhambane Governor's decision, which completely contradicts the law. To recall rights to land use and benefit previously existing, there should be a public consultation and a form of payment of just indemnification or compensation.

In summary, from the Project's conception the law was violated, possibly because prominent members of government were part of the group responsible for its creation. The lack of respect of the **Land Law** with regards to consultation processes is particularly clear, as there was no consultation or public meeting for local communities, local authorities at the provincial level and in general, and for all those with acquired titles. Decisions were made centrally with very little knowledge of what was happening on the ground, including a lack of knowledge regarding exactly how many families lived in the affected area. Various employees from provincial provinces and local authorities confessed that they were limited to fulfil "superior orders" – that is, orders from those in greater authority.

## Installation

In 2001, the Sanctuary Project began its installation in the region, having transferred the first 16 families living in the area from where the first buildings were built (mainly offices and houses for management). In terms of indemnity and compensation, for each relocated family the Project built houses of the same dimension with cement floors and improved latrines, and supplied a monthly food basket. Relative to payments, the amount provided did not take into account the quality and quantity of benefits in the original location, such as fruit trees, alleging that the families would continue to have access to those trees, which in practice, did not happen. As such, the community members felt the amount was insignificant and unjust.

As the Project expanded its infrastructures and completely occupied the space, it initiated the process to transfer the rest of the families. In summary, the indemnity (which was insignificant) was not paid on time, with the excuse that there was a financial crisis. In the meantime, electric fencing was placed around the whole area to prevent any person outside of the Project from entering. This act contradicted the promise to local communities that they would have access to goods left behind in their original lands, and inevitably caused discontent. Additionally, signs with explicit messages (e.g., “private property”) that contravened the Constitution (as land is the property of the State) were placed around the fences. This set of statements forbidding anchoring boats, camping, picnics, fishing, diving, hunting, and polluting without permission, and threatening detention and punishment, is very intimidating and aggressive.

The late payment of the indemnities and the fact that this compensation was very little increased frustration in local communities. According to collected data from the Vilanculo Attorney General, a series of damages against the fence, fires, and protests against the way the process was driven followed. The relationship between the Project and local communities remained tense, with the latter exposing their anguish and horror at the way they were being treated to visiting administrative authorities.

Various private individuals had economic interests in the area of the Project, especially in the tourism sector, and possessed the rights to use and benefit from the land. These individuals saw their rights extinguished by an order from the Provincial Governor, which amounted to notable losses. In all, only one of the members reacted in defence of their rights, by accessing the courts. The case of ***Cabo do Mar Limitada*** still awaits a final decision by the Supreme Court.

## Summary

This case helps illustrate why care must be taken in the creation of conservation areas. The government took the wrong path when it did not respect the legal framework for conservation areas and land when creating the *Vilanculo Coastal Wildlife Sanctuary*. There was no public consultation under legal terms; there was no respect for acquired rights; there was no just indemnity by law. All these problems generate conflict, not only between local communities and the investor, but also investors and pre-existing investors. All of this could have been avoided if the law was respected. The investor also committed errors in the process, which exacerbated the problem. The way in which the communities were dealt with and treated, especially at the initial phase, as well as the conflicts that occurred with the first investor and

are still in on-going, are proof of the lack of understanding of the importance of respecting Law and Rights, both as litigious prevention, but also in generating harmony and social coexistence.

Conservation cannot be imposed or coerced, but must be accepted freely and voluntarily by all those who could be potentially affected, directly or indirectly. Conservation should be a mechanism for generating sustainable development, especially at the local level. Reality shows that a conservation project defined in vertical terms, not democratically, without necessary involvement of effected communities, and without equating sustainable alternatives to mere resource exploitations, results in risks in the short, medium, and long term, and real failure in the end.

### **10.3 Social movements and trends**

Various social movements have emerged at the national level. In general terms, they all have support from non-governmental organisations, which is essential to guaranteeing that communities have a voice and can get their claims heard in the fight for defence of their rights.

The Open Letter below (see Box 10.2) was signed by various civil society organisations, appealing for intervention in serious violations of land and natural resource rights. It was published in various media outlets and replicated in social networks in June 2011, but remains unknown whether the letter produced any impacts.

#### **Box 10.2: OPEN LETTER TO THE PRESIDENT OF THE REPUBLIC**

June 28<sup>th</sup>, 2011/ Noticias

Your Excellency, Mr. President of the Republic, Armando Emílio Guebuza,  
You have recently received an environmental award given by the organisation, WWF (World Wide Fund for Nature), for the efforts carried out in the area of conservation of the environment and the tree planting campaign at the school and local community levels. It is, without a doubt, a source of pride to all Mozambican citizens and an incentive for many initiatives to be carried out, in a world where environmental problems have worsened, there is greater ecological unbalance, climate change threatens food security, biodiversity, life and security of people and goods, there is land grabbing that threatens justice and fair investments based on natural resource exploitation.

However, without demerit to the good examples that lead to the award, we still see in Mozambique more deterioration of our forest, wildlife, mineral and water resources.

As it has been reported in the media, we are under dangerous networks of organized crime, involving some government and Frelimo members, as well as national and international citizens, who are only concerned with getting maximum profit using illegal means, putting at risk supreme interests of the Mozambican State, as well as various fundamental rights of citizens.

These networks do not hesitate to threaten and abuse those who are opposed to their criminal acts. It has become more frequent that journalists, State and NGO employees, in exercising their professional mandates, receive intimidating telephone calls or messages, as a first warning, which, if not taken, could lead to measures that could lead to one's death, as it happened in Nampula, with various forest and wildlife monitors who were barbarically assassinated by illegal loggers.

This climate of impunity is frightening, generating more mistrust from citizens with relation to the integrity and seriousness of institutions run by the State. This situation, Mr. President, contrasts with the award Your Excellency received. We believe that it was not for these reasons that the President and other citizens fought for, many of which lost their lives in the liberation efforts against colonialism, of exploitation of men, in the efforts to valorize and preserve wealth from the natural resources we possess.

Mister President, we are, today, witnesses and cannot continue indifferent to the frightening loss of forests, our wildlife, our mining and resources, our communities' land, our common wealth. There are deserts, polluted rivers, tears from communities badly resettled and, above all, poverty, Mister President...!

We hereby, request from you, as our leader and fighter of poverty and first guarantor of the Constitution of the Republic, an urgent intervention, that is concrete and effective, that honours the magnificent award you received, and a public position from your Excellency against illegalities and the climate of impunity in natural resource management in the country.

Without further ado, and with the expectation that the present letter be worthy of your consideration, we sign with the highest esteem and consideration.

Center for Public Integrity  
Centro Terra Viva  
Fórum Mulher  
Justiça Ambiental  
KULIMA  
KUWUKA JDA  
Mozambique Human Rights League  
Livanningo  
ORAM  
RADER  
TEIA  
WLSA

## **10.4 Community awareness of laws and policies**

The level of knowledge, and therefore access to information and participation, varies from region to region and community to community, and depends on various factors ranging from geographical location (proximity to cities and/or roads); level of external support given; internal organisation (i.e., leadership, mobilisation of members, engagement); level of education; profile of government members and various State institutions (e.g., the position of the Administrator, for instance, could decide how communities voice their discontent in a certain situation); among other factors.

## **10.5 Do some communities manage better than others?**

Some local communities have been able achieve better results than others in terms of management depending on a variety of factors, such as the type of program, partners, the role of government, the location, the profile of the private operator, the community organisation etc. It is important to study these situations through research geared towards analysing the reasons, actions, and consequences of successes and failures of community management experiences in comparative terms. This has not been done, to date.

# **11. LEGAL AND POLICY REFORM**

## **11.1 Institutional reforms required**

A fundamental review and harmonisation of the various institutional mandates functioning on the ground and working with local community rights is needed. In particular, with respect to the legislative and political framework, harmonisation over natural resources, especially with respect to local community rights, and strengthening laws – with a focus on forest and wildlife, mining and petroleum legislation – are needed.

## **11.2 Specific recommendations**

In specific terms, we recommend the following:

- Regulate the concept of community public domain that is constitutionally established;
- Establish mechanisms and proceedings for a complete and effective transfer of power to local communities in natural resource management;
- Harmonise the Land and Forest and Wildlife Laws in the chapter about acquired rights through occupation, overcoming the minimalist view of rights established by Law;
- Revise the contract models of concession for exploitation of natural resources, including communities as subjects or celebrated parties, side to side with the State and private operators;
- Define real benefits to be granted to local communities by the extractive industry.

### 11.3 Implementation of reforms

This is an opportune moment for change as we approach the end of a presidential and legislative mandate at the beginning of 2015. During this time, robust debate to strengthen the various political parties' agendas can be promoted with the goal of defending the rights of local communities. Strengthening civil society organisations, especially in creating an agenda that is pro-community rights, with regards to transfer of power, is key.

## 12. CASE STUDIES

### Case Study 1: Tchuma Tchato

#### a) Brief History

In 1994, the year Mozambique held its first multi-party elections, a pilot project that hoped to make CBNRM a reality in the country was launched. Inspired by projects like Zimbabwe's CAMPFIRE, the "Tchuma Tchato"<sup>9</sup> programme was created in the Administrative Post of Chintopo, Mágoè District in the Tete Province. Established in the 200,000 hectare area where government-authorised wildlife operator *Safaris of Mozambique* had been operating since 1987, the programme was developed to help reduce the constant conflict that had taken place between the private operator and local communities. It set out to define obligations from each side, as well as to ensure concrete benefit generation for local communities (Ferrão 2010; Filimão et al. 2000; Siteo et al. 2007).

The Tchuma Tchato programme had the following objectives:

- (i) Promote natural resource conservation in the region with local community involvement;
- (ii) Promote sustainable natural resource use;
- (iii) Guarantee that benefits from natural resource exploitation be shared with local communities;
- (iv) Promote sustainable local development;
- (v) Minimise conflicts over



Photo 11.1: Sand dollar, Barra (2014). Source: Quintin Brooks

<sup>9</sup> Literally "Our Wealth" in Nyungwe, a local language from Tete Province.

land and natural resource use between effected and interested parties (Chidiamassamba 2010).

According to Chidiamassamba, “the philosophy of the program is to involve the three parties, whether they be direct or indirect users of the natural resources. Partners such as:

- (i) the State, who is the highest structure that must promote and regulate existence of other governmental and non-governmental organisations interested in assisting natural resource management, technically or financially;
- (ii) the communities as direct users of natural resources, given that their economic and social life greatly depends on these; and
- (iii) (iii) the private sector also as direct and indirect user through promoting touristic investment in sustainable natural resource management” (*ibid*: 47)

The programme was established through the **Ministerial Diploma n. 92/95, July 12<sup>th</sup>**, where Tchuma Tchato was described as “a pilot program where rural communities have control of and are responsible for natural resource management.” This legal instrument introduced an exploitation tax for Safari Photography to be paid by tourists and updated fees due from hunting. It also established maximum percentages of taxes from local programmes, with 33% to go to community programs in the area; 32% for the Mágoè district; and 35% for the State budget. Intending to evenly distribute revenue from sport hunting, the legal instrument determined that from total collected taxes, the following percentages would be applied: (i) 33% for community programs in the area where taxes are collected; (ii) 32% for Tchuma Tchato Program Management Unit; 20% for Districts (covered by Tchuma Tchato); (iii) 20% for the Districts (covered by Tchuma Tchato); (iv) and 15% for the National Tourism Fund (today the National Tourism Institute) (article 1 of the Ministerial Diploma n.º 63/2003, June 18th).

In the first years of the Tchuma Tchato programme, support for material and equipment, construction of infrastructure, and development of the CBNRM programme in the form of salary payments for a few monitors came from the Ford Foundation, an American donor foundation (FERRÃO 2010). Funding also came from the International Union for Natural Conservation (IUCN) (Chidiamassamba 2010: 8; Ferrão 2010). The programme delivered some benefits for local communities in its first years, including improvement of socioeconomic conditions (especially with the construction of a community market), mills for processing crops, and construction of schools. It also acquired vehicles and boats for fishing activities, and supported rural development micro-projects (Ferrão 2010). Meanwhile it worked to promote education and awareness about the importance of protecting and conserving biodiversity.

## **b) Organisation**

Currently, the Tchuma Tchato programme consists of a Central Unit in Tete City, the provincial capital, represented by the Provincial Director of Tourism, who is a member of the Tete Province Government. There are also four operating units at the local level: one in the Zumbo

District (Zumbo Unit), two in the Mágoè District (Bauwa and Daqui Units), and one in the Chiúta District (Chirindza Unit) (Chidiamassamba 2010).

Local Natural Resource Management Councils (identified in the **Forest and Wildlife Law**) were also established (different to the COGEP mentioned above), with community organs represented in the planning, negotiation, implementation, and monitoring processes of the programme (Chidiamassamba 2010; Ferrão 2010). Each Local Council is composed of 10 to 12 members, including a president, vice president, treasurer, secretary, representative/chief of wildlife and other natural resource conservation, representative/chief of culture, representative/chief of protocol, and representative of fisheries. These organs were in turn monitored by Superior Natural Resource Management Councils, composed of their respective presidents, treasurers, secretaries, and other members democratically chosen by the communities, which were responsible for managing funds for implementing the Ministerial Diploma n. 63/2003, July 18<sup>th</sup> (Chidiamassamba 2010).

It should be noted that the organs mentioned above, especially the Local Councils and the Community Committee, were closer to those provided for by the legislation for local organs of the State, (**Article N. 111. and 113, Regulation of the State Local Organs Law (2005)**), than those in the Forest and Wildlife legislation, where the COGEP figure was provided for by law but never created (**Article N. 31., Forest and Wildlife Law**).

In practice, the State continued to play a fundamental role in managing the Tchuma Tchato area because a member of the Provincial Government drives the Central Unit. The communities remained in the margins of the main directorate structure as associative organs, deprived of any decision-making power concerning land and existing natural resources. The State (at the provincial level) fundamentally remained responsible for Tchuma Tchato administration, keeping it too central for a supposedly CBNRM program.

### **c) A false devolution**

Tchuma Tchato remains Mozambique's first CBNRM programme, and is an important national and international reference. It never stopped being a programme controlled by the State, which remained responsible for making determining decisions, dialogue with economic operators, collecting taxes, management and distribution of these taxes, and licensing the use and benefit from existing resources in the region covered by the Tchuma Tchato Programme.

With decentralisation, the tourism sector, under which the Programme was located, attributed responsibility to the Tete Provincial Directorate of Tourism. Though not subject to direct management from the central government, management powers still remained with Provincial Government, which is geographically distant from the communities covered by the project. This is counter-intuitive to the devolution of powers that is supposed to guide this CBNRM program.

Though almost two decades has passed since the creation of Tchuma Tchato, government has yet to effectively build an institutional model that successfully devolves power to local



communities. Ferrão argues that this is one of the main weaknesses of this programme, particularly given that the State has maintained all rights to land and other natural resources (2010: 208).

Shortly after the programme launched, sufficient legislation was approved providing for solutions that could turn devolution into reality, as was the case with COGEP, seen in the LFFB (1997) (**Article N. 31, Forest and Wildlife Law**) and its respective Regulation (2002) (**Articles N. 95 to 98, Forest and Wildlife Regulation (2002)**). However, a COGEP constituted of representatives from interested groups in the Tchuma Tchato programme – namely the Government (central, provincial, and district), private operators (mainly safari operators), local communities and non-governmental organizations (national and international) – was never created. Such an organ would have added value to building consensus between all parties, as well a consensus on a more integrated and consequently efficient intervention. It also would have provided a platform for monitoring and evaluation of activities.

The **Forest and Wildlife Law** also provided for a conservation area figure, which would be implemented – the areas of historic-cultural value, identified and managed by the local communities, and that exist independently of creation by the State, whose only role is in respect to recognition (**Article N. 13, Forest and Wildlife Law**).

Today, contrarily, the Provincial Government carried out a proposal to create a national park, Magoé National Park, the most protectionist of the conservation areas categories foreseen in the Mozambican judicial-legal regime (**Article N. 11, Forest and Wildlife Law**). This park was created through Decree n. 67/2013, December 11<sup>th</sup>, in the Mágoè District, between the Mussenguesi and Daque Rivers, in an area of 355 852.045 hectares, to mitigate human-wildlife conflict and capitalise on the opportunity for biodiversity conservation and income generation (Community Land Initiative 2012).

#### **d) The downfall of Tchuma Tchato**

After many years in the limelight, Tchuma Tchato suffered a downfall when its main partners – withdrew support. Since 2000, Tchuma Tchato has had to function solely from revenue generated by the 32% tax from wildlife resource exploitation. This revenue proved insufficient to execute the programme's objectives, especially as the revenue diminished with the decrease of wildlife in the region, which is discussed further below.

Fieldwork showed that infrastructure erected to bring tourists to the area such as the Bauwa Campsite, strategically located in the Zambeze riverbanks, had been totally abandoned. The programmes' past achievements were lost, as infrastructure like water and electricity broke down and couldn't be fixed for lack of funds, and trash was simply left by visitors.

#### e) The error of gigantism and the incapacity to control and monitor

In addition to Mágoè, the Tchuma Tchato programme expanded to seven additional districts (Changara, Cahora Bassa, Chiuta, Chifunde, Macanga, Marávia, and Zumbo), totalling an area of 3,928,911.40 hectares, involving a total of 135,000 habitants, organised in twenty-seven local communities (Centro Terra Viva 2009). This geographic expansion was not accompanied by a reading/analysis of experiences from the pilot areas where the programme began (namely in Bauwa–Chinthopo and Daque), and there were fewer necessary conditions to guarantee adequate management of the territory and its respective natural resources (Chidiamassamba 2010). The result was a departure from the initial defined objectives, and jeopardised the sustainability of the Tchuma Tchato programme.

In the beginning Tchuma Tchato had 104 monitors; by the end of 2010 there were only 62 due to the enormous difficulty in paying salaries and guaranteeing basic working conditions (Chidiamassamba 2010). That number will continue to reduce unless something is done to change the current scenario. The monitors lack communications, so there is no network between the various monitoring units, or between monitors and the program's leadership. They are also without transport and thus incapable of handling poaching, human-wildlife conflict, preventing and fighting wildfires, or supporting emergency medical situations. Additionally, the monitors lack modern, adequate weapons (or ammunition for the few existing weapons), which puts them in an extremely vulnerable situation when faced with poaching or human-wildlife conflict.

Even more serious is their general abandonment by the programme; they have been left to their own devices, without even the right to food during work travels, as there is only money for the salaries of the few remaining men left.<sup>10</sup> As a result, the monitors are less functional, contributing to their declining image in the eyes of the local population. It is also worth noting that the vehicles, boats, motorcycles, and bicycles acquired throughout the years are damaged, and accommodations are in a horrible state of degradation due to lack of maintenance (*ibid*).

Lacking the conditions to properly monitor, the District Governments and the Tchuma Tchato Programme are often forced to ask for support from safari companies to solve various problems.

An important note is the fact that there is clearly a lack of regulation of the **Forest and Wildlife Law** in terms of the community monitors' statute (the so called community monitor agents) (**Articles n. 37, n. 4, Forest and Wildlife Law**). In these monitors lack a regime that defines respective powers, rights, and obligations, and thus are completely dependent on the existence of external support for CBNRM programs.

---

<sup>10</sup> According to a member of the Zumbo District Government, in an interview in the Zumbo village, on September 30<sup>th</sup>, 2012.

An important sign that there is secundarization of the respective role was approving, by the Ministries of Agriculture, Tourism and Interior, of the Forest and Wildlife Monitor Statute, through the Ministerial Diploma n. 128/2006, June 12<sup>th</sup>, and that is only applicable to State Monitors. Thus nothing was said relating to community monitors or sworn monitors (the last group is contracted by private operators from game farms and from forest concessions). The legislator's silence puts this figure of the monitor in a weak position to be able to fully perform their monitoring work (FERRÃO 2010).

#### **f) The deterioration of natural resources**

Problems such as poaching, illegal forest exploitation, and forest fires are increasing at an alarming rate (Chidiamassamba 2010), jeopardising sustainability of natural resources, biodiversity, and the sustainability of the whole CBNRM program.

There is growing evidence that organised crime networks involving citizens from neighbouring countries including Zimbabwe, Zambia, and Malawi, along with Mozambican citizens are poaching elephants for their tusks due to increased demand on the illegal international market. With the aforementioned difficulties the monitors face, the situation favours the poachers. Given the lack of real and concrete benefits to local development, members of the communities are also increasingly involved in hunting. In addition, there is suspicion that dishonest operators are hunting outside of government-defined quotas (*ibid*). Poaching may have already contributed to the extinction of some wild species in various areas covered by the Tchuma Tchato Programme, as well as causing migration of animals, which has led to more cases of human-wildlife conflicts.

During fieldwork carried out by Dr Serra in October and November 2013, many interviewees spoke about excessive fishing, not only in the region's rivers, but also on the Zambeze River, where there has been a decline of fishing resources over the past few years, mainly due to demand from neighbouring countries. This factor has been of concern to the area's tourism operators who rely on fishing activities. There are also registered fishermen who become poachers.

Aside from the above problems, there are very visible impacts of fires almost everywhere in the Magoe District and a clear lack of motivation in efforts to protect and conserve the forest. Additionally, forest exploitation activities contrary to the existing legal framework are taking place (Ferrão 2010). These activities have serious consequences for the Changara District in the southern region of Tchuma Tchato, with wildlife running away as a result of the noise caused by cars, motorcycles, and forest workers (*ibid*). Forest exploitation is already harming some safari operators who are dependent on wildlife to carry out their activities.

In addition, loggers are also poaching, and various mining companies have been seen in the region, carrying out research and prospecting activities for uranium and mineral coal. With this drastic decline of biodiversity, if nothing is done soon, the Tchuma Tchato Programme's days are numbered.

### **g) Escalation of the human-wildlife conflict**

As a result of increasing pressure on resources in certain areas, not only through killing of some species, but also people occupying ecological corridors important to wildlife, there is an increase in human-wildlife conflict.<sup>11</sup>

The main concern is with respect to elephants invading farms and the damage they cause, jeopardising food security for many people. According to various participants in our meetings, when the monitors are called, support arrives much too late or does not even arrive. Human occupation of the elephants' ecological corridors has exacerbated the problem, with fishermen building camps that close the animals' access to the Cahora Bassa Basin, causing them to divert to areas occupied by people.

In recent years there has also been a larger presence of lions in areas occupied by populations as a result of the increased poaching of antelope and other species that are usually prey to these felines. This is perhaps the most disturbing indicator of the decline in wildlife in the region.

### **h) Conflict between operator and communities**

Currently eight safari companies operate in the Tchuma Tchato programme area, namely: Mozambique Safaris, Sable Hills Safaris, and Africa Hunt and Tours in the Mágoè District; Chawalo Safaris in the Zumbo District; Calm Lakes Investment and Development Ltd in Chifunde District; and Chiputo Safaris, Nhenda Safaris, and Safaris Tetense in Marávia District (Chidiamassamba 2010: 16).

The relationship between communities and wildlife operators continues to become increasingly problematic (Chidiamassamba 2010), in part because of a lack of clarity about private sector responsibility to communities in the areas where resources are located.

Each operator draws its own relationship policy with the communities in the areas where they operate. Some claim they have no obligations aside from payment of taxes as legally defined, and others attempt to carry out social responsibility activities. Currently, there are no cases of an established partnership between safari operators and communities, at least with a written and signed contract by all parties, establishing rights and obligations for each party.

In areas where safari companies who do very little to improve living conditions for local populations operate, there are more frequent cases of poaching, forest exploitation, and forest fires started by community members who are unhappy and unmotivated to adopt measures to protect and conserve natural resources. In light of this, Chidiamassamba recommends the "urgent need to get the operators and communities together and their representatives to discuss the problems that affect each side and find the best way to dialogue, which should be

---

<sup>11</sup> Ferrão calls attention to the damage caused to populations by elephants and hippopotamus in family farms FERRÃO, Jorge (2010), ob. cit., p. 195.

through periodic and systematic meetings in each area of intervention. It is also important that a guiding manual is developed in a participative manner with proceedings about social responsibility that must be integrated not only for the operator's responsibility, but also responsibilities of Local Communities', Provincial, District and Local Government, and agreement between involved parties that must be put into writing and copied to everyone (Chidiamassamba 2010: 25).

#### **i) Lack of transparency mechanisms in revenue/benefit management**

One of the main criticisms of the Tchuma Tchato Programme is the lack of transparency in benefit management (Ferrão 2010). No one knows the exact amount of taxes collected by the State, and therefore what amount must be channelled to various beneficiaries, including communities, as per the legislation. There is also no knowledge as to how Superior Councils for Natural Resource Management are managing benefits belonging to the communities.

The channelling of funds to the communities is done in the following manner: Firstly, the safari operators pay taxes for hunting through a bank deposit in the Provincial Directorate for Planning and Finance's account at the Tete Province level. This money is transferred to the community account in the name of the Provincial Directorate for Tourism. Finally, the Provincial Tourism Directorate distributes the funds at the end of each season, observing the Diploma n. 63/2003, June 18th (Chidiamassamba 2010).

According to Chidiamassamba, "in general there are serious problems with management of the community's funds. One of the problems referred to during this work is linked to the lack of inclusion of different social groups during planning for use of funds, which was made worse by the lack of dialogue and transparency in management of a common good. The weak technical assistance to communities by respective Operative Units and interference by other interveners, particularly local government representatives, in the use of funds are also factors that negatively affected the whole management process" (Chidiamassamba 2010: 15).

According to various authors, another issue concerning Tchuma Tchato Programme revenue managed by the State is that the State has served itself with benefits that should have been allocated to the communities to carry out social activities that are in the State's obligations: namely to build schools and health centres (Ferrão 2010).

Chidiamassamba notes that the model of revenue management is inadequate, mainly because the amount allocated to the programme's functioning and to the local communities is too low to guarantee the success of Tchuma Tchato. She also questions the decision to allocate funds to the District and National Tourism Institute, which have little impact on CBNRM programme (2010). She goes on to present various proposals to solve the problems in the Tchuma Tchato Programme, including a revision of the Ministerial Diploma n. 63/2003, June 18<sup>th</sup>, proposing as option A: attribution of 62% of revenue for the programme's functioning, 33% for the local communities, and 5% to the National Tourism Institute; or option B: 67% of the total revenue for the programme's functioning and 33% to the local communities (*ibid*: 38-39). Both

proposals imply not contemplating district governments. Any such solution will require some kind of central intervention after due analysis and consultation. This means that altering the revenue amount used for the sustainability of the Tchuma Tchato Programme can only occur after approval of a new legal instrument that simultaneously repeals the Ministerial Diploma n. 63/2003, June 18<sup>th</sup>.

Tchuma Tchato remains hostage to diverse interests that are completely foreign to the principles developed in its inception. It remains submerged in the deepest and fatal silence, where those who are responsible watch its precipitous fall, which could be irreversible if there is no major intervention.

#### **j) Lessons from the Tchuma Tchato case**

This case raises the following question: to what extent is the Mozambican juridical-legal framework and its respective regulation correctly implemented, especially with respect to community rights in forest resource management? Further, to what extent does this new Conservation law and regulations that intend to open doors for CBNRM actually contribute to sustainable development at the local level?

One of the main findings on the failure of CBNRM experiences is related to this question of sustainability – the lack of which is a consequence of short-term international support. Failing to create the necessary foundations for the programme's continuity without external support, (i.e., the ability to generate necessary capacity and autonomy internally), this model contributes to frustrated expectations in local communities and resulting de-motivation in relation to protection and conservation measures of natural resources in the programme's region (Sitoe et al. 2007; Salomão & Matose 2007). Many projects are designed only to last between three to five years, with the first year spent purely on preparing, launching, and installing the programme. Thus by the time the first results start to arise, external partners are already closing out their activities, generating discontent and frustration at the community level (Sitoe et al. 2007).

There is also the problem of State intervention at all levels, from the central, provincial, and district, which is a result of the excessive centralisation that continues to guide the functioning framework of natural resource management (Veja-se Salomão 2007). In fact, the history of CBNRM can be used as a barometer to measure the degree of unified political will to bring real decentralisation, and in particular, a real devolution of powers in resource management to local communities. In the absence of a legal framework that affects a genuine devolution of management powers to local communities, Tchuma Tchato remains an eminent state programme fundamentally controlled by the Tete Provincial Government through the Provincial Directorate of Tourism. This programme is in fact managed both centrally and vertically by Provincial Government, with merely a cosmetic appearance of community based management. Despite an unwillingness to abdicate powers of decision-making over Tchuma Tchato, the State has meanwhile almost totally abandoned the programme, keeping itself at a great distance

from the local problems and constraints, sentiments and expectations of the population, and solutions to improve what is a crisis situation.

According to Ferrão, CBNRM programmes appeared “as a corollary to the democratisation process in the region,” with the vision to “not only solve issues of natural resource degradation but also, to deeply boost development of the field and mitigate poverty” (2010: 218-219). However, the author goes on to explain, “Unfortunately the communities continue to be marginalised, with a growing level of dissatisfaction among these. It is important that one redefines the question of partnerships and ownership of land and natural resources. The decentralisation must be part of a broad process, whose objective is to transfer power to the local and district level” (ibid: 219).

State resistance to decentralisation in the communities indicates a need to monopolise resource access and benefits from these resources, especially through licensing wildlife operators, and also through the extractive industry, currently and over the next years. The hunt for resources is already underway, as solicitations for licenses and concessions increase. In the end, the potential medium and long-term benefits of protection and biodiversity conservation will count less than the short-term profits, which are clearly higher, and do not leave room for the present State to make wise choices concerning sustainable development.

Obstacles in the process of delimitation of community land further indicated the State’s clear reluctance to lose control over natural resource-rich lands, logically, control over allocating power to third parties/investors and to benefit from such business. In the midst of this problem there is an enormous conceptual misunderstanding, because there is confusion over delimitation and a DUAT concession, in other words, the recognition of a direct pre-existing right with the attribution of a new right.

Another indicator of the State’s centralist position is the provision in the regulation of the different land and other natural resource regimes: on case, the DUAT is recognised through occupation, the second no longer exists, leaving only the safeguarding of “subsistence rights” (a minimalist perspective on rights), which translates into the consecration of the concept “own consumption” (**Article n. 1.º, n.º 9, Forest and Wildlife Law**).

This all begs the question of to whom the existing natural resources in the Tchuma Tchato area belong? The legally correct answer is the State. However, in practical terms, the communities who have always lived off those natural resources should by right be the main beneficiaries in the use of various natural resources by third parties. This means recognising the communities not as a minimal negotiating body, as is currently the case (not only in Tchuma Tchato, but throughout the country), but rather as a maximalist negotiator – if land is the communities’, and in this same land there are resources, it is within reason that the communities should have effective partnerships in the investment processes of those resources, whether they be wildlife, forest, mining, oil, energy, livestock, tourism, etc. It is our belief that this model would bring about sustainable development.

Regarding protected areas, the intention to create a national park firstly reflects a traditional State-centric perspective, since in the current Mozambican model it is the State which is responsible for administration of national parks. Thus again we see a retreat in the intention to transmit powers to local communities before all other possible solutions to overcome the current crisis around investing in a functional CBNRM model have been explored. The proposal to create a national park could be a tactical game the State is playing to protect a parcel of territory in the Tchuma Tchato Region – thus transmitting a politically correct image at the international level – while still excluding many areas in the current protected statute, claiming that they no longer possess wildlife potential, when, in reality, there is interest in using these lands for other natural resource exploitation, including forests and especially minerals.

One thing is certain: while waiting for answers to arrive, the potential to conserve is declining at an alarming rate; this decline significantly meanwhile increases poverty in the region, due not only to reduced revenue from resource exploitation taxes, but also increased threats of climate change resulting from the destruction and/or degradation of forests and the concomitant reduction of rainfall levels.

## **Case Study 2 – Resettlement of communities living on top of coal**

### **a) Background of Vale and Rio Tinto Project**

The mining and oil sectors are relatively new features in the country's economic landscape. After years of Civil War and deep economic crisis, there has been a gradual "rediscovery" and gradual rush to exploit the country's various existing mineral resources.

In November 2004, the Mozambican government and the Brazilian company Vale do Rio Doce, established an agreement for implementing a prospecting and research project for coal, as well as a Memorandum of Understanding for social projects (**Preamble of Decree n. 51/2005, December 20<sup>th</sup>**). The government, through Decree n. 51/2005, December 20<sup>th</sup> (published in the Republic's Bulletin 1.<sup>a</sup> Series– N.º 50, December 20<sup>th</sup> 2005) approved the first phase of the project titled "Rio Doce Mozambique-Integrated Development of Moatize", to be implemented by the company Rio Doce Moçambique, Limitada, registered in Mozambique and associated to the Brazilian group Companhia Vale do Rio Doce (article n. 1 of Decree n. 51/2005, December 20<sup>th</sup>).

The project is in the Moatize Municipality, Tete Province, and has the following objectives:

- (i) Prospecting and research for coal;
- (ii) Develop infrastructure related to prospecting and research for coal;
- (iii) Carry out studies for determining possibilities for installing other projects outside of mining, namely casting aluminium, central power, ferroalloy factory, steel mill, cement factory, fuel plant, charcoal factory, and biodiesel production;
- (iv) Carry out social projects in the terms of the Memorandum of Understanding for implementation (**Article n. 2, Decree n. 51/2005, December 20<sup>th</sup>**).



In the terms of the aforementioned Decree, “control and monitoring of project implementation will be under the responsibility of the Ministry of Mineral Resources, through the Inter-ministerial Commission created for this purpose or in other terms determined by the Minister of Mineral Resources” (**Article n. 5, n. 2, Decree n. 51/2005, December 20<sup>th</sup>**).

Through Resolution n. 66/2008, November 28<sup>th</sup> (published in the Republic’s Bulletin, 1.<sup>a</sup> Series – N.º 48, November 28<sup>th</sup> 2008), a provisional authorisation was given to the request from Rio Doce Moçambique Limitada to acquire the right to use and benefit from land, over an area of 23,780 hectares in the Moatize (headquarters) Administrative Post, Moatize District, Tete Province, destined to the mining activity and associated infrastructures (**Article from Resolution n.º 66/2008, de November 28<sup>th</sup>**).

#### **b) Resettlement problems**

The process of resettlement of populations began in 2009 and was concluded in October 2010. In 2009 the Provincial Government informed the local population that they would be transferred to new areas so as to allow for coal exploitation (Verdade 2012). According to research by Dr Serra, those considered unemployed were sent to Cateme, Moatize District (Tete Province) while those who had employment, even in precarious forms, were resettled to a village called 25 de Setembro, in the Moatize Village (*ibid*). Vale’s process of resettling populations from its mining concession areas were riddled with mistakes that because they were not resolved timeously, had created situations that eventually resulted in conflict. Field visits confirmed various problems that the media and NGOs working in the region had been flagging for the past four years at least, including discontent of communities due to receipt of small parcels of unfertile land, degradation of homes, lack of employment opportunities etc.

A key problem was that the areas created for the resettled population were in urban areas, meaning that once-rural communities had to undergo a quick transition from rural to urban life, without fulfilling pre-conditions for a successful transition such as reintegration of new economic activities. Thus in many cases the people were expected to continue to depend on subsistence farming, but with less quantity and quality of land to satisfy basic needs.

In January 2011, the resettled population in Cateme protested publicly against difficulties in accessing drinking water and water for their livestock, lack of land appropriate for farming, and lack of electricity. At the same time they also complained that the rain was infiltrating the houses built by Rio Doce Moçambique Limitada. The Rapid Reaction Force (FIR) (the Special Polices Forces of Mozambique) repressed the protesters with canes and guns (Canal Moz 2012). Discontent grew, and especially since September 2011, feeling betrayed by the local government and Rio Doce Moçambique Limitada for failing to follow through on promises, the relocated communities have been demanding a revision of the compensation, which in their view was unjust and inadequate, more training and jobs, as well as maintenance or rehabilitation of the houses given to them (Verdade 2012).

More recently, having realised that their complaints were not taken seriously since 2009, the resettled population from 25 de Setembro decided to intensify protests, with community

leaders going to the District Government of Moatize to voice their concerns, demanding that Rio Doce Moçambique Limitada answer to the demands. They also scheduled a protest for October 10<sup>th</sup>, 2012 in case their complaints did not have a favourable outcome (Verdade 2012).

With changes in the government in 2012 imminent, namely the nomination of then-Provincial Governor Alberto Vaquina to be prime minister, the situation saw a different outcome. The government and Rio Doce Moçambique Limitada initiated efforts to overcome this conflict (such as new negotiations) so as to avoid a situation with delicate political consequences (*ibid*). Director of the company, Ricardo Saad, admitted: “there are improvements to be made” to fix the houses given by the company to 750 families who were transferred (OPais 2012).

### c) The legal framework of land planning

An important finding from the Cateme group’s resettlement process has to do with the non-use of the **Land Planning Law** (2007) (LOT), the **Regulation of the Land Planning Law** (2008) and the **Directive about the Process of Expropriation for Planning Processes** (2010).

Application of the planning legislation is justified by two things; firstly, for special planning in the coal region for residence and resettlement of populations, for the many economic activities (mainly farming and livestock), and for implementing social facilities, among others. For this purpose, the government could have used the planning instruments in the **Land Planning Law** at various levels (national, provincial, district, and municipal). In this concrete case, in this particular region, planning is done at the central and provincial levels, as that is where plans for large plots of land are drawn up, giving priority to economic, social, and environmental activities for different regions in the country; also at the district and municipal level organizing the relationship between communities, natural resources and its physical spaces.

At the national level, there are general rules from the Planning Strategy, and norms and guidelines for provincial, district, and municipal planning that are compatible with sector policies in development planning (**Article 9, n.º 1, of LOT**). In the **Land Planning Law** terms, the planning instruments at the national level are: the **National Program for Land Development** (PNDT) and the **Special Plan for Spatial Planning** (PEOT) (**Article 10, n.º 2, Land Planning Law**).

With the impossibility of advancing to developing the **National Program for Land Development**, it was important to create a **Special Plan for Spatial Planning** for the Tete coal region and its respective corridors for transporting coal, so as to adequately organise the region before the wild race for land seen in the past years, which causes an enormous demand for land and increase in conflicts. The **PEOT** would need to ensure the identification and safeguarding of necessary areas for settlement of populations, especially for subsistence. In the end, the PEOT would achieve optimisation of interests arising from various economic activities so as to avoid excessive carbonisation of the regional economy.

In the **Land Planning Law** terms, the PEOT establishes the parameters and the conditions for use of areas with spatial, ecological, or economic continuity in the inter-provincial context, with the view to realising the following objectives:

- (i) Establish the parameters and conditions for using natural systems and areas with specific and different characteristics, or with supra-provincial spatial continuity, defined by their ecological characteristics, by economic parameters or social development, or even as a result of natural disasters which require special intervention at the national level; and
- (ii) Define the nature and limits of interventions of authorities of local and municipal organs, in the areas and geographic situations, or economic, where there may be mutual temporary or permanent influences (**Article 21, of the Land Planning Regulation, approved by Decree n.º 23/2008, de July 1<sup>st</sup>**).

#### **d) Just compensation**

The **Land Planning Law** established basic criteria for defining what is just compensation in the sequence of an expropriation action, public need or use, with the legal gap that characterised the current legislation. The **Land Planning Regulation** (2008) foresees the needed procedure for declaring and materialising expropriation for public interest, need, or use.

In this case, the defined rules were not observed for formalisation of expropriation, though in practice there was a situation of expropriation. One must note that the **Land Planning Regulation** (2008) came into force on October 1<sup>st</sup> 2008, thus, ninety days after publication of the Decree that approved it (**Article n. 3, Decree n.º 23/2008, July 1<sup>st</sup>**). In the meantime, the process of resettlement began in 2009; that is to say, some months after the legal instrument came into force.

One could formally justify this by saying that the legal framework for land planning was not applicable to this case, because it was not a case of a planning action translated into a physical plan, but rather the beginning of an activity for natural mineral extraction. However, such an argument is fallible because if the land planning legal framework is understood broadly, it is evident that it goes beyond mere physical planning. Basically the **Land Planning Law** is applicable any time there is reorganisation of a spatial territory, intervening in the relationship between people, natural resources, and the physical environment. Thus, using a material argument, the planning legal framework was applicable to this case. Additionally, criteria in the **Land Planning Law** and the regulation legislation were not observed for defining compensation. Its inclusion in the **Land Planning Law** was purposeful, which resulted in various conflicts in registered land in the country, worsened by payment of compensation that was very unjust.<sup>12</sup>

In light of the **Land Planning Law (Article 20, n.º 3, Land Planning Law)**, expropriation for interest, necessity, or public use gives space for payment of just compensation, in terms legally defined to be calculated to compensate, among others: loss of tangible goods (crops, property, improvements made in the expropriated areas) (**Article 1, Land Planning Law**); loss of intangible goods (roads and access to transportation) (**Article 1, Land Planning Law**); breaking

---

<sup>12</sup> We had the opportunity to work in the commission in the Ministry for Coordination of Environmental Affairs, with support from an FAO consultant. The commission was led by the architect José Forjaz and included the following lawyers: Fernando Cunha, André da Silva, and Carlos Serra.

social cohesion (increased distances of the new resettlement location to social structures and the habitual nuclear family, family cemeteries, medicinal plants) (**Article 1, Land Planning Law**); and loss of production goods.

In our understanding, implementation of the planning legal framework could have prevented the crisis situation and general dissatisfaction that occurred mainly due to the damage caused to the victims of the process, that is, the resettled communities of Cateme and 25 de Setembro.

#### **e) Government response: Regulation on the Resettlement Process as a Result of Economic Activities**

In response to criticism about how the resettlement of the people of Moatize was carried out, and to prevent similar situations in the future, the government approved the **Regulation on the Resettlement Process as a Result of Economic Activities** through Decree n. 31/2012, August 8<sup>th</sup> (published in the Republic's Bulletin, 1<sup>st</sup> Series – N.º 32, August 8<sup>th</sup> 2012).

This instrument considered that “the growing demand for natural resources in the country has come to dictate the need for physical space for implementation of economic projects, which implicate resettlement of people to other areas, without observing socioeconomic and cultural aspects”, and how this reality drove to the need to “normalise the process of resettlement” (**Preamble of Decree n.º 31/2012, of 8 of August**). It aims to establish basic rules and principles about the resettlement process that results from economic activities for public or private initiatives, carried out by a singular or a collective, national or foreign body, with the ultimate objective to promote quality of life for citizens and environmental protection (**Article 2.º of Regulation in the Process of Resettlement (2012)**).

The aforementioned Decree also created a **Technical Commission for Monitoring and Supervising Resettlement** as a multi-sectoral organ for technical assistance to the Minister overseeing the Land Planning, in this case, the Minister for Coordination of Environmental Affairs (**Article 2m Decree n.º 31/2012, August 8<sup>th</sup>**). This Minister has the mandate to designate the members of this Commission, as well as to nominate the president from among those members (**Article 3, Decree n.º 31/2012, August 8<sup>th</sup>**). The Commission integrates two members of the planning sector; a member of the local administration; a member from the public works and habitation sector; and one from the district government (**Article 6, n.º 1, of Regulation in the Process of Resettlement (2012)**). The Commission was reinforced with the participation in work sessions of representatives from other sectors, specialists, or individuals with merit (**Article 6, n.º 2, of Regulation in the Process of Resettlement (2012)**). In the terms of the Regulation of the Resettlement Process (2012), the Commission has these main functions:

- (i) Monitor, supervise, and give methodological recommendations about everything in the resettlement process;
- (ii) Provide technical opinion on resettlement plans;
- (iii) Produce monitoring and evaluation reports for the resettlement process, taking into account previously approved plans;

- (iv) Propose notification of the proponent of an activity to give clarification about the process of resettlement;
- (v) Produce an Internal Regulation proposal for the Commission; and
- (vi) Propose complementary norms for implementing the present Regulation (**Article 7, n.º 1, Regulation in the Process of Resettlement (2012)**).

Without jeopardising the mandate of the Technical Commission of Monitoring and Supervision, the legislator provided for five representatives from the affected population to participate in the resettlement process. Of these five, one came from civil society, three from community leaders, and two from the private sector. This group has the following objectives:

- (i) Mobilize and spread awareness to the population about the resettlement process;
- (ii) Intervene in all phases of the resettlement process;
- (iii) Spread awareness about the rights and obligations resulting from the resettlement process; and
- (iv) Communicate with competent authorities about any irregularities or illegalities detected during resettlement (**Article 8, Regulation in the Process of Resettlement (2012)**).

The legislator defined resettlement as “movement or transferring of affected people from one point in national territory to another, accompanied with restoration or creation of equal or better conditions” (**Article 1(j) of Regulation in the Process of Resettlement (2012)**). Basic rights were thus defined for those affected as:

- (i) Re-establishing income at an equal or superior level than previously;
- (ii) To be transported with one’s goods to the new residence;
- (iii) Living in a physical space that has infrastructure, with social facilities;
- (iv) Having space to practice subsistence activities; and
- (v) Giving opinions throughout the whole resettlement process.

There was clear concern in defining the content for minimum rights for affected communities and individuals through implementation of economic activities, so as to avoid bad situations, including those discussed in the current study. It was still a very careful perspective and minimalist, and not least with the prevision of the obligation to create equal conditions to those before resettlement. In a perspective that resettled communities are placed at the margins of the economic project, are not considered effective partners, side by side to the investor, and definitely losing the right to land which they occupied, would be a minimum to demand in this new condition.

## **f) Lessons**

Analysis of this case raises issues around how the State responded to investors’ land demands in general and/or mining operators in particular – highlighting that there is a definitive transfer of land rights from the occupants, with particular focus on the local communities, to third parties, i.e.,- the private operators.

In our understanding, the definitive transfer of land rights constitutes a non-adequate modality for the Mozambican reality; knowing that once the mineral resources are exhausted, the abandoned land goes back to the State and not the local communities who once had the rights to that land through occupation. There is also the assumption that after mining operators depart, the local communities will reclaim their historic rights over that land, regardless of time passed. Mining exploitation should not automatically mean the definitive transferral of land rights to the investor. Instead, if communities traditionally own these lands, they should retain the land rights and benefit from any mining income.

The State should explore the possibility of opting for a model of temporary transfer of land rights, whether by a contract of ceasing of exploitation, provided for in the **Land Law (1998)**. This model would allow the communities to maintain their respective historic rights over occupied land according to foreseen legal norms, recovering them immediately after the mining investor leaves, when the mineral resources are exhausted or for any other reason, but also establishing a more balanced relationship between investors and local communities. Such a model would open a window for communities to benefit in a real and significant way, through payment of a monetary amount whose conditions of payment would be properly negotiated and agreed upon by the parties involved. Even further, in a scenario where local people are viewed as equals, they could be considered real partners of the investment project, contributing to that business with land resources.

Another aspect needing further consideration is the definition of just compensation. This issue constitutes a challenge in driving the resettlement process.

Also at issue is the State's distance in directing the process under discussion. Vale was the responsible party for driving operations that culminated in a resettlement that was poorly carried out. That situation, however, was exacerbated by the poor level of monitoring and supervision functions of various operations that led to a climate of discontent, followed by protests and violent actions perpetrated by police forces. From the beginning, the resettlement process was badly driven, with many successive irregularities, which culminated in the breach of agreements and commitments made for a just and decent resettlement as stated in the law.

## REFERENCES

ALMEIDA, Irene et al (2010), *Manual para Paralegais na Área dos Recursos Naturais, Ambiente e Desenvolvimento*, Maputo, CFJJ/FAO.

ASSOCIAÇÃO DE COMÉRCIO E INDÚSTRIA (2012), *Legal Framework for Recognizing and Acquiring Rights to Rural Land in Mozambique – A Guide to Legalizing Land-Holding*, Maputo.

BALEIRA, Sérgio (2012), “Como Usar a Gestão e Administração de Terras para a Promoção do Desenvolvimento Sustentável”, *Sociedade e Justiça*, n.º 3, Maputo, Centro de Formação Jurídica e Judiciária.

BALEIRA, Sérgio (2012), “O programa de recursos naturais e desenvolvimento do CFJJ - Experiências, Impacto e Desafios”, *Edição Comemorativa dos 10 Anos do CFJJ*, Maputo, CFJJ, 2012.

BALEIRA, Sérgio/SAMO, Saturnino (2010), *Protecção Jurídica dos Direitos de Uso e Aproveitamento da Terra das Comunidades Locais*, relatório não publicado, Matola, Centro de Formação Jurídica e Judiciária.

BERNARDINO, Tomas (2003), “As Causas de Perda de Direitos na Actual Legislação de Terras”, *Aspectos Jurídicos, Económicos e Sociais do Uso e Aproveitamento da Terra* (Coordenação de Gilles Cistac e Eduardo Chiziane), Maputo, UEM, Imprensa Universitária.

BERNARDINO, Tomas (2007), *Transmissibilidade do DUAT*, Apresentação por ocasião da Conferência Comemorativa dos 10 Anos da Lei de Terras, realizada em Maputo, de 17 a 19 de Outubro de 2007.

CALENGO, André Jaime (2005), *Lei de Terras Comentada e Anotada*, Maputo, Centro de Formação Jurídica e Judiciária.

CALENGO, André Jaime (2007), *O Debate Actual sobre a Terra em Moçambique – Notas Introdutórias*, Apresentação por ocasião da Conferência Comemorativa dos 10 Anos da Lei de Terras, realizada em Maputo, de 17 a 19 de Outubro de 2007.

CANALMOZ (2012). Located at <http://www.canalmoz.co.mz/hoje/21092-comunidades-reassentadas-paralisam-actividades-da-vale-mocambique.html>. Accessed on October 22nd 2012.

CENTRO TERRA VIVA (2009), *Activities Report for the Tchuma Tchato Program*, Maputo

CHIDIAMASSAMBA, Catarina (2010), *Estágio Actual de Funcionamento do Programa Tchuma Tchato*, Maputo, KSM, AMBERO e ATCF

CHIZIANE, Eduardo (2011), *O Retorno à Concentração e Centralização do Poder Administrativo em Moçambique*, Maputo, Kapicua.

COMMUNITY LAND INITIATIVE (2012), Mágoè Visit Report – Tchuma Tchato Program (10th to 13th of July), not published, ITC, p. 3.

CULTURAL DIVERSITY TOOLKIT (2014). Available at:  
<http://mozambique.smetoolkit.org/mozambique/pt/content/pt/8785/A-diversidade-cultural-de-Moçambique>. Accessed on 3 March 2014

DE WIT, Paul, NORFOLK, Simon (2010), *Reconhecer Direitos sobre Recursos Naturais em Moçambique*, Documento de trabalho para a Rights and Resources Initiative.

FERRÃO, Jorge (2010), *A Convenção sobre a Diversidade Biológica – Gestão comunitária dos recursos naturais na África Austral*, Maputo, Coleção Ciência, Texto Editores.

FILIMÃO, Estêvão, MANSUR, Eduardo, and NAMANHA, Luis (2000), Tchuma Tchato: a evolving experience of community-based natural resources management in Mozambique, FAO;

FUMO, Joaquim (2007), “Da Política de Guarda-Chuva ao Reconhecimento Minimalista das Autoridades Comunitárias”, *O Reconhecimento pelo Estado das Autoridades Tradicionais e da Participação Pública* (organização de Helene Maria Kyed, Lars Buur e Teresinha da Silva), Direito em Sociedade, n.º 2, Maputo, Centro de Formação Jurídica e Judiciária.

JOSÉ, André Cristiano (2007), “Autoridades Arditas e Democracia em Moçambique”, *O Reconhecimento pelo Estado das Autoridades Tradicionais e da Participação Pública* (organização de Helene Maria Kyed, Lars Buur e Teresinha da Silva), Direito em Sociedade, n.º 2, Maputo, Centro de Formação Jurídica e Judiciária.

KNIGHT, Rachael (2003), *Camponeses Realities: Their Experiences and Perceptions of the 1997 Land Law*, In.  
[http://www.mokoro.co.uk/files/13/file/lria/camponeses\\_realities\\_mozambique.pdf/](http://www.mokoro.co.uk/files/13/file/lria/camponeses_realities_mozambique.pdf/)

MOZAMBIQUE NOTÍCIAS 2013: See:  
[http://www.portaldogoverno.gov.mz/noticias/news\\_folder\\_econom\\_neg/setembro-de-2013/producao-de-recursos-minerais-cresceu-34-por-cento-em-2013/?searchterm=Recursos%20Minerais%20e%20Energia](http://www.portaldogoverno.gov.mz/noticias/news_folder_econom_neg/setembro-de-2013/producao-de-recursos-minerais-cresceu-34-por-cento-em-2013/?searchterm=Recursos%20Minerais%20e%20Energia).

NEGRÃO, José (2002), “A indispensável terra africana para o aumento da riqueza dos pobres”, *Oficina do Centro de Estudos Sociais*, n.º 179, Coimbra, Universidade de Coimbra.

NHANTUMBO, Isilda, MACQUEEN, Duncan (2002), *Direitos das Comunidades: Realidade ou Retórica*, Maputo, DNFFB/DFID/IIED.



NHANTUMBO, Isilda, SALOMÃO, Alda (2010), *Biofuels, land access and rural livelihoods in Mozambique*, London, IIED/Centro Terra Viva.

NORFOLK, Simon (2004), "Examining access to natural resources and linkages to sustainable livelihoods – A case study of Mozambique", *LEP Working Paper n.º 17*, FAO.

OAKLAND INSTITUTE (2011), *Understanding Land Investment Deals in Africa – Country report: Mozambique*, USA, Oakland, Oakland Institute.

OPAIS 2012. <http://www.opais.co.mz/index.php/sociedade/45-sociedade/19826-vale-admite-erros-em-cateme.html> Accessed on October 22nd 2012.

ORAM (2007), *Comunicação da ORAM por ocasião da passagem dos 10 Anos da Lei de Terras*, Maputo.

ORAM (2010), *Documento apresentado na Reunião Nacional sobre Delimitação de Terras Comunitárias*, Maputo.

SALOMÃO, Alda, MATOSE, Frank (2007), *Towards community-based forest management of miombo woodlands in Mozambique*.

SERRA, Carlos Manuel (2014), *Estado, Pluralismo Jurídico e Recursos Naturais*, Maputo, Escolar Editora.

SERRA, Carlos Manuel et al (2012), *1.º Relatório de Boa Governança na Gestão Ambiental e dos Recursos Naturais em Moçambique 2010 - 2011* (coordenação de Alda Salomão e Carlos Serra), Maputo, Centro Terra Viva.

SERRA, Carlos Manuel, TANNER, Christopher (2008), "Legal empowerment to secure and use land and resource rights in Mozambique", *Legal Empowerment in Practice – Using legal tools to secure land rights in Africa* (edited by Lorenzo Cotula and Paul Mathieu), London, IIED/FAO, 2008.

SERRA, Carlos Manuel, CHICUE, Jorge (2005), *Lei de Florestas e Fauna Bravia Comentada*, Maputo, Centro de Formação Jurídica e Judiciária.

SERRA, Carlos Manuel, CUNHA, Fernando (2008), *Manual de Direito do Ambiente*, 2.ª Edição, Maputo, Centro de Formação Jurídica e Judiciária.

SITOE, A. Almeida, GUEDES, Benard S., SITOE, Sílvia N. D. Maússe (2007), *Avaliação dos modelos de manejo comunitário de recursos naturais em Moçambique*, Maputo, Ministério da Agricultura/FAO, Faculdade de Agronomia e Engenharia Florestal.

Summary Document 2007. Summary of the 19th Ordinary Session of the Council of Ministers, held on June 24th, 2007.

TANNER, Christopher (2011), “Chapter 4 – Mozambique”, *Decentralized Land Governance: Case studies and local voices from Botswana, Madagascar and Mozambique*, Cape Town, University of the Western Cape, EMS Faculty, School of Government, Institute for Poverty, Land and Agrarian Studies.

TANNER, Christopher (2013), “Valorizar a terra em Moçambique: um processo inclusivo ou divisivo?”, *Dinâmicas da Ocupação e Uso da Terra em Moçambique*, Maputo, Observatório do Meio Rural, Escolar Editora, pp. 132 – 152.

TANNER, Christopher, BALEIRA, Sérgio (Coordenação) (2004), *Conflitos de Terra, Ambiente e Florestas e Fauna Bravia*, Matola, Centro de Formação Jurídica e Judiciária/FAO.

TANNER, Christopher, BALEIRA, Sérgio, NORFOLK, Simon, CAU, Boaventura, ASSULAI, Janete (2006), “Making rights a reality: Participation in practice and lessons learned in Mozambique”, *LSP Working Paper 27*, Rome, FAO.

TANNER, Christopher/BALEIRA, Sérgio (2009), *O quadro legal de acesso aos recursos naturais em Moçambique: o impacto das novas legislação e das consultas comunitárias sobre as condições de vida locais*, Sociedade e Justiça, Volume I, Maputo, Centro de Formação Jurídica e Judiciária.

Verdade 2012. <http://www.verdade.co.mz/nacional/31365-tete-reassentados-da-vale-em-erupcao-silenciosa>. Accessed on 22 October 2012.

VOA 2014. <http://www.voaportugues.com/content/moz-human-rights/1503203.html> Accessed March 8, 2014.