

Examining access to natural resources and linkages to sustainable livelihoods

A case study of Mozambique



Simon Norfolk

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FOOD AND AGRICULTURE ORGANIZATION OF THE UNITED NATIONS

Livelihood Support Programme (LSP)

An inter-departmental programme for improving support for enhancing livelihoods of the rural poor.

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The cover photograph shows people at a meeting on the delimitation
and titling of their community land under the new Land Law.

Photo by Stefano Gasparini

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views of FAO.

The Livelihood Support Programme

The Livelihood Support Programme (LSP) evolved from the belief that FAO could have a greater impact on reducing poverty and food insecurity, if its wealth of talent and experience were integrated into a more flexible and demand-responsive team approach.

The LSP works through teams of FAO staff members, who are attracted to specific themes being worked on in a sustainable livelihoods context. These cross-departmental and cross-disciplinary teams act to integrate sustainable livelihoods principles in FAO's work, at headquarters and in the field. These approaches build on experiences within FAO and other development agencies.

The programme is functioning as a testing ground for both team approaches and sustainable livelihoods principles.

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Access to natural resources sub-programme

Access by the poor to natural resources (land, forests, water, fisheries, pastures, etc.), is essential for sustainable poverty reduction. The livelihoods of rural people without access, or with very limited access to natural resources are vulnerable because they have difficulty in obtaining food, accumulating other assets, and recuperating after natural or market shocks or misfortunes.

The main goal of this sub-programme is to build stakeholder capacity to improve poor people's access to natural resources through the application of sustainable livelihood approaches. The sub-programme is working in the following thematic areas:

1. *Sustainable livelihood approaches in the context of access to different natural resources*
2. *Access to natural resources and making rights real*
3. *Livelihoods and access to natural resources in a rapidly changing world*

This paper contributes to the second thematic area by analysing the extent to which Mozambique's recent regulatory changes to natural resource access and management have had their intended effect and identifies issues that require further attention.

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1. INTRODUCTION

Since the adoption of a new Constitution in 1990 and the signing of the peace accord in 1992, Mozambique has witnessed a period of rapid regulatory change in respect to the rules that govern the ownership and rights of use of a range of natural resources. There are new laws and regulations in place that govern access to and beneficial use of land, forest and mineral resources and a new environmental framework law.

This regulatory change has taken place within the context of an official overarching concern with the reduction of absolute poverty in the country, which still exhibits some of the highest incidence levels of rural poverty in the world. A sector wide support programme for agriculture and rural development, PROAGRI (in place since 1999), and the Poverty Reduction Strategy and Plan (adopted in 2002), have both established principles and priorities in respect to natural resource usage that are intended to ensure a reduction in the vulnerability and an improvement in the livelihoods of the rural poor.

FAO has been involved in providing assistance to the recent policy development processes in Mozambique, particularly in respect to the land and forestry sectors. There are ongoing FAO projects in land administration, community forestry, territorial planning, food security and judicial training, all of which are concerned with or affected by the policies, institutions and processes that impact upon access to natural resources by the poor.

At a global level FAO also has a sub-programme on building stakeholder capacity to improve access to natural resources, through the identification and development of appropriate pro-poor policy and legal environments. This sub-programme has now identified the need for an analysis of the links between access to natural resources and livelihood strategies of the poor in Mozambique, particularly in the context of the recent policy and legal initiatives.

Approach and focus of the paper

The overall purpose of the paper is to analyse the extent to which the regulatory changes to natural resource access and management have had their intended effect and to identify and explore the critical issues that require further attention.

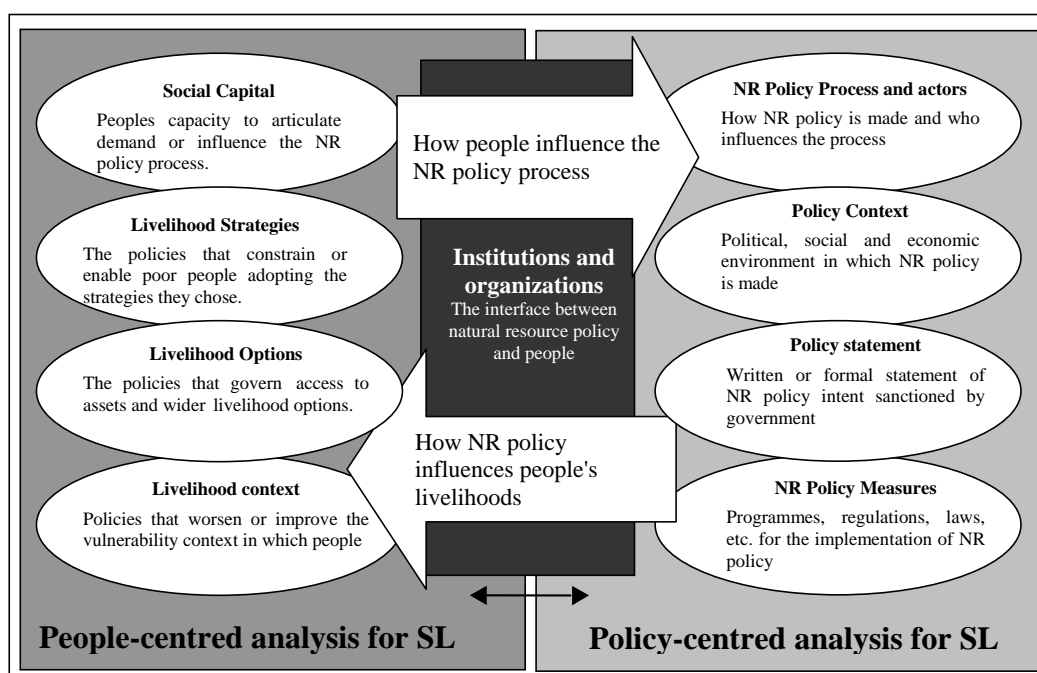
A livelihoods approach to this analysis assists in understanding the following key aspects:

- the extent to which the voice of the rural poor has been and can be included within policy formulation and decision-making processes around natural resource management;
- the extent to which the rural poor are able to make claims upon and capitalise from new opportunities created by the policies;
- the extent to which the policies and/or implementation initiatives are having differential impacts upon different segments of the rural population (i.e. the extent to which the implementation of the various policies is supporting or undermining the livelihood strategies of the poorest members of the population);

- the impact of the differing interpretations accorded to new policy concepts and legal tools by the various mediating institutions and processes that interface with poor peoples' access to natural resources (including government, non-government, community and 'traditional' institutions); and,
- the effect that new policies and approaches may be having on the nature of disputes related to natural resource access or control and the extent to which these changes are supportive of or detrimental to peoples' livelihoods.

The figure below, adapted from "Tools for Sustainable Livelihoods: Policy Analysis" (IDS, 2000), shows the important components for analysis of natural resource policies from a livelihoods perspective.

Figure 1 Livelihoods analysis components



2. SETTING THE SCENE

Mozambique became an independent state in 1975 after an armed struggle waged against the Portuguese colonial state that lasted over 10 years. In 1977, the ruling FRELIMO party declared itself a Marxist Leninist Party and embarked upon a modernization campaign that exhibited the classic characteristics of a Marxist model of development. The legacy left to Mozambique at the time was characterized by extreme underdevelopment of most rural areas and an externally focused economy that was dominated by the provision of transport routes, tourism services and migrant labour to neighbouring countries in the region. FRELIMO sought to sweep away this legacy by taking command of the economy, setting production quotas for all sectors and running the former colonial farms and plantations as large scale state enterprises.

The ensuing period, between 1977 and 1987, was an “intense but brief” phase of building a centrally-planned economy. As a result of the relative brevity of this period, the rural economy remained pretty much in its pre-independence state (Wuyts, 2001). Although drastic changes took place in the ownership of land (with state farms replacing colonial plantations and settler farms), the conditions under which most of the rural population operated remained the same, particularly in relation to the relative importance to their livelihoods of off-farm incomes and subsistence production.

The approach taken during the era of central planning, which treated the rural population as a homogenous group of subsistence producers operating outside of the cash economy, failed to capture the complexity of rural peoples’ livelihoods. Remittances from migrant, seasonal and casual labour occupied (and continue to do so) a significant part of the livelihoods of many of the rural population, albeit to different extents in different parts of the country¹. The model of a homogenous peasantry remains dominant, however, in the post central-planning phase of reform and reconstruction, though it now comprises a mass of “smallholder producers” rather than “subsistence producers”. The existence of this homogenous peasantry is largely a fiction; on the contrary, the picture is highly heterogeneous. Livelihoods are constructed from various survival strategies and diverse forms of “income-gathering” (Tanner, 1986). The difficulty of analysing rural livelihoods, understanding the characteristics of the rural poor and the mechanisms that may be needed to improve their conditions lie precisely in this complexity (Pontera, 1999).

This paper shows how most rural livelihoods in Mozambique, while highly dependent on access to natural resources, are not constructed on the “narrow” use of land for cultivation. It examines the extent to which new natural resource policies in Mozambique have taken cognisance of this diversity and looks at some of the initial evidence of the impact of these policies. It advances the proposition that some of the initial gains made from policy developments in the land sector, which were cognisant of livelihood diversity amongst the rural poor in Mozambique, may now be being rolled back by more narrowly constructed policy narratives in respect to the forms of access and rights frameworks of other natural resources and other sector legislation.

¹ “We no longer see a clear divide between household subsistence production and migrant wage-labour. Rather we see people in rural households combining food production with diverse ways of generating income - brewing, making charcoal, repairing shoes, queuing for food aid, doing casual wage-labour, receiving remittances and pension payments, selling livestock”. (O’Laughlin, 2001)

2.1 Rural livelihoods in context

Over the past 30 years Mozambique has suffered long periods of disruption as a result of the war, severe drought and extensive flooding. As a result it remains one of the poorest countries in the world. It has a Human Development Index of 170th of 173 countries globally in 2001, with a life expectancy at birth of 39 years on average and literacy rates of 44 percent. Those living on less than US\$ 1 per day form 38 percent of the population and almost 80 percent survive on less than US\$ 2 per day (UNDP, 2003). The spatial distribution of poverty is not uniform: on aggregate, poverty is more predominant in the centre of the country and less so in the north and south and there are significant differences between provinces.

Mozambique remains heavily dependent on the international donor community with the net disbursement of ODA in 2001 totalling US\$934.8 million (US\$51 per capita).

The vulnerability context of rural livelihoods

Major changes have occurred in the context in which rural livelihoods have been constructed in Mozambique over the last 20 years, many of which have enhanced the vulnerability of the majority of the rural population. These changes have impacted upon the natural, physical and social capital that is available to the rural poor. They include the widespread destruction of the war, the introduction of economic structural adjustment policies, the advent of market forces and a liberalized economy at the end of the war, the increasing onset of a severe HIV/AIDS epidemic, prolonged periods of drought and more recently, devastating floods and climatic events.

Smallholder farmers face a range of hazards that pose a threat to their productivity and farm-based livelihood strategies. These hazards include declining soil fertility through the practise of slash and burn agriculture. There are significant threats to crops and livestock from disease, insect infestations, weeds and storage pests². Cattle and goats were decimated by the war, and as populations recover, there are concerns about the capacity of veterinary support services. External shocks such as global commodity price volatility and the continuing shrinkage in migrant labour opportunities in South Africa have the potential to significantly reduce rural incomes.

Other threats include flood and drought. The most vulnerable areas to drought are those in the central and southern parts of the country (Maputo, Gaza, Inhambane, northern Manica and southern Tete). It is estimated that around 60 percent of the country has a probability higher than 30 percent of drought occurrence. Flood risk affects over 1.7 million hectares at an altitude of less than 20 meters above sea level and within 10 kilometres from the principal hydro-basins. The areas at most risk of flood are those around the Zambezi, Pungue and Buzi rivers, and, to a lesser extent, those surrounding the Limpopo and Incomati [GOM 1998a].

Mozambique's agricultural sector has suffered from several changes in direction since independence, as well as the massive disruption from the war. At the end of the war, the severe lack of basic services and rural infrastructure was a binding constraint on

² Another reinforcing feature of poverty is the weak intensity of use of productive inputs. "There is negligible use of fertilisers, mechanical tools or animal draught power and, while this makes labour power particularly critical to agricultural reproduction, household labour supply is limited by prevailing household structure." (Cramer & Pontara, 1997, p. 9)

agricultural growth. Many rural areas with large populations and considerable agricultural potential continue today to have extremely difficult access to the national road network. The IMF review of implementation of the PARPA³ in 2003 stated that the “nationwide coverage of transitable highways is still fragile, however, which has discouraged private-sector investment and slowed the development of rural markets for agricultural inputs and products” (IMF, 2003).

Rural trading is therefore beset with problems of transport availability, at costs that make Mozambican trading comparatively disadvantaged. A number of studies have identified market access and prices as the most important determinant for agricultural production. Physical capital in the form of the network of small stores (cantinas) that existed during the colonial period has been decimated – these used to offer the option of bartering agricultural produce for consumer goods and agricultural inputs, and provided an important bulking-up function. They may also have offered small-scale production or consumption credit to local people. Now, many farmers have to travel long-distances to local markets where their bargaining position is weak.

Since the mid-1990s state farms land was distributed to private enterprises and, to a much lesser extent, smallholders. Many of the state-operated farms near to the major population centres were occupied during the war by displaced people, often with the permission and encouragement of the authorities. These land holdings have been returned to the now privatised companies that formerly operated them or to new entrants to the scene, leading to the loss of land, trees and other resources that had formed a major part of rural peoples’ war-time livelihood strategies. Many of the companies have little capital and investment potential, however, and the land holdings in many cases are being held for speculative rather than productive reasons.

HIV prevalence rates were estimated at 12.2 percent in 2000, with the highest rates in the Central region (INE, 2002). The impact over the coming years is likely to enhance the vulnerability levels of many households, as families are affected by illness. Some families are likely to lose land, or to get much less benefit from the land than was assumed. The burden of care for family members who fall ill will largely be placed upon female members of the household, who are also predominantly those involved in agricultural production. Family savings will be consumed and assets sold to help pay for medical expenses. Farm-land utilization is likely to decline as the inputs become unaffordable and the household labour supply is reduced (Drimie, 2002). Land rights of women may also become increasingly insecure under patriarchal customary tenure systems (which predominate in Mozambique, despite their nominal unconstitutionality in this respect); widows may be required to return to their own families and lose the land that they had access to whilst married.

It is noticeable that the higher rates of infection also coincide with those areas where there is most competition for land; the major international transport corridors and the peri-urban areas (ibid). In addition, AIDS has already begun to affect the people working within land and natural resource administrations and related institutions as well as those involved in the supply of essential goods and services or those that provide markets. The implications for institutional capacity to carry out functions will be several: impacts in terms of productivity, on finances and on human resources.

³ The Portuguese acronym for the Poverty Reduction Strategy & Plan.

Box 1: The country at a glance

Mozambique covers a surface area of 799,380 kilometres. The climate is predominantly tropical although sub-climates exist as a result of topographical differences. Three broad landscapes can be distinguished within the country: the coastal plains along the length of the country that raise to 200 metres above sea level and cover 44 percent of the territory; the central and northern plateaux (200 to 400 metres), which cover 43 percent of the territory; and the great plateaux and mountain ranges (over 1000 metres), situated in the interior, covering the remaining 13 percent of the territory. Rainfall is far higher and less erratic in the central and northern regions where the majority of agricultural production is concentrated.

Natural resource use as part of livelihood strategies

*In some cases, like the 200 families of the Djabula village in Matutuine District, near Maputo, forest products represent 93 percent of their average yearly income of around 500 US dollars per family (63 percent from charcoal, 30 percent from traditional drinks made from the palm *Hyphaene sp*) (Pereira & Cossa, 2001).*

Mozambique is essentially an agriculture-based economy⁴ and the contribution of agriculture, at almost 28 percent of GDP in 1999, is believed to be substantially underestimated in official statistics. More than 75 percent of the population is employed in the agricultural sector⁵. It is estimated that of the total land area of 78.6 million ha, about 46 percent (36 million hectares) are considered suitable for arable use. However, in 1996, only some 3.4 million ha, or about 10 percent of the arable land, were estimated to be cultivated (ADB, 1996).

The war resulted in increased pressure on land near major towns of the coastal zones and safe rural areas, but out-migration to areas of origin has since occurred. With improvements to rural security and the tertiary road network has come increasing clearance of land for cultivation. Of the total area cultivated, it is estimated that about 90 percent is under production systems of the so-called “family sector”. The remainder is used by other agents: agribusiness firms (particularly sugar, tea and cotton) state/private joint ventures, cooperatives and private individual farmers. Most agriculture is rain-fed, and in the southern and central provinces of Mozambique rain falls erratically and most of it only during a short period of the year.

The use of natural resources in livelihood strategies is not limited to agriculture and the full-time cultivation of land, i.e. the low level of land that is cultivated paints a false picture of the actual area that is important to the rural poor. Other natural resources are collected, processed and/or marketed by many families, either as a predominant activity or as part of a diversified portfolio of livelihood strategies designed to spread and minimize specific risks. These include resources such as bush meat, honey, clay, roots and tubers, medicinal plants, building materials, thatching

⁴ Article 39(1) of the Constitution states that: “In the Republic of Mozambique agriculture is the basis of national development”

⁵ Smallholder agriculture as a whole employs 63 percent of men and 92 percent of women in the labour force and represents more than 80 percent of agricultural production value, contributing 25 percent to GDP (Braathen and Palmero, 2001).

grass, firewood and the production of charcoal and salt. Forests, in particular, provide a range of resources central to peoples' livelihoods. The majority of the population remains in settlements dispersed widely throughout the country's forests. This is in marked contrast to other African countries, where colonial policy had been to relocate people from the forests to roadside communities. The effect in Mozambique is that a much higher percentage of the population lives in isolated forest communities that are directly dependent on access to surrounding forest resources and the health of forest ecosystems for survival. Mozambicans rely on woody biomass, for example, for nearly 85 percent of their total energy consumption.

Moreover, most of the population lives within a 40 kilometre wide coastal strip extending over 2,000 kms, making artisanal coastal fishing a major livelihood strategy for a huge part of the population. The main freshwater fishery in central and northern Mozambique is Lago Niassa (Lake Malawi). There are also a number of major rivers (e.g. Rovuma, Zambezi) which also host significant fisheries resources (although in some cases these are in decline due to destructive fishing techniques), and fishing in smaller rivers and water sources is also prevalent. The Sofala Bank (a wide extension of the continental shelf fed by the Zambezi delta) extends from Beira in Sofala along Zambézia to Nampula in the north. This fishery is rich in prawns. Inland fishing in rivers and lakes and the production of dried fish will very often be part of rural people's subsistence or informal commercial activities (SLSA, 2003). It is estimated that direct employment in this sector provides for up to 80,000 jobs.

In contrast to other countries in the region, there are far fewer other opportunities for cash-earning activities and consequently a much higher reliance upon agriculture, alongside hunting, fishing and the gathering of other natural resources for sale (ibid). Although remittances from migrant, seasonal and casual labour are important elements of many livelihood portfolios⁶, many of these opportunities are in turn linked to the provision of agricultural labour (except in the case of migrants to the mines of South Africa, which is a phenomenon that is decreasing as the labour demands from this sector contract). In many rural areas the only opportunities for the provision of paid labour are through the system known as *ganho-ganho*, where services, usually for the heavy work of clearing previously uncultivated land, are provided to families that are able to provide remuneration in the form of consumer items unavailable on the local markets, food, beer and, less commonly, cash. It has been estimated that less than 20 percent of rural households use hired labour (Cramer & Pontara, 1997).

Even those livelihood strategies that include involvement in local crafts and trades, which in some areas have assumed an international dimension, are heavily based on access to natural resources. Charcoal and salt production, basket and mat making, beer and spirit production, carpentry, pottery and blacksmithing all rely upon local natural resource availability. Natural resources also play a major part in the coping strategies that people adopt during times of crisis or shocks.

⁶ Unfortunately, there is very little data available as to the relative contributions to the total income of a family unit from the various livelihood strategies.

2.2 Background to policy development processes and an overview of existing policy and institutions

Constitutional principles of importance to natural resource policies

A constitutional debate was initiated in 1990, largely as a result of decisions taken at the 5th FRELIMO Party Congress. As a result of this debate, a new Constitution was approved in November 1990; several important changes to the Constitution related to natural resource ownership and related principles of use and management (see Box 2).

Box 2: Constitutional principles relating to natural resource ownership and use

Article 35

“1. The ownership of natural resources located in the soil and the subsoil, in interior and territorial waters, on the continental shelf, and in the exclusive economic zone is vested in the state.

2. The public domain of the state shall also include:

- a) the maritime zone;
- b) the airspace;
- c) archaeological heritage;
- d) nature conservation zones;
- e) hydro-power resources;
- f) energy resources;
- g) other property and assets classified as such by law.”

Article 36

“The state shall, with regard to the national interest, promote the inventory, the knowledge and the development of natural resources and shall determine the conditions for their use and enjoyment.”

Article 37

“The state shall promote efforts to guarantee the ecological balance and the conservation and preservation of the environment for the betterment of the quality of life of its citizens.”

Article 48

“In granting titles for the use and enjoyment of land, the State shall recognize and protect rights acquired through inheritance or occupation, unless there is a legal reservation or the land has been legally attributed to another person or entity.”

The first article of Chapter 4 (Economic and Social Organization) in the Mozambican Constitution is Article 35, which deals with the public domain of the state and entrenches the concept that the state is the paramount owner of the natural resources occurring within its territorial limits⁷. The Constitution recognises the obligation of the state, in the national interest, to develop the natural resources of which it is the paramount owner and to determine the conditions under which citizens (and others) may access these resources for their use and enjoyment.

⁷ Later in the Constitution, symbolic weight is given to the value and ownership of these resources by the description of the significance of two of the colours that appear in the national flag: green is stated to represent the riches of the soil and gold the riches of the subsoil, Article 193 [Constitution of Mozambique, 1990] Note: all translations in this section are sourced from the English language version of the Mozambican constitution available at <http://www.urich.edu/~jppjones/confinder/const.htm>

The constitution is unequivocal in its stipulation that land ownership is vested in the state and that no land may be sold, mortgaged, or otherwise encumbered or alienated⁸. However, the same provision also stipulates that the use and enjoyment of land shall be the right of all the Mozambican people⁹. The conditions under which citizens may enjoy such rights are the prerogative of the state, which is constitutionally obliged to develop specific laws governing these conditions.

The constitution also introduces qualifications and limitations on the eventual content and nature of these conditions (or mechanisms of access). First, it stipulates that rights of use and enjoyment may be granted to individual or collective persons, *taking into account its social purpose*. Second, there is a constitutional directive to the effect that direct users and producers must be afforded priority and that the laws developed by the state may not permit use and benefit rights of land to be used to favour situations of economic domination or privilege to the detriment of the majority of citizens¹⁰.

Most importantly, however, the 1990 constitution obliged the state, for the first time, to recognise rights acquired through inheritance or occupation¹¹. It was this amendment that heralded the subsequent revision of the land law and led to the legal recognition of customary and other rights to land. Mozambicans had, through this amendment, finally ceased to be squatters in their own country.

Policy formulation processes in natural resource sectors

Land

The process of developing the 1995 national land policy and the main elements that emerged in this and the subsequent legal instruments have been well described elsewhere (see J. Negrão, 2000, C Tanner, 2002, Norfolk et al, 2001a). It is important to note briefly, however, some of the elements of the process that have led to its being held up as a model in consultation and consensus-seeking amongst diverse groups within Mozambican society, and praised in particular for the space that was created during the process for the voice of the poor and the marginalized.

First, the policy development process was lead by an Inter-Ministerial Land Commission¹² created by statute and involving 9 separate Ministries and coordinated by a Technical Secretariat. Meetings of the Technical Secretariat were attended by organizations representative of diverse interest groups: The *Associação Rural de Ajuda Mútua* (ORAM, Rural Association for Mutual Assistance), the *União Nacional dos Camponeses* (UNAC, National Peasants Union), church-based groups, national academic institutions, the private sector and land specialists. ORAM and UNAC enjoyed the status of “permanent invited members” to the Technical Secretariat. This structuring of the policy development process meant that non-governmental organizations were involved for the first time in legal reforms. Indeed the 1996 National Land Conference to discuss the draft law, involving 200 participants from government, private sector, aid agencies, academics and international and national

⁸ Article 46 (i) and (ii) [ibid]

⁹ Article 46 (iii) [ibid]

¹⁰ Article 47 (iii) [ibid]

¹¹ Article 48 [ibid]

¹² Full name: *Comissão Inter-Ministerial para a Revisão da Lei de Terras* - the Inter Ministerial Commission for Revision of the Land Law.

NGOs has been called “...an exercise in democratic participation hard to equal...anywhere, north or south” (Tanner, 2001, quoted by Kanji et al, 2002).

Second, a broad-based campaign to raise public awareness and understanding was undertaken by some 200 different NGOs, churches, associations and cooperatives and appropriate and well-targeted materials were developed to put across the messages of the campaign (see also 4.2 below for further details).

Third, the important implementation elements of the new law, contained within the Technical Annex, were subjected to an iterative process of action-learning by the piloting of some of the procedures in the field. Further important elements that contributed to the development of the new law are identified in Box 3.

Box 3: Critical factors in the development of the new Land Law in Mozambique

1. Political liberalization, increasing freedom of speech and of the press allowed NGOs to influence land policy. It was possible to criticise draft versions of the land law in public without fear of reprisals. Freedom of the press allowed opposing voices to be heard and citizens to be informed of different arguments.
2. In the process of formulation, discussion and approval of the new land law and its regulations, the broad alliance between sections of government, parliament, religious institutions, NGOs, academics and donors was a critical factor in its success.
3. The churches were important and active in this process, promoting dialogue between FRELIMO and RENAMO, establishing the Diocesan Lands Committees, and supporting the creation of the NGO ORAM to defend the rights and interests of communities.
4. The Latin American experience of agrarian reform positively influenced the Mozambican land reform process. Some individuals - religious persons, academics, and representatives of development agencies and consultants of the United Nations system - were from Latin America and had particular knowledge of and sensitivity to land issues.
5. The fact that individual academics and leaders of non-governmental organizations were respected and recognised for being honest was vital to the success of their advocacy. These leaders were able to engage with different interest groups while maintaining their commitment to promoting land rights for the majority. They were not members of either of the main political parties.

Source: Kanji et al, 2002

However, since the disbanding of the Inter-Ministerial Commission there has been a considerable reduction in the extent to which further important aspects of policy development and implementation are subjected to consultative and participatory processes. Often the high-level policy, laws and regulations require additional legal, statutory or bureaucratic instruments to be put in place and the content of these can have an impact upon the effectiveness of the policy and laws themselves. Often, however, the development of these instruments is not subjected to the same level of consultation with and examination by stakeholders and particularly not by those outside of the government agencies.

Thus, for example, the Norms and Instructions of the *Direcção Nacional de Geografia e Cadastro*¹³ (DINAGECA) is an internal operating manual used by this directorate to guide the work of its technicians and to lay down technical procedures. In referring to the legislated requirement to submit land applications to community consultation processes, the document contains this sentence:

*“It is necessary to return the pending applications to consultations with communities, but certainly we ought to open an exception for the case of areas that are less and not greater than 10 hectares”*¹⁴.

Other documents, formats, procedures and operating policies also have the potential to detract from the principles in the policy and law. These include the format and the nature of the community land certificates that are issued after a land delimitation is completed, the procedures adopted for the community consultations (and departmental guidelines on who should participate in these) and even the structure and nature of the official land register. The development of these “institutions” (or “rules of the game”, representing as they do the interface between policies and people) is rarely if ever subjected to the level of scrutiny given to policies and laws.

Forestry and Wildlife

The development of a Forestry and Wildlife policy framework and a corresponding sector investment programme began in 1991 with the drawing up of a provisional programme under a UNDP/FAO team. This was apparently the first attempt at a “programme approach” within the agriculture sector (Cuco, 2001). A “Forestry Pre-Programme”, based on the 1991 design phase, began in 1993 with finance provided from the UNDP. In 1995, a “National Programme of Forestry and Wildlife (1995-2000)” was prepared by the *Direcção Nacional de Florestas e Fauna Bravia*¹⁵ (DNFFB), followed in 1996 by the development of an “Investment Programme for the Forest and Wildlife Sector”, drawn up with technical assistance from FAO/UNDP. Also in 1996, a “Forestry and Wildlife Policy and Strategy” was developed (the investment programme was revised in 1997, following a Joint Donor Pre-Appraisal Mission and integrated into the PROAGRI programme¹⁶). The Forestry and Wildlife Policy and Strategy document was adopted by the Council of Ministers in 1997¹⁷.

In these developments, the consultation process was seen as being limited to “foresters” and “technicians” and did not involve other important organizations with different perspectives and a greater awareness of the social aspects of the law. The Policy and Strategy document was followed by the passing of the new Forestry and Wildlife Law in 1999¹⁸. Dealing as it did with high value resources there were powerful interest groups involved and consequently there was little consultation

¹³ The National Directorate of Geography and Cadastre, responsible for land administration functions at a national level and part of the Ministry of Agriculture and Rural Development (MADER).

¹⁴ “É preciso devolver os processos em curso à consulta às comunidades, mas certamente que devemos abrir excepção para caso de áreas inferiores e não superior á 10 has”. Section 9(5) Norms and Instructions DINAGECA

¹⁵ The National Directorate of Forestry and Wildlife, responsible for forest administration functions at a national level.

¹⁶ PROAGRI - Programa de Investimento Publico Agrário, the sector wide investment programme for agriculture.

¹⁷ Resolution 10/97 of 7th April.

¹⁸ Forestry and Wildlife Law [*Lei de Florestas e Fauna Bravia*] Law 10/99 of 7th July.

during its drafting. The law was greeted with dismay by some of those who worked on the land law and policy development processes and it was said that this new legislation created the “illusion of inclusion”, without clear and practical mechanisms for devolution (Tilley, pers. com., cited in Anstey, 2000).

From 2001 a shift appeared to take place and there was a much greater level of consultation and participation in the drafting of the (as yet unpromulgated) Regulations and of other legal instruments that were necessary in order to move towards implementation of the law. These issues included the following:

- the manner in which resource management powers could be delegated to communities and other entities (to be the subject of a Technical Annex to the law – Art. 109 Regulations);
- the manner in which communities were to receive financial benefits from the payment of local royalties (to be the subject of a Ministerial Diploma - Art. 112(3) Regulations);
- the methodologies and procedures for the establishment of local resource management councils, including their relationship to other planning and resource management bodies, both government and non-government.

To tackle these and other issues a broad-based Forest Forum (see Box 4) was established and a series of consultations undertaken throughout the country. Perhaps, in the same manner as the FAO technical assistance in land policy development had helped to encourage and ensure broad participation in the early phases of that process, it was the DFID-funded assistance to the forest sector that had an impact on the nature of forest policy formulation from 2001.

Box 4: The Forest Forum and policy consultation processes

Pivotal to the new process was the early negotiated establishment of a national Forest Forum. The ToRs for this Forum were debated and agreed by government, the forest industries and civil society representatives at an inaugural meeting in 2002. Four subsequent thematic Forum meetings were held in Maputo, Beira, Chimoio and Tete with funded participation of key stakeholder groups and some local participants. Further meetings are now budgeted within the ongoing work programme of DNFFB.

To ensure adequate understanding it was felt necessary to design, implement and institutionalize a process of provincial consultation. The resultant consultation in each province drew on and trained provincial government forest services (SPFFB) and local NGOS. It provided a snapshot of successes and failures in the implementation of forest and land laws and was used to inform the background materials for Forum meetings. Six semi-structured interview templates were prepared for use in a consultation training pack targeting provincial services of the DNFFB and NGOs. The questionnaires were structured for use with:

- Communities overlapping with concession areas
- Communities with natural resource management projects
- Communities without projects
- Communities in protected areas
- Concession holders and workforce
- Simple Licence holders and workforce

Source: IIED/DNFFB

Although the new law was espoused as a Mozambican law made by Mozambicans, it is questioned whether the same would have happened with political pressure by donors and international technical assistance (see Pijnenburg, undated). The ability of civil society to interact and feed into policy formulation processes was increased by their vertical linkages (a form of social capital) with donors and others who were able to apply pressure so that the processes were transparent, open and consensual.

Despite considerable work the legal instruments have still not been finally agreed upon and promulgated and at this stage appear to be undergoing a process of “harmonization” with other sector legislation. The regulations, however, were published in 2002 and it was obvious that there had been some improvements as a result of the more inclusive approach¹⁹.

The policy consultation process resulted in the training of three regional civil society teams in order to gather information about the implementation of the new forest and land laws. Team leaders were then responsible for training and including members of the *Serviços Provinciais de Florestas e Fauna Bravia*²⁰ (SPFFB) and local NGOs in the consultation process. Consultation missions were conducted initially in eight provinces involving interviews with more than 300 groupings of government, community, NGO and private sector stakeholders and was later extended to cover a further two provinces (IIED/DNFFB, 2002). Based on this field work, consultation reports prepared for the Northern, Central and Southern regions were presented to focus group meetings to refine and revise the final reports. A synthesis paper was drafted to crystallise the key findings from the consultations into policy relevant materials; this paper focused on the institutional structures and processes needed to ensure that rural communities had access to the rights envisaged in the law.

Consultations with stakeholders are continuing, most recently in regard to the development of operating manuals to provide guidance on the nature of community participation and representation on co-management bodies (COGEPs²¹) and the formation of partnerships with private sector operators. While initial drafts of these manuals may put emphasis on issues that might be better left for community groups to decide, they are at least being circulated and discussed by various stakeholders.

The development of policy in respect to community rights within national reserve areas is not as clear. This is an issue which has a potentially massive impact upon the livelihoods of many thousands of people who are resident in areas that are, or are currently being declared as conservation areas²².

¹⁹ For example, the exploitation of timber resources through the simple licence system had become subject to a mandatory community consultation process (contrary to the previous draft of the legislation which had made these necessary only for concession applications) and the actual procedures to be followed during the consultations had been considerably improved. The payment of 20 percent of licence revenues to local communities had also been introduced by the later draft.

²⁰ Provincial Services of Forestry & Wildlife, responsible for licensing and regulatory functions at provincial level.

²¹ Conselhos Locais de Gestão de Recursos Florestais e Faunísticos - see article 95 Forestry & Wildlife Regulations

²² The Limpopo National Park, the Bazaruto Archipelago, the Elephant Coast Park, Derre Forest Reserve, the Gorongosa National Park, the Quirimbas and several other areas all have resident populations.

Water

The policy and regulatory environment for the water sector in Mozambique saw the promulgation of a Water Law in 1991 and the subsequent development of a National Water Policy (NWP) in August 1995. The latter therefore represents the first formulation of water sector policy by the government in the post conflict era. The NWP accords high priority to the basic needs of the poor in respect to water supply and sanitation and envisaged the participation of consumers in relevant planning and management of water supply systems, enshrining the principle of management at the most appropriate level. Development of the policy was the responsibility of the National Water Council, which had been formed as a result of the 1991 law. In rural areas there is no substantial difference between poor and non-poor in terms of type of water source and sanitation: most people depend on wells, rivers, lakes and latrines.

Fisheries

The Fisheries Law was approved in 1990²³ and although it defines and prioritises three main areas of fisheries activity that can be classified as “micro level” (subsistence, artisanal and semi-industrial) there is no recognition in the law of community level rights to fishing resources nor of rights of participation in management decisions regarding the resource²⁴. Fishing resources are state property and the law is heavily weighted towards the establishment of conservation measures. These include the determination of resting periods, areas of forbidden or limited access, maximum quantities of exploration, prohibition or regulation of fishing as far as internationally protected species are concerned and the protection of rare and endemic species. There is also no evidence that the policy formulation for the fisheries sector was accompanied by any kind of broad consultation process. The lack of direct reference to communities’ rights and the weak capacity of the authorities responsible for enforcement are identified as major weaknesses (Chilundo & Cau, 2000). The law applies equally to marine and inland waters. For the latter there are as yet no specific regulations, as there are for other sectors such as aquaculture or marine fisheries. Access to the inland water fisheries is regulated by the General Regulations to the Law.

New policy tools and concepts

The 1995 Land Policy was built upon a set of principles that highlighted the need for greater protection of existing use rights to land and the establishment of an environment within which the rural poor could increase the benefits from the most common form of natural capital available to them: land. The policy was consciously designed to have a positive impact on the livelihoods of the rural poor²⁵. It resulted in

²³ Lei de Pescas 3/90

²⁴ In the sub section of the Government’s 5 Year Plan dealing with the fisheries sector [s3.10] it is, however, stated that the state will: “Promote associations of fishers and guarantee their involvement in the management of fisheries, including their regulation, investigation, extension and commercialization with priority to artisanal fishing.”

²⁵ As one of the FAO Technical Assistants involved in the policy development process states “... this law is also an important development tool, and was explicitly designed as such. Indeed equitable and sustainable development is its major underlying objective. It is not a law that simply defines and protects land rights; it does not assume that once its work is done, things will remain as they are.” C. Tanner, 2002.

the legal recognition of local community groups and of their land use rights, the incorporation of community representatives into formal institutional processes of land adjudication and the establishment of legislated participatory methodologies that permitted community members to register their rights in the national cadastre, either as individuals or as groups of co-title holders.

The Forestry and Wildlife Policy is also geared towards the greater involvement of local communities in the management of natural resources and ensuring that they get benefits from those resources. There are some important similarities and equally important differences between the actual legislation that resulted from the adoption of these new policies. The aim of this section is to briefly highlight some of these issues.

Local communities

The Land Law introduced a concept of “local communities” which related directly to a spatial area within which a group of people lived and made use of resources²⁶. The Technical Annex introduced a legally prescribed methodology for the identification of the community and the related areas, a process that was intended to be in the hands of the particular community and to be one largely of self-definition (with safeguards such as obligatory consensus with neighbours, etc.). Thus the communities could be anything from a traditional unit based on membership of a clan or chieftaincy to a simple group of neighbours (CTC, 2003). Section 4.3 examines the extent to which this flexibility has been utilised in the implementation of the Technical Annex.

The Forestry and Wildlife Law imports the Land Law’s definition of a “local community” but treats the community as a form of public body that has a legitimate interest in resource management, rather than a private body (as in the Land Law) that holds actual private use rights to a resource. It adds hunting as one of the areas considered as safeguarded by the local community²⁷. This is a positive change, since it recognises a further purpose for which customary user rights have existed. However, the Forestry and Wildlife Law only recognises these customary rights to forestry and wildlife resources for *subsistence* purposes. Instead of recognising more fully an inherent right to the resources (which could then not only be safeguarded by the community, but used by them as a natural capital asset with which they could negotiate), the law establishes a licensing framework for development and exploitation of such resources on a commercial basis. In doing so, it contains elements that put it beyond the reach of most of the existing national forest companies, let alone community groups that might wish to follow this route. In addition, the Forestry and Wildlife Law has introduced a level of confusion regarding the nature of the community as an entity, since it appears to be treating such groups as a form of public body that has a legitimate interest in resource management, rather than a private body (as in the Land Law) that holds actual private use rights to a resource.

The Regulations to the Environmental Framework Law²⁸ adopt a different definition of local community. In this law the community is defined as a “group of people

²⁶ ‘a grouping of families and individuals, living in a circumscribed territorial area at the level of a locality or below, which has as its objective the safeguarding of common interests through the protection of areas of habitation, agricultural areas, whether cultivated or in fallow, forests, sites of socio-cultural importance, grazing lands, water sources and areas of expansion.’ Article 1(1) Land Law

²⁷ Article 1(5) Forestry & Wildlife Law

²⁸ Regulamento sobre a Avaliação do Impacto Ambiental (Decreto No.76/98, de 29 de Dezembro)

situated in the area of influence of a proposed activity and that is not confined necessarily to a village or to a district²⁹”.

Consultations and representation

Perhaps one of the most important aspects introduced by the new policies was that of mandatory consultation processes with local community groups, important largely because of the scale and breadth of its application. By requiring applicants (and government agencies) to consult with local groups that were potentially affected by the request for natural resource use rights, the balance of power was shifted away from the state, which had previously held the prerogative of deciding upon the occupation and use status of resources, and towards the direct users of those resources. Both the Land Law and the Forestry and Wildlife Law require these consultations, although they are termed a “renegotiation” in the latter law. One of the improvements to the Regulations for the Forestry and Wildlife Law was that the community were also to be involved in the decisions related to the adjudication of the “simple licences”, which had not been a requirement in the earlier drafts.

The inclusion of such a mandatory process meant that prima facie opportunities were created for negotiating agreements between the rights holders (local communities) and those who wished to gain access to resources. As such the consultations are “a critical ‘development moment’ for both the local population and the investor – one side gets benefits and an incentive to live peacefully with the newcomer; the other gets local cooperation and a secure environment to invest in” (Tanner, 2003).

Community benefits

The Land Law recognises customary rights and gives them the force of formal legal rights, whilst also encouraging the growth of private sector “take-up” of land use rights. It creates an enabling environment that allows local communities and investors to negotiate agreements around land use rights, with the state’s role limited to ensuring that minimum standards are applied in these negotiations, that registration complies with technical standards and that the taxation system functions effectively. The benefits to local communities are envisaged as coming in the form of payments or benefits to them as a result of negotiating the third party use of “their” natural capital.

Conversely, the Forestry and Wildlife Law creates an enabling environment that draws local communities and the private sector into decision-making forums that have management powers over resources. These resources are still owned by the state, however, which recognises no customary or inherent right to them, except in certain limited ways (e.g. the right to subsistence level use). Here, the benefits to local communities come from a royalty paid by the state from the revenue that it collects for use of the resources and a say in how the resources are managed.

It has been said of the two laws that they are essentially the same: rather than directly securing a role for local communities in the development and exploitation of natural resources, they create an enabling environment in which this can happen (Garvey, 2001). This is true, but hides an important difference in approach. When a resource

²⁹ “grupo de pessoas situadas na área de influencia de uma actividade proposta e que não se circunscrevem, necessariamente, a uma aldeia ou a um distrito”

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

Participation in resource management and conflict resolution

In addition to the mandatory consultations where user rights are to be allocated to private users, the new policies highlight the involvement of local communities in more general management decisions (through the COGEPs envisioned in the Forestry and Wildlife Law) and in the resolution of conflicts (specifically mentioned in the Land Law³⁰). Again, there is a difference in approach, since the decision-making powers that community groups may exercise over forest and wildlife resources operate within the co-management framework and have the nature of a public right of participation in state-mandated structures, whereas their rights to manage land resources, in terms of the Land Law, are recognised as private, “unadulterated rights” over the land within their jurisdiction. The Forestry and Wildlife Law and the Regulations contain provisions that permit the delegation of resource management powers over forestry resources to community groups; the joint Ministerial Diploma that would define the procedures for this has not yet been drafted.

The nature of new rights

Communities have no right to register their rights or to force the state to certify them; their registration and certification is subject to administrative discretion. Under the land law a community may only delimit their land and request its registration in the cadastral atlas if the district administrator approves this. Although the wording in the regulations is positive (“...at the request of local communities...the right of use and benefit of land acquired by occupation...can be identified and registered in the national cadastral atlas³¹”) and although there is nothing in the law or the regulations that stipulates that the process is subject to state approval, the technical annex introduces this requirement by including within the pro forma documentation an obligatory process that must be approved by the district administrator³². The Technical Annex, including the pro forma documentation, is a legal instrument and therefore represents a legal requirement in the registration of land use rights acquired

³⁰ Article 24 states that local communities must be involved in the management of natural resources and the resolution of conflicts: (1) *Nas áreas rurais, as comunidades locais participam (a) na gestão de recursos naturais;(b) na resolução de conflitos;*

³¹ “Quando necessário ou a pedido das comunidades locais, as áreas onde recaia o direito de uso e aproveitamento da terra adquirido por ocupação segundo as práticas costumeiras, poderão ser identificadas e lançadas no Cadastro Nacional de Terras, de acordo com os requisitos a serem definidos num Anexo Técnico” Article 9(3) Regulations

³² Formulário 2, Technical Annex

through occupation³³. This has led to the blocking of registration of community rights, e.g. the Maputo Elephant Reserve authorities retrospectively reduced the area that had been delimited by a community (Nhantumbo, 2002).

In the Forestry and Wildlife law local communities are permitted to register a zone as a sacred forest and have it declared as such (thereby imposing limits on its use by third parties) but this is also subject to administrative discretion, this time at the level of the Provincial Governor.

The governance context

PROAGRI and the PARPA

The first phase of PROAGRI was set up as a five year agreement in 1998 between a major group of donors and the MADER, based on a Memorandum of Understanding. The Memorandum committed MADER to a transformation process that was to involve the identification of core functions at all levels and implementation of an institutional reform process and capacity building for MADER to implement its new functions in an efficient and effective way. Eight separate components were designed as a platform for this programme and a set of “Basic Principles” was established (see Box 5). In addition, PROAGRI was seen as a means to introduce a more coherent and effective way of channelling and managing donor assistance to the sector, replacing fragmented donor-driven projects with a coherent programme.

Box 5: The Components & Basic Principles of PROAGRI	
Programme Components	Basic Principles
Institutional development Agricultural research Agricultural extension Support to agricultural production Livestock Lands Forestry and wildlife Irrigation	Poverty reduction Decentralization and empowerment Good governance - Transparency, accountability and participation Policies, programmes and activities designed with attention to gender-related issues and implications Policies, programmes and activities reflect increased attention to rights and needs of smallholder farmers concerning access to land, inputs and markets Policies, programmes and activities designed with attention to environmental and social sustainability Market-oriented policy framework MADER activities limited to core functions and MADER strengthened to carry them out

As far as the land component is concerned, over the period of the first phase of PROAGRI, the vast majority of government resources have been directed towards

³³ The relevant Formulário and the need to obtain the District Administrators consent for delimitation are not mentioned in the Training Manual published by the Land Commission. Copies of the other 5 formulários required in the process of delimitation are included but the training manual excludes this particular one.

making provision for the private sector uptake of land rights in rural areas, rather than on implementation of the newly introduced concepts of land delimitation and formal registration of community rights.

The PARPA notes that the State has the obligation to promote and enforce the sustainable use of natural resources, with the participation of communities and local government, for the benefit of the country as a whole and in order to prevent irreversible exploitation. The PARPA further states that agriculture and rural development play a key role in any strategy for poverty reduction and economic growth and is also clear that success in this will depend on other sectors (such as infrastructure, telecommunications, markets, financial services, education and health and nutrition) that have an impact upon agricultural livelihoods in rural areas. The action plans in the PARPA are imported wholesale from the PROAGRI. Although the implication is that “agricultural development” is in fact cross-sectoral in nature, and that appropriate action in a number of sectors and cross-sectoral coordination is required, the PARPA does not elaborate on the mechanisms by which such coordination might take place (Whiteside, 2003).

Formal institutions

The two main role-players in respect to the regulation of natural resource use are the Directorates of Geography & Cadastre (DINAGECA) and of Forestry & Wildlife (DNFFB), both within the MADER. These national directorates are represented at provincial level by service units (the SPGC and the SPFFB) that also fall within the directorates of Agriculture and Rural Development at this level. This is an important constraint within the Mozambican administrative system: “dual subordination”. In theory, the provincial services are responsible to both their line ministry (i.e. MADER) and to the provincial governor. In cases of disagreement, it is not clear whose authority counts and outcomes appear to depend largely on the personalities and individual power bases of those involved (independent-minded provincial governors, especially those out of reach of Maputo have substantial autonomy). Coordination between the SPGC and the SPFFB is still lacking in many areas, although in some provinces there have been moves to implement the institutional reforms that posit the amalgamation of these institutions into a single natural resources oriented service unit (Durang, pers. com.).

As part of a ministerial restructuring process following the 1999 elections, Fisheries was separated from the former Ministry of Agriculture and Fisheries and became a Ministry in its own right. The Institute for Development of Small-Scale Fisheries (IDPPE), which provides support to small-scale fisheries, has always kept separate from the management of semi-industrial and industrial fisheries and from fisheries research. IDPPE’s focus is strongly oriented towards coastal fisheries and there is effectively no formal management of inland fisheries (except on Lago Niassa).

The Ministry of Tourism (MITUR), in respect to policy and regulation of conservation areas and the Ministry of the Environment (MICOA) are also both involved in the development of policy that has a direct bearing on natural resource access. Both ministries have relatively weak provincial structures.

At a district level the structure and composition of the agricultural directorates varies widely but is generally characterized by a very low level of human, physical and

financial resources. Very few districts have specific representatives from the provincial land or forestry and wildlife services, which tend to be concentrated in the provincial capitals. For regulatory activities, therefore, the provincial offices will depend upon the participation of generalist technicians based in the districts.

Representatives of the district administrative authorities also play a role in land adjudication processes, but have been less prominent in decision-making in respect to forest and wild resources. Land consultations have to be accompanied by a representative of the district administrator, although in many cases this role will be allocated to the district directorate of agriculture. At sub-district level there is even less specialist capacity and this is usually restricted to extension workers.

Formal judicial structures extend only as far as district level and in many cases are absent even here. Those that do exist are beset with capacity problems; few judges have university level training, legal texts and other important material are lacking and corruption is recognised as a major problem (CTC, 2003). It is not easy for ordinary rural citizens, even when they are organised through a community structure, to get access to the judicial system. Factors that militate against them include:

- a lack of information on rights and entitlements, as a result of high levels of illiteracy and a lack of appropriate dissemination strategies and materials;
- the high costs involved, only partly alleviated by the potential to claim a “State of Poverty” and enjoy partial exemption from court costs;
- scepticism regarding the objectivity of official institutions;
- the imposition of administrative resolutions by local government authorities rather than encouraging the use of judicial recourse; and,
- the lack of an empowered ‘community voice’. (De Wit, 2001)

It is only since the initiation of a training and support programme for the judiciary that most district judges are aware of the land law. It will still require some time before these judges can respond more successfully to needs at the local level (ibid).

Community level institutions

During the colonial period, indirect rule occurred through a system of land estates (*prazos*), either granted by the crown or taken by conquest and governed essentially as fiefdoms. The colonial administration also co-opted traditional chiefs (*régulos*) as a further instrument of indirect rule; the chiefs became the main mechanism for levying taxes, recruiting labour and allocating land outside the *prazos* and company domains. At Independence, FRELIMO abolished the *regulado* and replaced it by a new cell-based system of centralized democracy, with *grupos dinamizadores*, village councils and land commissions responsible for land allocation (O’Laughlin, 1995). In some areas, notably in the southern provinces and the liberation zones of the north, this system became established with local *secretarios* holding substantial power and influence. Geographical patterns in authority can still be discerned, although these have been disrupted by overlapping migration patterns as people fled from conflict.

In general, traditional authorities appear still to be the main influential actors with respect to natural resource allocation and control. In addition to their identification

with spiritual roles and mystical values³⁴ the traditional authorities are often used by NGOs as dispensers of aid and by companies as agents and generally have high stocks of social capital and influence. The extent to which traditional powers have been eroded by the official marginalization of the *régulos* after independence varies, but there is evidence that in some areas this process led to the development of open-access systems for common pool resources that had previously been regulated through customary norms and practises (see Box 6).

Box 6: The exploitation of Mussels in Coastal Areas of Southern Mozambique

On the Southern Mozambique coast there are marine rocks where mussels and other common pool resources occur. The marine zone that contains these rocks is divided into areas that belong to certain coastal communities. Over a long period of time, people of these communities used customary practices and norms to control the exploitation of these mussels. The resources were normally exploited between December and February of each year and collection was regulated by taboos which served to control the members' behaviour and attitudes in relation to the resource. In December of each year, community representatives would verify whether the mussels were sufficiently developed to be exploited. If they were well developed, some baskets were extracted and distributed to community leaders and elders. At a subsequent meeting the elders would decide upon the date when exploitation could start and this was transmitted orally among villages.

Although there were sometimes complaints from community members not belonging to the leaders' families, they obeyed the customary norms and practices. The reason for complaints is that sometimes during the verification sessions, leaders and members of their families used to exploit mussels secretly for more than the expected quantity. The observation of customary norms ensured the regular collection of big mussels and the preservation of the resource. By accepting that the exploitation was to be done between the months of December and February, they were investing in the conservation and productivity of mussels. However, in the area of each community there were places also destined for free access, where any one member of the community at any time of the year could exploit the resource for their subsistence needs. The mussels were important to the local economy; they were used for family consumption (fresh or dry) and for sale or exchange with other communities. With independence, the traditional authorities and the related customary norms and practices for common pool resource management were removed by the new government. The new structures of power proved not to be effective in managing the resource which became open access in its entirety. The quantity and quality of the resource consequently declined.

Source: Chilundo and Cau, 1999

In relation to land resources, however, the power and legitimacy of the traditional authorities seems to have been largely maintained. The end of the war and the consequent return of displaced populations in the early 1990s proved this continuing

³⁴ Perreira (2003) points out that the attributions of these traditional chiefs "*can not be looked at as merely political, since their power is around the fundamental aspects of the lives of the community as a whole, namely land use and concession, the maintenance of social order, resolution of conflicts, traditional sacrifice rituals, among others...when exercising their powers over the community, the religious-political aspect assumes a greater spectrum. This is understood as being linked to the mystical values that transcend the purely political sphere. In this sense, the traditional chief is not only a secular leader, he is also a religious leader, an aspect mainly related to the responsibility to guard the land, resolve conflicts and perform traditional sacrifice rituals for the ancestors*"

durability of traditional institutions of land allocation and adjudication: the re-establishment of legitimate and widely accepted land holding patterns (between groups and individuals that had remained in the countryside, those that had returned and those arriving to new areas) occurred within the framework of the customary rules of the rural populations. The process occurred largely without conflict and required little intervention from formal authorities.

In times of normality, the traditional authorities in an area may only be used by local people as a forum for resolving disputes. In many areas access to land can be through kinship networks or neighbours rather than through the chieftaincies. Outsiders who come to a new area in search of land would traditionally be expected to ask permission from the local traditional authorities, but in some cases (see Box 7) this may just consist of informing them after the fact in order for the boundaries to be confirmed.

Box 7: Land Transactions in the community of Murrua

Transactions in land are registered in the sense that a written declaration is passed when these are witnessed by local authorities. A copy stays with the seller and purchaser and the local authorities register them “only in their memory”. Other transactions are done “clandestinely” and are only known to the seller and purchaser. Local authorities may get to know about these when a dispute arises and the parties request intervention. Offers of land for free, on loan or for purchase are all possible in Murrua. Immigrants to the area have to present their need to the local traditional authorities, although sometimes the transaction is done directly between the parties and the authorities are informed afterwards in order to confirm the limits of the area. Local people state that transactions in land occurred even in colonial times.

Purchase is much preferred over loaning land because of a perceived lack of security. A traditional chief of the area stated: ‘borrowed land is land full of problems. It doesn’t work.’

Land was offered for free in an area where there was thick forest cover which was difficult to clear. The form of compensation that was operating was that locals wanted to see the area cleared because it was home to wild animals.

Source: Cau, IIED, 2003

Customary systems of resource tenure vary across the country and between different ethnic groups. The sophistication of these systems appears to be linked to population density and competition over resources. For example, in the central provinces local leaders can describe a complex set of rules and taboos, and the hunting and harvesting of a number of species is proscribed at particular times (SLSA, 2001).

Over large areas of the northern province of Niassa, on the other hand, where population density is extremely low, few taboos can be identified, even with respect to trees which are considered to facilitate communication with the ancestors. Where conflicts emerge, one section of the community simply breaks away and moves on and there is a reluctance to engage with either administrative or communal authority. On the other hand, in the same area, the paramount chiefs are able to describe and agree the boundaries of their territories across most of the province (Anstey, 2000).

The lack of a functioning judicial system in rural areas creates further reliance upon the traditional authorities, the *Presidentes de Localidade* and the *Chefes de Posto* to serve as higher authorities if a criminal or civil matter is irresolvable at the village level. As a result, rural communities govern themselves more often by traditional laws or remembered vestiges of colonial law than by current state law (Knight, 2002).

Trees, in particular, play an important evidentiary role in legitimizing local claims. Loans of land are often accompanied by a prohibition on the planting of new trees.

2.3 The implementation of natural resource policies

Information on rights and entitlements

Access to information is a critical factor in ensuring that services from a state to its citizens are in fact delivered and that standards are met. When it comes to rights and entitlements the information is a *sine qua non* since a right loses its force completely if you do not know that it exists; people have to know what their entitlements are in order to be able to claim them. Bureaucratic actors not only participate in constructing systems of rights and entitlements but can also impede the implementation of rights. One of the most effective mechanisms by which to ensure citizens do not claim rights is through the restriction, or lack, of information on entitlements.

The Land Campaign has been the main driver behind the dissemination of information, dealing not only with the new rights and entitlements contained within the Land Law but also some of those contained within the new Forestry and Wildlife Law. The campaign concentrated initially on getting across 6 main messages from the new legal framework. The means of communicating these messages included “comic” strips, and audio-cassettes with recordings of the dramatised texts of these scripts. These were in Portuguese and 20 national languages (Negrão, 1999). In the second year of operation the campaign defined a further set of 6 messages. (See Box 8). Following on from the initial campaign and in addition to it, several NGO groups concluded separate funding arrangements with donors to finance the dissemination of information regarding the new law. This, for example, formed a major part of the DFID funding to ORAM in Zambézia which, in the period from 1999 to 2002 conducted literally hundreds of information sessions at various levels - with community groups generally, with community leadership, with local administrative structures and including district and provincial level seminars.

The Land Campaign later transformed itself to a Land Forum and became institutionalized in some provinces. The present level of energy and coordination of activities varies quite widely and there is evidence that some of the provincial fora are now more characterised by elements of competition rather than collaboration and coordination between the participating organizations (Ribeiro, pers. com.)

Dissemination of the Forestry and Wildlife Law has not been so extensive; initially, some organizations were reticent because they perceived the message to be one of control of community activities rather than the creation of space and opportunities for them³⁵ (SLSA, 2001) and other organizations were awaiting the publication of the

³⁵ This attitude is confirmed by the perception of some community groups: “The understanding of the communities is that the legislation on land protects the rights of the communities as it maintains their

Box 8: The messages of the Land Campaign

The six messages of the initial Land Campaign were:

RIGHT TO LAND – Rights acquired by occupation based on oral evidence are protected, with the recommendation however that in conflict zones titles to the use and benefit of land should be requested.

DEMARCATIION OF LAND – There is an obligation on the state to consult communities on whether the land to be adjudicated is genuinely unoccupied.

WOMEN AND LAND – Publication of the demand that women and men have the same rights of occupation, and that women discriminated against by customary rights should unite themselves into associations.

LAND: TOGETHER IN PARTNERSHIP – Avoid conflicts and division of land, but set up partnerships of mutual advantage.

RIGHTS ON URBAN LAND – Inform people that there must be transparency in the allocation of sites by municipal councils, and that they can use their constitutional right to demonstrate in order to make themselves heard.

CONFLICT RESOLUTION – Judicial recourse is the last that should be resorted to. Prior to this one should seek further information, mediation, other alternatives, consensus, petition and use means of social communication to defend one's rights.

The six messages of the second Land Campaign were

THE LAND ALSO BELONGS TO WOMEN – On this occasion the topic of women's rights to land was approached via discussion in the family about the need for a change in customs.

PATHS HAVE NO OWNERS – Rights of way are enshrined in the new Land Law.

CONSULTATION IS OBLIGATORY – The citizen is informed about the ways in which consultations by the state should be carried out.

THE COMMUNITY CAN SIGN CONTRACTS – The Land Law, its Regulations and Technical Annex, envisage the possibility of communities being able to delimit their land with a view to obtaining a title. The Land Campaign, with its basis in the Civil Code and other legislation, thus concluded that the community's capacity to exercise rights and fulfil obligations is recognised. Thus from the moment when a local community is registered – with a name, representatives and delimited territory – its juridical status can be fully exercised, and it is thus able to sign contracts.

REGISTER YOUR LAND – The growing number of cases of illegality found in urban and peri-urban areas in particular led the Land Campaign to advise urban citizens to register their land.

HOW TO DEMAND ONE'S RIGHTS – This concerns the minute of a petition based on Law no.2 of 1996 for communities to make use of whenever they believe that their rights are being violated.

Source: Negrão, 1999

right of occupation and allows the delimitation of the community area, whereas the legislation on forests and wildlife and environment are considered to impose obligations or prohibitions" (IUCN, 2003)

long-delayed regulations before they felt confident enough to become involved in dissemination. Some of the provincial Land Fora have, since publication, become involved in this and ORAM in most areas is now including a focus on the forestry laws and policies in its ongoing activities.

It appears that there have only been partial and fragmented attempts to monitor the effectiveness of the various information campaigns (an issue of concern to some donors) but there is considerable anecdotal evidence that suggests that knowledge of the laws and the associated rights and duties remains low, even in areas where NGOs have been operating quite intensively. In Zambézia, for example, even in areas where land delimitation had taken place, many community members still exhibited little knowledge of their rights (Wrangham, 2001). This is offset by evidence from other parts of the country that would seem to demonstrate that the information campaigns have in fact been very effective (see later for further discussion on this).

There is also anecdotal evidence that suggests that the intensive targeting of community groups by NGOs and civil society campaigns, coupled with the comparative lack of a state driven process of disseminating information, has created a situation in which the local populations' awareness of the regulatory framework is in fact greater than that of local administrative structures, including at a district level. This is equally true within the forest sector. Conclusions from the consultation process carried out in the forestry sector also identified similar obstacles: (1) government agents did not have access to the laws nor the capacity to disseminate information to local community groups; (2) the law had not been translated into local languages; (3) NGOs involved in dissemination did not always understand the concepts and principles in the law; and (4) high levels of illiteracy were an obstacle to dissemination (Nhantumbo & Macqueen, 2003).

Consultations in land and forest resource allocation procedures

One of the most important aspects introduced by the new policies was that of *mandatory consultation processes* with local community groups. These are now necessary in every single application for natural resource rights in rural areas. The consultation process is an important opportunity for the establishment of a potential long-term partnership between a local community and private sector investors in rural areas and is of primary importance in reducing the potential for later conflict.

As a new institution these consultations are beset with myriad problems. In some cases they are not taking place at all or they may be performed in a perfunctory manner. Local elites may manipulate the process. Local administrative structures may not provide supportive guidance. Structural problems exist, such as the inclusion of a mandatory financial "incentive" for the community group and the lack of a system for capturing the terms of agreements and monitoring compliance. Box 9 shows the main findings of an analysis of over 100 consultation processes in Zambézia province and these are supported by much anecdotal evidence from other parts of the country. Further research conducted in Zambézia revealed a high awareness on the part of communities of the requirement that they be consulted on new applications for private land use rights within their areas. However, they registered complaints regarding the

Box 9: Problems identified with community consultation processes regarding private land applications in Zambézia

- Very few files of the applications contained documentary evidence of the consultation or the documents were vague and unclear.
- Consultations were taking place without the concerned community being given the opportunity to clarify their rights or the nature of the process.
- In some areas several different consultations were being undertaken independently and in isolation of each other and frequently by different SPGC officials.
- Little or no information regarding existing land rights or applications was given to the community groups.
- Documentation regarding the consultation was often unclear on who had participated in the meeting and what agreements, if any, had been made.
- Very large land applications were being subjected to consultations involving very few members of the community

Source: Land Tenure Component, ZADP, 2001

quality of consultations that have taken place to date and record that in some instances there are other ‘local structures’ that are consulted in their name³⁶.

Even where local administrative structures may take a more neutral role in respect to the consultations, there is very little acceptance of the need to provide community groups with support and information that would assist them in making informed choices in the negotiations. Very rarely, if at all, do SPGC representatives who attend the consultations come equipped with maps and registers that show the extent of actual and pending private land holdings in a community area and it is in fact rare for even the district administrations to have access to this kind of information. Innovative and progressive solutions are not advanced by local state structures, which are often looking for quick fix solutions rather than long-term agreements that they will then be required to monitor. Thus, as a report from Cabo Delgado province states: “In reality, the new law has not turned out quite as well as planned. While it does defend community land rights, it has not produced the close relationships between investors and rural communities that its designers envisioned. Instead of contracts spelling out ongoing financial relationships between investors and communities, the practice of one-off (compensation) payments continues, leaving community members with a short-term flush of cash and long term loss of their lands” (Bechtel, 2001). There is also very minimal recording of the nature and elements of any longer-term agreements that may be being made, making the monitoring and enforcement of these an extremely unlikely scenario in the future³⁷.

³⁶ The representatives of a community known as Mutange in Zambézia province reported an instance of this: a provisional approval for a private concession (500ha) was granted after a consultation that took place without the presence of ORAM (contrary to a local agreement) and which involved only the Bairro Secretary. The application involved an area previously used by the PIDE as a prison farm and which was never demarcated. Community members therefore occupied it after independence so a conflict arose when it was ‘re-awarded’ to the new applicant. The representatives further reported that the Secretary subsequently lost his position as a result of the consultation outcome.

³⁷ “In discussions it became apparent that although local community groups have a generally high awareness of the obligation on land applicants to consult with them prior to being awarded the use

Bila & Nhantumbo (2002) point out that community consultations in the forestry sector are more complex in comparison with those regarding land resources, largely as a result of issues of scale. Forest concessions can cover hundreds of thousands of hectares distributed across district boundaries and covering various administrative posts and dozens of villages. They further note that given the apparent complexity and variety of stakeholders and interests involved in such large areas it would be expected that the consultations would raise a range of issues and expectations. However, “the consultation reports of those [concessions] already approved appear very simple and are not clear on the methodology used nor the principles used in the [consultations]” and it would seem that “the consultations were merely done to obtain a ‘rubber-stamp’ [from the community]” (Bila & Nhantumbo, 2002).

There is in fact little experience of consultations in forestry applications, given the fairly recent enactment of the regulations and the fact that most of the existing applications were in fact already authorized (despite their nominal illegality). However, concession agreements may proceed without operators taking on any meaningful obligations vis-à-vis the affected communities: “Other villagers lament that community leaders have negotiated away their forests in exchange for gifts such as a bicycle or food. Concessionaires admit that they often arrive in areas to begin harvesting and find villagers who have heard nothing of the concession. When problems arise after operations begin, such as the inadvertent destruction of crops as a result of tree felling, communities apparently find it impossible to speak with people at a level within the company who can make reparations (Reyes, 2003).

An often stated view is that the consultation processes act as a powerful disincentive to investment in rural areas, but it appears to be rarely the case that a community will reject an application during consultation. Most community groups in fact welcome the potential presence of a new local actor with resources and social capital that they do not possess, perceiving this to be a positive impact upon local development.

Land delimitation exercises

After the initial land delimitation exercises undertaken in 1999 as part of the piloting processes of the Technical Annex³⁸, the level of government finance, resources and involvement in this area of implementing the new policies has been extremely limited. Most land delimitations since this time have in fact been undertaken through off-budget donor-supported exercises that have been implemented by various NGOs, with government participation occurring as a reimbursed service to these groups.

Indeed, although there was apparently considerable support for the resource and funding requirements that would be needed to implement and test the new poverty-focussed elements of the law³⁹ (not least through PROAGRI) it soon became apparent

rights, they are less clear on what sanctions exist, or which mechanisms they can use to call attention to the fact that agreements are not being honoured.” (Land Tenure Component, ZADP, 2002)

³⁸ Under the auspices of the FAO Project GCP/MOZ/056/NET

³⁹ A report of the PROAGRI Land Review Mission, completed in November 2000, observed that “the package for rural areas is already complete...it is essential that the now complete legal framework be moved forward to a well-supported implementation phase” (PROAGRI, 2000). Similarly, in a DfID report on a workshop held in December 2000, it is stated that “all the necessary legal instruments and policy documents are now in place for implementing a full-scale local level development programme built upon the progressive foundations of the new land policy and legislation. It is essential that an

that the government considered these to be of secondary importance and embarked instead upon a drive to attract outside investment and to facilitate the allocation of private land use rights. While pro-forma expenditure plans may include allocations for information dissemination and delimitation but *actual* expenditure has been minimal over the last few years. There is what has been characterized as “a tendency within the more conventional thinking of PROAGRI towards a dualist view of ‘family’ sector (community) land use and new, private sector land needs” (DfID, 2000).

Despite limited government funding for the pro-active delimitation of community land, there have been a considerable number of delimitations completed in various parts of the country, largely through the support of NGOs. Information on and monitoring of the implementation of these delimitations has been fragmented and partial, notwithstanding the recent DFID-funded appraisal of the land sector, which included a specific review of completed delimitations throughout the country (CTC, 2003). This review stated that the total of delimited areas now stands at 162; 59 of which have been issued with certificates and 24 of which have a full land title, implying that they were demarcated rather than delimited (*ibid*). One of the gaps left by the dissolution of the Inter-Ministerial Land Commission is a central collection point for the monitoring of the implementation of this aspect of the new law, a gap which has not been filled by the National Department of Geography and Cadastre which is still battling to provide the country with an efficient and transparent register on private land holdings.

The policy-makers in the mid 1990s were keen to highlight the flexibility of the land law and technical annex: the community (as an entity that can register land use rights) need not necessarily be a group that pays allegiance to a traditional paramount chief (*régulo*) and that the boundaries of delimited areas need not follow old “traditional” boundaries from the colonial period, nor present-day administrative divisions. The “community” can choose its own name, define its membership according to broad and flexible guidelines and appoint its own representatives, free of any stipulations in the law. The challenge of “how to (legally) recognise a group without converting it into something else” (Fingleton, 1998) seems to have been an important consideration in the framing of the law. In implementation, however, it appears that the vast majority of delimitations that have been completed are being defined along the lines of the old colonial-era *regedorias* or defining and refining the zones of influence of traditional chiefs and authorities at various levels.

It is the issue of scale that is perhaps one of the most important in relation to the effectiveness of delimitation exercises and their actual and potential impact upon livelihoods. Bruce (1999) suggests that common property management regimes are predisposed for success when the group of users is small and the resources not too extensive. Reasons for this include the low cost of the intra-group enforcement of rules, extra-group exclusion, easy detection of problems and infractions, better coordination and participation in decision making. The Mucombwe case had a small group, containing a population of over 600 people, and the area that was delimited covered 3,000 hectares. In contrast, some of the delimitations completed in Zambézia

effective implementation programme be launched now as quickly as possible, in order to test the model in practice and answer the many practical questions that have been raised about its applicability on the ground” (DfID, 2000).

have covered very large areas of land with considerable populations⁴⁰. Again, this appears to be as a result of the enduring nature of the concept of *regulados* and *regedorias*⁴¹. The “entry point” used by ORAM for the delimitation exercises in Zambézia, for example, has tended to be through the locality (state) structures and the “recognised” traditional authorities, many of which are identified through the use of old colonial-era registers or maps (Norfolk et al, 2003). Well-entrenched notions of administrative and traditional boundaries tend to be the dominant defining characteristics of the “community groups”, despite a policy framework that would allow for a much wider range of potential associations.

The extent to which the process of delimiting community land forms part of a “joined-up” implementation approach, that has as an objective the integration of the poor in the social and economic development of an area, has also been of concern. Many delimitation processes to date have been criticised for having been undertaken in isolation and without a clear vision of how the exercise would form part of further, obviously necessary, processes of local planning and development. To a certain extent this situation has come about as a result of two main drivers:

- An objective articulated by some NGOs that considered the defensive implementation of the law as necessary in order to secure and protect land rights from outside encroachment; and,
- A programmatic imperative on the part of some NGOs to deliver on targets set as a result of donor agreements.

Some commentators lay the blame for this more squarely with the NGO groups that have been implementing the delimitations, criticising them for not having stimulated further planning activities nor actively looking for potential alliances with private sector organizations that would be interested in negotiating access to some of the resources over which community groups had acquired legally-registered access (Nhantumbo, 2002). Others consider that long delays between activities and poor planning and coordination between state and NGO service providers is partly to blame. In the community of Canda, for example, land delimitation was undertaken as part of the FAO/DNFFB Community Based Management of Natural Resources Project, but the long delay between this and the initiation of a management component to the exercise was judged to have left people in the area feeling that the delimitation process had no real purpose (CTC, 2003).

The award of forest concessions to private sector entities

The procedures and principles for the concession management framework for forestry have been under discussion and development for the past two years and formed a further part of the DFID sponsored forest policy formulation process. There has been,

⁴⁰ One community in Zambézia province, known as Mongoma, for example, has delimited land that extends beyond locality areas, covering more than one administrative post in two separate districts and containing within it a number of old *regedoria* areas. The area is vast, covering over 200,000 hectares, and the population is estimated at over 20,000 people. In four communities from Sofala, delimited land ranges from 47,000 ha to 107,000 ha. Manica contains delimited community areas of 23,000 ha, 49,000 ha,

⁴¹ In the localidade of Pida in Namacurra, for example, the two communities of Muehvia and Muibo have delimited boundaries that are the exact same as the two *regedorias* registered and mapped by the Portuguese authorities.

however, a disjuncture between the principles and requirements that were eventually adopted and the actual application of these in the concession awarded to date.

The Regulations provided that concession contracts of up to 20,000 ha and all simple licenses can be authorized at the level of Provincial Governor without the involvement of the national government (concessions ranging in size from 20,000 to 100,000 ha must be approved by the Ministry of Agriculture). The basis for granting a concession begins with a direct request presented to the provincial director of forestry by those who seek it. This should be followed by several steps including an estimated timber inventory and the community consultation process. After the consultation a more detailed topographic representation of the area, its population and its timber should be forwarded along with plans for the operation of sawmills. Analysis of these materials is done at the provincial level, whilst the proposal is made public in national newspapers. Depending on the size of the possible concession, authorization is granted at the level of Provincial Governor or the Minister of Agriculture.

What actually takes place is less definitive. For example the detailed timber inventories call for a substantial expense for the would-be concessionaire prior to any guarantee of a return and have not been required by the DNFFB in the granting of the initial concessions. Management plans are weak, where they exist. The inclusion of sawmill plans may or may not happen, but a general shortage of functioning mills indicates a widespread lack of implementation. No mention is made of how monitoring might take place. There are indications that animosity and frustration are emerging among Mozambican communities as the ill-planned and intensifying timber harvest provides them with few benefits and little hope for the future (Reyes, 2003).

The methods and intensity of logging activities in a forest area can bolster some aspects of a local economy while undermining others. For example, wage earners from amongst the community can provide an increased market for locally produced goods, while on the other hand, those who depend on the harvesting of game or medicinal plants may find these things more difficult to come by.

Community forestry and other CBNRM initiatives

The Community Management of Forest and Wildlife Resources Assistance Unit within the DNFFB was established in 1998 under the direct control of the National Director. Funded by the Dutch Government and implemented by FAO⁴², the unit's main objective was to coordinate, facilitate and promote the development of community-based management systems. The main aim of the project has been to develop methods, tools and arrangements for community forestry; despite the range of these that have been developed to date the models "are not yet ready for full replication." (Mansur & Cuco, 2002).

A raft of other CBNRM initiatives exist. Many are driven by biodiversity conservation objectives or other objectives aimed at decreasing the degradation of natural resources in particular areas. Some of these projects have begun to use land delimitations as a tool for securing legal title to some areas but have been characterized by "narrow" delimitations of particular areas and resources, often attached to particular interest groups, rather than an identification of the variety and

⁴²FAO GCP/MOZ/056/NET

diversity of resources and land that may be of importance to various groups within a community. While these projects seek to provide the legal, institutional and economic frameworks for communities to become co-managers of communal area resources and advocate strong “ownership rights” for communities, they have been relying more upon state “permission to experiment” rather than a strong mandate for decentralization and tenurial security.

Decentralization initiatives

The devolution of powers of natural resource management to local groups has been complicated by a parallel process through which the government has been reinstating the institution of “indirect rule” through ‘community representatives’. This legislation was not submitted to parliament but was issued as a decree from the Council of Ministers⁴³. The decree essentially re-appoints the traditional chiefs as legally-recognised representatives of community groups, although it mentions that these representatives can also be the Bairro or village secretaries or other leaders “legitimized as such by their respective communities”. In the decree and the associated regulations⁴⁴ there are no clear procedures for how this choice of representative is to be made, except for provisions that state where a community has “legitimized” both a traditional authority and a “civic” leader (such as a Bairro secretary) it is the community that decides who has precedence. Research conducted in Zambézia in 2001 revealed that the implementation of the decree was understood rather differently by the local authorities who stated that they were “calling all the chiefs in the area to reinstate them” (SLSA, 2001).

Areas of confusion arise because one of the specific issues that is a subject of engagement between these representatives and the local administrative authorities is that of the “use and benefit of land”. However, the definition of a local community in the regulations to the decree varies from that in the Land Law and is strictly related to territorial administrative divisions; district, administrative post and locality. Community representatives of these groups are therefore state-appointed, state-remunerated and of a public character, whereas local community groups in terms of the land law are private land-holding entities. Difficulties arise when the state treats the “15/2000 representatives” as if they were the legitimate representatives of a local community as defined in the Land Law, which has in fact been the position of the DINAGECA (see later Box 11). The Land Law contains an article that states that the mechanisms for representation of community interests in respect to land use rights are fixed by law (Article 30); it therefore cannot be that the decree 15/2000 and the associated regulations serve this purpose, since it is not a law but merely a decree⁴⁵. What remains, however, is a confused situation understood in different ways by different actors.

⁴³ Decreto 15/2000

⁴⁴ These were promulgated through a Ministerial despatch (Diploma Ministerial 107-A/2000) and therefore not subject to parliamentary scrutiny.

⁴⁵ I. Pires, Pers Comm.

3. ASSESSING THE IMPACT

This section of the paper aims to highlight some of the impacts, from a livelihoods perspective, of the early implementation experiences and initiatives described in the preceding section. Writing in 2001, Alda Salomão neatly summed up some of the legal and institutional challenges that were still being faced in the attempts to involve local community groups in the management of natural resources:

“The question of participation without powers or the precarious nature of rights, the question of representation without legitimacy or of legitimacy without responsibility, the question of excessive bureaucracy in procedural aspects linked to the challenge mounted by the need of integrating and harmonizing the formal and informal legal systems, all these constitute key aspects of the involvement of communities in the sharing of powers, responsibilities and benefits from the management of natural resources...” (Salomão, 2001)

This section will demonstrate that these are indeed the issues that are mediating the impact of the new policies. The section therefore looks at the issue of impact from the following perspectives: the nature of community “representation” as conceived by the various policies and processes; an assessment and categorization of the benefits that are accruing to community groups as a result of the new NR policies; the extent to which benefits may be being captured within elite groupings, rather than accruing to community groups as a whole; the perceived benefits to peoples’ livelihood strategies and the incentive regime in this regard; institutional capacities at a community level and the nature of disputes relating to natural resource access and allocation.

3.1 Local communities, new institutions, representation and participation

It would appear that the new resource use rights relating to land, forestry and other resources are viewed as “...commendable but (that) they have moved ahead of the institutions and structures that link them to resource rights and endowments” (DfID 2000). Thus, while community resource management “appears to be at the centre of legal and policy frameworks, the envisaged decentralization of resource management is moving forward in the context of weak civil society and a lack of clarity over the transfer of rights, responsibility and authority” (ibid). In other words, there is a problem still with the forms of participation, with the mechanisms of decentralization and the creation of “new” institutions of natural resource management.

One of the key findings of a research process into natural resources and livelihoods in Mozambique, conducted over the last three years, was that local micro politics affect how natural resource policies work in practice, and particularly how the process related to the decentralization of powers occurs. Along with other southern African countries, Mozambique is committed to administrative and political decentralization. But this is taking a particular form in practice. The operation of local elite networks, party connections, kin-based linkages, and relations between government and traditional authorities all play a part in affecting the degree to which decentralization (in its various forms) leads to benefits for the poor living in rural areas. Many rural areas in Mozambique remain remote and marginalized from the political and economic mainstream and, as a result, the standard patterns of administrative and

political authority do not operate. Very often there are intermediaries – local elites, NGOs, donor projects and others – who have significant influence on the way in which resources are allocated. Thus it is at the local level where bargains are made, deals negotiated and politics practised and this is where the gains or losses for livelihoods are made. With multiple and competing lines of authority, the local political context is key, and is often ignored in the standard models and assessments of decentralization policies (Scoones, pers. com.).

Box 10, for example, reveals the potential for institutional conflict that is being created by the implementation of Decree 15/2000 in the context of parallel processes in the land policy, where new community institutions may clash with newly-empowered traditional structures. Social relations of importance to resource access go beyond the village confines, with a range of other institutions (local political parties, national and international NGOs, private sector and religious entities) being important. *Régulos* in particular have derived much power and legitimacy from being used by agents as a first part of contact, but other actors can be equally important.

Box 10: Land Committees and Traditional Leadership

On the one hand, the provincial government land services and the NGO ORAM have been working with local land committees that have been established as part of the land tenure reform programme. These bodies, in terms of this sector legislation, become the legally empowered institution for the management of community land in a particular area, once a community has decided to delimit and register its land. On the other hand, the decree (Decreto 15/2000) that re-institutes the colonial era institution of “official” traditional leadership (now termed “community representatives” and in operation country-wide) includes a land management function as one of the attributed powers. In several cases where private land applications have been made by outsiders to an area, there have been disputes as to whether the local land committee or the official “community representative” (or indeed a general meeting of community members called for the purpose) is the institution that ought to be consulted. These institutions can also mirror local level power struggles; the land committee for Bajone is dominated by members of the local Catholic congregation, perhaps reflecting the influence of its donor “partner”, whilst the local chief (and now newly elected community representative), is a Muslim. Not surprisingly, both assert their primary right to be consulted on land issues affecting the community.

Source: SLSA Research Paper 11, 2003

Research in the forest reserve in Derre, Morrumbala (see Box 11), identified the fact that membership of a local association, with strong links to a donor project that was supporting local community involvement in management and control of the forest resources, was perceived by many of the local population to be the preserve of a local elite and not for, as they put it, “we nude people” (SLSA, 2001). In other areas, participation in projects of this nature reveals a mismatch between the overall objective and the particular motivations of the communities for becoming involved. A community in Bajone, Maganja da Costa, for example, had a different perception of a local land committee from that of the NGO that had initiated and guided its establishment – essentially they saw the committees as a potential source of gain.

Box 11: Associations and “elitism”

In Derre, an administrative area within the district of Morrumbala which contains a forest reserve and considerable timber resources, two institutions prevail: the traditional authorities and local government. Both of these institutions have a strong presence in the leadership of a local association that has been assisted with foreign donor money to represent local interests in respect to natural resource use. Membership of this association is only available on the basis of payment of membership fees, which at 25,000 *meticaís* acts as a barrier to the poorer members of the community.

There are conflicts within the traditional institutions, mainly due to power struggles and the perceived inefficiency of some of the chiefs. Even though the two institutions that supposedly represent a larger constituency are part of ACODEMAZA, they have a limited impact on the defence of the interests of the majority, since many are excluded by the membership fee system. This threatens to further deny the rights of the communities.

The current institutional arrangement in Derre would seem to suggest that the local perception of ACODEMAZA as an “elite” movement is likely to affect the involvement of the poorest members of the community, hence contravening the spirit and aims of the current natural resources management policy framework.

Source: SLSA, 2003

Where there are problems with the legitimacy of authority, or of “leaders” that form part of the local administrative structures, the role played by outside agents in assisting communities to take advantage of the new policy principles becomes crucial. There are many examples that reveal the extent to which the Land Law, in particular, is opening up the space for fundamental transformations in local power relations and allowing previously marginalized groupings to assert themselves⁴⁶. However, the role of NGOs in this respect can be decisive.

Of course, it is not only the state-appointed administrative leaders that may abuse their roles; traditional chiefs may “manufacture” participation in order to facilitate community consultation over the issuing of licences in return for favours (cash, or otherwise). Frequently those consulted are in physical proximity to the local authority. This process narrows the range of participants and helps to establish an entrenched “elite participants” group, who, through the distribution of benefits, may become particularly powerful, particularly as the demand for participation increases.

⁴⁶ Knight points out that the fact that communities are now meeting to discuss local priorities and community strategies for development is a radical upheaval of the status quo. In response to the question, “What changes have you seen in your community since the introduction of the new land law?” one man in Musiyaharo explained:

“There have been changes in the relationships between people in the area – long back it was not usual for the leaders to have meetings where the community members in general could participate. They used to have meetings between the leaders, but then each leader would communicate the results to his own group of people. But now we have meetings where all of the community members and community leaders meet and discuss. To me, I am now feeling happy because these meetings are making us develop. For example, after discussing, we are now planning to build a house which we will use as a hospital, and we are also planning to make bricks to build a better school.” (Knight, 2002).

The most important aspect of how the policy is playing out in practise is the institutional messiness. The tendency for NGOs and administrative authorities to establish a multiplicity of institutions in certain localities was evocatively described by one old man in Bajone, Mozambique as the “committee disease” (SLSA, 2003). New institutions parachuted on to communities attempt to lump together people from different social groups and political parties and from administrative and traditional authorities. The same man described the resulting conflict and disorder as like having a cat and mouse living together in the same room. However he went on to explain that he attends meetings held by most of the groups operating locally in the hope of gaining benefits from each. Nhantumbo (2002) notes that this confused situation has prevented many communities from being able to truly take control of local resource management, in harmony with state institutions that recognise their legitimacy and support their role.

Further confusion arises from the use of an operating manual (an instrument with no legal force) to “trump” legal provisions from different sector legislation and lump all of the community institutions into a single body. The recently-produced DNFFB manual on community institutions states:

“After its formation the (committee) will become the community institution which relates to the state, with local business people, with NGOs and with other institutions and which will defend the interests of the community and assist the local administrative authorities on any local development subject”⁴⁷ (DNFFB, 2003).

3.2 Forms of benefits for local communities

Social capital

Knight (2002) presents strong evidence for the building of social capital amongst community groups as a result of the implementation of the Land Law. She identifies four significant areas in which the law is having a beneficial impact (Box 12), all of which relate to an improvement in the internal functioning of groups or the extension of their external links to other actors. It is likely that the widespread policy consultation processes around both the Land Law and the Forestry and Wildlife Regulations served also to build this kind of social capital. For example, a case study evaluation of participatory forestry research promoting the co-management of publicly owned reserves in Malawi found that the research itself had positively affected participating communities’ social capital in terms of improved relationships with local forestry department staff and a greater sense of rights, responsibilities and ownership (Henderson, 2000). Mansur & Cuco (2002) point out that there are clear advantages in the present community forest areas when compared to zones where no initiatives under this programme are being implemented. Such advantages include community empowerment, some forest management, the possibility of developing and testing methods and tools, and a better relationship between government officers and

⁴⁷ *“Depois de formado, o CGC passa a ser o órgão da comunidade que vai dialogar com as autoridades do Estado, com empresários, com ONGs e outras instituições e que vai defender os interesses da comunidade e assessor as autoridades administrativas locais para qualquer assunto de desenvolvimento local”*

local people (Mansur & Cuco, 2002). Where the relationship does not get better, there is evidence that power relations are becoming more balanced (see Box 12).

Box 12: Social capital

The building of social capital as a result of land law implementation

- Through their use of the law, communities are being drawn more deeply into Mozambique's national (legal) framework, which is decreasing rural communities' isolation and helping to build a more inclusive nation-state;
- Increased feelings of personal and community power caused by the law's titling mandates are leading to increased feelings of tenure security, which in turn are helping to foster personal and community development;
- Communities feel protected by the 1997 land law and believe that the law is a validation of their own traditions and customary laws. This is helping to promote the acceptance of the land law and the implementation of resource management strategies;
- Communities are becoming more organized and united as they realize that cooperation and dialogue are necessary to be able to negotiate with investors for benefits and manage local resources.

Source: Knight 2002

Increasing local power in Sanga

Perhaps the most powerful of the activities has been the recruitment of community scouts who are responsible to the local village committee. The incidents where such scouts have initiated or been involved in the arrest or reporting of illegal harvesting by, for example, local government officials (including the District Administrator) has demonstrated far more powerfully real shifts in authority than any rhetoric on the issue. The increasing ability of these scouts to deter outsiders' use of local resources and to operate within the local geography of the village in terms of conflict over individual and group activities is also helping in a shift from powerlessness and towards a sense of proprietorship.

Some scouts attempted to use their new positions of authority as a means to personal benefit thus mirroring that of the attitudes and actions of state employees. Both these problems are being addressed through placing the issues within the decision making of the committees and the sacking when necessary of individuals. A more complex problem has been the reaction at various government levels to the existence of alternative local power structures particularly when these structures decrease rent seeking or harvesting of benefits by these local state elites. The keeping of accurate illegal use data particularly when it illustrates that over 85 percent of all such activities involve state officials has been successful so far in retaining higher level political support and countering statements such as these scouts are "armed bandits operating outside state control" (for example, during the elections of 1999, the Provincial Director of Health while on party political campaigns in Matchedje ordered the hunting of some sable to distribute as an election booster for his party. He was prevented from doing this by the Committee President, the community scout and the village Chief. His reaction on return to Lichinga was to report to the Provincial Governor that in north Sanga the *povo* or ordinary people were suffering from "armed bandits of this Chipanje Chetu programme"!)

Source: Anstey, 2000

There is also evidence that some of the negative impacts of the messy institutional environment can be offset by the more thoughtful and carefully planned establishment of representative bodies. The structure of a Natural Resource Committee within one community divided the top two leadership positions in the committee between locally important actors, representative of FRELIMO and RENAMO, and made all committee decisions contingent upon the agreement of the Chief. In contrast to the “cat and mouse” situation described by the old man in Bajone, it was argued that in this way the committee had “guaranteed its’ overarching power in the community – as it had enfolded all the community leaders into the committee’s core structure” (Knight, 2002). This was said to have been a successful strategy, as outlined by Chief Nyakwanikwa, who described himself as being an integral part of the leadership structures of the Committee:

“I am part and parcel of the committee because the committee itself won’t do anything before they consult with me, the Mambo. When I approve a plan, we refer what we have agreed upon to the land law manual – there we have the concrete foundation for what we have agreed upon ... We have now seen that we are one in common, everything is done unanimously. During community meetings, secretaries unite the people, and the mambos tell them the traditional rules. Because of the unity between the mambos and the secretaries, we are now having the access of moving anywhere to exchange ideas with others.”

In another community, also from Manica province, the NGO involved in community delimitation reported a series of benefits related to the increased stock of social capital accruing to the community (Box 13). That these impacts are being felt by the previously powerful is perhaps illustrated by comments from a researcher looking at the attitudes of forest sector stakeholders in Zambézia province:

Both government officials and logging managers express a considerable amount of contempt toward environmental NGOs and organizations working on issues such as land tenure and rights education. For instance, NGO workers have apparently received threats for continuing with their work and, in conversation, operations managers make a deliberate attempt to discredit the need for such work (Reyes, 2003)

Box 13: The benefits of land delimitations - an example from Manica

- Greater participation in the management of local resources
- Community assumes greater control of its area through a clearer definition of the boundaries
- Stimulates more participation in local development activities
- Minimizes the incidence of local conflicts

Source: Kwaedza Simukai Manica, (Simione & Alberto, 2001)

Human capital

Box 14 shows the results of an analysis done on some of the agreements flowing from land consultations with communities in Zambézia. The predominant form of agreement (58 percent of cases) was for opportunities for local employment. In only one of the 48 cases, however, was any detail provided in respect of this agreement; for the vast majority, the number and nature of opportunities to be created, remuneration levels, selection policies, etc. were all unspecified.

Box 14: The nature of agreements made in land consultation processes - a sample from Zambézia

Agreement	N.º of cases	percent of Total
Employment of locals	48	58 percent
Sale of produce locally	7	8 percent
Compensation	4	4 percent
Operation of grinding mill	5	5 percent
Building of shop or school	2	2 percent
Use of traction animals	1	1 percent
Good relationship	2	2 percent
No declaration	16	20 percent

Source: Land Tenure Component, ZADP, 2001

It was also noted that none of the agreements specified any form of training that was to be made available; the predominant feeling of those who were attending the consultations was that what was involved here was access to cheap labour rather than investments in and improvements to human capital. Several reports have noted the fact that usually only low-income positions are involved. In the case of the Bazaruto Archipelago, where employment creation was hailed as a potential major benefit for community groups, less than ten percent of the jobs created at the various tourism establishments were actually filled by inhabitants of the islands (Engdahl et al, 2001).

Natural capital

The next largest category of agreement from the Zambézia example (16 cases representing 20 percent) were cases in which the community did not object to the application but where no specific agreements on local benefits were made. It appeared in these cases that the natural capital available to communities (the land resources) was in fact being reduced. Only in four percent of the agreements was some form of compensation to be paid to existing rights holders. In only one percent of the cases did an applicant agree to make livestock available as traction power for ploughing and clearance of land, despite the predominance of applications for grazing land (ZADP, 2001) and the evident lack of this form of natural capital amongst the communities⁴⁸.

⁴⁸ This may be an indication of abuse of the law; registration as grazing land implies much lower rates of tax.

Physical capital

A further 15 percent of the cases involved the applicant agreeing to make local produce available for purchase, to establish a local mill or to construct other amenities (including shops). Anecdotal evidence from elsewhere attests to the predominance of agreements that involve an investor promising to build social amenities such as a school or health post, or to improve access roads to the area involved. An IUCN report on the benefits to communities within reserve areas states that many of these infrastructures provided by the private sector are built from local materials and hence last for only a short period of time (IUCN, 2003). A lack of coordination with local government authorities has left some new facilities unstaffed and unused.

In the forest areas there is evidence that physical capital may in fact be destroyed. There is apparently no expectation by government that logging companies will build or maintain transportation infrastructure. The requirement for management plans, for example, makes no explicit call for operators to invest in road or bridge construction, nor does it require them to repair damage done to existing roads and bridges. One group of villagers explained how a light-duty bridge built with the assistance of an international NGO allowed them to reach the nearest town during the rainy season. However, the bridge was used by logging trucks weighing well over the bridge's capacity and before long the bridge was destroyed beyond use. Rather than rebuild, the loggers began using a much longer route that avoided major water crossings. The added distance of this route makes it much more difficult for villagers to reach the town, sell their goods, buy necessities and access health care (Reyes, 2003).

Financial capital

What are lacking still are concrete financial benefits to communities as a result of partnership or joint venture deals (it was noted above that only four of 100 consultations resulted in an agreement that resulted in the payment of compensation to existing rights holders – all of these were in the form of once-off cash payments). Box 15 shows the nature of proposals regarding local benefits put forward by private sector entities that were bidding for hunting concessions in Marrromeu district. Only one proposal suggested any form of financial payments and this was to be made to the traditional chief of the area⁴⁹. In general, it appears that most proposals, in respect to community involvement, were vague in the extreme (Soto & Madope, 2000).

Writing in 2001, Matakala & Mushove state that there is little experience of benefit distributions of a financial nature and that the only examples are that of the *Projecto de Gestão e Desenvolvimento da Reserva do Niassa* and the *Tchuma Tchatu* project. The division of financial benefits as part of the former project are set by a legal instrument passed by the cabinet⁵⁰. This instrument states that the management of the reserve, which is a national conservation area, will be done by the *Sociedade para a Gestão e Desenvolvimento da Reserva do Niassa*, and anticipates a tripartite arrangement between the state, a private company (Investimentos Niassa) and the “local communities” as a third partner. The holdings within this society are set at 51

⁴⁹ It was noted that this proposal endangered the sustainable exploitation of wildlife resources because the local community, marginalized by this system of payment, would continue to hunt in the area (Soto & Madope, 2000)

⁵⁰ Autorização 79/98 Conselho de Ministros

Box 15: Proposed benefits proposed by hunting concessionaires in Marromeu

Benefit	Bahati Safaris	Promutur	Inhaminga Safaris	Wicker Trading
Employment	✓	✓	✓	✓
Assistance for community guards		✓		
Zoning		✓		
Consciousness raising		✓		
Provision of game meat	✓	✓	✓	✓
Provision of grinding mill			✓	
Assistance to school	✓	✓	✓	✓
Assistance to hospital	✓	✓	✓	✓
Traditional ceremony	✓	✓		
Payment to traditional authority	✓			
Tips for workers	✓			
Assistance to local resource management committee	✓	✓		

Source: Soto & Madope, 2000

percent in the state and 49 percent in the private company; “over the next 10 years” it is envisaged that 15 percent of the holdings will be made available to the local communities and 19 percent to other “private investors”, with the state and company holdings reduced to 30 percent and 36 percent respectively (Rodrigues, 2001).

Presently, the only financial benefit flowing to the communities is the payment of 50 percent of the revenue from auctions of hunting quotas within the buffer zone, outside the core limits of the park. This money is paid only after there has been an agreement reached between the park management authority and the community groups on what it will be used for and it appears that this has included the payment of the salaries of those community members who have been involved in the maintenance of the park fences (ibid). In effect it would appear that the community has to pay itself, from its own revenues, for providing services to the park.

In the case of the *Tchuma Tchatu* project, once again the division of benefits had to be authorised through a specific high level legal instrument⁵¹. According to this the division is as follows: 21 percent and 10 percent for the district administrations of Mágoè and Zumbo respectively, 35 percent to the state operation in charge of the concession. The project known as Chipanje Chetu, in Nissa province, attempted to follow this model but failed as a result of the lack of a legal instrument for the payment of benefits (see Box 16 below).

⁵¹ Diploma Interministerial 92/95

Box 16: Failed incentives for participation

Failure to address incentives

The community of Senhote in Monapo district of Nampula province organized a voluntary group of 14 community scouts, men and women, to assist in law enforcement and control of use of their 3,300 ha of natural forests, which have been neglected by government law enforcement officers in the past. In their first intervention, around 12 logs of valuable tree species - *Pterocarpus angolensis*, *Millettia stuhlmanni*, and others - were confiscated from outsiders, who have been exploiting these resources without a license. The scouts immediately informed the local government authorities, who arranged the transfer of the apprehended products to the District Directorate of Agriculture (DDA), in Monapo. According to the present regulations, confiscated products are the property of the State and funds resulting from its auction must revert entirely to the State. The community scouts were left only in the possession of the hand tools taken from the illegal loggers. Knowing the value of the logs (estimated at approximately USD 1,000), but not benefiting from them, the community scouts lost all motivation to continue supporting law enforcement in their forest area.

In a similar case in the Derre Forest Reserve area, a team of researchers were informed of a group of local people that had apprehended someone cutting trees in the area without a licence. Since this was soon after a meeting with the local and forest authorities at which the community had been encouraged to become involved in control measures in and around the reserve, the group had duly prevented the logger from leaving the area and reported the incident to the police. According to the informants, the police received a bribe from the logger and allowed this person to leave unmolested, leaving the local community with little motivation to continue with any further forest control activities.

Failure as a result of withholding benefits

In 2001, the *Chipange Chetu* programme brought to the remote district of Sanga, in Niassa province, the first 34 tourists who ever visited the area. They left behind around USD 6,200 in hunting fees. Notwithstanding the fact that the programme is exclusively run by the local community (with some assistance from IUCN and SPFFB), they were not authorised to retain the fees collected; hunting fees are, by law, to be deposited in government accounts. The Sanga community was trying to mirror the *Tchuma Tchato* programme in Tete province, where local communities retain around 1/3 of the fees collected. However, they were informed that this incentive system is exceptionally and exclusively authorised to be applied in the *Tchuma Tchato* area of Bawa, thanks to a special diploma signed by the Ministry of Agriculture, the Ministry of Justice and the Ministry of Finance back in 1995, which is site specific. Working hard as tourist guides but not able to retain the hunting fees, and faced with complicated mechanisms to obtain benefits, the local community in Sanga feels unmotivated to welcome tourists in the future.

Source: Mansur & Cuco, 2002 and SLSA, 2001

There is also some evidence that the new policies are leading to an (unintended) loss of benefits for local groups, particularly in respect to the relationships with forest operators who, as a result of the new Regulations that allocate 20 percent of the tax revenue for the benefit of local communities, appear to be using this as an excuse to reduce their allocation of direct benefits.

A loss of livelihood options is also being noted in the case of some private sector development initiatives, particularly those in the tourism sector that target areas of high conservation value. Under the guise of providing support for alternative livelihood strategies and generating local wealth, some of these projects are in fact having a net prejudicial impact upon local livelihoods. Tourism projects, in particular, are prone to overstating the extent of community agreement and participation involved in their establishment with one operator⁵² even claiming that the Quirimbas National Park is the only conservation area in the world to be proclaimed at the request of the local inhabitants, despite clear independent evidence of local resentment, suspicion and marginalization on the part of the archipelago community (Johnstone, 2003).

Other large concessions that have an impact upon local land rights, mostly related to mining activities, have tended to take a classic compensation route and aside from a few social infrastructure developments appear not to be interested in establishing long term relationships with local people.

3.3 Community incentives and capacities to claim and secure rights and manage resources

An important aspect of local community involvement in the formal management systems of natural resources is the perceived benefit to their livelihood strategies in doing so and the incentive regime in this regard is therefore important to analyse. Institutional capacity at a community level is also a key element. While the legal system and policy framework may define and enforce some rights, the administrative structures and service deliverers are often the primary institutions through which entitlements are delivered or withheld. The interactions between citizens and “street-level actors” (local bureaucrats, police, etc.) are central to the conversion of abstract rights into concrete reality. Box 16 shows examples of both these kinds of failures: a failure on the part of regulatory frameworks to adequately address the issue of incentives and failures as a result of the withholding of benefits by local power structures.

Knight (2002) states that information regarding the Land Law has had the effect of making people more aware of this process, a first step towards improving their capacity to challenge local actors who distort messages or withhold entitlements. Teaching villagers about national laws is allowing them to clearly see the differences between national policy and local governance. One woman interviewed stated that:

“In my opinion the local government is totally wrong, because it changes what was approved by the central government and puts it in their own words.” (Quoted in Knight, 2002)

Such a distinction between local officials and national policy is important, as it has made clear to communities that local corruption can be fought – one need only go above the corruption to a higher level, or refer to the law and base your power and conclusions in its mandates (ibid). Similar conclusions were drawn by Anstey (2000) in his observations regarding the willingness of the Sanga community guards to challenge locally powerful interests who were flouting the law.

⁵² See, for example, www.bespokeexperience.com

A report on the Goba community, one of the initial projects implemented under the auspices of the FAO implemented project within the DNFFB, acknowledges problems of both incentive structures and capacity:

“The incentives for participation may not be sufficient to compensate the costs of engagement in community organization including the imposition for charcoal making restriction even understanding the advantage of sustainability of forests for present and future generations. Currently, there is a lot of enthusiasm among communities while the project exists to support the initiatives, but the alternative activities have not yet produced incomes to sustain people expectations and confidence to drop dependence on charcoal making. We should acknowledge the strength of organization of Goba Community and the capacity to make it work, but on the other hand, the level of illiteracy is very high and may create some limitation on communication with other stakeholders and investors”. (Kumagwelo, 2000)

Even the flagship Tchuma Tchato project was critiqued from a similar perspective:

“The major problem with Tchuma Tchato was that the role of local authorities was not clearly defined, although it is recognised that they should be involved and directly benefit from the revenue distribution process. Tchuma Tchato shows us that a weak legal framework is one of the critical constraints for productive collaborative interaction between necessary parties (government institutions, communities and the private sector). The main problem was the perceived uneven distribution of responsibility and mechanisms of distribution which did not integrate the equity principles for the benefit of the community.” (Foloma, 2000)

Nhantumbo & McQueen (2003) point out that poverty and illiteracy militate against the participation of local communities in management regimes for natural resources; the need to satisfy basic necessities means that poor forest communities do not often have the luxury of a long planning horizon for the use of resources. They highlight the fact that there are only ad hoc initiatives in respect to building capacity for natural resource management and that there is no national strategy for this.

3.4 Social differentiation and marginalization

Land tenure rights as they operate in customary systems in Mozambique are, as in many other areas, highly dynamic and complex. They intersect with other forms of relationships in myriad ways. The implication of their recognition in formal law is that inequalities, where these exist in the “customary” systems, can be reinforced. Some, such as gender inequalities, are nominally excluded from this reinforcement since they are contrary to the constitution.

However, in the absence of legislated state support for the new institutions, that steers them towards practises that do not unfairly discriminate against any group, this counts for little. The recognition of customary tenure must be done in such a manner that ensures that there is a choice available beyond narrow definitions of “traditional authority” mechanisms. In Mozambique this has been provided for through the very broad definition allowed to groups that wish to call themselves a “local community”.

In this way, the customary tenure that is being recognised is nothing more than a set of rules and institutions that derive their legitimacy from within the community.

That said, the space and freedom that exists for people to break out of existing systems is constrained by unequal power relations, unequal access to information and the potential loss of social capital that flows as a result of membership of a particular group. This capital may well bind people to continued membership of a “traditional grouping” and, as Bingen (2000) puts it, “the ties that bind are also the ties that exclude.” In other words, those “excluded” as a result of familial or kinship institutions are likely to remain so even where governments have devolved authority to local levels (SLSA, 2003).

Customary tenure systems have proved themselves remarkably adaptable to changing circumstances, including rising land scarcity, and the commercialization of agricultural production. They can provide means of access to resources for groups with weaker traditional claims, such as women and young people, as well as migrants and other mobile groups. In Mozambique the most common support networks comprise kinship and family but also include membership in church congregations, for example (see Box 17).

**Box 17: Marginalized groups and support mechanisms
in the community of Murrua**

People in the community of Murrua, Zambézia, identified marginalized groups as including old people without support mechanisms, sick people, single women, widows and widowers and young people. Others consider themselves as marginalized because they have little or marginal land to leave for children or people, even with land, that did not have the conditions necessary to use it (labour constraints)

Support mechanisms exist within the community. For example, Sra. Laura Savula, a widow, was assisted by her family and the members of her church congregation to clear her machamba.

The position of divorced women is particularly difficult since they have to return to the home of their parents but without access to land of their own. Some community courts are addressing this by encouraging the division of goods, including land. In some cases, widowed women will, however, continue to cultivate land that belonged to the husband.

Cash difficulties sometimes lead to distress sales of land although no cases of being without land were recorded. The total area available to a family is reduced, however, and the soil fertility drops on remaining areas because of subsequent overuse.

Social differentiation was also noted as a factor of market access - Most of Nhafuba community is far from the road network, unlike in the neighbouring community of Murrua which has much easier access to local markets and services.

Source: Cau, 2003

However, the incidences where benefits are captured by local elites are many. Many of the individuals employed by forestry companies in Zambézia, for example, are related to local leaders. One company representative noted that he always pays a salary to the local traditional authority, even though the individual is not required to work. Another company official noted that many of the individuals hired are nephews, relatives or closely associated with the traditional authority, party secretary or other local leader (Kloek-Jensen, 1999). Other recruitment processes also marginalize the poorer members of community groups:

“Villagers explained how loggers arrive in an area to begin cutting and make it known that laborers will be needed. The operator will generally place a Mozambican in charge of choosing the workers. Vying for jobs, people offer livestock and other scarce valuables in exchange for work. The result is that those villagers who can afford to pay the most are most likely to get jobs” (Reyes, 2003).

The example given in Box 18 also demonstrate how the processes and institutions can be manipulated by local elites, whether these are consultations or involve the registration of rights.

Box 18: Processes of elite capture

Class inequalities in Dororo

In Dororo, although the NGO staff had worked hard to teach the main points of the land law, people were generally unwilling to learn and accept it. Explanations for why villagers are reluctant to listen to the activists and unhappy with the land conflicts can be largely attributed to class for two reasons. First, the poorer members of the community see investors as a source of jobs, a good thing regardless of the lack of other benefits or loss of land. One of the activists explained that:

The community participation in the learning of the new land law is still lacking because most of the people are not yet understanding what will happen in the future, they are still only thinking on today, they are still ignorant. It happened that on the third investor’s consultation date, while the activists were still criticizing on the points of the negotiation, the people stood up as if we were not talking and were already signing the papers.

Second, the community members chosen (by the ORAM organizer and the community as a whole because of their high literacy levels) to spread the word of the land law are part of the richest family in the village, owning many heads of cattle and large fields. The activists are thus seen by many community members as wanting to chase away investors – who might bring jobs – so as to gain more land for themselves. One of the poorer community members also explained that same consultation:

The agricultural specialists were trying to explain to the people the fruits they would harvest from the investor, and most of the people were in line with what was being said. Others, just a few, refused the entrance of the investor, for they have facilities such as many heads of cattle, a hand plough, and other necessities that we don’t have. These ones, they refused, but it was hard for them, having medium-sized fields, to employ everyone, and the little they have they force people to work for them and receive less payment. So when they see people who have money coming into the area, they fear that they will lose their cheap labour, and so competition of living will be high. As a result they found it wise not even to listen to what the investor had to say.

Source: Knight, 2002

The position of women as a commonly marginalized group may be changing as a result of the messages transmitted by the Land Law, although there are community groups that contend that this marginalization never existed in customary systems. In all four of the communities studied by Knight in Manica, community elders of both genders firmly insisted that according to local custom, widows had a clear right to

remain on their lands after the death of their husbands. For them, the land law's insistence that widows and unmarried women have the right to have their own land was merely another example of how the land law mirrors their own customary rules. She contends, however, that the land law is deeply affecting gender dynamics in other ways and shifting the balance of power within households, particularly in relation to resource-management decisions:

“Female members of the drama group in Musiyanharo reported that after learning about the land law, their husbands allowed them more freedom. One woman explained the changes that have come about as her husband has learned and understood the land law, saying, “Long back, without knowing this new land law, my husband was not able to give me the permission to sell any of our family production. But now that he knows that it is written in the land law that women have their rights to use the land, now I am free to decide on my production and also to sell it, and I am also free to do this community work.” (Knight, 2002).

Noticeable shifts are also occurring in respect to participation in community meetings. In fact, women's participation in the dissemination meetings held by ORAM in Zambézia, which was monitored over a period of two years, outstripped that of men (ZADP, 2002). Knight notes that there is still much to be done, however, and quotes one female interviewee as saying:

“When women are working, the men approve that the women have their own pieces of land, but when it comes to harvest time, the men say, “You are my own, and so whatever you are harvesting is also my own.” (ibid)

3.5 Conflicts and dispute resolution

Lucas (2001) identifies two primary forms of conflict in respect to land resources: those arising between local community groups and third party interests from outside the community and those occurring between community members (or neighbouring community groups), with the former identified as having a far greater negative impact on the livelihoods of the rural poor. In common with other studies (see, for example, Norfolk & Soberano, 2000), this research identifies the fact that many contemporary conflicts have historical roots that can reach back to early colonial conquests and usurpation of land rights. Where this is not the case, the conflict very often arises between new investors that want to rehabilitate pre-existing farms and infrastructure, many of which, in the period since independence, have been abandoned and subsequently occupied by local people. Other conflicts arise as a result of locally incompatible land uses, as evidenced by the many conflicts in Zambézia province that occur between rice-growing local communities and livestock-owning investors.

As noted in Box 8, the initial land campaign stressed informal and administrative rather than judicial means of resolving conflict, an emphasis followed by ORAM strategies in seeking a consensual solution to a conflict through mediation and the promotion of partnerships between communities and the private sector. Lucas notes the mediating role of the traditional authorities in this respect and the tendency for these conflicts to be resolved through the payment of compensation to affected rights

holders. Administrative authorities may become involved if this level of dispute-resolution is not successful and the actors in such cases can be from the local district administrations, the SPGC offices or the offices of the provincial governor.

The traditional authorities have a predominantly greater role in the resolution of conflicts that occur between community members or between neighbouring groups. Very often, these institutions will co-exist with the “community courts”, whose foundations lie in the peoples’ courts introduced by post-independence legislation. These function as a court of first instance in a local area. Cases that are impossible to resolve at this level can be referred to similar courts at a higher level in, for example, the administrative post. The “judges” are elected locally and in many cases comprise the local political/administrative functionaries and office bearers of organizations such as the OMM. Although the institution is largely respected and is recognised to play an important role, there are accusations of corruption in some areas. In Licoa, for example, researchers were told:

“When we go to the community court, in many cases it becomes complicated because some of us are poor and have nothing to pay the judges...when you are poor your problems are not resolved, you have to have a chicken or other animal in order to get any solution to your problem and if you do not have this you could wait your whole life...”
(SLSA, 2003)

Similar comments were made in relation to the traditional dispute-resolution processes but here there appears to be a higher level of acceptance that the parties to a dispute must contribute something to the chief. Payments are recognised as “costs” rather than as inducements for a favourable verdict.

The legal incorporation of customary tenure rules into dispute resolution processes has been a crucial step. One researcher, who was evaluating agro forestry techniques in Nampula, noted the important role served by the existence of older cashew trees in identifying the legitimacy of claims to particular pieces of land and claimed that “the widespread presence of cashew on smallholder land in this province allows these trees to provide evidence of land ownership, and constitute legitimate evidence for dispute resolution” (Unruh, 1996). It further appears that this incorporation is a two-way process and that some elements of the land law are now being integrated into local customary rules for resolving disputes:

“The law has begun to be actively adopted into local conflict-solving strategies, both for internal conflicts and during external conflicts. In every community studied, leaders reported that local leadership structures have begun referring to the land law when resolving internal disputes. Furthermore, many villagers expressed variations of this statement, made by a man in Dororo: ‘For us to have power, we have to stick to the legal procedures!’ Such sentiments are proof that communities are embracing legal strategy, understanding that not only is it possible for them to make the jump to state-based procedures and legal process, but that it is also necessary” (Knight, 2002).

Other comments reveal the extent to which the law has reinforced some of the customary rules and procedures:

“The new land law hasn’t changed anything, only it has strengthened other things. Traditionally, we used to avoid people cutting trees unnecessarily, or starting veldt fires, or burning the cemetery grounds, the land law also recommends these things. The land law itself has also avoided people to cultivate in or open our traditional forests where we practice our spiritual ceremonies. Definitely the land law has strengthened our rules that were existing in the past. With the introduction of the land law, things seem to resemble the past” (quoted in Knight, 2002)

There is a striking degree of complacency as community groups watch their forests disappear. In other words, the study uncovered no reports of group protests, no stories of sabotage, and no accounts of police responding to unrest of any form. Instead, people simply shake their heads, shrug their shoulders and explain how they perceive the situation to be unfair but intractable. This is striking, but perhaps not surprising, as it fits squarely within the patterns of their centuries-long experience. (Reyes, 2003)

4. KEY LESSONS, PRESENT AND FUTURE CHALLENGES

A sustainable livelihoods approach requires that the focus of the Mozambican state now needs to be on providing tailored services to empower poor people (and others), within an appropriate policy environment, to benefit from potential livelihood gains. The critical role of the centre becomes helping to create that environment; through developing policy (or localising national policy), through redistribution where market forces need tempering to ensure the poor are covered, through high level strategic planning and developing strategies for implementation, through the delegation of operational control to “deconcentrated” structures at provincial and district level (or to local government), through ensuring coordination in the use of resources and monitoring development to ensure that policy objectives are achieved cost-effectively and without fraud. In Mozambique there remain many challenges; the purpose of this section of the paper is to propose some of the most important areas that need to be addressed if the initial gains that have been made through the development of new natural resource policies are to be consolidated. Box 19 summarizes entry points for a livelihoods approach to natural resource policies.

4.1 Policy gaps and implementation shortfalls

Policy issues

The legal and policy framework regarding natural resources is still evolving and presents good opportunities for strengthening community rights. However, there are some areas of concern; some important policy instruments still need to be put in place and the application of these policies and regulations has major shortcomings, in terms both of capacity and commitment. Ongoing decentralization processes and devolution of rights and responsibilities to local communities is revealing the tensions in Mozambique where land and natural resource policy mixes a powerful role of the state with the need to strengthen community rights. Devolution of rights policy is being driven more by informal “pilot” and ad hoc approaches than through central level processes, and in fact there are pressures to move in the opposite direction, where powerful interests are involved (World Bank, 2003).

Some of the important policy issues that still require clarification or the development of subsidiary instruments in order to be put into practise include the following:

- a) The nature of the interface between the “community representatives” recognised by the state in terms of *Decreto 15/2000* and the representatives of the community as a private entity with co-title over local land resources.

Confusion between public and private representative roles has arisen as a result of the implementation of state decentralization processes combined with a parallel devolution of rights to community groups in terms of, in particular, the Land Law. This confusion has arisen as a result of the contents of the legal instrument (*Decreto 15/2000*) that created a community-level tier of publicly-appointed representatives, whose powers now overlap with those that have been devolved to community groups as private land-holding entities. This has marginalized the role of those that represent the community as a private entity. Although this issue has been raised in natural resource for a on several

Box 19: Entry points for a livelihoods approach to natural resource access policies in Mozambique

Level	Operational entry points and instruments	Arenas for action
National policy dialogue	<ul style="list-style-type: none"> • Macro-policy dialogue in economic, social, political and environmental spheres • PARPA 	<ul style="list-style-type: none"> • National policy priorities & intra-sectoral budget allocations • Regulatory frameworks for key areas (land, forestry, and informal sector, financial sector, labour standards, etc.) • National governance: public sector reform, decentralization; regulation of civil society organization and social mobilization; policies on disclosure, openness and transparency of budget and policy processes and natural resource use right allocations (e.g. national cadastre).
	Sector policy dialogue <ul style="list-style-type: none"> • PROAGRI (MADER) • MICOA • MAE 	<ul style="list-style-type: none"> • Sector policy priorities and intra-sectoral budget allocations, consistency & harmonization • Service delivery standards and entitlements and the monitoring of the fulfilment of these • Regulatory process at sector level (e.g. forest services regulation of concessions, land services regulation of consultations, Ministry of Tourism allocation of reserve area concessions) • Sector governance: transparency of policy processes and engagement of primary stakeholders, permanent fora for dialogue & consultations
National and sub national project or programme support	Public sector <ul style="list-style-type: none"> • MADER (DINAGECA, DNFFB) • CFJJ • MAE 	<ul style="list-style-type: none"> • Capacity building and direct project support to key activities (e.g. land delimitations, community land use planning) • Policy development and piloting of change (e.g. land delimitations, partnership formation) • Monitoring of the fulfilment of livelihood rights • Accessible justice systems • Dissemination of information relating to rights and entitlements • Transparency of information relating to natural resource use rights and concession allocations • Access to independent mediation and related services
	Civil society <ul style="list-style-type: none"> • ORAM, UNAC, IUCN, ACORD, HELVETAS, IBIS, etc. • COGEPs • Private sector 	<ul style="list-style-type: none"> • Support to agencies supporting livelihood rights for poor people through: <ul style="list-style-type: none"> • Advocacy • Capacity-building • Social mobilization • Direct support (e.g. funds for delimitations, micro-credit)

Adapted from Moser & Norton, 2001

occasions it is little understood within the broader realm of decentralization programmes and initiatives. A statement that clarifies the differences between these representative roles is needed; this could come as a result of a tightly focussed policy seminar that brings together policy-makers that are working on natural resource policies and those involved in decentralization programmes, with participation also from NGOs that are helping to support the implementation of both policy initiatives.

Indeed, there are several areas where natural resource and decentralization policy overlap; possibly enough to justify the creation of a semi-permanent forum to debate and discuss areas of overlap and synergy. In this way some of the pitfalls of implementation to date (e.g. the proliferation of different institutions at a local level, confusion between public and private representation, etc) might be avoided or minimised. Harmonization of policy in this way might prove to be more effective than the present system whereby completed drafts of policies and laws are then submitted for formal comment by other sector ministries.

- b) The nature and extent of the powers that can be delegated to community groups in order for them to institutionalise their management of local natural resources (i.e. the joint Ministerial Diploma from MADER and MITUR referred to in Articles 33 of the Forestry and Wildlife Law and 99 of the Forestry and Wildlife Regulations).

This missing piece of legislation is crucial for the transfer of real authority and control over natural resources to local community groups. At present there appears only to be a draft technical annex produced by the MADER, rather than the joint instrument from MADER and MITUR that the law and regulations require. This draft is at times vague, particularly in respect to how community groups must be organised in order to qualify for the delegation of powers and the actual procedures and costs involved in making an application to the provincial services. Drafting appears to have been done by the DNFFB to date and there has not yet been any official consultation regarding the contents of the proposed technical annex. The opening up of the discussion concerning the elements of this legislation, so that civil society groups, NGOs and community groups themselves are able to engage with some of the issues involved, is an important next step. It is important that representatives of the provincial services, from Forestry and Wildlife as well as Tourism, also provide input to the process, since it is at this level where implementation will take place. Central-level drafting teams often overlook or have no experience of the resource and capacity limitations that exist at provincial offices.

- c) The policy in respect of acquired land rights in areas which are or are to be declared as conservation areas.

There is no clear consensus on whether or not land rights acquired through good faith occupation or according to 'customary norms and practises' are recognised in law where these fall within areas that have some form of conservation status. This is an important issue given the establishment of new conservation areas (e.g. the Limpopo Park, the Quirimbas National Park, etc.) and the number of people that live in existing parks (e.g. the islands of the

Bazaruto Archipelago). Whilst conservative and conservation agendas take the line that the Land Law specifically excludes the obtaining of a DUAT in such areas, it is less clear on whether this applies to rights acquired through operation of the law (i.e. where pre-existing rights were being recognised). In addition, private sector representatives have in fact been awarded DUATs in such areas, even after the new law came into operation (examples of these, in the Limpopo Park area and the Bazaruto Archipelago, can be found in the Government Gazette). In a context where powerful interests are pushing for the removal of people living within conservation areas, in order to make way for the award of private concessions, clarity around this issue could provide a clear basis on which those affected were able to establish their equity (or a basis for compensation if removed). Although the IUCN has commissioned some research into this issue there are a number of divergent approaches in operation. The national departments of Land and Forestry and Wildlife, provincial governments in Gaza and Inhambane, the Transfrontier Conservation Areas Unit within Tourism and other government agencies all appear to have different perspectives on this issue.

- d) The policy in respect to the awarding of concessions to private sector entities for natural resource management in conservation areas.

Closely connected to the previous issue, and as important from the perspective of local community groups that have de facto interests in the resources, this is an issue which is presently clouded in confusion. Tender procedures and the nature of the adjudicating bodies are not transparent and there has been no public debate or input into the relevant criteria to be adopted in decision-making processes. The World Bank have provided resources through the TFCA process (to MICOA) that are intended to bring clarity to this policy area, but progress to date has been slow and there are several institutions that fall outside the ambit of this programme.

- e) The mechanisms for allocation and payment to community groups of the 20 percent of local revenues contributed to the state by private sector users of forest and wildlife resources (i.e. the joint Ministerial Diploma from MADER, MITUR and MPF referred to in Article 102(2) of the Forestry and Wildlife Regulations).

A draft of this joint Ministerial Diploma exists, but appears not to have been widely circulated to date. The payment to local communities of the 20 percent of local tax and licensing revenues is one of the cornerstones of the Forestry and Wildlife legislation and is the only tangible benefit that is envisaged in return for the increasing responsibilities that are accruing to local community groups in the management and control of forest and wildlife resources. It is therefore crucial that this piece of legislation is designed in a way that ensures that the policy objectives are attainable.

Unfortunately, the draft version in existence posits a range of conditions and procedures which appear tailor-made to ensure that no tangible benefits will be realisable for many years. Community groups, the nature of whose representation still remains unclear in the law, are required, for example, to open a bank account in order to receive the 20 percent of the local revenues.

Notwithstanding the almost complete absence of banks in rural areas, the community groups will also be faced with banking procedures that will effectively prevent them from opening such accounts. The draft legislation further states that where a community is unable to open an account, the monies can be held in trust by the licensing authority and spent on the community groups behalf according to instructions from them. This would have the effect of turning a provincial office of the Forest and Wildlife Services, for example, into a bank-cum-procurement agency for a range of community groups, a situation that is clearly untenable given the severe absence of capacity within these offices to carry out their existing responsibilities. There appears to be a continuing level of technical assistance from the FAO in the development of these proposals⁵³ but with the official demise of the DFID process there is less momentum around the consultative processes than is necessary to ensure their applicability and suitability to the Mozambican rural context. Representatives of the provincial offices of the DNFFB are unaware of the contents of the draft and have not been involved or consulted in the process.

- f) The establishment of general principles concerning the distribution and utilization of the payments to communities made in terms of Article 102(1) of the Forestry and Wildlife Regulations.

These presently appear only (vaguely expressed) within the *fundamentação* section of the joint Ministerial diploma referred to above and as such do not actually form part of the legislation itself. The basis for the detailed discussion around mechanisms for payment of community benefits ought to be a set of general principles that have been broadly discussed and debated. An opportunity for this, based on the results of the nationwide community consultation process undertaken by the DNFFB, ought to be created.

- g) Policy mechanisms and instruments that promote and facilitate the sustainable commercial exploitation of natural resources by local communities.

Presently community groups are required to satisfy all of the legislated procedures that apply to private sector commercial users of natural resources. Whilst some of these are necessary from a sustainable use perspective there are elements of the laws, particularly the Forestry & Wildlife Regulations, which could be re-examined in order to make them more accessible to local community groups. Some research into these issues, with a particular focus on the movement and commercialization of charcoal and traditional plants, for example, could lead to some amendments to the legislation that would ease community groups' entrance into the formal commercial exploitation of natural resources.

An enabling environment

It is also important to recognise that the impact of improved access to natural resources will be conditioned by access to other types of capital, in particular agricultural markets, inputs and appropriate technologies, as well as elements of other

⁵³ I Pires, Pers Com.

sector legislation that have an important bearing on the quality of the “enabling” environment. Some of these elements include the following:

- The formation of formal associations at a community level remains a difficult and bureaucratic process and is ultimately subject to a political/administrative veto. More simple and accessible mechanisms that enable groups of people to freely associate in such a way that they gain formal, legal recognition will be extremely important in the future. Presently, the recognition of formal associations can take months or years, partly as a result of unwieldy bureaucratic processes and other tactics (through colonial-era legal processes which, strictly speaking, are contrary to the fundamental right to free association and which were removed in Portugal after the fall of the Salazar regime for precisely this reason; in Mozambique, however, they remained on the statute books).
- Banking regulations and requirements will make it almost impossible for community groups to open and manage accounts, despite the fact that they may have been awarded legal recognition through the operation of the Land Law. Alternative financial institutions providing more accessible and tailored services to the rural poor in Mozambique do not yet exist outside of the rather narrowly-focused and NGO-managed credit programmes.
- The emphasis on the formation of formal, notarised agreements between private sector operators and community groups will have to contend with the extremely high transaction costs involved in accessing notary services⁵⁴. These, and other forms of business services, are not available to rural populations and even local business entities find them largely inaccessible and extremely expensive.
- Government services generally, but specifically those in the natural resources sectors, are staffed largely by technocrats with little experience of working in participatory ways with local community groups. Although there are some initiatives around the country to provide appropriate training and skills development (such as the Centre for Sustainable Development of Coastal Zones in Xai-Xai and agencies involved in various decentralised planning projects), there is no comprehensive change management process within MADER that is addressing this issue, despite the recognition of its importance within PROAGRI documents.

The regulatory frameworks governing these processes will be powerful disincentives in their present form and more analysis and understanding of these obstacles is required.

The private sector has an important role to play in increasing opportunities for livelihoods but the existing monopolistic practises of many agribusiness traders and companies are actually reducing access to markets for individuals and emerging small-scale enterprises. There is a clear need for a regulatory presence of the state to ensure competitive behaviour and the maintenance of low barriers to market entry.

⁵⁴ In some cases these services can cost as much as 39 percent of the value of the agreement being notarised (E. Joaquim, [Thulamanzi Lda], pers. com.)

Appropriate incentive structures which encourage the private sector to be responsive to community groups (who have little or no economic power in the market place) are particularly difficult given the limited taxation base in the natural resource sector in Mozambique, thereby reducing the possibility of using tax incentives to guide private sector behaviour. Although of limited potential, it is notable that no thought has yet been given to the introduction of tax incentives for private sector users of land that make local development agreements with community groups.

Access to a well-functioning legal system is another important tool in curbing private sector (and state) excesses and in creating the necessary conditions for fair transactions. The right kind of social capital for communities to enter into "arms-length" negotiations over the use of the resources in their historical possession will come from the creation of this kind of environment.

Implementation issues

Other challenges remain in the implementation of existing policies so that potential gains as a result of new principles can become concrete gains in terms of an improvement to livelihood sustainability. A case in point is the new institutional arrangements related to the mandatory **local consultations** with community groups as part of concession allocation processes. Here the development of a common methodology and training materials that can assist in enabling government, NGO and private sector staff to complete the consultations in an effective way in the future is critical. There has been no official movement on this issue over the past three years despite the fact that it has been identified as a crucial gap.

The manner in which **concessions** are being granted is closely connected to this issue. The World Bank have indicated that "a lack of transparency and an ad hoc approach to the granting of large-scale agriculture, tourism, wildlife and other natural resource related concessions threaten the sustainability of development in these areas" (World Bank, 2003). Large tracts of high quality coastline have been parcelled out to investors, many of whom having little long-term investment commitment or experience. The benefits of investments associated with these concessions are largely being captured by narrow interests, and local communities are being both excluded from decision-making and are gaining little benefit. A "patronage system" is developing at the different levels of state intervention, which "increases the fragility of Mozambique's much lauded economic recovery" (ibid). The award of forestry concessions despite non-compliance with existing regulations and the non-existence of standard tender procedures and regulatory institutions for the award of tourism concessions in conservation areas put the attainment of formal policy goals at risk.

The general **lack of implementation** in respect to the potential of the new land policy for tenure reform on a large scale, particularly in a situation where clear and strong property rights are being identified as a *sine qua non* of sustainable community level natural resource management systems, is of concern. Land is perhaps the key livelihood resource for the rural poor in Mozambique, even where agriculture is not the main source of livelihoods. It can act as security, as a means to gain access to other livelihood options, and as a lever for other forms of investment and linkage. The new land policy was in fact designed with precisely this in mind and its non-implementation in this respect has been a crucial failure of the MADER. This paper has noted the extremely low allocations in the PROAGRI annual budgets for

dissemination of information regarding rights and entitlements in terms of the new laws and the non-existence of funds to promote and support the delimitation of community land areas. Attaining the policy objectives will require a much greater investment of public finances.

Transparency in information on resource use rights is also critical. The continuing lack of an efficient and transparent cadastre, where both private and communal use rights are recorded and maintained appears only to attract periodic attention and criticism. The existing land administration system, which is geared more to servicing the needs of the minority, has to be turned into a service for the rural majority. Local administrations, NGOs, private sector operators and communities face huge obstacles in obtaining accurate and up-to-date information regarding the allocation of natural resource rights in an area⁵⁵. Institutional coordination in this respect is extremely weak and some government services, such as those of the SPGC and the SPFFB, are maintaining separate records and systems of use rights where in fact these should be unified.

A general lack of **integrated planning and implementation** is noticeable still, despite the PROAGRI and PARPA. Sectoral approaches, leading to some of the inconsistencies noted in this paper, are dominant and the restructuring process that is ongoing within the MADER has done little yet to have an impact on this. Other Ministries, such as Planning & Finance and Environment, are developing policies and programmes with important implications to local level planning processes. Linking the implementation of the Land Law with processes of land use and district planning offers considerable potential for the strengthening of good governance through the delineation of responsibilities, improvement to capacity and ensuring accountability (CTC, 2003). Presently, however, there is little evidence of this.

4.2 Understanding and monitoring impact

With increasing emphasis in Mozambique on programme or direct budgetary support (building capacity through responsibility) the need for **governance feedback loops and monitoring** mechanisms becomes ever more critical. These mechanisms are vital in order to gauge whether current policies and institutions are hitting the target, a critical question that can only be answered through the detailed technical and consultative review of field-level impacts in often distant locations (IIED, 2002). In addition, there is a high degree and complexity of spatial differentiation within Mozambique; policy in practice can vary greatly between different parts of the country, according to local variations in the institutional/organizational environment. This environment can also change over time, without change in policy statements.

Information regarding the impact of new natural resource policies in Mozambique is characterized by its fragmentary and ad hoc nature at the moment, emanating from various institutions and organizations and consisting very often of anecdotal rather than empirical evidence. There is clearly a need for a more rigorous and institutionalised process of monitoring policy impact that builds upon and supports the presently fragmented collection of data and studies that are being conducted.

⁵⁵ In order to purchase a simple topographic map from DINAGECA it is still necessary to write a request to the National Director. At scales of greater than 1:250,000 the release of the map must be approved by the Minister.

The Inter Ministerial Land Commission, for a period at least and with a varying degree of success at different times, functioned as a focal point for the initial monitoring and necessary iterative processes involved in the policy formulation period in respect to the land law. Now that this institution has been folded into the MADER, it is difficult to identify a central institution that can serve as the collection and analysis point for the kind of monitoring and feedback processes that are necessary. In a DFID workshop report from 2000, the head of the Mozambican Land Commission is quoted as saying that “there are some in Mozambique today who worry that the new obligations to consult and work with local communities on land occupation and management issues will block or delay the development process” and she underlined the need to “take the facilitating role of the [technical secretariat] down to provincial level now in order to assist full implementation of the policy and law in practice” (DfID, 2000). Although this did not happen, a return to the idea of establishing **provincial-level focal points** within the Directorates of Agriculture and Rural Development, that can serve as support mechanisms and monitoring institutions, would assist in building a much better picture of the impact of new policy frameworks. They could also assist in developing best practice guidelines based upon past community based natural resource management efforts.

In the absence of an institutionalised capacity at provincial level for monitoring and policy feedback, an alternative approach would be to initiate this process at a national level, in partnership with institutions such as IUCN and NGOs such as ORAM, HELVETAS, etc. The **development of an action research agenda** that provides a methodology and tools through which a variety of policy instruments in the natural resource sector could be evaluated in terms of their impact would be a valuable first step towards the establishment of a permanent feedback loop. Some elements of the policies that could be an initial focus of such work include:

- The implementation and impact of the Forestry and Wildlife Regulations vis-à-vis the **creation of co-management councils** at district level. This could include the identification of obstacles in practise to the creation and functioning of these councils, as well as the community-level institutions that are intended to underpin them.
- The **nature and extent of benefits to local communities** as a result of private sector use of natural resources through negotiated access and the award of concessions. This could adopt a long-term monitoring approach that would help identify some of the important dynamics between local community groups and private sector “partners” over time. Comparisons between benefit regimes that arise through the allocation of forestry concessions and those in the tourism and hunting sectors, within and outside of conservation areas, could be made and lessons drawn from the various institutional settings within which the agreements are negotiated and maintained.
- The **nature and impact of land delimitations** that are being carried out. This could begin by developing a basic typology of delimitations and help to identify more clearly the factors that lead to or militate against successful interventions that have a positive impact on livelihoods.

- The **impact of information dissemination campaigns** conducted by various entities. If this were conducted as part of a cooperative programme between government and non-government agencies, this kind of research could begin to identify some of the best methodologies and serve to diffuse tensions between the state and NGOs concerning the contents of various information campaigns.

Alternatively, the proposed institutional restructuring of MADER, which envisages the amalgamation of the DINAGECA and the DNFFB into a single natural resources directorate, may offer an opportunity to establish a further monitoring system within PROAGRI that addresses these areas. Some low-level technical assistance in the design of an impact monitoring system, carried out in consultation with non-state agencies involved in the natural resources sector, could add considerable value to the existing information systems developed through the PROAGRI process (which have tended to be activity rather than impact-orientated).

It may be useful to use the recent establishment of a Poverty Observatory as a model for this kind of monitoring initiative or as an element of this broader body. The main objective of the Poverty Observatory (PO), established with technical assistance from the UNDP, is to monitor and evaluate the performance in the implementation of the PARPA by collection of data on progress achieved and analysis of the data to better orient required action. It will conduct studies and research and establish a series of data banks, documenting experiences of best practices. The PO will be expected to make suggestions to Government to promote the impact of the implementation of the PARPA. The PO is made up of two groupings; an ad hoc advisory group to be known as the Opinion Council and a permanent body known as the Technical Secretariat. The Opinion Council is made up of 60 members representing the central bodies of the State, civil society organizations, and from international development partners. UNDP, through a project titled "Support to PARPA's Monitoring and Evaluation System" will assist the Secretariat of the PO. Discussions with the secretariat on the development of natural resource policy monitoring mechanisms could be a useful starting point for the development of this capacity.

4.3 Supporting local institution building

Developing **strong representative rural institutions** is now widely recognised as being one of the central pillars without which rural economic development cannot take place. A key governance challenge is to build the political will and institutional capacity to promote sustainable livelihoods and this requires a particular focus on developing practical linkages to translate national policies, laws and regulations into action at the local level (Glavovic, 2001). Support for local institutions, to strengthen their ability to deliver services (government) and to make claims on entitlements (citizens) is an area on which there needs to be considerable focus in the years ahead. This paper has shown how local politics have a far greater impact in practise than the design of decentralization policies at a national level and therefore much greater attention should be paid to the issue of building and strengthening the social and political capital of the rural poor than at present.

If decentralization and devolution are to be effective in promoting sustainable resource management there have to be effective management institutions in place at the level to which authority has been transferred. These institutions need to be

genuinely representative, transparent and accountable to the constituencies that they represent. A critical component of the decentralization/devolution process is ensuring that these local level institutions are effectively empowered through both an appropriate legal framework and the provision of skills and resources needed to exercise such control. A prerequisite to the successful functioning of such institutions is a clear and commonly understood definition of the membership of the group that such institutions represent. Whilst this is a policy issue that has not been dealt with clearly and consistently by the new policies to date, it is also an implementation issue that has been little considered. Some of the examples covered in this paper indicate that in several cases despite an effective legislative framework, implementation has been undermined by lack of a coherent strategy.

There is also a clear and related need for more and broader investments in human capital that cut across classes and gender and support transformative processes within community level institutions. As Bingen (2000) points out "...human capital investments offer the promise of enabling people to liberate themselves from the 'ties that exclude'..." Research findings quoted here are revealing that investments in human capital can provide women and other marginalized groups in a society the opportunity not only to build and strengthen their other assets, such as social capital, but also to use them as a means for enhancing their livelihood strategies.

The process of modifying informal institutions in this way can be slow, and often conflict-ridden. Its success in practice often depends on access to an effective legal system and the existence of supportive community-oriented service organizations and resources. These will take time and patience to build within the Mozambican context, where both the justice system and civil society organizations are weak and disorganised and have tended to be socially removed from the community groups that they are intended to serve. However, the ability to address restrictive informal institutions is an important element in achieving a policy context that is supportive of livelihoods for marginalized sections of the community (Thomson, 2000).

An immediate area of focus ought to be the development of support and training resources for the local co-management bodies established by the Forestry and Wildlife Law, with a particular emphasis upon the community elements of these, so that participation in these institutions will have meaning and purpose. To date it appears that the DNFFB have not yet begun to consider the resource requirements of these institutions. Groups such as the COGEPs need to be allowed to engage in a "learning process of institution-building" supported by government policies that favour participatory management and that provide legal support and protection for the groups. There will be no "one size fits all" but a coherent strategy of support is certainly needed. IIED have made small grants available to groups that are working to develop replicable and transferable tools in this regard, but the impact will be limited without a long-term focus and concern from within the DNFFB.

NGO staff and government personnel alike also need to learn new ways of working with local community groups, as evidenced by some of the examples in this paper. A sustained focus on the changing of attitudes and the deepening of skills and understanding of participatory approaches of working are necessary.

Direct funding support

Other forms of support for local community groups might include funds to enable them to take advantage of new opportunities created through policy changes that remain out of reach because of the high transaction costs involved. Existing initiatives are shown in Box 20.

Box 20: Examples of direct funding support

DFID support

DFID has been exploring the potential of a programme on the implementation of the land law which would provide support to communities to pilot ways to develop the land delimitation process into an active and democratic one that delivers livelihood benefits. DFID commissioned an appraisal of the challenges that would face such a programme, completed in 2003, and have allocated further financing in 2004 in order to move towards a detailed design phase.

Other donor groups, including the Dutch, Swiss and Swedish development assistance agencies have expressed an interest in providing joint support and a coordinating committee between these donor groups has been established to oversee the design phase. Terms of Reference for this design phase are currently being developed. Various other entities from the international and national NGO sectors, the private sector and local government institutions, might be brought into participating in such a programme, with a focus on developing the right kind of institutional environment for the provision of support to land-holding communities such that they can realize tangible benefits from their newly-acquired capital.

IUCN/Dutch Government support

The IUCN, with funding provided by the Dutch government, have established the *Fundo Para a Gestão dos Recursos Naturais e Ambiente* (FGRNA), available to government, NGO, private sector and community entities that need support for research or capacity-building projects that contribute to the sustainable management of natural resources.

The funds cover fieldwork and other related costs and are available for periods of up to 18 months. Applications are considered on merit by an independent technical panel.

Training and support

Projects around the country that have addressed some of the training and support needs for strong representative institutions at community level are listed in Box 21.

4.4 Independent institutions

Different mechanisms have been used to clarify the levels and standards of services to which people are entitled, to increase accountability, and to empower citizens in relation to public organizations. These include the use of benchmarks, codes of conduct or citizens' charters and report cards for identifying service standards and monitoring their implementation. Mozambique, as a result of its history, has little (but growing) experience of independent institutions; a focus on the identification and feasibility of suitable independent institutions in the natural resources sector may be useful in the future, however, since the effectiveness of such approaches may be greater when mechanisms for monitoring and redress are embedded in such "higher"

Box 21: Examples of training and support

The MAMM and GEREN programmes - Nampula (SNV)

These programmes were established in 2000 and cover the districts of Mogincual, Angoche, Moma and Mogovolas (MAMM) and Nacala, Memba and Nacaroa (GEREN). The GEREN program functions as a coordinating project, financed by IUCN, with 4 implementing agents (ORAM, SPFFB, AMODER, IDPPE). Each institution operates with its own funds. Financing for a second phase was requested in September 2000 and the project is surviving presently on the basis of bridging funding from SNV whilst they await the outcome of the request to IUCN. There is a level of uncertainty regarding the future which complicates the planning process with the other partners. Whilst the GEREN project focuses on natural resource management by community groups, the MAMM programme has a more general community planning focus and works through Local Development Commissions (*Comissões de Desenvolvimento Local*) which are used to identify local needs and formulate plans. Training of the local working groups is a main activity of the project, which works through Local Development Agents, most of whom are technicians with a rural development or agriculture background.

The Centre for Sustainable Development for Coastal Zones - National (MICOA/DANIDA/World Bank)

This centre, within MICOA but operating autonomously, is responsible for strategic planning programmes on an area-specific basis. They have helped to develop coastal zone management plans in several parts of the country using methodologies that have closely mirrored the procedures contained in the Technical Annex to the Land Law. In 2004 they are planning to run training courses for government officials in district administrations that concentrate on how to assist communities to participate fully in negotiation, planning, mediation and conflict resolution processes. A similar centre in Chimoio, the Centre for Rural Development, will start operating soon with Finnish support, and intends to develop a capacity for land and natural resource planning and management.

Local Development Planning Project - Nampula (CONCERN)

The CONCERN programme is similar to the MAMM Programme and envisages the incorporation of community concerns in the district planning processes. It was established in 2000 and will function until the end of 2005 in the districts of Malema, Ribaue, Lalaua e Murrupula. The programme uses a similar methodology to MAMM in that it assists rural communities in the establishment of Local Development Commissions capable of identifying needs and designing initiatives applicable in their communities. An important difference is that CONCERN does not provide funds for the realization of micro-projects and, instead, encourages the LDCs in the search for other sources of funding or assistance.

Civil Society Development Facility (SNV)

SNV have planned the creation of a Civil Society Development Facility that would make funds available to community groups in Nampula for a variety of 'strengthening' activities.

ICRAF (World Agroforestry Centre)

ICRAF and an NGO (Aid to Artisans) are launching a project in Matituine district (Maputo province) based on community management of local forest resources. According to the representative in Maputo the programme will involve capacity-building at community level on environmental awareness, forestry management, marketing skills and negotiation with the private sector.

level institutions. Independent institutions may provide the forms of support to local community groups that are not forthcoming from the government services – overseeing the fairness of negotiations, providing effective mediation between disputing parties and monitoring compliance with agreements that are made between private sector entities and local communities. In the absence of an accessible and efficient judicial system the creation of less formal but equally independent mechanisms for these functions to be performed may be necessary.

4.5 Capacity building for civil society

Mozambican NGOs and civil society organizations often do not have the capacity to present a strong voice at policy consultations and considerable work is needed for them to become familiar with issues and to organize around them. Only a few NGOs are in a position to react to unexpected opportunities to influence policy, which often arise at short notice and give little time to consult their membership. In addition many of the Mozambican NGOs often find it difficult and time consuming to work together in alliances, as evidenced by the problems being faced by some of the provincial fora established in the wake of the Land Campaign.

Working with rural focused NGOs and other civil society organizations requires significant management time and a long-term perspective. Strategic approaches might include the provision of support for different stakeholders on an issue simultaneously. In this way donors and technical assistance agencies are not overly identified with the interests of one stakeholder and can sometimes add value by making linkages and learning lessons.

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Further information about the LSP

The Livelihood Support Programme (LSP) works through the following sub-programmes:

Improving people's access to natural resources

Access of the poor to natural assets is essential for sustainable poverty reduction. The livelihoods of rural people with limited or no access to natural resources are vulnerable because they have difficulty in obtaining food, accumulating assets, and recuperating after shocks or misfortunes.

Participation, Policy and Local Governance

Local people, especially the poor, often have weak or indirect influence on policies that affect their livelihoods. Policies developed at the central level are often not responsive to local needs and may not enable access of the rural poor to needed assets and services.

Livelihoods diversification and enterprise development

Diversification can assist households to insulate themselves from environmental and economic shocks, trends and seasonality – in effect, to be less vulnerable. Livelihoods diversification is complex, and strategies can include enterprise development.

Natural resource conflict management

Resource conflicts are often about access to and control over natural assets that are fundamental to the livelihoods of many poor people. Therefore, the shocks caused by these conflicts can increase the vulnerability of the poor.

Institutional learning

The institutional learning sub-programme has been set up to ensure that lessons learned from cross-departmental, cross-sectoral team work, and the application of sustainable livelihoods approaches, are identified, analysed and evaluated for feedback into the programme.

Capacity building

The capacity building sub-programme functions as a service-provider to the overall programme, by building a training programme that responds to the emerging needs and priorities identified through the work of the other sub-programmes.

People-centred approaches in different cultural contexts

A critical review and comparison of different recent development approaches used in different development contexts is being conducted, drawing on experience at the strategic and field levels in different sectors and regions.

Mainstreaming sustainable livelihoods approaches in the field

FAO designs resource management projects worth more than US\$1.5 billion per year. Since smallholder agriculture continues to be the main livelihood source for most of the world's poor, if some of these projects could be improved, the potential impact could be substantial.

Sustainable Livelihoods Referral and Response Facility

A Referral and Response Facility has been established to respond to the increasing number of requests from within FAO for assistance on integrating sustainable livelihood and people-centred approaches into both new and existing programmes and activities.

For further information on the Livelihood Support Programme,
contact the programme coordinator:
Email: LSP@fao.org

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