

Land-based Investments in Mozambique: Challenges in Community Rights Protection, Participation and Benefit Sharing



Alda Salomão

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LAND-BASED INVESTMENTS IN MOZAMBIQUE

Challenges in Community Rights Protection,
Participation and Benefit Sharing

LANDINVESTERINGEN IN MOZAMBIQUE:
Uitdagingen op het Gebied van de Bescherming, Deelname en
Uitkeringen van Rechten van de Gemeenschap

INVESTIMENTOS BASEADOS NA TERRA EM MOÇAMBIQUE:
Desafios na Protecção de Direitos Comunitários, Promoção da
Participação e Partilha de Benefícios

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Abstract

The interest in the governance of land and other resources in developing countries has intensified over the past two decades in response to the increased pressures registered due to land-based investments. These pressures derived from global interests to remedy the food and energy crisis of the 80s but were also a result of public and private interests at national level involving large extensions of land in different sectors. The manner in which these interests and investments have been addressed, has fuelled concerns both at the national and international levels due to negative social and environmental impacts. In general, land-based investments have failed to respect and protect citizens' and community rights. Citizens and communities are often marginalized from decision-making processes, lose their land rights permanently or see them substantially restricted in both size and quality, and rarely share any meaningful benefits. This thesis analysed this reality using the Republic of Mozambique as a case study, due to its reputation as a country with a progressive policy and legal framework that balances community and investors' land rights so that citizens can effectively benefit from land-based investments. While thanks to these provisions the Mozambican 1997 Land Law has been described as one of the best in Africa, based on the research findings, the main conclusion of this thesis is that there are good elements in the Mozambican legal framework for participatory and inclusive land governance but in practice community rights protection, participation and benefit sharing do not actually materialize and, so far, neither procedural nor distributive justice objectives have been achieved.

Samenvatting

In de afgelopen twee decennia is de interesse in beleid rondom land en natuurlijke hulpbronnen in ontwikkelingslanden sterk toegenomen, doordat investeringen in land een grote druk op land en hulpbronnen hebben veroorzaakt. Deze druk kwam aan de ene kant doordat er op globaal niveau steeds meer belang was bij het oplossen van de voedselcrisis en energiecrisis vanaf de jaren '80, maar ook doordat in veel landen nationale overheden en bedrijven in verschillende sectoren veel belang hadden bij het opkopen van grote stukken land. De manier waarop deze investeringen hebben plaatsgevonden heeft geleid tot grote zorg op nationaal en internationaal niveau, met name vanwege de negatieve sociale – en milieugevolgen. Over het algemeen hebben investeringen in land de rechten van burgers en gemeenschappen niet beschermd en gerespecteerd. Burgers en gemeenschappen worden vaak gemarginaliseerd in besluitvorming, verliezen permanent hun landrechten of zien hun land flink teruggaan in omvang en kwaliteit, en de verwachte voordelen van de investeringen worden nauwelijks gematerialiseerd. In deze dissertatie wordt deze problematiek behandeld met Mozambique als casus, omdat dit land bekend staat om een progressief beleid en juridisch raamwerk op het gebied van landrechten. In dit beleid zijn – op papier - de belangen en landrechten van gemeenschappen en investeerders met elkaar in balans, zodat burgers daadwerkelijk zouden kunnen profiteren van landinvesteringen. De Mozambikaanse landwet van 1997 staat dan ook bekend als een van de beste van Afrika. Echter, dit onderzoek laat zien dat er, ondanks de goede elementen in het Mozambikaanse juridische raamwerk voor participatief en inclusief landbeleid, in de praktijk zeer weinig terechtkomt van het beschermen van de rechten van gemeenschappen, participatie en het delen in de voordelen van investeringen. Tot dusver is rechtvaardigheid op het gebied van participatie en ook op het gebied van de verdeling van kosten en opbrengsten niet gerealiseerd.

Contents

ONE: INTRODUCTION (19)

- I. Land Governance for Sustainable Development: Concepts and Debates (25)
- II. Research Objectives and Questions (44)
- III. Theoretical Perspective (45)
- IV. Dissertation Structure (56)

TWO: Description of the Case Study, Research Design, and Methodology (59)

Introduction (61)

- I. Why Mozambique? (61)
- II. Mozambique Investment Strategy (66)
- III. List of Investment Projects Analysed (69)
- IV. Research Methods Used (75)
- V. Research Challenges (80)

THREE: Participatory Land Governance in Mozambique: An Historical Review of Principles and Practice (83)

Introduction (85)

- I. The Role of Land in the Adoption and Consolidation of Democratic Governance in Mozambique (85)
 - II. State Ownership over Land and the Concept of Public Domain (96)
 - III. Legal and Institutional Pluralism and Community-based Land and Natural Resources Management (101)
 - IV. Administrative Decentralization for Participatory Governance (104)
 - V. Land-based Investments and Community-Investor Partnerships (111)
 - VI. Corruption, Political and Military Violence and Impacts on the Land Sector (116)
- Conclusion (119)

FOUR: The Limpopo and Mágoé National Parks in Massingir and Mágoé Districts: Assessing Community Rights Protection and Community-Public Partnerships in Biodiversity Conservation (121)

Introduction (123)

- I. National Parks and Community Lands (126)
- II. Rights Protection, Community-Public Partnerships, and Expropriation of Community Rights in the Limpopo National Park (134)
- III. Procedural Justice in the Creation of the Limpopo National Park (136)
- IV. Rights Protection and Procedural Justice in the Mágoé National Park (144)
- V. Distributive Justice Within and Around the Limpopo and Mágoé National Parks (146)

Conclusion (162)

FIVE: Anadarko Liquefied Natural Gas Project in Palma District: A Review of Community Consultations and Participation in the Extractive Industries (165)

Introduction (167)

- I. Anadarko LNG Project in Palma District and Communities Lands (168)
 - II. Community Consultations for Rights Protection and Political Participation in the Allocation of Land Use Rights to Anadarko (179)
 - III. Community Consultations for Economic Inclusion and Benefit Sharing (203)
- Conclusion (213)

SIX: The Maputo-KaTembe Bridge Project in Maputo City: Assessing Investments Benefit Sharing and Contribution to Local Development (215)

Introduction (217)

- I. The Maputo-Katembe Bridge, Community Lands and Resettlement Procedural Justice (220)
 - II. Resettlement Distributive Justice and Community Perceptions on Fair Compensation and Development (226)
 - III. Investments and Resettlement Contribution to Community Development: Challenges in Ensuring Procedural and Distributive Justice (238)
- Conclusion (241)

SEVEN: FINAL CONCLUSION AND DISCUSSION (245)

REFERENCES (271)

ANNEXES (292)

SUMMARY (328)

RESUMO (332)

SAMENVATTING (337)

AUTHOR CV (342)

List of accronyms

ADMADE	Administrative Management Design
ATVC	Associação Tlharihani Vaka Cubo
ANAC	Administração Nacional para Áreas de Conservação
ARP	Afungi Resettlement Plan
ASPALMA	Associação de Paralegais do Distrito de Palma
AU	African Union
AWF	African Wildlife Foundation
BIOFUND	Fundação para a Conservação da Biodiversidade
CBC	Convention on Biodiversity Conservation
CBNRM	Community-based Natural Resources Management
CBSM	Community Benefit Sharing Mechanism
CCIE	Coligação Cívica para a Indústria Extractiva
CEDES	Comité Ecuménico para o Desenvolvimento Social
CGP	Cubo Game Park
CIP	Centro de Integridade Pública
CPD	Community Public Domain
CSOs	Civil Society Organizations
CSR	Corporate Social Responsibility
CTV	Associação Centro Terra Viva – Estudos e Advocacia Ambiental
DA	District Administrator
DDR	Development-induced Displacement and Resettlement
DINAT	Direcção Nacional de Terras
DINOTER	Direcção Nacional de Ordenamento Territorial e Reassentamento
DNTF	Direcção Nacional de Terras e Florestas
DUAT	Direito de Uso e Aproveitamento da Terra
ENH	Empresa Nacional de Hidrocarbonetos
FAO	Food and Agriculture Organization
FCT	Fórum de Consulta sobre a Terra
FDI	Foreign Direct Investment
FIAN	Global Network for the Right to Adequate Food and Nutrition
FIG	International Federation of Surveys
FRELIMO	Frente de Libertação de Moçambique
FPIC	Free Prior and Informed Consent
GLCP	Great Limpopo Conservation Park

GLTCA	Great Limpopo Transfrontier Conservation Area
GRAIN	Genetic Resources Action International
GNP	Gross National Product
GoM	Government of Mozambique
HDR	Human Development Report
ICM	Igreja Católica de Moçambique
IESE	Instituto de Estudos Sociais e Económicos
IFL	International Financial Institutions
ILC	International Land Coalition
IFPRI	International Food Policy Research Institute
ISS	South African Institute of Security Studies
IOs	International Organizations
KGR	Karingani Game Reserve
LBIs	Land-based Investments
LDC	Less Developed Countries
LNTF	Limpopo National Transfrontier Park
LNP	Limpopo National Park
MAI	Massingir Agroindustrial SA
MDG	Millennium Development Goals
MICOA	Ministério para Coordenação da Acção Ambiental
MITADER	Ministério da Terra, Ambiente e Desenvolvimento Rural
MITUR	Ministério do Turismo
MNP	Mágoé National Park
MPD	Municipal Public Domain
MARP	Mecanismo Africano de Revisão de Pares
NLP	National Land Policy
NGOs	Non-Governmental Organizations
OECD	Organization for Economic Cooperation and Development
OMR	Observatório do Meio Rural
ORAM	Organização Rural de Ajuda Mútua
OXFAM	Oxford Community for Famine Relief
PDUTs	Plano Distrital de Uso de Terras/ District Land Use Plan
SADC	Southern African Development Commission
SDAE	Serviços Distritais de Actividades Económicas
SDC	Swiss Development Cooperation

SDG	Sustainable Development Goals
SPD	State Public Domain
SPGC	Serviços Provinciais de Geografia e Cadastro
STV	SOICO Televisão
TC	Twin City
TFCA	Transfrontier Conservation Area
TTP	Tchuma Tchato Project
TVM	Televisão de Moçambique
UNDP	The United Nations Development Programme
UNECE	The United Nations Economic Commission for Europe
UN-Habitat	The United Nations Human Settlements Programme
UNAC	União Nacional dos Camponeses
UN	The United Nations
UNEP	The United Nations Environment Programme
UNCTAD	The United Nations Conference on Trade and Development
UNESCAP	United Nations Economic and Social Commission for Asia and the Pacific
UNESCO	United Nations Educational, Scientific and Cultural Organization
VGGTs	Voluntary Guidelines on the Responsible Governance of Tenure of Land, Fisheries and Forests in the Context of National Food Security
WLSA	Women and Law in Southern Africa
ZIMOZA TFCA	Zimbabwe/Mozambique/Zambia Transfrontier Conservation Area

List of annexes

Annex 1	List of Author Publications
Annex 2	List of Guiding Questions
Annex 3	List of Documentaries and Categories of Respondents
Annex 4	Extract of CTV 2018 Report on Community Consultations organized in Palma
Annex 5	Mozambique 1995 National Land Policy
Annex 6	Mozambique 1997 Land Law
Annex 7	OAM Communique on Anadarko Judicial Process

List of figures

Figure 1	Mozambique Geographical Location in the African Continent
Figure 2	Geographical Location of Investment Projects Analyzed
Figure 3	Great Limpopo Transfrontier Park
Figure 4	Massingir Administrative Division 2000
Figure 5	Limpopo National Park Community Resettlement-induced Spatial Relocation
Figure 6	Mágoé District Administrative Division
Figure 7	Mágoé National Park Area Including Buffer Zone
Figure 8	Location of the Cubo Community in Massingir
Figure 9	Natural Gas Occurrence in Mozambique
Figure 10	Palma District in Cabo Delgado Province
Figure 11	Anadarko Onshore and Offshore Infrastructure and Facilities
Figure 12	Illustration of Onshore Structure
Figure 13	Anadarko LNG Project Area (DUAT)
Figure 14	Anadarko LNG Project Afungi Community Resettlement-induced Spatial Relocation
Figure 15	Maputo-Katembe Bridge Project Community Resettlement-induced Spatial Relocation

List of boxes

Box 1	Extracts of the 2015 and 2016 Human Development Report Forewords
Box 2	Extract of AIM News Report on Quitupo Consultations

List of tables

Table 1	Mozambique National Economic Organization Constitutional Directives
Table 2	Total Investment Projects Approved between 1990 and 2011
Table 3	Main Investors by Country of Origin, Land size and Sector of Investment, 2004-2013
Table 4	List of Land based Investment Projects Analyzed in the Dissertation
Table 5	1975 Constitutional Provisions on Land Governance and National Development
Table 6	List of Lands Considered Partial Protection Zones
Table 7	Nacional Land Policy Guidelines for Investments in Community Lands
Table 8	Land Law Provisions on Mandates for Land Use Rights Allocation
Table 9	Massingir District Administrative Division and Traditional Community Occupation
Table 10	Communities Awaiting Resettlement in Massingir District
Table 11	Communities Under Ongoing resettlement in Massingir District
Table 12	Communities Under Pending Resettlement in Massingir District
Table 13	Mágoé District Administrative Division and Traditional Community Occupation
Table 14	Current Revenue Distribution in the Tchuma Tchato Community Program
Table 15	Proposal for Readjustment of Ministerial Diploma 63/2003
Table 16	Palma District Administrative Division
Table 17	Timeline of Main Palma LNG Project Processes and CTV Interventions

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Utrecht, 2020



Rostina (left), Matilde (right): Source: Author, 2014.

I dedicate this thesis to Andurabi Deji, community paralegal from Quitupo village in Palma District, who, from 2013 to 2018, led the community struggle for legality and justice in the Anadarko LNG Project involuntary resettlement process. He died in 2018. The first families from Quitupo were moved to the resettlement village in mid-2019.

One

Introduction



Men, women, and children from Quitupo Community in Palma District,
Cabo Delgado Province. Source: Author, 2015

“Leave No One Behind” (UN 2015)

Introduction

Since its independence from Portugal in 1975, Mozambique has espoused a formal commitment to democracy and participation enshrined in all its subsequent Constitutions. One manifestation of this is the choice of State ownership over land, which was adopted in the name and for the benefit of the people, with all citizens having the right to participate in the national development process (GoM 1975, 1990, 2004). From 1995 onwards, Mozambique developed progressive land policy and legislation through an open and inclusive process (Tanner, 2002). These instruments are built around important pro-poor provisions focused on promoting participatory land and natural resources governance. These included the principle of legal pluralism and recognition of traditional norms of land acquisition and management, as well as recognition of the role of traditional authorities in rural land management. Community-based land and natural resource management and development has thus been seen as an integral part of the national strategy for inclusive, participatory, and decentralized land governance. Participatory governance is also intended to be achieved through a decentralized public administration pursued via different models such as administrative and democratic decentralization, with local (district) governments and district areas seen as development centres. Local governments were assigned a particularly important role in ensuring inclusive and participatory land governance.

After the end of the civil war in 1992, private sector inclusion and promotion and attraction of investments to dynamize economic development became the main strategy to finance national development plans. As a result of the adoption of the progressive and innovative 1995 National Land Policy (GoM, 1995) and the 1997 Land Law (GoM, 1997), community rights were formally recognized as a way of ensuring local livelihoods and securing land tenure. Since then, the government and investors have been obligated to consult with local populations whenever land decisions might affect their rights, positively or negatively. Therefore, receiving people's free, prior, and informed consent when intending to occupy and use community land became Mozambique's land governance landmark.

Putting these principles in practice, however, has not been easy in a context of a strong interest and push for attracting FDI in different sectors and the double role assumed by the state in such a context, namely rights protection and investment promotion (Macuane, 2012; Wolford et al, 2013; Borrás and Franco, 2012). The following quote made by the head of the Mozambique National Land Directorate in a meeting with the author in 2013 reflects the tensions between directives contained in the legal framework and the situation on the ground:

“The state is sovereign. Natural resources belong to the state, so the state doesn’t need to consult with anyone to authorize land use rights to investors.”

In fact, in the past two decades, the governance of land and natural resources in developing countries has been a dominant theme in global development debates (Kjaer, 2004; Moyo, 2004; Toulmin, 2008; Amanor and Moyo, 2008; Hanlon and Mosse, 2009; Borrás and Franco, 2010a, 2010b; De Shutter, 2011; Bernstein, 2012; Hall, 2012; Hickey, 2012; Castel-Branco, 2013; Haar and Leeuwen, 2013; Worlford et al, 2013; Matos and Medeiros, 2014). The interest in the governance of land and other resources in developing countries has intensified not only by increased pressure from global interests to remedy the food and energy crisis of the 80s (GRAIN, 2008, 2010; Busscher, 2018), but also as a result of pressures to mitigate climate change impacts and increase biodiversity conservation (Milgroom and Spierenberg, 2008; Fairhead et al, 2012; Franco et al, 2014; Busscher, 2018; Busscher et al, 2018).

Economic interests and investments in nature-based tourism, mineral and hydrocarbon extraction, industrial agriculture and forest plantations, as well as investments in public infrastructure have also added to this pressure. These interests and investments have fuelled concerns both at the national and international levels over social and environmental impacts, particularly the impact on the rights and livelihoods of rural populations (Negrão, 2000a, 2000b, 2001; Moyo, 2008, 2010; Otto and Hoekema, 2012; World Bank, 2003, 2010; FAO, 2010; AU, 2012; Mosca et al, 2014; Castelo-Branco, 2015).

A major cause of concern voiced in these debates is that, in general, land-based investments have failed to produce their proclaimed development outcomes, especially in terms of rural development (Castelo-Branco, 2015). Arguably, they have also failed to protect citizens’ rights, with citizens often marginalized in decision-making processes, losing their land rights permanently, or seeing them substantially restricted in both size and quality (Cotula et al, 2009; Wily, 2011a). The cosmetic use of progressive legislation has also been identified as a strategy to create the impression of ‘development with a human face’ in these ‘business as usual’ situations (Tanner, 2010).

In some countries, the underperformance of investment in terms of citizens’ land rights protection and achievement of expected economic development results is seen as deriving from governments’ failure to prioritize and ensure rural citizens’ political and economic participation in the governance of land (Palmer, 2015). This marginalization has sparked social scepticism and resistance to large scale

land-based investments and increased association of investment projects with rural land grabbing (GRAIN, 2008, 2010; De Shutter, 2011; UNAC and GRAIN, 2015a, b; Borras and Franco, 2013; Franco et al, 2014; Mosca et al, 2014).

Consequently, the issue of how to protect citizens' rights and how to achieve adequate political and economic participation in the context of land-based investments is still hotly debated (Amanor and Moyo, 2008; Zoomers, 2013; Cernea, 2008; Schoneveld, 2013). Specifically, the issue of how to ensure adequate interpretation and implementation of the legal requirement to secure free, prior, and informed consent (FPIC) of rural citizens to investors' occupation of their lands, and ensure their accrual of tangible benefits, has been frequently highlighted in land debates (Cernea, 2008; Cernea and Mathur, 2009; FAO, 2012; Hanna and Vanclay, 2013; Vanclay, 2017; OXFAM, 2014; Franco et al, 2014).

Against this backdrop, and focusing on the 2015-2030 Sustainable Development Goals (SDG) motto "Leave No One Behind" (UN, 2015), this dissertation looks at the Republic of Mozambique as a case study for how land-based investments impact community land access and use rights and participation in land decisions. Many developing states – including Mozambique - had decided to attract investments, particularly foreign investments, to generate revenue for poverty eradication and for development promotion, while also protecting legitimate rights of their citizens, even before the MDGs and the SDGs were adopted.

Given this dual role of the state, promoting land-based investments while also reviewing their social and environmental impacts, this thesis focuses on the role played by the Mozambican state (government), and the inherent tensions associated with framing and orienting land-based investment strategies while also ensuring citizens' rights protection and participation through proper procedures and fair benefit sharing (Gaventa, 2002; Evers et al, 2013; Wily, 2013; Booker et al, 2015; Cabral and Norfolk, 2016; Otsuki et al, 2016). Of particular concern is the role of the state (government) in community land rights protection and promoting community participation in land decisions, both in its procedural and distributive perspectives (Thibaut and Walker, 1978; Lind and Tyler, 1988; Schlosberg, 2003, 2004; Vermunt and Tornblom, 1996).

Keeping in mind the ongoing dilemmas of states in balancing conflicting interests in the land and natural resources sector, especially the need for investments to boost economic growth while also guaranteeing community rights, the thesis assesses whether land-based investments in Mozambique are in line with the principles of procedural and distributive justice and thus contribute to sustainable rural

development through just and fair land governance. For this purpose, the dissertation undertakes a review of policy principles and legal procedures for participatory land governance using practical experiences of both public and private investments, including the so-called community investments or community-based natural resources management projects (Nhantumbo and Macqueen, 2003; Fabricius, 2008; Salomão and Matose, 2007; Siteo et al, 2007; Siteo and Guedes, 2015). In particular, it assesses the extent to which such principles and modalities are making or can make a difference in ensuring that in this country the government, the private sector, and local citizens (individually and collectively considered) equitably share both the responsibility for and benefits from good land governance for sustainable development.

Participatory and inclusive governance in Mozambique derives from constitutional principles and legal directives, namely ‘State Ownership over Land and Natural Resources’, ‘Legal and Institutional Pluralism and Community Participation’, ‘Community Consultations’, ‘Administrative Decentralization’ and ‘Land-based Investments for Rural Development’. The dissertation discusses these principles and directives, theoretically adopted with both procedural and distributive justice concerns to assess how they are materialized in practice and the extent to which they effectively promote state responsibility to (1) protect citizens’ rights, particularly the right of local communities to access use and manage land and other resources for the nation’s socioeconomic development; (2) promote citizens’ access to information and participation in public decisions related to land and natural resources access and use; (3) and ensure citizens’ participation and enjoyment of development outcomes, through political and economic inclusion as well as through fair benefit sharing. In this way, the dissertation contributes to the understanding of procedural and distributive justice approaches and challenges by looking at what is working or failing in developing countries’ land governance and why.

Using procedural and distributive justice lenses, the dissertation then analyses concrete examples of how the different elements that, in theory, shape Mozambique’s land governance experience have been used and played out in practice, including an analysis of the level of compatibility or tensions among them. The selected examples allow Mozambique’s participatory land governance principles and modalities to be assessed from different angles, namely: (a) different economic sectors (nature conservation, extractive industries, and public infrastructure); (b) different categories of investors (public, private, community); (c) different geographical and cultural settings (south, centre, and northern parts of the country), and; (d) different spatial settings (rural and urban areas).

Through its conclusions about the role and performance of the Mozambican state in this context, the dissertation also contributes to global debates on land governance by analysing the different situations that represent land grabbing (Busscher, 2018; Busscher et al, 2018), as well as its varied manifestations and the actors involved. Finally, by answering the research questions, the dissertation offers some guidelines about how land governance in Mozambique should evolve into a truly participatory, equitable and sustainable process, in a way that is perceived as just by local citizens and communities, both in terms of process and in terms of outcomes.

I. Land Governance for Sustainable Development: Concepts and Debates

To contextualize the research questions and objectives, this section presents a review of concepts and debates relevant to the dissertation topic. It starts by explaining how the notion of development has been seen as entailing the ‘human right to development’. Discussions on the concept of the ‘human right to development’ are followed by discussions of other concepts that the thesis considers as instrumental for materialization of such rights in the land sector. These include the concepts of and debates over ‘sustainable development’; ‘good governance’; ‘good land governance’; ‘responsible investments’; and ‘land grabbing’. After this, a section with a presentation of the theoretical framework used to support the thesis analysis and discussions is included, which is then followed by a section with the dissertation structure.

1. The Human Right to Development and Development as Freedom

In 1986, the United Nations adopted a Declaration (UN, 1986), in which it promoted a rights-based approach to development (Gaventa, 2002) and affirmed the ‘right to development’. In this declaration (UN, 1986, Article 1), the right to development is defined as follows:

1. The right to development is an inalienable human right by virtue of which every human person and all peoples are entitled to participate in, contribute to, and enjoy economic, social, cultural, and political development, in which all human rights and fundamental freedoms can be fully realized.
2. The human right to development also implies the full realization of the right of peoples to self-determination, which includes, subject to the relevant provisions of both International Covenants on Human Rights, the exercise of their inalienable right to full sovereignty over all their natural wealth and resources.

According to Sengupta (2001) and Gaventa (2002), the 1986 declaration not only linked the idea of development to the concept of rights, but also linked the rights to meaningful participation and economic, social, and cultural justice as its inherent components. In fact, Article 8, No.2 (UN, 1986) states that:

“States should encourage popular participation in all spheres as an important factor in development and in the full realization of all human rights.”

The justification for promotion of the human right to development derived from the assertion that human beings are the central subject of development, which gives states the right and the duty to formulate appropriate national development policies that aim at the constant improvement of the well-being of the entire population and of all individuals” (UN, 1986, Article 2). In his discussion about the nature of the human right to development, its value addition to analysis of development processes, as well as the tensions between those in favour and those against the human rights approach to development, Sengupta (2001:2) concludes that “realizing the human rights to development is fundamentally different from conventional policies and programmes for development, whether seen as increasing the growth of gross national product (GNP), supplying basic needs, or improving the index of human development”. Sengupta (2001:2) offers further clarification on the nature of the right to development by identifying the elements contained in the concept as follows:

First, there is a human right that is called the right to development, and this right is ‘inalienable’, meaning it cannot be bargained away. Then, there is a process of “economic, social, cultural, and political development”, which is recognised as a process in which “all human rights and fundamental freedoms can be fully realised”. The right to development is a human right, by virtue of which, “every human person and all peoples are entitled to “participate in, contribute to and enjoy” that processes of development.”

This clarification is important because it is also in the perspective of development as a human right that this thesis addresses procedural and distributive justice in the governance of land for sustainable development. Notably, the right to participate in all spheres is considered an enabling factor for realization of the human right to development. Sengupta (2001) sees the individual human person as the active participant in and beneficiary of this right, even if peoples or collectives of human persons entitled to this right calls attention to the need to distinguish between individual and collective rights, an issue that the thesis will take up when discussing concepts such as ‘local community’ and ‘community participation’. As the different chapters will show, the distinction between individual and collective rights is crucial in discussions about compensation for rights extinction and involuntary

displacement and resettlement, as individual and collective land rights are often diluted or even forgotten in participation processes due to the tendency to either place the focus on the right held by the collectivity or by the individual, ignoring the fact that these rights often coexist.

Furthermore, procedural and distributive justice is essential for materializing the human right to development, as stated in Article 2, clause 3, of the Declaration on the Right to Development which seeks:

“the constant improvement of the well-being of the entire population and of all individuals, on the basis of their active, free and meaningful participation in development and in the fair distribution of benefits resulting there from”.

The declaration gives equal weight to procedural aspects and distributive aspects, recommending equal attention to both by stating that “all human rights and fundamental freedoms are indivisible and interdependent” (Ibid, article 6, clause 2 and 3). Inevitably, the role of all states that have adhered to the declaration is to formulate appropriate policies and take all necessary measures, including procedural and distributive measures, for the realization of the right to development.

In 1996, a decade after the adoption of the UN Declaration on the Right to Development, Mahbud ul Haq, who coordinated the 1990 Human Development Report, highlighted the importance of attaching concerns over procedural and distributive justice in the concept of development by suggesting that there should be a search for models of development that enhance human life, treat GNP as a means not an end, distribute income equitably, replenish natural resources for future generations, and encourage grass-roots participation of peoples in the events and processes that shape their lives. (ul Haq, 1996). Concurring with ul Haq’s view, in his 1999 book titled “Development as Freedom”, Amartya Sen, winner of the 1998 Nobel Prize in Economic Science, suggested that “societal arrangements, involving many institutions (the state, the market, the legal system, political parties, the media, public interest groups and public discussion forums, among others) should be investigated in terms of their contribution to enhancing and guaranteeing the substantive freedoms of individuals, seen as active agents of change, rather than as passive recipients of dispensed benefits” (Sen, 1999:xii-xiii). Analysis of development, he added, calls for an integrated understanding of the respective roles of these different institutions and their interactions.

Sen also argued that an adequate conception of development must go much beyond the accumulation of wealth and the growth of gross national product and other income-related variables, recommending that “development has to be more concerned with enhancing the lives we leave and the freedoms we enjoy” (Ibid:14). In

this context, Sen also sees ‘development’ as a process of expanding the freedoms that people enjoy, considering expansion of freedom as both the ‘primary end’ and the ‘principal means’ of development, and highlighting the ‘constitutive’ and ‘instrumental’ role of freedom in development (Ibid:36). For him, the categories of freedom in development include: political freedoms; economic facilities; social opportunities; transparency guarantees; and, protective security, calling attention to the linkages that exist among them and to the need of tying them together for development to be fully achieved (Ibid:38).

In this context, Sengupta (2013) argues that by implying citizens’ right to act/participate in society processes aside from the right to enjoy fundamental freedoms and quality of life, the concept of, and right to, development presented above requires the people-centred and rights-based approach to development, which is also defended in this thesis. In this perspective, in the sequence of Mozambique’s adherence to the Declaration on the Right to Development, the aim of the thesis is to assess the extent to which the Mozambican land governance policy, including approval of legal procedures and practical experiences, responds to this approach.

2. The Concepts of Development and Sustainable Development

Since the early 90s, the notion that development should be ‘sustainable’, based on three fundamental and complementary pillars - economic growth, social well-being and environmental protection - became the main guiding approach to public policy design in many countries and also for programmatic interventions led by the different branches of the United Nations Organization (UN), particularly after the highly influential report produced in 1972 by the United Nations (also known as the Brundtland Report). In this context, due to growing concerns over the negative impact of economic activities on people and the environment, great emphasis was put on environmental sustainability at the Rio Conference organized in 1992, and subsequent conferences organized in Rio in 2012 and in Johannesburg in 2012. Since 1992, the international community adopted several environmental conventions and protocols, and aside from the 1992 Rio Declaration and its Agenda 21, conventions for biodiversity conservation, addressing climate change, combating drought and desertification, barring production of substances that deplete the ozone layer, and barring the transboundary movement of hazardous wastes, were part of the number of international legal instruments that substantially helped in raising global environmental awareness.

In parallel to concerns over environmental protection, concerns over the advancement of human well-being also became prominent again. In this context, the first Human Development Report (HDR), published in 1990, defended the view that

“development is about enlarging people’s choices - focusing broadly on the richness of human lives rather than narrowly on the richness of economies” (UNDP, 1990; DFID, 2010a,b). The instrumental role of social aspects in development, including states’ obligation for peoples’ rights protection and the role and importance of their participation in decisions as enshrined in the concept of the human right to development, continued to be highlighted as indicated in the 2000 Human Development Report, which asserted that “Only with political freedoms—the right for all men and women to participate equally in society—can people genuinely take advantage of economic freedoms” (UNDP, 2000).

Despite its focus on participation, this assertion clearly highlights the importance of combining both participation and rights protection. In fact, for achievement of ‘sustainability’ in the economic development context, the report highlighted the need for the establishment of transparent, accountable, and effective systems of institutions and laws, concluding that “Only when people feel they have a stake and a voice will they throw themselves wholeheartedly into development” (Ibid).

One insight that can be derived from these citations is that ‘development’ has been used as an excuse to justify disrespect for people’s rights with the consequent mistrust to many initiatives presented under that label but which are seen as falling short of ensuring both rights protection as well as political and economic inclusion. A decade and a half later, while recognizing that progress had been made since 1992, when the Rio Declaration on Sustainable Development was adopted, it was also acknowledged that considerable challenges still remain. Box 1 contains statements extracted from the foreword of the 2015 and 2016 HDRs, which provide a picture of the status of global development today.

Box 1: Extracts of the 2015 and 2016 Human Development Reports forewords

(UNDP, 2015: iii): “The report highlights impressive progress on human development over the past quarter century. Today people are living longer, more children are in school and more people have access to clean water and basic sanitation. Per capita income in the world has gone up, and poverty has gone down, resulting in a better standard of living for many people. The digital revolution has connected people across countries and societies. Work has contributed to this progress by building people’s capabilities. Decent work has provided people with a sense of dignity and an opportunity to engage fully in society”
(UNDP, 2016:iii): (The report) emphasizes that poor, marginalized and vulnerable groups—including ethnic minorities, indigenous peoples, refugees and migrants—are being left furthest behind. The barriers to universalism include, among others, deprivations and inequalities, discrimination and exclusion, social norms and values, and prejudice and intolerance. The Report also clearly identifies the mutually reinforcing gender barriers that deny many women the opportunities and empowerment necessary to realize the full potential of their lives.”

The 2015 HDR (UNDP, 2015) had already declared that “if the potential of all people is harnessed through appropriate strategies and proper policies, human progress would be accelerated and human development deficits would be reduced.”

The UN SDG Declaration (UN, 2015) also indicates that immense challenges remain in the quest for a more just and balanced economic development.

Thus, in spite of significant progress over the last twenty to thirty years and global commitments to the MDGs, the SDGs, and other initiatives, the HDRs continue to show that the majority of the global population remains poor and marginalized from decision-making processes that affect their lives. While there is debate and disagreement over the findings shown in these assessment reports, with critiques about choices of indicators and computational methodology (Kugelman and Levenstein, 2009), there is a consensus that so far, the dream of a people-centred and rights-based development process that leaves no one behind is still to be fulfilled (Sengupta, 2001, 2013; Cotula, 2011; Ibahwoh, 2011, Amanor 2008, 2012; UNDP, 2015; UNDP, 2016). This thesis aims to contribute to the understanding of what is failing in the Mozambican case and how global initiatives such as the SDGs might produce faster, more inclusive, and consistent results for the benefit of the majority of the national population.

Attempts to answer this question and to figure out how to balance and accelerate both economic and human development, and to discern which development and decision-making models should be used, have fuelled debates before and after the MDGs and SDGs were adopted, and continue to inspire reflections even today (Amanor, 2008, 2012). Interestingly, in these debates the very concepts of ‘development’ and ‘sustainable development’ have been challenged (Ferguson and Lohmann, 1994; Ibhawoh, 2011; Moyo, 2010 ; Rapley 2007; Bush et al, 2011; Silva; 2012). For example, from an interpretative perspective, Ibhawoh (2011) uncovers opportunistic uses of the ‘human right to development’ concept, by asserting that “the legitimizing language of human rights has been used to pursue goals that have more to do with the international politics of power and resistance, as well as the interests of ruling regimes than with the welfare and empowerment of ordinary citizens” (Ibid).

From a procedural and outcomes perspective, Waker (2010; 2011, 2013) and Sengupta (2013) claim that considerations of equity and justice are the primary determinants of development, suggesting that such determinants are the pillars that should then help in framing procedural and distributive decisions that enhance political and economic rights and freedoms. This is the perspective used in this

dissertation to assess procedures and outcomes in the land sector. Particularly in the context of involuntary resettlements, considerations about equity and justice are crucial since these processes are being sold as opportunities for local development (Vanclay, 2017; Cernea and Mathur, 2009).

A critique to the concept of ‘sustainable development’ was offered by Amanor (2008) who asserts that the dominant framework for sustainable development conforms to neoliberal economic paradigms as a result of power relations within global environmental policy institutions. Calling attention to the importance that must be given to the understanding of the economic context in which the concept and related processes are used and analysed, Amanor (2008) suggests an alternative framework critical of the impact of capitalism accumulation on land and natural resources and focused on social justice (Ibid). In this context, Amanor concludes that:

“The major challenge in creating sustainable development is to locate the problem within a political economy framework of analysis that links scarcity and the depletion of natural resources with capitalist accumulation and market expansion. This needs to examine the implications of the expansion of markets to resources. It also needs to relate contemporary ideologies of resource scarcity, including the concept of sustainable development, to the expansion of global markets.” (2008:195)

Amanor’s position (2008) is also defended by Castel-Branco (2010), Bush et al (2011), German et al, (2013), Weimer (2012) and Macuane et al (2018), who also offer a post-development critique of the idea of ‘development’ by adopting a political economy approach. Macuane et al. (2018), for example, defend that procedures used (or not used) and distributive outcomes are highly influenced by the settlements negotiated among powerful political and economic actors who control both the state machinery as well as natural resources access and use. This suggests that it is important to analyse how both legal factors and factors beyond the law might influence Mozambique’s (and other developing countries) success or failure in achieving sustainable development with full enjoyment of the human right to development by its citizens, individually and collectively. While this thesis does not provide a full-fledged political economy analysis it uses some of the reflections undertaken in this field to try to understand how such political and economic settlements might have influenced both the content of legal instruments as well as their practical implementation and enforcement.

3. The Concept of Good Governance

Discussions about development models have often been linked with those about public administration governance, with repeated calls for “good governance”. In this regard, the World Bank (1994) asserted that “good governance is epitomized by predictable, open, and enlightened policy-making, a bureaucracy imbued with a professional ethos acting in furtherance of the public good, the rule of law, transparent processes, and a strong civil society participating in public affairs. Poor governance (on the other hand) is characterized by arbitrary policy making, unaccountable bureaucracies, unenforced or unjust legal systems, the abuse of executive power, a civil society unengaged in public life, and widespread corruption”.

Otto and Hoekema (2012) note that since the publication of the World Bank’s 1992 report on good governance and development, “the concept of ‘governance’ – and especially ‘good governance’ – has taken centre stage in development policy, both internationally and domestically”. For them, the concept refers to “the role of the state in development processes, and covers aspects of politics, administration, law, and state-society relations”. For UNESCAP¹ ‘governance’ is “the process of decision-making and the process by which decisions are implemented (or not implemented)”.

UNESCO² provides a comprehensive definition, which indicates that “Governance has been defined to refer to structures and processes that are designed to ensure accountability, transparency, responsiveness, rule of law, stability, equity and inclusiveness, empowerment, and broad-based participation”. Equating ‘governance’ to ‘good governance’ and stressing that it involves more than the organs of the government, UNESCO further adds that “Governance also represents the norms, values, and rules of the game through which public affairs are managed in a manner that is transparent, participatory, inclusive, and responsive” concluding that “in a broad sense, governance is about the culture and institutional environment in which citizens and stakeholders interact among themselves and participate in public affairs”.

As this and many other definitions show, and as many analysts also defend (Katsamunskaya, 2016), there is a very close link between ‘government’ (or public administration) and ‘governance’. For Kjaer (2004) “governance is the capacity of government

1 United Nations Economic and Social Commission for Asia and the Pacific - www.unescap.org/sites/default/files/good-governance.pdf

2 United Nations Educational, Scientific and Cultural Organization - <http://www.unesco.org/new/en/education/themes/strengthening-education-systems/quality-framework/technical-notes/concept-of-governance/>

to make and implement policy, in other words, to steer society”. According to Peters (2008), cited by Katsamunskaja (2016) “the role that government plays in governance is variable and not constant, because there are models of governance that are state-centric and some that are more society-centred”. In some of these definitions, ‘governance’ is interpreted in a purely procedural perspective, without much concern with outcomes. However, as seen above, the focus of both the HDR and SDGs is on both procedures and outcomes, thus imposing a moral judgement on governance results. This thesis also takes this approach, seeing ‘good governance’ in terms of ‘correct decisions’ and thus contesting the argument that “governance is not about making ‘correct’ decisions, but about the best possible process of making those decisions”³. In fact, and as mentioned earlier, public governance and the role of the state/government (in land governance) are quite central to this thesis.

4. Good Land Governance for Sustainable Development

Many ideas about good governance have been applied to the concept of land governance as well. In fact, in Africa and in other parts of the so-called developing world, the concepts of ‘development’, including the concept of ‘sustainable development’, has gone hand in hand with the concept of ‘good land governance’. This perception was advanced by Thwala and Khosa (2008:33) in their analysis of sustainable development in South Africa. After stating that “Any discourse on sustainable development must consider the land question, since land is at the centre of a number of complex and inter-related factors deriving from social, political, economic and environmental factors of development”, Thwala and Khosa (2008:52) then concluded that while debates on sustainable development can cover a wide range of issues, “land must be the entry point for such discussions”. In the same line, and referring to Malawi’s legal framework on land governance, Kanyongolo (2008:99) concluded that “sustainable development is possible only when land reforms facilitate the elimination of inequalities in access to land substantively and not merely formally”.

Thus, it seems safe to conclude that in southern Africa and other parts of the developing world, sustainable development is intrinsically associated to how land and natural resources are accessed and used and by whom, and to how benefits resulting from such use are shared. Furthermore, with many developing countries having nature-based economies and the majority of their population living in rural areas (UN-Habitat, 2016), a particular focus is given to the role of land in the promotion of sustainable rural development (Scoones, 1998; Moyo, 2003). To advance in the

3 (<http://www.goodgovernance.org.au/about-good-governance/what-is-good-governance/>)

achievement of the goal of sustainable rural development, governments from those countries have adopted strategies for rural development where they commit to adopting participatory models in the management of their national resources, especially land. The assumption is also that this approach—participatory land governance—will ensure a higher level of benefit-sharing from development initiatives, and consequently more sustainable development processes.

In this context, in 2010 the African Union (AU) produced a framework and guidelines for land governance, defining ‘land governance’ as “the political and administrative structures and processes through which decisions concerning access to, and use of, land resources are made and implemented, including the manner that conflicts over land are resolved (AU-ECA-AfDB, 2010:xiii). Highlighting the centrality of land in development, the AU expressed its concerns over national strategies by stating that:

“Although land is central to sustainable livelihoods in Africa, development initiatives in many countries do not always take comprehensive account of this reality. African governments need to take appropriate measures to ensure that land plays its primary role in the development process and more particularly in social reconstruction, poverty reduction, enhancing economic opportunities for women, strengthening governance, managing the environment, promoting conflict resolution and driving agricultural modernization.” (AU, 2010:13).

This is the agenda to which this thesis also aims to contribute by focusing on the role played by the government. Stig Enemark (2017) addresses the concept of land governance particularly in respect to the role of governments, when explaining that land governance is about the policies, processes, and institutions by which land, property, and natural resources are managed, including decisions on access to land; land rights; land use; and land development (Ibid). Land governance, he adds, is about determining and implementing sustainable land policies and sustainable development requires spatially enabled governments that organise business and processes around place-based technologies. Referring to the 2015-2030 SDGs, Enemark (2017:27) also links land governance and sustainable development by asserting that “Meeting the Global Agenda requires good land governance to build a sustainable future”.

Despite the seemingly obvious need to adjust procedures and technology to promote good land governance that enhances sustainable development outcomes, it is increasingly clear that in many countries this approach is not being adopted. Consequently, the land governance benefits described above – rural poverty reduction

with effective citizen's involvement – are also not being achieved in practice (Sengupta, 2001; Ibhawoh, 2011; Bush et al, 2011; Amanor, 2012; Enemark et al, 2014; CCIE, 2019).

Furthermore, despite the adoption of society-centred governance models and progressive people-centred policies and strategies by governments from developing states, some of which have used a consistent policy rhetoric supporting the human right to development, citizens from these same countries claim that the approaches to development so far adopted, particularly strategies for land and natural resource management, are not responding to their interests nor adequately protecting their social and environmental rights, particularly land rights (UNAC, 2014). On the procedural front, they particularly claim that the voices of citizens and communities are not being heard, that they are not involved in many public decisions and that many decisions are taken more to favour private interests rather than to favour the interests of citizens and the state (UNAC and GRAIN, 2015b; UNAC, 2014; ORAM, 2015, 2018; CTV, 2012, 2017, 2018).

A number of case studies and land governance assessments in Africa and other developing regions indicate that the gap between theory and practice is wide and that the recent years have witnessed a worrying distancing of governments from their responsibility to protect citizens' rights and promote participatory local development based on land and other natural resources (Amanor, 2012; Amanor and Moyo, Eds, 2008; Deininger and Byerlee, 2011; Deininger et al, 2010, 2012; AU, 2012; Oakland Institute, 2011). To address this matter, international organizations, international financial institutions, and western donor countries have been at the forefront of the "good land governance" movement, now shying away from the focus on land rights titling promoted in the early 90s (Deininger et al, 2010) and through the development of good governance frameworks and guidelines to regulate investments (World Bank, 2010; FAO, 2010, 2012; USAID, 2011). Civil society organizations (CSOs), both at the national and international levels, as well as academic institutions, have also been advocating for good land governance, defending that public and private institutions must respect citizens' rights and interests, and include them when designing and implementing development policies, programmes, and projects (GRAIN, 2010; ILC, 2010; FIAN, 2011; JA and UNAC, 2011; OXFAM, 2016).

Governments from both developed and developing states have also joined the movement (DFID, 2000). Through regional organizations such as the Southern African Development Commission (SADC), they have conducted assessments on the status of land governance highlighting the multiple dimensions of the 'land

question' both in the dimension related to the legacy from colonization but also related to modern time dispossession due to investments (Moyo, 2004).

In order to address the diversity of issues surrounding land governance, in 2010 the SADC recognized and emphasised the need for stakeholders' engagement and the importance of aligning land policy with other development and sectoral policies. A comprehensive analysis of the multidimensional complexity of the land question in Southern Africa is found in the following statement by SADC (2010), which is crucial to understanding the historical, political, economic, social, and cultural context under which the role of land governance in sustainable development in this region, must be assessed. By highlighting political, institutional, and procedural aspects, as well as intergenerational aspects, this portrait offers an overarching image of the different challenges and dimensions pertinent to development debates in southern Africa.

"The history of colonial and racial discrimination in Southern Africa has left a deep mark on land issues in the region. This history of land dispossession, colonial settlement, racial discrimination and struggle for independence needs to be properly addressed by land policy processes. (...) Land policies need to address discrimination against women in terms of land ownership and access to land. Women are major rural producers in Southern Africa, yet they are marginalized from access to factors of production. Southern Africa is recognized as the epicentre of the HIV and AIDS pandemic globally. (...) Land policies in the region need to be harmonized with other development and sectoral policies. It is crucial that civil society organizations be involved throughout the whole cycle of land policy development, including the implementation and progress tracking phase. The role and contribution of the private sector should not be underestimated. While recognizing the impact of the colonial legacy, and identifying the constraints of the current situation, land policies in Southern Africa need to consider emerging issues and challenges of the future. These issues include rapid urbanization, globalization and markets and environmental challenges." (SADC, 2010:74).

A review of land governance challenges in Latin America (FIG, 2016) and in the Asia and the Pacific region (ILC, 2013), also presented similar concerns. With reference to land governance in Asia, the ILC (2013) claimed that "Starting in the late 1980s, there was a resurgent focus on land reform in development policy discourse. However, much of this new discourse about land policy seemed to highlight considerations of "economic efficiency", relegating issues of "equality" and "distributive justice" as secondary" (Ibid). Addressing land governance in Latin America, FIG (2016) indicates that while most countries have developed environmental legal and institutional frameworks to formulate strategies and action plans for sustainable

natural resources use and environmental protection, there is a limited capacity to implement and enforce existing legislation. Weak capacity and poor institutional arrangements then constrain effectiveness (Ibid). As claimed by Okoth-Ogendo (1999, 2002), this situation (weak institutional capacity) does not happen by chance, as it suits elite interests. This is clearly a good point for reflecting about the link between theory and practice, and the necessary conditions for implementation and enforcement that need to be put in place before adopting policies and laws that risk being progressive only on paper.

The Asian and Latin American assessments are included in this review because they add important dimensions to the historical perspective raised by SADC (2010), by highlighting equally important factors such as the priority given to economic efficiency at the jeopardy of equality and justice, including distributive and procedural justice, as well as issues related to institutional capacity and willingness to implement and enforce policies and legislation for sustainable natural resources management.

Notably, however, as pointed out by some land researchers (Tanner, 2017) and historians (Hanlon, 2002; Hanlon and Mosse, 2009) and also as shown in this thesis, while some challenges might have roots in colonial times, they are still quite prevalent in some developing countries due to modern governance choices (Hanlon and Mosse, 2009; Cabral and Norfolk, 2016; Weimer and Carrilho, 2017; Burr, 2014; Macuane, 2012).

This thesis will show how some of these factors – particularly institutional and technological issues, elite interests, political economy as well as modern time governance issues such as rule of law and transparency (or lack of) – play a role in the potential for developing countries to succeed or fail in their quest for sustainable development. Above all, it will show the need for clarity in the concept of ‘state’ and practice of ‘sustainable development’, as this concept also carries its share of challenges. As claimed by Amanor (2012) “the concept of sustainable development is often used to deny the poor rights in land, to justify expropriation of their land and to forestall redistribution, by privileging efficiency and technical interventions above social justice”. He also points out that arrangements are increasingly being made in which resources expropriated for the public interest are allocated in one form or another to the private sector for ‘sustainable management’ (Ibid). Therefore, he concludes, “sustainable development needs to be more clearly defined in the context of environmental and social justice” (Ibid). In their assessment on land governance in Mozambique and Ethiopia, Becker and Wittmeyer (2013:781) highlight challenges related to the concept of ‘State’, by pointing out that

“Findings from Mozambique and Ethiopia suggest that elites utilize neoliberal policies and ideals to remake and newly reinsert the state as the principle site determining a hierarchy of accumulation and privilege. Investors and business or party elites sit firmly at the top. It is therefore crucial to address “land grabbing” within an emerging neoliberal project pursued by the state.”

This thesis contributes to this definition using the analysis of nature conservation projects included in Chapter Three to assess how the social and environmental pillars of the concept of sustainable development are addressed and balanced with the economic pillar pursued in those projects.

5. Land-based Investments and Economic Development

Foreign Direct Investment (FDI) directed at developing countries, including investments in the land and natural resources sector (or land-based investments-LBIs), have always received prominent space in both global and national level development debates, particularly since the Millennium Development Goals were promoted in the 2000 (UN, 2000). This is because, on the one hand, some see LBIs as the solution to rapidly overcome poverty in these countries. On the other hand, others associate LBIs with social, economic, environmental and political disruptions and dubious financial rewards for the countries where they operate and for their respective populations. While concerns have been raised over state sovereignty, in terms of its autonomy and freedom to control accrual and distribution of revenues deriving from exploitation of national resources by foreign investors (Cotula, 2011; IESE 2013, 2015, 2017; CIP 2013, 2015a, b, 2016a, b), concerns over loss of access rights, resource dispossession, environmental degradation, and threat to food security have been more prominently raised in discussions about the contribution of such investments in the pursuit of the human right to development. Major concerns have undoubtedly been related to the role and treatment of those who are expected to be the main beneficiaries of LBI: national citizens (OMR, 2014).

In 2009, the United Nations Food and Agriculture Organization (FAO) presented what can be seen as a ‘compromise’ approach, defending the benefits and inevitability of LBIs to help overcome poverty in developing countries but also highlighting the social, economic, and political conditions that must be put in place for LBIs to play their role in sustainable development promotion and to prevent them from becoming a land grab strategy (FAO, 2009). Referring to the agriculture sector, in its reflection on whether LBIs represent a win-win opportunity or an opportunity for land grabbing, the FAO (2009) asserted that lack of investment in agriculture over decades has meant continuing low productivity and stagnant production in

many developing countries. It also claimed that lack of investment has been identified as an underlying cause of the food crisis of that moment and of developing countries' difficulties in dealing with that issue (FAO, 2009). Thus, while recognizing that the increased interest in foreign investment in agriculture has aroused substantial international concern due to the complex and controversial economic, political, institutional, legal, and ethical issues, in defence of LBIs the FAO (2009) pointed to developing countries' limited capacity to fill in the financial gap in terms of resources needed to cover the gross annual investment of USD 209 billion needed in primary agriculture and downstream services (Ibid).

However, there are disagreements with this FAO view. In 2011, the then UN Rapporteur on Business and Human Rights pointed out that more than imposing a discipline on land-grabbing there is need for a real alternative to this kind of investment in land (De Schutter, 2011). In defence of his position, De Schutter (2011:250), argued that "Current attempts to 'regulate' large-scale investment in farmland are misleading insofar as they presuppose that such investments can be desirable under certain conditions, provided they are well managed.(...) By making such a presupposition, we underestimate the opportunity costs involved in giving away farmland that is considered 'idle' to promote a type of farming that will have much less powerful poverty-reducing impacts than if access to land and water were democratized for the local farming communities. We overestimate the capacity of the governance structures in the host countries."

In spite of concerns voiced by De Schutter and others (Castel Branco, 2010; Cotula, 2010; Mosca and Selemane, 2012; Borrás et al, 2011), FDI in general and LBIs in particular continue to have positive receptivity in some circles and continue to dominate economic approaches proposed to or imposed upon developing countries, particularly by international financial institutions and organizations. In a clear pro-FDI tone, the Global Investment Trends Monitor minimized the above-mentioned concerns and highlighted the importance of FDI for ensuring robust, resilient growth and sustainable development in developing countries (UNCTAD, 2015). For UNCTAD (2015) "In the context of the post-2015 development agenda, [foreign] financing for those economies is even more to the fore".

In an attempt to balance interests and deflect criticism, in 2012, the FAO and the World Bank led a process that produced the "Voluntary Guidelines on the Responsible Governance of Tenure of Land, Fisheries and Forests in the Context of National Food Security" (VGGT). The VGGT intended to contribute to global and national efforts towards the eradication of hunger and poverty, based on the principles of sustainable development (FAO, 2012). The preface of the VGGT affirms

that: “The eradication of hunger and poverty, and the sustainable use of the environment, depend in large measure on how people, communities and others gain access to land, fisheries and forests. The livelihoods of many, particularly the rural poor, are based on secure and equitable access to and control over these resources. They are the source of food and shelter; the basis for social, cultural and religious practices; and a central factor in economic growth” (Ibid: iv).

Critiques of the VGGT summarized by Hall and Scoones (2016) are mainly based on CSOs perceptions about the guidelines produced by FAO to assist investors in implementing the VGGTs. According to Hall and Scoones (2016:41), CSOs claim that:

1. The rapid growth of guides for investors produced by a spectrum of institutions start from an incorrect premise as they are built around the risks that private and corporate investors encounter in acquiring land, fisheries, and forest, in order to manage and reduce economic, financial, and reputational risks rather than the human rights principles which underpin the VGGT. Thus, natural resources are transformed from a human rights issue into a matter of business.
2. The guides implicitly transfer state prerogatives and duties to companies and investors and the ‘multi-stakeholderism’ of implementation initiatives mixes up the roles of states and companies, entrusting businesses to resolve land conflicts instead of requiring states, as duty-bearers, to realise and protect tenure rights and to regulate and monitor investors.
3. The guides impose a non-existent “partnership” between corporations and communities and presume their different interests can be resolved by integrating local people into corporate supply chains – through contract farming, outgrower schemes, and management contracts.

Pointing out that CSOs have in fact lobbied for some of the provisions that were included in the VGGT, Hall and Scoones (2016:41) conclude that these critiques stem from the perception that donor support is being directed towards such initiatives at the cost of funding that could strengthen civil society, social movements, and grassroots organisations. In this regard they note that Via Campesina and other organizations published a joint statement urging the UN agencies, states, research institutions, and other NGOs “to withdraw and refrain from all initiatives that aim at abetting the corporate sector and private investors to use the Tenure Guidelines [VGGT] for the pursuit of business interests, thus supporting the corporate capture of resources, public policy spaces and human rights’ (Ibid).

The debates about LBIs and VGGTs will feed reflections undertaken in this thesis regarding development models and mandatory versus voluntary standards, large versus small scale investments, and external versus community-based investments, in view of the so far marginal economic impact and substantial social and environmental disruption often resulting from large-scale public and private land-based investments in Mozambique.

6. Land-Based Investments and the Land Grabbing Debate

As mentioned above, a common concern raised in debates on the governance of land in the context of land-based investments (LBIs) is that governments from developing countries are generally failing to protect local rights and ensure that such investments sustainably use land and natural resources for the benefit of national citizens, especially rural citizens (Cotula, 2011; Castel-Branco, 2010; Mosca and Selemene, 2012). In particular, these governments are seen as failing to adopt or to enforce and impose national policies and laws on investors in a manner that is conducive to good land governance for sustainable development (FAO, 2009; AU-ECA-AfDB, 2010; ILC, 2010, 2013). By failing to protect citizens' rights in the attraction of investments, national governments and public administration performance have been blamed for promoting land acquisitions marred by rights dispossession without due process, thus amounting to land grabbing. This thesis identifies other dimensions of land acquisitions for investments, including procedural and distributive aspects, that turn them into land grabbing.

Most recommendations from these debates and assessments of land governance have stressed the need to enhance responsible and accountable public interventions in this sector (World Bank, 2013; Urban LandMark (2012, 2011-2013); Trindade and Salomão (2016); Jere (2012); Tenga (2013, 2015); Mulolwa et al (2016). However, in the search for causes of such an apparently generalized public mal-governance, some analysts perceive that the intensification of debates on, and the push for, good land governance in the last few years is a result of yet one more hyperbole imposed upon developing countries by international financial institutions and western donor governments. They claim that this hyperbole hides dubious agendas that reflect failure of the structural adjustment programs and poverty reduction strategies imposed by those institutions in the recent past (Okoth-Ogendo, 2002; Moyo, 2005a, b; Negrão, 2001; Cabaço, 2007; Castel-Branco, 2010; Palmer 2011, 2015; Zoomers and Kaag, 2014; Carothers and Brechenmacher, 2014).

This apparent contradiction between the cause of, and the blame for, land governance failure in developing countries, has led to calls to pay more attention to the

complexity of the land problem, cautioning against simplistic and precipitated conclusions, and recommending that “debates must be broadened and discussions deepened” (Castel-Branco, 2010; Moyo, 2010; Zoomers and van Westen, 2013; Weimer, 2012). These researchers argue that discussions over land governance, particularly those related to land grabbing, should be made through an historical perspective to understand underlying causes of government performance that often are not so obvious. This can bring national/international links and the multidimensional impacts of land-based investments into the analysis, particularly foreign large-scale land-based investments (Amanor, 2012; Zoomers and Van Westen 2013; Zoomers 2013; Elsheikh, 2013; Zoomers and Kaag, 2014; Zoomers et al, 2016).

In this context, Moyo (2005), Wily (2011a), (Hickey, 2012), Zoomers (2013) and Palmer (2015) have pointed out that the land grabbing phenomenon that gave rise to the recent and ongoing good land governance movement is neither new nor is something happening by chance. They argue that this is a direct consequence not only of colonialist policies but also of post-independence policies that were externally and intentionally imposed upon the developing world. Others, such as Acemoglu and Robinson (2013) have also pointed to intentional governance approaches taken up by developing countries’ governments, generally dominated by political and economic national elites, who have adopted similar dictatorial tactics for marginalization and dominance over national populations.

Because land acquisition for LBIs has often led to land grabbing resulting in loss of rights, involuntary resettlement, population impoverishment and negative environmental impacts (Mosca and Selemene, 2012), in her analysis of Africa’s land question, Elsheikh (2013) concurs with De Schutter (2011) and others (Manji, 2001; Meizen-Dick et al, 2011; Amanor and Moyo, 2008) that the problem must be solved with measures that go beyond regulation. In this context, Elsheikh argues that it is imperative to emphasize the economic, political, environmental, and social consequences of large-scale land deals that are negatively impacting labour relations, devastating local food systems, and intensifying dispossession of rural communities in many African countries, in the following terms

“ (...) land policies in Africa need to be tackled in the multifaceted context of underdevelopment, asymmetrical global trade, and economic dependency. To that end, African states need to enact redistributive land reforms to: (a) revise and modify the colonial nature of customary laws that tend to increase land concentration and marginalize small farmers and poor, rural communities; (b) reverse existing legal frameworks and institutions that manage land allocation and land use to better serve the interests of the people who suffer most from the impact of large-scale land deals; (c) promote targeted access to land and

resources for rural women and small farmers; and (d) halt all large-scale land deals and renegotiate these deals on the basis of social, political and economic national interests that strive toward food security, poverty alleviation, and environmental protection.” (2013:4).

Elsheikh’s caution about the multidimensional impacts of large-scale land acquisitions is helpful in putting the procedural and distributive justice considerations into perspective in the dissertation discussions as, in fact, both must be assessed with reference to the extent to which they address all those dimensions. Also relevant to land grabbing debates is Amanor’s assertion (2008) that the challenge for researchers is to place debates about land governance and sustainable development within the context of global economic realities. He affirms that:

“The state in Africa has largely become complicit in the implementation of the neoliberal agenda and in the expansion of unfettered markets and foreign investment. Its role in the pursuance of the neoliberal agenda needs to be better understood. This requires a much clearer analysis of the relationship between the state and capital, and of the impact of the expansion of international capital on access to and control of natural resources and their depletion (...). New agendas for sustainable development need to be concerned with notions of social redistribution of natural resources and land, and public participation in control over the appropriation and accumulation of land. They need to uphold rights to livelihoods, to environmental entitlements (including clean environments and recreational facilities), and to the maintenance of public resources, which should not be appropriated by private capital and international investments in the new scramble for natural resources that characterizes the globalisation of Africa” (2008:195)

According to Otto and Hoekema (2012), Moyo (2003; 2008), Amanor (2012), Bush et al (2011) and Elsheikh (2013), aside from domestic considerations land policies in many developing countries have been informed also by international and transnational assistance, which in the 90’s favoured neoliberal policies as well as promotion of land titling and other approaches to facilitate land transactions particularly and improve the business environment for private foreign investors. Others have also argued that structural adjustment and market liberalization have had negative impacts on the strength and ethical position of African states, and allowed external powers to secure the influence they now have over national political systems and national development options and strategies (Stiglitz, 1998, 2002; Hanlon, 2002; Cabaço, undated); Hanlon and Smart, 2008; Palmer, 2015).

As already pointed out by Amanor (2008:195), “Twenty-five years after the introduction of structural adjustment, it is lame for researchers and neoliberal apologists to continue regurgitating rhetoric about rent-seeking African states and

patronage politics, and the need to roll back state power, without placing this in the context of global economic realities”. This is also why Palmer (2015) asserts that external dominance has made national governments accountable more to donors and other external entities than they are to their own citizens, with benefits from public policies leaving much to be desired in terms of positive impacts in the lives and livelihoods of the majority of their populations.

Palmer (2011) also suggests that the good governance voluntary guidelines and frameworks now promoted by those same powers in fact ensure that the interests of foreign investors and donors are given priority, facilitated by more business-friendly environments - meaning less state bureaucracy and control, easier access to rural lands and natural resources, and convenient national alliances. In the face of continuing influence and dominance of international powers over national governments, Palmer further claims that voluntary guidelines and frameworks will hardly produce any relevant impact in terms of substantial and sustainable development, with more accountable governments and fair benefit sharing (Ibid).

While this thesis analyses development and good land governance mostly from an inward looking socio-spatial, institutional and procedural perspective, the political economy dimension presented above, including the external factors highlighted by Amanor (2008, 2012), Elsheikh (2013), Palmer (2011, 2015) and others, help in understanding the context in which institutions are created and function, and public processes are conducted. As claimed by Hanlon (2010), Macuane (2012), Castelo Branco (2010) and Weimer (2012), existing rent seeking and patronage practices in Mozambique and other countries cannot be analysed in isolation from global politics, markets and neoliberal policies as they are, to a great extent, created or supported by these factors. These claims are relevant for the thesis discussions on state identity undertaken in Chapter Three and on the extra-legal factors that influence governance processes addressed throughout the dissertation. They are also relevant for identifying when land acquisitions become land grabbing.

II. Research Objective and Questions

The objective of this dissertation is to identify policy principles and legal provisions approved for the land and natural resources sector and assess the extent to which they contain procedures that effectively protect rights and livelihoods, raise citizens' voices, and reinforce their powers while also ensuring economic inclusion and equitable benefit sharing from land-based investments. Through a review of the

crosscutting procedure of community consultations, the dissertation looks at how protection of community land rights and promotion of community participation - including participation-enhancing elements, namely rule of law, transparency, accountability, and benefits-sharing - have been legally formulated, institutionalized, interpreted, and operationalized in practice.

Guided by these objectives, the dissertation seeks to respond to a key question:

How have the main principles and procedures of Mozambique's land policy worked out in practice with regard to community rights protection, participation, and benefit sharing in the context of land-based investments?

The following sub-questions have guided the research process:

1. What are the main principles and procedures of Mozambique's land policy?
2. How have procedures to ensure community rights protection worked out in practice and what have been the main challenges?
3. How have procedures to ensure community participation worked out in practice and what have been the main challenges?
4. How have procedures to ensure benefit sharing (and local socioeconomic development) worked out in practice and what have been the main challenges?

To respond to the main question and sub-questions, this research purposely looked at community protection, participation and benefit sharing in relation to different types of investments, different economic sectors, and different geographical locations. The choice of case study and investment projects is explained in Chapter Two and Chapters Four to Six provide empirical data from the different projects.

III. Theoretical Perspective

The different chapters of this dissertation analyse how the governance approach adopted in Mozambique enhances and contributes to both fairness of process (procedural justice) and fairness of outcomes/results (distributive justice) in land and natural resources governance, including rights recognition as well as political and economic participation rights. Since, as will be explained in Chapter Two, fairness of process and fairness of outcomes is the goal theoretically pursued by the Mozambican land policy and legal framework, this thesis draws insights from procedural and distributive justice theories applied to the environmental sector and presented in the next sections. Furthermore, since participation is persistently

mentioned as a crucial element and enabling factor for achieving the human right to development, for ensuring good land governance and for promotion of sustainable investments, and since the Mozambican land policy is also firmly grounded on the notion and principle of participation as a basis for human rights protection (GoM, 1995), a review of participation theories has also helped in framing the thesis analysis and discussions.

1. Procedural and Distributive Justice in Land Governance

Vermunt and Tornblom (1996) have analysed procedural and distributive justice, and in an introduction to this topic they have asserted that “distribution of scarce resources permeates almost all spheres and levels of social life and that people frequently evaluate the distribution of scarce resources in terms of justice or fairness” (Ibid:1). Claiming that distribution of scarce resources is a problem affecting society at the micro, meso, and macro levels and that there was a well-established finding that fairness is of great importance and affects people’s feelings and actions in social interaction, they indicated not being surprised that the social sciences committed considerable time, energy, and financial resources to the study of scarce resource distribution and people’s evaluation of it, with the major concern of identifying what a just distribution is or should be (Ibid:1). As they further explain “a resource distribution or allocation process frequently consists of an authority (a person or an institution possessing varying amounts of discretionary power to allocate resources) and one or more recipients of the allocated resource. The authority divides the resource between him/her and one or more others or between others. In making the allocation decision, authorities use distributive rules like equality (everyone receives the same amount), equity (the received amount of the resource matches contributions), or need (outcomes satisfy needs)” (Ibid:1).

Vermunt and Tornblom (1996) also argue that in making allocation decisions, authorities apply procedural rules - as distinct from distributive rules - to arrive at the decision, but add that “as an allocation event consists of an outcome and a procedure, the two aspects are inextricably connected to each other. Theoretical and empirical research has been and still is carried out within each of these domains, more or less independently of each other. During the last couple of decades, researchers have increasingly focused their attention on how judgments of the distribution and the procedure combine to form (overall) justice conceptions. The assumption is that people take both aspects of the allocation event into account, when they determine whether or not a particular situation is just” (Ibid:4).

In examining justice in the environmental and natural resources sector, Schlosberg (2003, 2004, 2013) has found claims for justice to be about more than just distribution of environmental goods and bads. Pointing out that the issue of distribution was always present and always key he also noted that issues of cultural recognition and political participation were also crucial components of the environmental movements' definitions of environmental justice (Ibid). As such, for him any idea of a distributional just treatment of nature will simply not come about without addressing both the issues of recognition (of rights) and procedure. Justice, then, he adds, requires not just an understanding of unjust distribution and a lack of rights recognition, but, importantly, the way the two are tied together in social, cultural, and political processes.

For Vidamar (1990, 2002), Tyler (2003, 2011), Tyler and Jackson 2013) procedural justice refers to the fairness of a process by which a decision is reached and judgments about procedural justice are distinct from those about distributive justice (the fairness of the outcome), as well as from outcome favourability (how good the outcome is for any given party). Asserting that perceptions of procedural justice have important effects on how people think about and behave with respect to the outcomes they receive in legal disputes, Tyler (2011) also points out that the fairness of a process is a separate, independent construct, distinct from how fair or how good an outcome is. As such, he concludes, procedural justice has a separate and independent effect on how people feel about their results, apart from how fair or how good the outcome is (Ibid).

Linking procedural justice with broader governance issues, Tyler (2011) further argued that people's everyday understanding of what procedural justice means conforms to many of the key elements that define the rule of law (such as non-retroactivity, generality, certainty, neutrality, protection of individual rights and lack of discretion by government actors) and that procedural justice, just like rule of law, fosters perceptions of legitimacy. Tyler (2011) also defends that because the rule of law has historically and philosophically been considered a central component of a legitimate governmental system, procedural justice is also a central component of how individuals make judgments about the legitimacy of authorities.

Blaikie and Muldavin (2013) allocate a crucial role to participation in fostering procedural and distributive justice, and asserted that while participation has been subject to sustained interrogation, a precise and detailed account of the practice of participation provides key evidence of procedural justice and serves as an indicator of the quality of distributive justice that evolves from it.

More recently, based on reflections by Walker (2010, 2011, 2012) and Tyler (2011), Peters (2015:7) also linked environmental justice to participation and concluded that “although the definition of environmental justice is something that has been done by both environmental and political writers, many of these theories of environmental justice are still very inadequate in their approaches, especially as they continue to insist solely on the distributive paradigm of environmental justice, with less emphasis on recognition and participation”.

Concurring with Schlosberg (2003) in that justice should be integrated into a comprehensive political project, Peters (2015:8) further claims that justice is a combination of three closely related elements: distributive, procedural, and justice of recognition and participation.

This thesis uses these reflections to assess the extent to which good land governance principles adopted in the Mozambican policy and legal framework have been complemented by substantive and procedural norms that are, both in theory and practice, conducive to desired outcomes in terms of rights protection, participation in decision-making processes, economic inclusion, and benefit sharing. In other words, the question that the thesis tries to answer is whether those principles have been materialized through interventions envisaging both fairness of process and fairness of outcomes.

2. Participation as a Key Element of Procedural and Distributive Justice in Land Governance and Responsible Investments

An analysis of the definitions of ‘good land governance’ presented above helps to identify at least five common concepts or principles: ‘participation’, ‘rule of law’, ‘transparency’, ‘accountability’ and ‘equitable benefits sharing’. The literature reviewed above also suggests that these five principles and concepts are present in most recommendations on good governance for sustainable development. They all form part of a package and their interconnection and interdependency should be well understood by all stakeholders as they are considered essential elements for determining whether the position and role reserved for citizens in development processes is bound to respond to their development aspirations both as political and economic actors. Notably, however, participation has occupied a central position, with the other principles acting either as participation-enabling elements (rule of law and transparency) or participation outcomes (accountability and equitable benefit sharing).

Participation, it is argued, should occur through the creation of, and support to, formal and informal mechanisms and spaces for citizens to be involved in public administration affairs (Scoones, 1998; Cistac, 2012; FAO, 2009; DFID, 2000). Different forms of formal participation have been identified, institutionalized and used, including administrative and democratic decentralization (Agrawal and Ribot, 1999; Ribot 2001, 2002, 2003, 2004; Manor, 1999, 2011; Wily, 2003a; Hickey and Mohan, 2005; Larson and Soto, 2008), as well as community consultations for free, prior, and informed consent on decisions that affect them (UN, 1992; Hickey and Mohan, 2005, OXFAM, 2014).

In some contexts, such as in Mozambique, aside from community consultations, public-community and private-community partnerships are also seen as mechanisms for citizens to collectively participate in, and benefit from, government efforts to enhance citizens' well-being and socio-economic progress through public and private land-based investments (GoM 1995; GoM, 1997; GoM 2004; GoM 2007; Monteiro et al, 2014; Cotula et al, 2009; FAO, 2012). Similar to participation, the rule of law is taken as one of the main structural features of modern and well governed democratic States, as public administration performance should be strictly and exclusively guided by law (Amaral, 1989; Cistac and Chiziane, 2008; Canotilho, 2008, 2011). In fact, a common assumption in the discussions about good governance is that it occurs when citizens' participation in public decisions is secured and when public institutions conduct their actions based on the rule of law (Kjaer, 2004; Canotilho, 2011; Cistac, 2009).

According to Canotilho (2008), the basic feature of the rule of law is the elimination of discretion in the exercise of public powers with the consequent guarantee of citizens' rights in face of such powers. From this premise, it can be inferred that if public institutions in democratic states are meant to exclusively prioritize and pursue public interest, then following the rule of law will lead to good governance⁴.

The 'rule of law' principle also implies that good governance is intrinsically linked to democracy and, consequently, to participation. As Canotilho (2008) also points out, the most adequate model to accommodate the principles and values of a State subordinated to the law is a constitutional democratic State that is socially and environmentally sustainable, which respects fundamental rights, and which

4 Criticisms of the rule of law principle often refer to public interventions that, based on approved laws, led to gross human rights violations such as Nazism and Apartheid. In this dissertation, the rule of law principle is discussed with reference to settings where human rights are constitutionally protected, as well as protected by national laws and international agreements, and governments are legally obliged to act accordingly. In this context, the rule of law principle is strictly linked to the objective of promoting and enhancing human rights protection and human development.

imposes legality and accountability on public administration. Canotilho rejects the notion of a state ruled by law ‘divorced’ from the problems of democracy and social justice (Ibid). This view is also shared by others. Kjaer (2004), for example, indicates that in democratization theory ‘good governance’ implicitly equals ‘democratic governance’, as the core concepts of governance include: legitimacy, efficiency, democracy, and accountability. ‘Good land governance’ then requires application of democratic principles in the land management and administration sector, giving prominence to legality and participation, and to efficiency and accountability. In this regard, and in connection to the land sector, Otto and Hoeckema (2012) suggest that a proper rule of law environment is key to the success of any land policy.

With regard to transparency, accountability, and benefit sharing, Carothers and Brechenmacher (2014:8), assert that “public sector accountability and transparency emerged as crucial concepts in the effort to reduce opportunities for corruption and strengthen internal and external monitoring mechanisms in the mid-1990s, when the World Bank and other major donors began concentrating on corruption - which many aid providers had traditionally avoided confronting head on, viewing it as too politically sensitive - as a key obstacle to poverty reduction”. Arguing that Transparency International and other groups helped push anticorruption onto the agenda, and also highlighting the role played by nongovernmental groups in developed as well as developing countries, they point out that “these organizations led a widening campaign for freedom of information that in many places produced new laws and regulation, guaranteeing citizens’ right of access to government information (Ibid).

‘Benefit sharing’ is widely cited today as a key element of good land governance and sustainable development, and equitable benefit sharing can be seen as one of the main goals of ‘participation’. Heslinga et al (2017:3) note, however, that the term has no well-established definition, adding that “it can be defined as being the process of making informed and fair trade-offs between social, economic and ecological costs and benefits within and between stakeholder groups, and between stakeholders and the natural environment, in a way that is satisfactory to most parties”. More towards the economic perspective of benefit sharing, Gill (2017) designed a framework for community benefit sharing mechanisms in the forestry sector (CBSM) in which she defines them as mechanisms through which funds from resources use are transformed into fair and equitably allocated benefits with additional and permanent outcomes for communities (Ibid).

While this concept is generally addressed in its economic/financial perspective, it has been argued that in some cases, for example in the context of community-based natural resource management, the most important benefits of community participation in these processes are non-financial (Virtanen, 2004a, b; Milgroom and Spierenburg, 2008; Milgroom, 2012, 2013; Fabricius, 2008). Therefore, in the cases selected for this dissertation, this concept is also analysed in both its financial and non-financial dimensions.

3. The Practice of Participation: Potential and Limitations in Securing Procedural and Distributive Justice

Similar to the concept of ‘sustainable development’, ‘participation’ has also had its share of criticism. For Cornwall (2008:269), “participation can be used to evoke – and to signify – almost anything that involves people”. For this reason, Cornwall (2008) suggests the need for conceptual clarity so that it can accomplish its democratizing promise. Referring to some participation theorists, namely Arnstein (1969) and his ladder of participation, which “looks at participation from the perspective of those on the receiving end” (Cornwall, 2008:270), and to Pretty (1995) and his typology of participation, which “speaks more to the user of participation” (Cornwall, 2008:270), Cornwall asserts that “both typologies describe a spectrum defined by a shift control by authorities to control by the people or citizens” (Ibid:271). However, Cornwall (2008) cautions that “while these typologies differentiate kinds of participation, they do not tell us much about the different kinds of participants who take part in community development projects” (Ibid:275).

In this context, Cornwall (2008, 2010) also calls attention to the limitations of participation, pointing out to the need to pay attention to (a) who is included or excluded as well as to those who exclude themselves; (b) the intersection between inclusion/exclusion and degrees of involvement; (c) the difference between involvement and influence; and (d) the question of representation and voice (Ibid). Concluding that “participation is in itself no panacea”, she also asserts that distinctions need to be made about how and on what basis different people engage in order to make sense of what participation actually involves for community development initiatives (Cornwall, 2008:280). For others (Hickey and Mohan, 2005), although participation has become a much-used term, development policy makers and practitioners failed to treat it as an intrinsic element of development processes.

Arguing that participation should be located within broader theoretical debates on development, Hickey and Mohan (2005) defend that participation should be conceptualized in terms of an expanded and radicalized understanding of citizenship.

With regard specifically to the concept of ‘participation’ and ‘the rule of law’, other analysts caution that good governance means different things to different people and that ‘good governance’ standards must be contextualized to avoid the risk of applying western concepts and standards that are not suitable to different social, economic, cultural, and environmental contexts (Webler et al, 2001; Cooke and Kothari, 2003; Poluha, 2002; Gaventa, 2002, 2012; Irvin and Stansbury, 2004; Hickey and Mohan, 2005; Reed, 2008). By this, and like Cornwall (2008), they mean that participation models must be context specific and culturally suitable and adapted. This thesis agrees with the assertion that context must be taken into account. However, it also claims that criteria for context considerations must be established in policy and legal texts duly approved and not during implementation processes or through measures taken at the discretion of government agents and investors.

Tandon (2002) also addressed the potential and limitations of governance principles if used or treated in isolation, or if disconnected from other equally important social and political factors. In this context, Tandon (2002:7-8) stressed the need for linking citizenship, participation, and accountability to form what he refers to as the ‘governance wheel’.

“It is one thing to debate the three concepts of citizenship, participation and accountability individually and approach them singly, but it may be worthwhile to think about how they fit together. We need to look at how participation assures accountability and how a sense of citizenship enables participation. I look at three of them together as a ‘governance wheel’. (...) Either way, citizenship, participation, and accountability together form the basis of [the] ‘governance wheel’, which move in an integrated, inter-linked, and synergised manner and which affect each other in a dynamic relationship. Citizenship, participation and accountability are in fact essential components of any kind of meaningful governance, not just in government institutions but in all institutions, which occupy public space.”

Tandon (2002, 2008) also highlighted the importance of a historical contextualization to the spaces for participation, which implies looking at forms of participation both in the traditional and modern context; the importance of political and cultural meanings of participation and citizenship; the importance of individual and the collective notion of citizenship; as well as the need for broadening the meaning of the public. In the same line as Tandon (2002), Hickey and Mohan (2005:26,27) offered a theoretical and analytical framework in which ‘participation as transformation’ can be located. In this context they have identified key dimensions of successful participation that results in transformation, namely:

1. A participation approach that “seeks to challenge power relations rather than simply work around them for more technically efficient service delivery, thus focusing primarily on issues of power and politics”;
2. Participatory approaches directed at “achieving close engagement with underlying processes of development rather than remain constrained within the frame of specific policy processes or interventions”;
3. Participation as citizenship, aiming at “bringing people into the political process, but also to transform and democratise the political process in ways that progressively alter the ‘immanent’ processes of inclusion and exclusion that operate within particular political communities, and which govern the opportunities for individuals and groups to claim their rights to participation and resources”.

Despite the ironic tone, which perhaps suggests an exaggerated and opportunistic use of governance principles, Carothers and Brechenmacher (2014:3) have nonetheless recognized their widespread adoption, particularly in policy statements and international development organizations, which inevitably have also been used by developing states in framing their national policies. In this regard, they have asserted that:

“If you are an unfamiliar visitor to an organization engaged in international development assistance and unsure of the reception you will receive, there is a sure-fire way to win over your hosts: tell them you believe that four key principles are crucial for development -accountability, transparency, participation, and inclusion. Your hosts will almost certainly nod enthusiastically, and declare that their organization in fact prioritizes these very concepts as key tools in the larger battle to eradicate extreme poverty and achieve sustained development. This holds true no matter whether you are visiting a major bilateral or multilateral aid agency, a foreign ministry engaged in development work, a transnational nongovernmental organization, a private foundation, or any other of the many groups that now make up the tremendously heterogeneous world of international development aid. These four concepts have become a ubiquitous feature of the policy statements of countless aid organizations over the past few years.”

Carothers and Brechenmacher (2014:1) also point out some limitations. Referring to an ‘incomplete bridge’, they assert that “these principles bridge three distinct practitioner communities that emerged from this new direction - those focusing on governance, on democracy, and on human rights, concluding that “consensus remains elusive” (Ibid). For them, democracy and human rights practitioners generally embrace an explicitly political understanding of the four concepts and fear technocratic or purely instrumentalist approaches; governance specialists often follow a narrower approach, applying the core principles primarily to the quest for greater public sector effectiveness, and aid providers frequently present the four concepts as

a unified agenda while in actual programming they may only pursue or prioritize selective parts of the set, engendering tensions among the different principles (Ibid).

Carothers and Brechenmacher (2014) also claim that although these concepts evoke potentially transformative notions of citizen empowerment, they risk being reduced in practice to limited forms of citizen consultation or technocratic reforms that rely on simplistic theories of developmental change. In their view, uncertainties and inconsistencies also stem from practitioners' scepticism in treating accountability, transparency, participation, and inclusion as intrinsic to their conception of development.

Pointing to questions related to impact and resistance on the recipient side, and arguing that their developmental impact is limited and inconclusive particularly regarding the relationship between governance and economic development, they claim that "developing country governments have rhetorically embraced the value of accountability, transparency, participation, and inclusion and joined international initiatives aimed at furthering these principles (Ibid). However, the political will to translate such commitments into substantive political reform is often lacking and that some governments remain fiercely opposed to incorporating these principles into the international development agenda, viewing them as entry points for illegitimate political meddling" (Ibid:2).

There is obviously merit in the reservations voiced about the potential that 'participation' and other governance principles have to secure good land governance for sustainable development, particularly if treated in isolation. However, there is also merit reflected in the fact that, in the last 30 years, public participation, the rule of law, accountability, transparency, and benefit sharing, have been constitutionally adopted and institutionalized in an integrated manner as guiding governance principles in many developing countries from Africa and other continents. This can be seen as a manifestation of a global consensus on their importance, independently from hyperboles of the moment. In fact, this consensus is also reflected in several international instruments, which, through the years, have been crafted with the active involvement of both developing and developed countries (UN, 1986; UN 1992; UN, 2000; UN 2015).

Therefore, and as suggested by Canotilho (2008), it can be argued that the inclusion of such principles in national constitutions and in international instruments (conventions, protocols, and agreements), standards, and guidelines, reflects a shared recognition of their importance as fundamental characteristics of global good governance has prevailed. In the same line, Carothers and Brechenmacher

(2014:5) also argue that “...the agreement around them appears to be unusually broad and its implications far reaching. Rather than simply adding new elements to the international development agenda, the consensus calls on donors to revise their approach to all areas of assistance. The four principles together in effect form a new conventional wisdom about development, one with interlinked normative and instrumental rationales and one that promises to bridge long-standing divides both within aid organizations as well as between donors and recipients”.

The conceptual review and debates presented in this section are useful to discussions about Mozambique that follow in the next chapters. This country provides fertile ground for assessing the five common elements associated with good land governance, all of which appear in one form or another in this country's policy and legal framework, in a myriad of projects and programmes, and in most debates about policy direction and impact. Carothers and Brechenmacher (2014) comment on participation limitations and Tandon (2002) comment on selective and opportunistic use of governance principles are noted here. As Tandon (2002) claims, governance principles should be seen as an integral part of a whole and as effective guidelines for development processes instead of terms merely used in political propaganda. Of particular importance is Tandon's assertion (2002) that their relevance should span beyond the assessment of developing governments' actions. For him such principles are also useful for assessing development aid agencies as well as foreign investor's performance who, as this thesis will show, in some instances adopt selective and partial observance of good governance principles often closing their eyes to citizen's rights violations and insignificant economic inclusion (Ibid).

Some of the claims and arguments presented in this chapter regarding sustainable development and the weakening of African states' ability to protect local rights and national interests by externally-imposed agendas and principles require further investigation that goes beyond the scope of this thesis. However, this dissertation shows that these factors only partially explain the current status of land governance in many developing countries. As argued by Fairbairn (2013), by focusing on externalities, land governance debates may be failing to assist in our understanding of how countries such as Mozambique have developed progressive legal and policy frameworks for land and natural resources, and then gone on to only partially or unsuccessfully implement them. In this context, using material from the different projects, the thesis tests how 'participation as transformation' is occurring or can occur in Mozambique, in a scenario where rights are protected, and where political and economic power is equitably shared by accountable actors and committed leaders.

IV. Dissertation Structure

Aside from the introduction included in **Chapter One**, which contextualizes the dissertation topic, research objectives, and questions, and presents a review of concepts and debates on participatory land governance and sustainable development as well as a theoretical perspective, the dissertation includes five additional chapters as follows:

Chapter Two provides details on Mozambique, including an overview of the different land-based investment projects that were analysed. It also includes a section describing the research methods used and associated challenges.

Chapter Three provides an historical, political, legal, and institutional contextualization to the Mozambican land governance experience. In particular, it highlights the principles seen as representing the backbone of Mozambique's land governance, namely 'State Ownership over Land and Natural Resources', 'Legal and Institutional Pluralism and Community-based Natural Resources Management', 'Administrative Decentralization', and 'Land-based Investments for Rural Development'.

The next three chapters then discuss the three guiding objectives pursued through the above-mentioned principles, namely (1) community rights protection and community-public partnerships; (2) community consultations for political participation economic inclusion; and (3) investments benefit sharing and contribution to local development. As community consultations are a crosscutting procedure imposed for operationalizing all these objectives, and are the means through which both procedural and distributive justice is sought, this is the thread used to guide the analysis in all chapters. Therefore:

Chapter Four addresses procedures for community rights protection and community-public partnerships in the biodiversity conservation sector, focusing on (1) the inevitability of community rights expropriations and (2) opportunities for community-public partnerships and community-based natural resource management in this sector. Discussions are based on the review of processes followed in the creation of the Limpopo National Park in Massingir District, Gaza province, as well as processes for the establishment of the Cubo Community Game Park, located in the park's buffer zone. For comparative purposes, the chapter uses another conservation area located in the centre of the country, the Mágoé National Park in Mágoé District, Tete Province, and the Tchuma Tchato Community Project, located within this park's area.

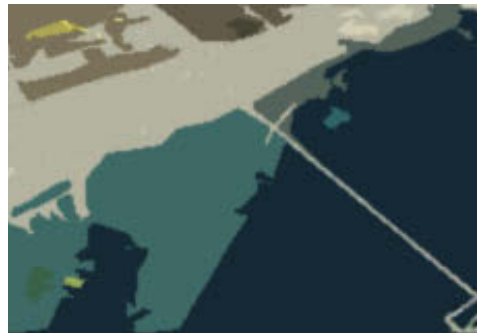
Chapter Five reviews community participation in land decisions and in economic opportunities in the extractive industries sector. In this context, it reviews community consultations to assess (1) whether community consultations were conducted and whether community free, prior, and informed consent was secured in the project's land rights allocation, and (2) whether community-private partnerships were negotiated. The reference case is Anadarko's Liquefied Natural Gas Project in Palma District, Cabo Delgado Province, located in northern part of Mozambique.

Chapter Six addresses investment benefit sharing and contributions to local development. For this it reviews community compensation negotiations associated with a resettlement process conducted in the Maputo-KaTembe Bridge and Highway project, an urban-based public infrastructure project implemented by the Mozambican government in Maputo City, Maputo Province.

The dissertation ends in Chapter Seven, with the author's Final Conclusion and Discussion. This chapter draws together the main findings and lessons learned from the Mozambican case to provide an empirically based response to the research question and sub-questions posed by this dissertation.

Two

Description of the Case Study, Research Design and Methodology



Introduction

“O poder e as facilidades que rodeiam os governantes podem corromper facilmente o homem mais firme. Por isso, queremos que vivam modestamente e com o povo. Não façam da tarefa recebida um privilégio ou um meio de acumular bens ou distribuir favores.” (Samora Machel, 1986)⁵

This chapter provides details of the Republic of Mozambique, the study case selected for this dissertation. It includes four sections that respectively address: (1) justification for selection of the study case; (2) justification for selection of investment projects; (3) research methods used, and; (4) research challenges faced by the author.

I. Why Mozambique?



Figure 1. Mozambique geographical location in the African Continent.

5 Author's translation:
“The power and privileges that surround rulers can easily corrupt the strongest man, so we want you to live modestly and with the people. Do not use your positions as privileges or as means of accumulating assets or distributing favours.” (Samora Machel, president of the Republic of Mozambique from 1975 to 1986).

Mozambique is a former Portuguese colony, located in Southern Africa's east coast, with the Indian ocean to the east coast and shared borders with Tanzania, Malawi, Zambia, Zimbabwe, Swaziland and South Africa. As a result of its success in maintaining a climate of peace and political stability since the end of the first post-independence civil war in 1992, Mozambique has achieved impressive levels of economic performance and growth and has been regarded as a safe ground for both national and international investors (World Bank 2010; IMF 2012; Macuane et al, 2018). For the Mozambican government, promoting investments, especially foreign direct investments (FDIs), was seen as the best way to fast track development and secure funds to reconstruct the social and economic infrastructure network destroyed by the country's civil war, which lasted 16 years, from 1976 to 1992 (GoM, 2000, 2005, 2009, 2015).

Likewise, despite economic regime changes experienced by the country since independence (socialism from 1975 to 1990 and capitalism from 1990 onwards), in theory the Mozambican government maintained a consistent people-centred development policy (GoM, 1975, 1990, 2004). At least in theory, this policy gave prominence to the state's responsibility to protect citizens and local community rights (GoM, 1995). The state's responsibility to protect citizens and local communities' land rights, particularly in the context of land-based investment promotion, was given particular attention in the 1995 National Land Policy (NLP) (GoM, 1995)⁶ through mandatory requirements for both companies and the government to consult with local communities to get their consent and to negotiate mutually beneficial situations when intending to use their land and other resources. The following policy objective can be found in the 1995 NLP:

“To guarantee the rights of the Mozambican people to land and natural resources, as well as to promote investment and sustainable and profitable use of these resources.” (GoM, 1995)

To materialize the NLP directive, a participatory process ensued in 1995 and 1996 (Tanner, 2002) which culminated with the approval of the 1997 Land Law still in force today. The land law review process is in itself considered emblematic due to the highly consultative approach adopted and the substantial involvement and leadership from both the government and civil society organizations, with support from the FAO. This process was described by Turner (2002), who at the time served as Senior Technical Advisor to the FAO in Mozambique, with reference to the National Conference organized in 1996 to discuss the draft land law:

6 GoM, Cabinet Resolution No.10/95 of October 17

“In many respects this Conference was a milestone for Mozambique and indeed would be for many countries with far more developed democratic systems. Over 200 from a wide range of institutions and organisations took part, including NGOs at the national and local level, and small associations representing farmers and women from different parts of the country. Several ministers and Assembly deputies were present, as well as politicians from the main parties. The main public sectors involved with land issues sent technical staff from the central and provincial level. Prominent members of the business community and members of the diplomatic corps were invited. Many national and international specialists also attended. The Conference was fully and openly covered by the press, TV, and radio services. Over a period of three days the draft law was discussed and dissected point by point. While the Conference was not binding in its decisions, full note was taken of all major criticisms, and a consensus sought on compromise solutions. On balance, by far the greater part of the draft received strong support from the majority of those present, even when senior figures expressed strong opposition. In short, the conference conferred a strong sense of legitimacy on the process as a whole, and on the draft law in particular, that subsequent political review and assembly debate was obliged to take into account.”

Guidelines for national development processes, including for foreign investment, were also provided in several provisions of the 2004 Constitution of the Republic, as transcribed in Table 1⁷.

Table. 1: Mozambique National Economic Organization

<p>Article 96: Economic Policy The State’s economic policy is directed at the construction of the fundamental bases of development— improving people’s living conditions, strengthening the sovereignty of the State, and the consolidation of national unity—through the participation of citizens as well as the efficient use of human resources and materials. 2. Without prejudice to balanced development, the State guarantees the distribution of national wealth, recognizing and valuing the role of the producing areas.</p>
<p>Article 98: Public Property and Public Domain 1. Natural resources located in the soil and subsoil, in the territorial sea, in the continental shelf, in interior waters, and in the economic exclusive zone are the property of the state.</p>
<p>Article 101: Economic Activity Coordination 1. The State promotes, coordinates, and oversees economic activity, acting directly or indirectly to solve the fundamental problems of the people and to reduce social and regional inequalities. 2. State investment should play a leading role in promoting balanced development.</p>

7 GoM, 2004 Constitution of the Republic of Mozambique-Title IV, Chapter II

<p>Article 102: Natural resources The State promotes natural resource knowledge, mapping, and valuation and determines the conditions for their use and enjoyment to safeguard national interests.</p>
<p>Article 103: Agriculture 1. In the Republic of Mozambique agriculture is the basis of national development. 2. The State shall guarantee and promote rural development for multi-sectoral growth to meet the needs of the people and the economic and social progress of the country.</p>
<p>Article 104: Industry In the Republic of Mozambique, industry is the driving factor of the economy.</p>
<p>Article 108: Foreign Investment 1. The State guarantees foreign investment, which operates in the framework of its economic policy. 2. Foreign ventures are allowed throughout the national territory and in all economic sectors, except those that are reserved for exclusive State property or exploitation.</p>

Source: 2004 Constitution of the Republic of Mozambique

Until recently Mozambique was considered a success story of democracy and of rapid and stable economic development in Africa⁸ (World Bank 2010; USAID, 2011), where progressive land laws are in place that embrace good governance principles (Hanlon 2002; Hanlon and Mosse, 2009; Moyo, 2005; USAID/SPEED 2015; Palmer et al, 2016; Cabral and Norfolk, 2016). Indeed, a combined review of constitutional provisions and provisions from different legal instruments undertaken for this dissertation, particularly legislation on land and natural resources, gives the reader a vision of a national development process directed at eliminating poverty by improving the living conditions for all citizens with citizen participation in the sustainable use of the country's natural resources. In this context, state ownership over land and all other natural resources was constitutionally adopted in the name and for the benefit of all Mozambican citizens (GoM, 1975, 1990, 2004). Furthermore, Mozambique has been considered an exemplary case of a country with a progressive policy and legal framework containing provisions for local communities to benefit from land-based investments. The 1997 Land Law has been described as one of the best in Africa (Wily, 2011b; McAuslan, 2005; 2013; Tanner, 2002; 2008; Norfolk and Tanner, 2007; Tanner and Bicchieri, 2014; Tanner, 2017).

This positive assessment of the country's legal framework is generally due to provisions on (1) community consultations aimed at protecting community rights and ensuring their political and economic inclusion; (2) community-private partnerships aimed at allowing rural land to be used by external actors while maintaining community rights and promoting mutual benefits; (3) legal and institutional

8 The last 10 years have witnessed worrying signs of a decrease in democratic spaces and processes, exacerbated by a financial scandal that has seriously damaged the country's reputation and severely undermined its economic progress.

pluralism aimed at integrating customary norms and traditional leaders in natural resource management and allowing community-based land and natural resource management, and; (4) sustainable public and private land-based investments that respect community rights and interests.

Despite this policy and legal framework, however, land-based investment projects, both national and foreign, and both public and private, have increasingly been involved in conflicts and tensions with local citizens and communities in both rural and urban areas (Castel Branco, 2010; Mosca and Selemene, 2012; CTV, 2015, 2017, 2018; Mosca et al, 2014; OMR, 2014, 2015; Cabral and Norfolk, 2016; Osório and Silva, 2017). In both public and private investments, investors have generally failed to consult with local communities and to respect their land rights (Tanner and Baleira, 2006; Norfolk and Cabral, 2016). They have also been found to trigger unjustified involuntary displacements and resettlements, failing to equitably share any tangible economic benefits with local populations and to provide visible contributions to local development (IESE, 2012, 2015). For these reasons, land-based investments in this country are seen more as land-grabbing manoeuvres than as development opportunities (OMR, 2014; IESE, 2012, 2013, 2015; UNAC and GRAIN, 2015; AUSCULT, 2017; ICM, 2017). Mozambique is thus often mentioned in land grabbing debates and placed at the top of the list of countries where foreign companies and national elites are acquiring large extensions of land in rural areas at the jeopardy of national citizens and local communities (Hanlon and Mosse, 2009; Cunguara and Hanlon, 2012; Milgroom, 2012, 2013; ILC, 2010; Cotula, 2011; OXFAM, 2013; GRAIN, 2010; Nhantumbo and Salomão, 2010).

Analysts of Mozambique's land sector, from the academy, civil society, and even from the government, agree with these claims and assert that in spite of the favourable legal framework and people-centred policies, the rights of local communities to access, occupy, and use land and other natural resources have been increasingly threatened, with communities marginalized from relevant land-related decision-making processes and also left behind in economic opportunities and benefits sharing (Negrão, 2004; Monteiro et al, 2014; Tanner, 2010; USAID/SPEED, 2015; Tanner and Biccheri 2014; Trindade and Salomão, 2016; Cabral and Norfolk, 2016; CIP, 2016).

While recognizing existing imperfections within the law and that the law might have to assume a share of the blame (Wily, 2011b), these analysts generally converge on the conclusion that Mozambique's land governance is being hampered by extra-legal factors, such as political and economic elitist interference, corruption, and generalized legal illiteracy among local communities in both rural and urban

areas (Matos, pers. comm, 2015; Mosca, pers. comm., 2015). Arguably, the current content of the law, including its alleged imperfections, might even be a reflection of tensions and compromises imposed by such factors, hence the comment that this is the law that was even possible to approve under the country's social, political, and economic circumstances of the time (Carrilho, 2014, pers. comm.; Hunguana, 2016, pers.comm.; Tanner, 2017, pers. comm). Claiming that bad natural resources governance stems from how a 'political settlement' has been organized and rent mobilization controlled by the ruling party, Macuane et al (2018) also argued that, "despite the increasing investments in natural resources, the country still experiences what has been termed as 'growth without change', with resettlement problems, low levels of contribution to GDP, and poor linkages between megaprojects and other sectors of the economy.(...) A key foundation of the political settlement in post-independence Mozambique has been the ideology of 'national unity' fostered by the ruling party Frelimo, which informs patronage and clientelism."

With this background, this dissertation also aims to understand how the participatory process adopted in the land law's formulation and the progressive content of the land law were possible under the prevailing political context in Mozambique land and natural resources governance profile.

II. Mozambique Investment Strategy

Land and other natural resources are Mozambique's biggest socio-cultural and economic asset, both for national citizens and families as well as for the state. For the state, investments on land have been seen and treated as catalysers of national socio-economic development, with the potential to provide important contributions to the country's fight against poverty, particularly rural poverty. Following the constitutional directive to make agriculture the main economic sector, the initial focus of the state after independence was to organize and boost agricultural production through both large state farms that were inherited from colonial companies, and through small farmers organized in farmers' associations. This approach was soon abandoned as a result of political changes that took place in the 80s and the resulting shift from socialism to capitalism and free market. The investment promotion strategy that ensued did not provide clarity in terms of priority sectors, or at least in terms of linkages between other economic sectors and agriculture. As a result, investments were attracted to all economic sectors and not necessarily to the agriculture sector and much less to the small family farming sector (Mosca and Selemene, 2012). An assessment undertaken by IESE in 2013 (IESE, 2013) shows the sectoral tendency of investments approved in the period from 1990 to 2011 as detailed in Table 2.

Table 2. Total Investments approved between 1990 and 2011

Sector	% of Private Investments Approved
Mineral Resources and Energy	29%
Agriculture and Agroindustry	25%
Industry	18%
Tourism and Hotels	9%
Transport and Communications	8%
Construction	4%
Services	2%
Banks, Insurance, and Leasing	2%
Other	2%
Aquaculture and Fisheries	1%

Source: Adapted from Massingue and Muianga (2013).

While investment attraction directed to the agribusiness sector represented 25% in this period (Ibid), this comprised mostly large forest plantations and game reserves which occupy vast amounts of land (GoM/MINAG-DNTF, 2011; Massingue and Muianga, 2013). Furthermore, investments in agriculture were not directed to supporting small farming food production but rather to large scale agribusinesses for export monocultures such as cotton, tobacco, sugar, cashews, and timber (Mosca and Selemane, 2012; Massingue and Muianga, 2013), and for biofuels-related crops such as sugar cane and jathropa (Nhantumbo and Salomão, 2010). In the latter case, campaign efforts were directed at mobilizing small rural farmers to cede their lands to investors (mostly foreign) interested in planting sugarcane and jathropa, or to convince small farmers to use their lands to plant crops for biofuels. The biofuels hype resulted in a major failure that fell short of producing needed results (Nhantumbo and Salomão, 2010), but the land withdrawn from rural communities was never returned to them and their economic expectations were crushed in the process (Ibid; Salomão and Zoomers, 2013). Between 1990 and 2011, the majority of investments were directed to the mining and energy sector, representing 29% of the total investments approved (Massingue and Muianga, 2013), and this sector steadily occupied the first position throughout the last decade, during which the shift to and focus on extractive industries (mining and hydrocarbons) and public infrastructure projects was substantial (Castel-Branco, 2015).

The tendency of land-based investments in the country, summarized in 2015 by Muianga (2015), was based on data from the Land Matrix. Like many other researchers (Cotula et al, 2009; Cotula, 2012; Edelman et al, 2013), Muianga (2015) raises reservations about the reliability of the data, but he asserts that this data

nevertheless provides a good indication of the pressure on rural lands imposed by land-based investors, particularly with respect to land scale, sectors, and actors. Muianga's data on some of these aspects is shown in the table below.

Table 3. Main investors by country of origin, land size and sector of investment, 2004-2013

	Country of Origin	Sectors	Land size
1	Portugal	Forest plantations, food production, biofuels	384.721ha
2	South Africa	Tourism, food production, biofuels	222.920ha
3	U.S. America	Forestry and fibre	168.170ha
4	Zimbabwe	Food production and biofuels	150.000ha
5	Norway	Nature conservation, carbon sequestration. Timber and fibre	130.800ha
6	U. Kingdom	Food production, biofuels, and livestock	63.029ha

Source: Muianga (2015)

In the first three decades after the country's independence, national private investors were practically non-existent, and this sector was essentially taken up by political and economic elites that emerged in the transition phase from socialism to capitalism and who used their influence and links with the state merely to secure land and other resources, thus positioning themselves strategically for the upcoming economic liberalization (Castel-Branco, 2013).

Therefore, while there is a tendency to focus attention on foreign investors, including in what relates to land conflicts with local communities, as pointed out by Muianga (2015) and others (Peters, 2013; Palmer, 2015), the role of national elites and investors, including the government, in attracting and facilitating large-scale land acquisitions should not be underestimated. In this context, a report issued by the World Bank (World Bank, 2010) highlights the role of domestic actors, indicating that 53% of the 2.670.000ha transacted between 2004 and 2009 in Mozambique were allocated to national investors. According to Muianga (2015), in many of the projects listed in Table 3, Mozambican investors are associated with investors through joint ventures.

Curiously, Muianga's data does not include projects in the mining and hydrocarbons sector, such as the Vale Coal Mining project in Moatize and Anadarko LNG project in Palma. His explanation for this is that these projects were authorized in a period when there was a government ban on land allocations above 10.000ha, thus turning them into 'unofficial' acquisitions (Muianga, 2015) to be hidden by

the government. In fact, both projects are marred by profound illegalities (Mosca and Selemene, 2012; Trindade and Salomão, 2016; HRW, 2013) which might also explain their absence from the reports. Another proposed explanation, however, indicates that some investors have adopted a phased land acquisition approach by applying for parcels smaller than 10.000ha, thus circumventing the ban (government representative anonymous comment, 2014).

III. List of Investment Projects Analysed

The data used in this dissertation resulted from an analysis of processes around land-based investments, using as a reference the following public, private, and community projects being implemented in the three regions of the country, as indicated in the table below. However, not all projects carry equal weight in the thesis. The Limpopo National Park Project, the Anadarko/ENI LNG Project, the Maputo-Katembe Project and the Cubo Game Park are the main cases, while the Mágoé National Park Project and the Tchuma Tchato Community Project are secondary cases included for comparative purposes. Chapter Four presents a combined case study as indicated in Table 4.

Table 4. List of land-based investment projects analysed in the dissertation

Sector & chapter	Projects	Category	Region	Principles/issues Addressed
Nature conservation/ ecotourism (chapter four)	1. The limpopo national park in massingir district, gaza province	Public project	South	State ownership over land, legal pluralism/ citizens' rights and political participation/ procedural justice
	2. The cubo community game park project in massingir district, gaza	Community project	South	Community-based land and natural resources management/economic inclusion/procedural and distributive justice
	3. The mágoé national park in mágoé district, tete province	Public project	Centre	State ownership over land, legal pluralism/ citizens' rights and political participation/ procedural justice
	4.The tchuma tchato community project in mágoé district, tete province	Community project	Centre	Community-based land and natural resources management/economic inclusion/ Procedural and distributive justice

Sector & chapter	Projects	Category	Region	Principles/issues Addressed
Extractive industry/ natural gas (Chapter five)	The maputo-katembe bridge and highway project, in maputo city, maputo province	Public project	North	Rights protection, political participation and economic inclusion/community consultations/procedural and distributive justice
Infrastructure/ roads& Bridges (Chapter six)	The anadarko/eni liquefied natural gas project in palma district, cabo delgado province	Private project	South	Land-based investments and resettlements for local socioeconomic development/distributive justice

Source: Author

1. Why These Projects?

The projects listed above have been selected to allow discussion of various aspects of the ‘good land governance’ question identified in the introduction to this dissertation. First, except for community projects, all projects, including public projects, involved investor requests for land use rights which overlapped and conflicted with pre-existing community land use rights. These projects also involve on-going or planned community land rights expropriation with economic and/or physical involuntary resettlements.

Second, to ensure diversity and better representation of projects for the whole country, and to assess whether similar problems occurred both across sectors and regions, the cases were selected from different sectors and are located in different regions of the country. The geographical diversity was also used to assess how customary norms and cultural specificities of each region have influenced the format and outcomes of community engagement processes organized by the government and investors, including community consultations and other mechanisms of community participation. It was also used to assess whether community involvement strategies and concerns differ according to their geographical location and cultural specificities, particularly involvement of women. The projects were selected from different economic sectors, with the objective of understanding if there are sector-based differences and specificities and if the relative economic and financial weight of each sector and investor, such as the oil and gas sector, make a difference in both procedural and distributive terms.

Third, both private and public investments, as well as community investment projects, are analysed to assess if the category of actors leading the projects translates into differences in how participation modalities are used; on how community consultations, public meetings, and other participatory procedures are conducted; and the manner in which affected citizens are economically included and share benefits. For the purpose of this thesis, public projects are those led by the state and financed by public funds, even if from a foreign source. Private projects refer to projects led by private companies holding a majority of shares in the ventures and also covering most of the financial costs, including projects that involve the state as a minority shareholder. Community projects are projects designed by, with, or for local communities, even when technical and financial resources are provided by external partners such as the government, private companies, or non-governmental organizations. These projects were used to support discussions in the different chapters. The circles shown in the map below indicate the project's geographical location.



Figure 2: Geographical Location of Investment Projects Analysed (in circles).

2. Projects Discussed by Chapter

After the introductory chapters that present an overview of the Republic of Mozambique, from Chapter Four to Chapter Six the dissertation presents different investment projects. Chapter Four comprises combined projects, while Chapter Five and Six focus on single projects.

2.1. Chapter Four

a) The Limpopo National Park in Massingir District, Gaza Province

In 2001, the District of Massingir's richness in wildlife and its border with South Africa led to the establishment of the Limpopo National Transfrontier Park (LNTP), linking the Kruger National Park and the Zimbabwean Gonarezhou National Park with what was then an official hunting reserve (Coutada 19). On the Mozambican side, the original hunting reserve was extended to form the Limpopo National Park (LNP) over an area of 1.123.316ha, expanding through three districts, namely Massingir, Mabalane, and Chicualacuala, in Gaza Province (GoM/MITUR, 2003). In Massingir District, the LNP covers 1.000.000ha, corresponding to 40% of the District area, in an area that housed about 27.000 people (Ibid).

The creation of the LNP imposed the forced displacement of the original land occupants. This involuntary resettlement process has faced numerous social, technical, and financial hurdles since the decision was made in 2003 and has still not been finalized. Out of the eight communities targeted for resettlement, only three have been moved so far in processes mired by human-wildlife conflicts and community protests. No expropriation process was ever conducted.

b) The Cubo Community Game Park Project in Massingir District, Gaza Province

The creation of the Limpopo National Park (LNP) was promoted as an opportunity for communities to benefit from the revenues expected to be generated by the park and also to be included in economic endeavours through promotion of community-based investment projects. As indicated in its Management Plan (LNP, 2003), these include community ecotourism projects. The LNP buffer zone was classified as adequate for both private and community ecotourism projects (Ibid) and since its establishment, about five private ecotourism projects and two community ecotourism projects were approved for implementation in its buffer zone (GoM-MAE, 2012). One of the community projects developed in the LNP buffer zone was set up by the Cubo Community. This project comprised the establishment of a game reserve in an area of 10.000ha, the 'Cubo Game Park', as well as the construction of a community lodge. To secure assistance in fundraising and in

project management, the Cubo community signed partnership agreements with both national and foreign private investors (the Mozambican Ngeneya Project and the South African Twin Cities, respectively). For several reasons the relationship between the Cubo community and its partners was marred by conflicts which ended only after a long and turbulent mediation process that lasted from 2014 to 2018, undertaken by the national NGO Centro Terra Viva (CTV) at the parties' request.

c) The Mágoé National Park in Mágoé District, Tete Province

In 2013, thirteen years after the creation of the Limpopo National Park (LNP), the Mozambican government created the Mágoé National Park (MNP) in the central province of Tete, Mágoé District. Similar to the LNP, the Mágoé National Park was established as part of a transboundary nature conservation area (ZIMOZA), accomplished jointly with Zimbabwe and Zambia, with which it shares borders. The largest area of the PNM is located in the Mágoé District, and the 5 localities from Mágoé district covered by the extension of the Park have a total of 30,452 inhabitants. No decision has been taken to resettle the communities residing within the park area and no expropriation process was conducted.

d) The Tchuma Tchato Community Project in Mágoé District, Tete Province

The Tchuma Tchato Community Program (TTP), created in 1995, was the first community-based natural resources management (CBNRM) project established in Mozambique (GoM, 1995). This project was promoted by the government in the same area that is now occupied by the Mágoé National Park. This project started in an area of approximately 200,000 hectares, and its emergence was fundamentally due to the need to resolve conflicts between local communities and private safari operators. As local communities claimed that they were not benefiting from such operations, the project aimed at reducing such conflicts through promotion of natural resources conservation with the involvement of local communities, ensuring that benefits derived from private exploitation of natural resources would be accrued by local communities in a substantial manner. From 1995 to 2010, the project was technically supported by the government and financially supported by the Ford Foundation. A revenue distribution scheme among local communities, district, provincial, and central governments was approved. Due to disagreements about equity in revenue sharing between local communities and the provincial and central governments, the Tchuma Tchato project was unilaterally cancelled by the central government through the creation of the Mágoé National Park.

2.2. Chapter Five

The Anadarko Liquefied Natural Gas Project in Palma District, Cabo Delgado Province

In 2010, the American private company Anadarko confirmed the existence of substantial natural gas reserves in the basin of the Rovuma river, located in the Northern part of Mozambique. The Afungi Peninsula, in Palma District, was selected to house the infrastructure needed to process and export liquefied natural gas, allegedly due to its low population density and environmental risks. However, the Afungi Peninsula is home to 12 local communities. Anadarko's project directly impacts land occupied by 4 communities, namely Quitupo, Maganja, Senga, and Patacua. The largest of these communities, Quitupo, with about 2750 inhabitants in 2012, has been targeted for both physical and economic resettlements. Without consulting with affected communities, without delimitating the community area, and without conducting the legally mandatory land rights expropriation process, in 2012 the government granted land use rights to over 7000ha of the Quitupo land for Anadarko's project, through a land use rights title (DUAT) issued in the name of a subsidiary of the National Hydrocarbons Company (ENH), the Rovuma Basin LNG Land (RBLL). After this, Anadarko signed a land leasing agreement with RBLL thus acquiring exclusive access and use rights over the aforementioned land.

Quitupo community is expected to be moved to a resettlement village being built in a land (Quitunda) belonging to the neighbouring community of Senga. The Afungi Resettlement Plan (ARP) was approved in December 2016 and the resettlement village construction was initiated in 2018. The first families were expected to be moved in early 2019. Due to the illegality of the DUAT process, at CTV's request, in 2016 the Mozambican Bar Association filed a court case against the Mozambican state in the name of the Afungi communities, challenging the legality of the project's DUAT. In 2019, the administrative court decided in favour of the illegality alleging that the communities were happy with the situation

2.3. Chapter Six

The Maputo-KaTembe Bridge and Highway Project in Maputo City

In 2010, the Government of Mozambique (GoM) approved an infrastructure project, funded by the Government of China, and comprising the construction of over 200 km of a ring road around the national capital city of Maputo, the Maputo-KaTembe bridge linking the main city (Maputo) with the town of KaTembe across Maputo bay, and a road starting from the southern end of the bridge through to South Africa via the coastal district of Matutuine, where the Ponta D'Ouro

Marine Reserve is located. Both the bridge and the highway have imposed the involuntary resettlement of numerous families that resided in formal and informal neighbourhoods in Maputo city. The Maputo-KaTembe bridge, in particular, required the resettlement of approximately 1200 families from three peripheral neighbourhoods, namely Malanga, Luis Cabral, and Gwachene. The Bridge was inaugurated in December 2018. While some families are happy with the new conditions they have in the relocation sites, other families complain about the manner in which compensation packages were designed and their removal was conducted, while also complaining about the lack of social infrastructure and livelihood opportunities in the new sites.

IV. Research Methods Used

This dissertation has followed a ‘hybrid methodological approach’ (Scoones, 1998) with a disciplinary symbiosis (Schoneveld, 2013) as it implied merging human geography, land and environmental management, and public administration law, while keeping global development theories and the natural resources political economy in mind.

The dissertation has substantially drawn on the author’s technical background as an environmental lawyer and practical work as a public interest advocate in land and natural resources issues in Mozambique over the last 17 years. As General Director of Centro Terra Viva (CTV)⁹, from 2002 to 2015, and as Senior Legal Advisor from 2016 to date, the author followed different land-related processes both at the central and local levels in the whole country and led CTV legal support to communities affected by the projects described in this dissertation. The author promoted and attended policy debates and policy/law formulation processes, followed largescale land-based investment projects, as well as community-based natural resources management (CBRM) projects, which helped in getting insight into the challenges faced by the environmental sector in general, and by the land management and administration sector in particular.

Of particular importance to this research is the work done by CTV since 2005, when this institution started focusing its attention on land governance in general, but particularly on protection of community land rights in the context of land-based investments. In that year, CTV was requested to provide technical support to

9 CTV is a multidisciplinary non-governmental organization dedicated to environmental research and advocacy, established in 2002 (www.ctv.org.mz /Centro Terra Viva-Estudos e Advocacia Ambiental)

the Tchuma Tchato Project, including financial management support. From 2008 to 2010, CTV chaired the National CBNRM Platform, a period in which a draft National CBNRM Strategy was formulated. Also in Tete, from 2012 to 2014, CTV monitored the Vale Mozambique Mineral Coal Mining project in the Moatize District, and short term field research to support this dissertation was undertaken in 2014. In 2015, CTV conducted a preliminary legal audit to the Portucel Forestry Plantation in Manica and Zambézia, which occupies a total of 365.000ha of community lands in the two provinces.

In the southern province of Gaza, Massingir District, between 2008 and 2010, CTV assisted the communities located within and outside the Limpopo National Transfrontier Park, monitoring projects in different sectors (conservation, biofuels, ecotourism) to assess their impact on local rights and livelihoods. In that period, CTV intervened as member of the African Safari Lodges Program Steering Committee¹⁰ and also as a member of the Massingir CSO Platform. In recent years, since 2014, CTV has specifically been supporting and providing legal advice to the Cubo Community. Fieldwork that contributed to this research was undertaken by the author in the Cubo Community from 2015 to 2017.

Between 2012 and 2017, the author led CTV's work in the Province of Cabo Delgado, Palma District, focusing on the process of land rights allocation to the Liquefied Natural Gas (LNG) project and the associated involuntary resettlement decision. Aside from following community and public consultation meetings organized for the design of the Afungi Resettlement Plan, the author prepared the terms of reference for an independent legal audit conducted on this project's land use right allocation in 2015, as well as the terms of reference for the court case submitted by the Mozambican Bar Association. In 2017 the author also prepared terms of reference for a monitoring process undertaken on the ARP design.

Since 2004, the author has written a number of articles addressing themes related to the thesis topic, which are included in Annex 1.

1. Data Collection, Organization and Analysis

This research principally uses qualitative primary data, supported by quantitative data from secondary sources, where available and appropriate. Primary data was collected from communities selected according to their involvement with key investment projects that illustrate the different impacts affecting local communities

10 A program promoted and funded by the Ford Foundation Southern Africa Office based in Johannesburg.

and the role of the State and investors in each case. The different situations investigated include communities subjected to involuntary resettlement, communities that have had to host resettled communities/families, and communities that have been directly involved in or affected by the economic interventions associated with such projects.

The selection of respondents for interviews and participants in focus group meetings and community meetings was guided by the principle of ensuring the representation of the diverse sub-groups existing within the communities, namely: women, the elderly, the youth, community leaders, community paralegals, religious groups, private enterprises, and central and local government representatives. Representatives of central government institutions and companies involved in the different projects were also interviewed. Finally, experts and academics working in the area of land, investment, and rural development were also interviewed.

Data collection was either carried out by the author or using CTV interviewers trained and supervised by the author. The data was analysed through the systematic reading and cataloguing of responses and organized along the key themes covered by the research, namely rights protection and partnerships, participation and community consultations, and economic inclusion and benefit sharing.

2. Policy and Legal Review

To attend to the first research objective, a review of selected policies and legal instruments approved from 1975 to 2017 that were relevant to the environmental (especially land) and public administration sectors was undertaken to provide an overview of the evolution that occurred since Mozambique's independence in 1975. In this context, a historical retrospective was also undertaken aiming to provide political contextualization for the different public governance choices and development approaches taken in the country in the land sector, before and after the 1997 Land Law was approved.

The following governance principles and participation models, integrated in the Mozambican Constitution and legal framework for land and natural resources management, were particularly assessed both in theory and practice:

1. State Ownership over Land and Natural Resources for Citizens' Rights and Public Interest Protection (2004 CRM, Articles 109; 263; 271);
2. Legal Pluralism for Community-based Natural Resources Management (2004 CRM, Articles 4, 98, 111; NLP, Point 17; 61)

3. Community Consultations in Land Decisions for Rights Protection, Political Participation, and Economic Inclusion (NLP, Point 61; CRM 2004, articles 96; 109, 118; 271)
4. Decentralized Land Governance/Administrative Decentralization (2004 CRM, articles 118; 263; 271; 273);
5. Private Land-Based Investments for Rural Development (NLP, 60; Land law, Art.; CRM 2204:108) –

3. Field Work, Community Paralegal Training, Semi-structured Focus Group Discussions, and Informal Interactions

The legal and historical analysis was complemented by field work aiming to verify how the different actors have positioned themselves on the ground in relation to their legal rights and responsibilities vis a vis their interests to access and use land and natural resources. This included foreign actors/investors.

Stakeholders' views and perceptions were gathered through different formal and informal means, including planned and unplanned conversations. Semi-structured focus group discussions were organized with community committees and community paralegals, as well as community interest groups such as women and the elderly. Public meetings and roundtables organized by CTV or with CTV participation were also used for this research. Attendance at national events and meetings relevant to the research topic have allowed individual interaction with community members; community leaders; community institutions (committees); local government institutions (district administrators and heads of district services); representatives of private investors and public companies; central and provincial government institutions; international, national, and local NGOs, and donor representatives).

Due to constraints caused by respondents' fear to talk and to be quoted (which meant resistance in talking to people while taking notes and asking for respondent's names) an important strategy for field data gathering was provided by the author's involvement in the conception and supervision of the four documentaries produced between 2010 and 2019, in the context of CTV annual land and natural resource governance monitoring. An effort was made to minimize respondents' exposure and prior oral authorization was sought to quote them. A very explicit warning was given to all respondents who interacted with the author in the sense that there was a potential risk in their participation in the interviews. The thesis did not disclose the identity of respondents even those who did not indicate preference to talk under anonymity. Both for CTV work and for the author's research objectives, respondents were selected in order to ensure group representativeness

(government, private sector, CSOs, academy, community members, and authorities) and specific themes and guiding questions were prepared for each group (Annex 2). The list of the different documentaries and categories of respondents to interviews undertaken in that context are included in Annex 3. These interviews served as the main field data for the author's discussions in this dissertation. Annex 4 contains an extract of the author's analyses of community consultations undertaken in the Palma LNG project which was published in a CTV report in 2017. As mentioned above, this research was greatly stimulated and supported by the author's work at CTV and since the beginning of the thesis process in 2012 this work was adjusted to allow for the academic research to take place.

In all cases, a combination of desk and field work was used. Where the possibility of fieldwork was limited or constrained, as was the case of the Mágoé National Park, a review of secondary data, including EIA reports and government and academic research reports relevant to the dissertation topic were undertaken.

4. Monitoring of Community Consultations for Land Rights Allocation, Environmental Licensing, and Resettlement Planning

Where possible, the author followed and assessed the three most important licensing processes related to the dissertation's topic, namely (1) the environmental licensing; (2) the resettlement plan approval process, and; (3) the land use rights allocation. Because the Limpopo National Park was created long before the research period, field work in Massingir aimed at reconstructing the licensing processes eventually conducted, based on field observation and perceptions shared by different actors. In the Palma LNG project case, except for the land rights allocation process, for which no public or community consultations were organized, the author attended all public and community consultations associated with the EIA and resettlement plan design process, to establish the extent to which they were conducted in a way that worked (or not) with and for local people, and the extent to which local communities were prepared and willing to participate in and influence the outcomes of such processes.

In this context, other legal processes, such as the negotiation of community-private partnerships were also reviewed. In the Maputo-Sul case the author personally attended one community consultation meeting and used data gathered by other CTV staff who attended other meetings organized by the company and also organized a legal audit conducted in 2015 over this project. On this project, the author also conducted interviews with government officers at the central level. Several meetings were held with the projects' management team. The Mágoé National Park case was

reviewed based on literature review and interviews with the government, as no public or community consultations were organized related to the park's creation. In this case the author did not have an opportunity to personally do field work after the park's creation. Local perceptions and views were gathered on interviews with representatives of local CSOs based in Tete and with consultants involved in the design of the MNP management plan.

V. Research Challenges

The government of Mozambique is known for its secrecy and institutionalized resistance to provision of public information, even where it is legally mandated to do so (SEKELEKANI, 2015; Salomão 2015; GoM, 2014; Macuane et al, 2018). Added to the climate of intimidation that was created within public institutions in the last two decades due to fierce party interference in public affairs (IESE, 2015; Macuane et al, 2018), this has resulted in most government agents (a) asking to make comments under anonymity, (b) simply not talking at all, (c) talking in a vague and uninformative manner; or (d) withholding relevant public information and documents. This was a significant constraint as it substantially limited opportunities to hear the voices and the experience of those in government who have the mandate to enforce policies and laws. While this situation was also faced in interactions with central and provincial level government officers, including public enterprise representatives, it was particularly felt in communications with local government officers (or district governments), who often represented the weakest link in tensions involving communities, companies, and central level public officers. When not asking for anonymity or simply not responding, these officers usually claimed that they did not know anything because “all decisions are made in Maputo”. This claim, registered by the author in another paper written on this topic (Baltissen and Van der Haar, Eds, 2016), and also revealed in the discussions included in this dissertation, was not necessarily untrue. Confidentiality claims and limitations on access to information were also faced in the author's interactions with private companies that generally chose to hide on the back of the government to justify their involvement in law violations and procedural irregularities. The climate of tension and intimidation that characterized some of the resettlement and other processes analyzed in this thesis led to the author's decision to protect the identity of community respondents.

As mentioned earlier, all communities and other actors with whom the author has interacted have been informed of the author's academic work. However, the occasions when the author intervened purely in that capacity were very rare, as the

reality of my particular circumstances imposed ‘doing research while working’, and local communities always saw and interacted with me primarily as ‘our lawyer’. In the same manner that all documentaries produced by CTV have been shared with all local communities involved and other interested parties, it has always been and remains my intention to share and use the thesis as my humble contribution to national debates and learning processes on land governance. For this purpose, I have assumed the commitment to, wherever possible, share the thesis with the people who interacted with me during the research process, some of whom (particularly government, private sector, and academy representatives) have explicitly requested to have access to the thesis.

Finally, this research was an important opportunity to reflect on academic research ethics, as I am aware that concerns have been expressed over a possible conflict of interest between my role as a social activist and my role as an academic researcher. Engaging in both social/political activism and academic research at the same time does raise complex questions, and there are some who argue that academic researchers should refrain from social or political activism (Van der Vossen, 2015).

I share the view of those who see the academy as composed of people drawn from the most diverse social and economic classes, political tendencies and diverse points of views but who are capable of understanding social reality untainted by their class affiliations (Mannheim, 1955, cited by Nakhaie and Adams, 2015). In this context, and as many political and social activists engage in academic research and many others move from the academy to social and political activism, it is also relevant to ask if the academy or any other sector can be considered totally free from bias (Jones, 2019).

My motivation for undertaking this research does indeed come from my role as legal advisor to communities negatively affected by land-based investments. While I do not claim to be an ‘uninterested researcher, above the fray of social conflicts’ (Nakhaie and Adams, 2008), I do hold personal and professional interest in understanding objectively and analytically why land conflicts in Mozambique occur. I can thus confirm that I have conducted my research with a keen awareness of the need for analytical rigour and the accurate representation of the facts as encountered during fieldwork. At all times, my work has been guided by the highest level of professional integrity and objectivity.

Three

Participatory Land Governance in Mozambique: A Historical Review of Principles



Samora Machel,
First President of the Republic of Mozambique (from 1975-1986)

Introduction

“Protection of Citizens’ Rights is the Supreme Responsibility of Democratic States”
(Canotilho, 2008).

This chapter presents the historical, political, and institutional context of land governance in Mozambique, discussing how it has set the stage for a complex interaction between the State, local people and investors. The chapter begins with an overview of Mozambique’s recent history as a nation and the role reserved for land in the formation of the state and in materialization of democratic governance. It then discusses the different principles in the legal framework, notably (1) state ownership over land and natural resources and the state-allocated Land Use and Benefit Right (or DUAT - Direito de Uso e Aproveitamento da Terra); (2) legal pluralism and the right of local communities to participate in land management using their own traditional norms or community-based land and natural resources management; and (3) administrative decentralization and the role of local governments in protecting local rights and in ensuring citizen participation, as well as legality, transparency, efficiency, and accountability in land decisions. The chapter ends with a discussion of (4) how the state frames the role of private investors and land-based investments in its strategies to promote rural development.

I. The Role of Land Management in the Establishment and Consolidation of Democratic Governance in Mozambique

In his book *Fighting for Mozambique*, the first president of the Mozambique Liberation Front (FRELIMO), Eduardo Mondlane, affirmed that the liberation struggle was not intended merely to expel the Portuguese. Rather, it was intended to reorganize the country and orient it towards sound national development (Mondlane, 1969). Since independence from Portugal in 1975, a formal commitment to democracy and participation has been a central principle in all Mozambican Constitutions. Indeed, FRELIMO has consistently upheld this principle within its discourse as a liberation movement (1962–1974), as leader of the post-independence single-party state (1975–1994), and as the party that has won the elections since 1994 and continues to govern the country until today.

The importance and value attributed to land and natural resources in the construction and consolidation of the Mozambican state, and the public interest goal attached to the principle of state ownership over these resources, were clearly expressed in the 1975 Constitution as follows¹¹:

11 GoM, 1975.

“Land and natural resources in the soil and subsoil, in territorial waters and Mozambique’s continental shelf are the property of the state. The state determines the conditions for their enjoyment and use.¹²The State promotes economy planning aiming at ensuring the correct use of the country’s wealth and its use **for the benefit of the Mozambican people** (emphasis added).”¹³

In line with the political ideology of the time, the 1975 Constitution adopted a nationalist, inward-looking approach to land and natural resource management, with these resources being reserved exclusively for the use of Mozambicans. Thus the 1975 Constitution proclaimed that:

“In the process of building the material well-being of the new society, with agriculture as the basis and industry as a driving factor, relying on its own strength and with support from its natural allies, the People’s Republic of Mozambique will build an advanced economy, prosperous and independent, and ensure the control of its natural resources in favour of the popular masses.”¹⁴

In this context, all foreign investment, in land or in other sectors, had to comply with this key principle and fit within the economic framework dictated by the State.¹⁵ Table 5 outlines the way in which governance principles and the role and position of the state in land and natural resource governance were formulated in the 1975 constitution.

Table 5: 1975 Constitutional Provisions on Participatory Land Governance and National Development

Article 6	Agriculture is the basis of development and industry is its driving force
Article 8	Land and all natural resources are the property of the state, which determines the conditions for their use
Article 9	The state promotes economic planning and the creation and use of wealth for the benefit of the Mozambican people
Article 14	Foreign capital must be authorized to operate within the framework of the state economic policy
Article 17	Men and women have the same rights and duties in all spheres of social, political, cultural, and economic life

Source: Author

12 Article 8

13 Article 9

14 Author’s translation

15 CRM 1975, Article 14

This approach was further consolidated in the preamble to the first post-independence 1979 Land Law¹⁶, which affirmed that:

“The Mozambique Liberation Front conducted the armed struggle for national liberation as a battle to free the land and the men. The land law aims to control and organize the use and enjoyment of land (...). It creates mechanisms suitable for the state to materialize the principle that the land cannot serve as a means of exploitation of man by man. By stating that land is the property of the state, and since the state is comprised of workers and peasants, **this means that the land belongs to all the Mozambican people** (emphasis added). As the state of workers and peasants is the exclusive owner of the land, all the Mozambican land is integrated in a state land fund.”¹⁷

The 1979 Land Law¹⁸ repeated the constitutional determination that land could not be sold or in any other form alienated, mortgaged, or leased, and proclaimed that as a means of wealth creation and social wellbeing, the right to use land belonged to all Mozambicans. Investments in land were to be mostly made in the agriculture sector through state-owned enterprises, (Hanlon, 2002; Castel-Branco, 2012) and farming families should be organized into collective forms of production, namely farmers’ cooperatives or associations (Mosca et al, 2014).

The early dream of building a democratic state guided by scientific socialism and led by FRELIMO as the single political party at the centre of national development and representing the will and expectations of all Mozambicans (GoM, 1975) was short lived. In the initial years of implementing this vision, FRELIMO faced internal tensions between those supporting a radically left-wing path, and those who did not (Geffray, 1990; Forquilha, 2007). External opposition against the FRELIMO communist regime also came from the South African and Southern Rhodesian governments. Measures such as the abolition of private property, the creation of large state farms out of old Portuguese plantations, and the poor performance of FRELIMO policies fueled internal dissent which coalesced into the RENAMO¹⁹ opposition to FRELIMO (Milgroom 2012; Hanlon 2010b; Araújo, 2008; Sumich and Honwana, 2010). RENAMO in turn was quickly embraced and supported by the two neighboring governments, resulting in one of the bloodiest African civil wars of the 20th century (Hanlon, 2002; Meredith, 2005; Lourenço, 2009). In 1987, exhausted by the prolonged and highly destructive war, and facing political demands from RENAMO and growing pressures for macro-economic reform from

16 GoM, 1979

17 Author’s translation

18 Article 1

19 RENAMO - Resistência Nacional de Moçambique

the International Monetary Fund (IMF) and the World Bank, the Mozambican government was forced to abandon its socialist orientation and introduce a new, multi-party constitution in 1990 which also provided the basis for a market economy (Castel-Branco, 2010; Cabaço, 2007; Hanlon, 1997, 2010a, b; Hanlon and Smart, 2008). Lengthy peace negotiations between the Mozambican government led by FRELIMO and RENAMO finally resulted in a Peace Agreement in 1992 (GoM, 1992), followed by the first multi-party elections in 1994.

The civil war made it impossible for the new forms of production mentioned above (state farms and farmers' cooperatives) to work as intended, and economic collapse followed. This created space for political elites to seize the opportunities presented by pressure from international financial institutions (IFIs) to reduce state intervention and open up the economy to economic liberalization and the privatization of public assets. State enterprises were progressively privatized in a process that mostly benefited government and party elites (Myers, 1994; Hanlon, 2002, Sumich and Honwana, 2010). These same elites later led the move to promote foreign investment in land which they now controlled and which was acquiring new value as a productive asset.

After the end of the civil war, as national and international investors appeared looking for land, this movement was extended to rural community lands considered 'unoccupied' due to the war-induced population exodus from rural areas (Myers, 1994; Myers and West, 1993; Castelo-Branco, 2010).

In the constitutional review that facilitated and guided the transition from socialism to a market economy, and which resulted in the 1990 Constitution, important innovations were introduced that can be considered the seeds of democratic governance important to the land and natural resources sector:

1. The identity of FRELIMO and the Mozambican state were separated, at least in theory. While FRELIMO is mentioned in the constitutional text, this was done only in the preamble and using the safer ground of invoking the role it played in the independence struggle (GoM, 1990).
2. Fundamental civic, democratic, and environmental rights were included for the first time, including citizens' right to access and use land and natural resources and the duty to protect the environment; the right of access to information, education, and justice; the right to form associations and political parties and; the right to vote.
3. State local organs (or local governments) were given the responsibility to ensure involvement and participation of citizens in all matters related to life in their respective communities.

4. Local communities and their leaders were recognized as legitimate actors in land and natural resource management, with constitutional recognition of customary norms as equivalent to statutory norms, provided these did not contradict constitutional principles.

In summary, in just 15 years (1975-1990), Mozambique moved from being a newly independent state liberated from colonial control, based on a 'state-centred democracy' grounded in a single party rule with FRELIMO as the leading actor and sole decision-maker, to being a multi-party democracy and market economy. During this time, FRELIMO faced an extraordinary range of social, political, and economic challenges. It transformed itself from a guerrilla movement into a political party charged with the responsibility to build a state and a nation. It faced strong external and internal opposition while struggling to establish what it thought was the best socioeconomic system for the country. It conducted a violent and destructive 16-year civil war that disrupted the country's social fabric and infrastructure and weakened state institutions already negatively affected by the post-independence exodus of Portuguese civil servants and which were now expected to implement a socialist, central-planning agenda. Furthermore, it adopted an entirely new political regime and managed the shift to capitalism and a western multi-party democracy when neither the party, the population, nor public institutions were prepared for it (Hanlon and Smart, 2008; Sumich and Honwana, 2010; Meneses, 2009).

Throughout this process, however, it is notable how land remained a central issue in a complex and often contradictory political evolution. With regard to land governance, the 1990 Constitution also underlined the social responsibility of the state towards rural people, who were still the majority of the Mozambican population (Negrão, 1996; Tanner, 2002). For Negrão (1996), the role assigned to the state was not only to determine the conditions for the use and management of rural land, but also to prevent the emergence of perverse sets of land rights that would create situations of dominance or privilege, thus jeopardizing the interests of the majority of citizens. Negrão (1996) further argued that the constitutional recognition of community land rights independent from formal titles provided a high sense of protection to the majority of rural people, for whom land continued to be the only source of subsistence and income. For those advocating greater security of community land tenure rights, such recognition represented a major achievement, even though recognition of community land rights did not automatically confer rights to the commercial use of land and other natural resources (Tanner, 2002; Manhica, 2007; Mosca, 2011).

From 1992 onwards, the return of the millions of Mozambicans who had fled during the war triggered debates on land governance (Carrilho et al, 1990; Myers 1994). These debates eventually gave rise to the creation of the Ad Hoc Land Commission which carried out a series of studies on state land management and administration. Among other issues, these studies showed how, despite the upheavals of a decade of repressed traditional leadership and civil war²⁰, customary structures were still very much alive and in control of land governance at the local level (Lundin, 1995; Tanner, 2002; Chilundo and Cau, 2000; Cau, 2004; Sumich and Honwana, 2010).

These debates and studies led to the creation of an Interministerial Commission to replace the Ad Hoc Commission, with a mandate to revise the 1979 land law. The Interministerial Commission, with technical support from FAO, led the development of the 1995 National Land Policy and the 1997 Land Law (GoM, 1995,1997) (Annexes 5 and 6, respectively). The NLP, still in force today, defines national priorities for the use of land and natural resources, including the recovery of land production capacity to ensure food security and the creation of conditions for the development and enhancement of the family-farming sector through adequate access to land. Another priority is for the land administration to update and improve the taxation system based on land occupation and use in order to support public budgets at all levels (1995 NLP, Paragraph 14).

The proclaimed aim of the 1995 NLP is to “ensure the rights of the Mozambican people over land and natural resources, as well as to promote private investment and the sustainable and equitable use of these resources” (Paragraph18). Key land policy principles include: (1) maintaining the principle of state ownership over land; (2) guaranteeing access and use of land by the population as well as investors; (3) recognizing customary rights of use and access and customary management of land of rural populations; (4) securing women’s right to access and use land; and (5) promoting private national and foreign investment without jeopardizing local residents and ensuring benefits for local people and the national budget (Ibid, Paragraph 17). The NLP clearly imposes the principle that any person or entity wanting access to land must negotiate with the local community occupying the envisaged land, adding further that “the consultation and dialogue with the community must be accompanied by competent state bodies, at central, provincial, and district or municipal levels” (Ibid, Paragraph 25).

20 It was in this period that traditional authorities and religious institutions were vilified, accused by FRELIMO of being instruments of colonialism. According to some political analysts, this is the reason why RENAMO enjoyed wide support in rural areas (Geffrey, 1992; Forquilha, 2006).

In short, the NLP provides a blueprint for a model of rural development with progressive and equitable land governance at its core, guided by the high priority of eliminating poverty and promoting self-sustained economic and human development. After approval of the NLP, the Interministerial Commission was tasked to develop a new land law. Early drafts were distributed to stakeholders and discussed at regional meetings, culminating in the 1996 National Land Conference where the final draft was endorsed by a wide range of stakeholders from government, civil society, farmers' organizations and the private sector (GoM, 1996; Tanner, 2002; João Carrilho pers. comm., 2013).

As mentioned above, the new law was approved in 1997. The development and approval of the new law is referred to as an example of a participatory and inclusive process that resulted in a legal instrument reflecting and balancing the interests of different actors, namely the state, national citizens and local communities, as well as the private sector (Tanner, 2002, 2008, 2010; Hanlon, 2002; Negrão, 2004; Quadros, 2004; Norfolk and Tanner, 2007; Wily, 2011b; Norfolk and Compton, 2012; Serra, 2013). Critically, this process built a strong sense of legitimacy around the law, which lasts to this day. Within constitutional and legal limits, and subject to the mandatory requirement for consultation with local people where necessary, foreign citizens and investors were also to enjoy the right to access and use land and natural resources in any sector. This approach seemed more coherent with the business and market-oriented policy adopted after the peace agreement, while at the same time preserving the core socialist principle of state ownership of land and a high degree of state control over how land is used (Oscar Monteiro, pers. comm., 2017).

It is useful to note the similarities and differences between the 1975 Constitution and 1979 Land Law, and the 1990 Constitution and the 1997 Land Law, with regard to land management and the role of state, local communities, and private investors:

1. Both constitutional texts included the principle of state ownership regime over land and all other natural resources. However, the prohibition to sell land or to alienate it in any other way, as well as the determination that the right to land, as a means of wealth creation and social wellbeing, belonged to all Mozambicans, had been inserted only in the 1979 Land Law and not in the first 1975 Constitution. These provisions were integrated both in the 1990 Constitution and the 1997 Land Law.
2. With regard to investments, Article 14 of the 1975 Constitution simply stated that "foreign capital could be authorized to operate within the framework of the state's economic policy", a formulation conveying a probability more than an assurance. However, Article 45 of the 1990 Constitution not only affirmed that foreign investment operated within the state economic policy framework, but also added

that “foreign investments are authorized in all economic sectors, except those reserved for state property or for exclusive state intervention”. As areas for exclusive state investments were not specified, this formulation opened the political door to foreign investment being seen as a structural element of the Mozambican economic development strategy. In fact, the 1997 law was also conceived to provide secure tenure and land access to the private sector in the context of a market economy.

3. The preamble to the 1997 Land Law departed from the inward approach adopted in the 1975 constitutional and 1979 legal texts, and opened the land and natural resources sector to the international market and foreign capital by stating that “The challenge facing the country’s development, as well as the experience in the implementation of Law No. 7/79, of 3 July, shows the need to review it in order for it to be adequate for the new political, economic, and social development of the country, and to ensure the security of land tenure, both for Mozambican peasants, as well as for domestic and foreign investors.”

Thus, it is fair to recognize that since 1975, the Mozambican state has, in one way or another, tried to pursue a people-centred approach to land and natural resource management and national development, while at the same time accommodating the neoliberal/capitalist agenda of opening up the country to national and foreign investors. The changes to both national land policy and the legal framework for land undertaken between 1975 and 1997 can be seen as attempts to reconcile the continuing adherence to the core socialist principle of land belonging to the state, with the need to effectively privatise the agrarian economy, with a focus on secure tenure and access for both local populations and new investors (Hanlon, 1997; Tanner, 2002; Macuane, 2012; Phiri, 2012). With the progressive elements of the 1995 NLP added to it, the current features of Mozambique policy and legal framework for land governance are a mix of pre-1990 socialist and post-1990 market economy-oriented principles, namely:

1. Land is the property of the state and cannot be sold, mortgaged, or alienated in any way. State ownership over land is adopted in the interest and benefit of all Mozambican citizens, with state property rights severely limited by public-interest goals.
2. Land use rights (*Direito de Uso e Aproveitamento da Terra*-DUAT) are recognized for all Mozambican citizens (individual rights) and local communities (collective rights) as quasi-property rights, subject to state-imposed restrictions on land rights expropriation, with enjoyment of unlimited tenure for citizens and local communities using such rights for personal livelihood security.
3. Legal and institutional pluralism recognizes the diverse legal regimes that exist in rural areas where the majority of the population live, allowing management

of land and natural resources in rural areas according to customary norms that do not contradict the Constitution;

4. Management of land and natural resources should be done in a participatory and sustainable manner, with the involvement of all citizens, including women, at all levels of government, with community and public consultations, community-based natural resource management, and administrative decentralization promoted as participatory governance mechanisms.
5. National and foreign investors have the right to access and use land according to the law and encourage partnerships between investors and local communities in land and natural resources for rural poverty reduction, ensuring benefits to local people as well as the national treasury.

Two key points should be highlighted from this section. First, from the earliest socialist regime in 1975 to the present day, all constitutional texts adopted by Mozambique have proclaimed Mozambique as a democratic state²¹ and democratic governance has been the proclaimed goal of the Mozambican state led by FRELIMO. At least formally FRELIMO has always maintained its commitment to democracy and to building a state of social justice and equality. For example, Hanlon and Smart (2008) argue that FRELIMO has adopted democratic approaches even during the liberation struggle, while others claim that this was basically a dictatorial organization (Simango, 1969; Forquilha and Orre, 2011; Forquilha, 2009a, b, 2010, 2014, 2017). As such, within its particular view of democratic governance, protection of citizens' right to land and to participate in decision-making processes has been at the centre of FRELIMO land policy discourse.

According to those who participated in the debates and drafting of the constitutional texts that maintain state property over all the country's lands and natural resources²², the principle of state ownership over land and natural resources was seen as the best way to ensure that all Mozambicans have the right to access and use land for their socio-economic progress and well-being, and to ensure that land and natural resources are used for the public interest (pers. comms. by João Carrilho, 2013; João Trindade, 2015; Teodato Hunguana, 2016; Óscar Monteiro, 2016). These defenders of the Mozambican approach within FRELIMO hold that protection of citizens' rights and pursuance of the public interest have always been FRELIMO's main goals when promoting the concept of state ownership over land and natural resources.

21 CRM 1975 (Article 2 and 27); CRM 1990 (Article 1 and 30); CRM 2004 (Article 1, 3, 73, 96,97)

22 CRM 1975 (Articles 8 and 9); CRM 1990 (Article 36); CRM 2004 (Article 109)

Second, the 1990 Constitution ushered in capitalism and multi-party democracy while state institutions, public administration officers, and a large national population were still ideologically and institutionally formatted for a centralized FRELIMO-centred socialist political and economic model (Meneses and Sousa Santos, 2009; Araújo, 2008; Macuane, 2012). Since independence, FRELIMO has kept itself in power largely through its successful dominance of national political life and public institutions, as explicitly expressed in the 1975 Constitution (GoM, 1975). In the independence speech, read by President Samora Machel, on 25 June 1975, the role that FRELIMO would play in the process of state formation was clarified as follows:

“The People’s Republic of Mozambique, state of the working Mozambican people, will be led by FRELIMO, an instrument of people’s organization and mobilization in the struggle for national freedom, which will continue to lead the new phase of the struggle for the construction of the people’s democratic state, for national reconstruction, and for the elimination of men-to-men exploitation. At all levels, Party decisions will prevail over government decisions.”

This almost philosophical belief in the role and destiny of FRELIMO continues to shape how public administration decision-makers behave today. Central to this role is their interpretation of the concept of ‘State’ and of the principle of state ownership over land and natural resources included in the various versions of the Constitution. FRELIMO’s role is seen as that of the fighter against oppression. So for many public officers, the majority of which happen to also be affiliated with FRELIMO, FRELIMO’s role in the fight against colonial oppression entitled it to a top down approach. For them, “FRELIMO is the state and the state is FRELIMO” (Forquilha, 2007), and, as such, pursuit of public interest in the land sector equates to pursuing the interests of FRELIMO government in this sector. By extension, in the land and other sectors, the state was used to pursuing the interests of the political elites who control and dominate FRELIMO.

In fact, the Mozambican state has been characterized by a political hybridism, where facets of different political regimes (socialism and capitalism) coexist since the adoption of the 1990 Constitution and the transition to a multiparty regime. While it is now a formally established democratic State with a capitalist and market orientation, some analysts note that the main characteristic of this State until today has been its centralized approach to public administration with the maintenance of a single-party political dominance (Cistac and Chiziane, 2008; Weimer, 2012; CIP et al, 2016; Weimer and Carrilho, 2017). This main characteristic, they argue, has deeply influenced state practice in all spheres of the country’s social, political, and economic life, including the manner in which land and natural resources are managed.

FRELIMO's heavy dominance of state institutions and affairs was expected to change as a result of the 1990 Constitutional review, when the multi-party democratic regime was first adopted and institutionalized and FRELIMO's prominence in state organs and documents was eliminated (Forquilha, 2007; 2014). However, the fact that FRELIMO remained in power and in the leadership of the country meant that, in practice, its ideology prevailed in spite of constitutional changes of political regimes (Serra, 2013; Forquilha, 2014,)

As these and other political analysts have asserted, the formal changes in the political regime did not necessarily represent an ideological change, and many people in the FRELIMO leadership did not internalize the implications and consequences that the new political regime entailed (FRELIMO members anonymous pers. comm, 2016, 2017). According to Forquilha (2014), FRELIMO was unable to adjust itself internally for this shift, hence the prevalence of a "de facto" single-party and centralized regime throughout the years, wrapped up in convenient "democratic" discourses. In 2009, Meneses and Sousa Santos summarized the situation in the following terms:

"Far from the ideal Weberian type of State bureaucracy, public administration (in Mozambique) is highly politicized in the sense that the building up of the administrative capacities of the State are seen as a way of consolidating the political leverage of the ruling party - FRELIMO. This top-down conception is consistent with a bottom-up view, the view of the people for whom administration structures are FRELIMO structures. Consequently, the existing democratic institutions, be they the multi-party system or the process of decentralization, coexist with a single-party political structure both as a practice and as a social representation shared by public officials and the population alike."

In the same line of thought, Serra (2013:22-23) commented that:

"The Mozambican State has been built on a centralistic base throughout history, in spite of the reform initiated in 1990 (....). The design of the State model has been influencing the rights of access, use and enjoyment of natural resources in a determinant way. We witness the prevalence of state dictatorship manifested in the principles of state property over land and all other natural resources, notwithstanding recent vindication of spaces by local communities, reflected in the land legislation and, to some extent, in the forestry and wildlife legislation, where an effective devolution of powers is promoted."²³

Party interference on public institutions extended through the judiciary as well, as indicated by members of the General Attorney's Office who complained that:

“When we arrive at the districts we have to pay homage to district governments and to the FRELIMO party's first secretaries. They force us to abandon court sessions (sometimes we have 10 sessions a day) to attend party meetings” (In *Jornal O País*, 2013, pg.2)

Outside public institutions, namely with traditional leaders, this interference was also felt, as these leaders were used as intermediaries between the party and local populations, which, according to Forquilha (2010; 2014), has contributed to political exclusion based on party affiliation at the local level.

Lack of public transparency and accountability in Mozambique has been exacerbated by deep political interference. Party interference in public institutions reached such a point that in 2017 the Catholic Church issued a public letter in which it expressed its concern about the issue. In this letter, the bishops from this religious congregation noted the party interference in public institutions, in people's lives and on jobs, and the fact that citizens were being forced to belong to the FRELIMO party. The widespread occurrence of land conflicts and land grabbing was also part of its list of preoccupations, seen as resulting from governance failures reflecting disregard to citizens' rights and interests (ICM, 2017).

These are important points to note when trying to identify and understand some of the factors behind the difficulty in implementing the progressive provisions of the Mozambican land legislation and the difficulty in matching theory and practice described in the next chapters of this dissertation. As also suggested in the sections below, these questions denote a particular level of complexity when considering the different identities of 'the state', and when it comes to deciding between protecting individual and collective rights of citizens simultaneous to the pursuit of public and private interest agendas.

II. State Ownership over Land and the Concept of Public Domain

Since the reforms of the 1990s, the challenge of reconciling state, community, and private interests has become more complex with the recognition of citizens' individual and collective land use rights as quasi-property rights. Furthermore, although all natural resources, including land, are owned by the State and are therefore public resources, not all lands fall under the public domain of the State. In the

2004 constitutional review²⁴, the Mozambican state recognized the existence of other entities that exercise domain (power) over certain lands. Of particular importance for this dissertation is the constitutional recognition of community public domain over lands and resources under community jurisdiction, and how this intersects with the higher-level ‘state public domain’ when it comes to respecting and managing the acquired and awarded rights of citizens and others over land and natural resources.

1. State Ownership over Land, State Public Domain and Community Rights

The 2004 constitutional review²⁵ reaffirmed the 1990 constitutional principle of state ownership over land and natural resources²⁶, but added an important innovation by listing different entities with a mandate to manage land and other natural resources or, in other words, that have “public domain” over these resources.

According to Article 98 of the Constitution, the three entities that exercise public domain over resources are the state, municipalities, and local communities, corresponding respectively to ‘State Public Domain’ (SPD), ‘Municipal Public Domain’ (MPD), and ‘Community Public Domain’ (CPD)²⁷. In principle, each of these entities should have specific management and administrative roles in respect to land and other natural resources within their area of jurisdiction, however it is defined. At this point in time, however, the resources falling under municipal and community public domain have not yet been defined, and only resources that fall under the public domain of the state have been identified in the both the Constitution²⁸ and the land legislation²⁹.

The concept of ‘domain’ should not be confused with that of ‘property’, as all lands and natural resources in Mozambique are the property of the state. However, a direct consequence of the existence of different entities with ‘public domain’ over natural resources is the existence of different territorial categories with different legal treatment and under different institutional jurisdiction. This aspect is of crucial importance as it imposes procedures and limitations that should be observed in land occupation for both private (citizens/communities and private projects) and public use (government projects).

24 GoM, 2004. Constitution of the Republic of Mozambique (CRM)

25 CRM 2004

26 CRM, 2004 (Articles 3, 4 and 6).

27 CRM 2004 (Article 98)

28 CRM 2004 (Article 98)

29 Land Law, (Articles 7, 8 and 9)

The concept of ‘public domain land’ is important when assessing concrete case study material, as according to both the 2004 Constitution and the 1997 Land Law, land use rights (DUATs) cannot be granted in such lands. Activities on public domain land are instead authorized through special licenses and must be compatible with the purpose for which public domain over such lands was established. Furthermore, recognition of community public domain over land and natural resources implies that local communities have a public identity and public responsibilities which must be clearly understood and integrated in the country’s institutional framework of land management and administration.

State public domain resources comprise those existing within total and partial protection zones³⁰. Total protection zones include lands reserved for nature conservation or preservation activities as well as lands reserved for state security and defence purposes, while, as shown in Table 6, partial protection zones comprise the following lands³¹:

Table 6: List of Lands Considered Partial Protection Zones

1	The bed of interior water, the territorial sea, and the exclusive economic zone;
2	The continental platform
3	The strip of maritime coastline, including that around islands, bays, and estuaries, which is measured from the high tide line to a mark of 100 meters inland;
4	The land strip of up to 100 meters surrounding water sources;
5	The land strip of up to 250 meters along the edge of dams and reservoirs;
6	The land occupied by public interest railway lines and their respective stations with a bordering strip of 50 meters each side of the line;
7	The land occupied by motorways and four lane highways; aerial, surface, underground, and underwater installations; and conduits for electricity, telecommunications, petroleum, gas, and water; including a strip of land bordering 50 meters on each side, as well as the land occupied by roads, including a bordering strip of 30 meters for primary roads and 15 meters for secondary and tertiary roads;
8	The two-kilometre strip of land along the terrestrial border;
9	The land occupied by airports and aerodromes with a surrounding strip of land of 100 metres;
10	The 100-metre strip of land surrounding military or other defences and security installations of the State.

Source: Author

30 Land Law, Article 6

31 Ibid, Articles 7 and 8

The land law also determines that no land use rights can be acquired in total and partial protection zones, i.e. in public domain land, although special licenses can be granted for certain activities. The selection of legal terms is important as they have specific meanings and legal implications. For example, ‘acquired rights’ are different from ‘recognized rights’ and ‘certain activities’ is different from ‘any activities.’ In this context, one pertinent question is whether pre-existing customary land use rights should be ‘recognized’ and maintained when state public domain lands are established.

This is the main issue addressed in Chapter Four, which addresses creation of nature conservation areas on land occupied by local communities. These areas are considered total protection zones, and thus, public domain land, but are generally created in locations where communities have legitimate pre-existing land use rights.

2. Community Public Domain (CPD) over Land and Natural Resources

To understand the concept of Community Public Domain, it is important to start by clarifying how the land rights of rural citizens and communities are treated in the Mozambican legal framework and to recall how the 1997 Land Law defines a ‘local community’. Starting with the latter aspect, the land law defines ‘local community’ as:

“A group of families and individuals living in a locally circumscribed territory aiming at safeguarding common interests through protection of inhabited areas, agricultural areas, forests, areas of cultural value, pastures, water courses, hunting and expansion areas.”

This definition, also included in the 1999 forestry and wildlife law, the 2007 territorial planning law, and the 2014 mining law, details important dimensions related to territorial, socio-cultural, ecological, economic, and developmental aspects. The definition is important for understanding the content and limits of ‘community lands’ as well as to clarify the concept of community ‘use’ and ‘occupation’. According to the land law, recognition of community land rights obeys the principle of co-ownership³² and local communities hold the name chosen by the issued titles³³. The implication of this is that the “local community” is a legal entity with a DUAT recognized and belonging to all members of a given community, whose land occupation is legitimized by their customary norms.

It must be noted that recognition of collective land use rights does not preclude recognition of individual rights belonging to families or individuals located within

32 Article 10, No. 3.

33 Article 13, No.4.

community lands. While holders of such individual rights are legally allowed to request separate titles, they are also obligated to respect collective interests in cases of land title transfers³⁴. Since ‘public domain’ is defined as comprising resources/assets reserved for public use, and therefore not subject to private appropriation nor to DUAT, it can therefore be assumed that CPD is exercised over what is excluded from individual/family private domain resources. However, while it is clear that a collective DUAT covers land with both common and private/family/individual resources, it is still not clear if ‘community public domain land’ should then only cover state public domain land and resources located within the local community boundary.

Collective land use rights acquired through customary systems, as well as the right of community traditional authorities to manage land and natural resources using customary norms, have been fundamentally reinforced through constitutional recognition. They were legitimized and reaffirmed in the 2004 Constitution through the ‘community public domain’ concept. However, the national parliament has so far failed to approve the law that should specify resources that integrate CPD, and which should also provide the respective legal regime.

These are some of the most important issues to be clarified in the design of the legal regime that will regulate CPD over land and resources, as common community-used resources such as water sources, collective farming and grazing lands, sacred lands, community forests, and wildlife resources are collective assets privately held by the local community and over which it has recognized land use rights.

Three key points must be highlighted here. First, the concept of community public domain imposes a review of the identity of the ‘local community’ as defined in the Land Law. Through allocation of public responsibilities to local communities, the Constitution has added a different legal layer to this entity’s legal nature. In fact, by distinguishing the public domain of the state from the public domain of municipalities, as well as the public domain of local communities, the Constitution in effect gives the ‘local community’ a hybrid legal nature, with both a public and private face. The public aspect relates to the ‘local community’ as an entity that formally not only occupies a territory but has also institutions that exercise public administration jurisdictional powers over this territory. At the same time, the local community is the title holder of a collective DUAT over its territory, which is an exclusive private right that extends to all those who live within its borders. Considering the place and role reserved for community authorities in their relationship with the government,

34 Land Law, Article 13, No.5.

these authorities can be considered para-state institutions that, in a way, act as an extension of the state public administration apparatus (Tanner, 2017).

Second, it is important to be clear about which land and natural resources fall under community jurisdiction. The concept of ‘local community’ included in the land law³⁵ provides the basis for identifying the assets that fall under community public domain. The area of jurisdiction is in principle identified through the process known as ‘community land rights delimitation’, which identifies all the land and resources used now or held for future use by any given grouping of households with common interests over the land they occupy.³⁶ All land and natural resources within the delimited local community border is then managed by that community’s customary management structures (Carrilho and Norfolk, 2013; Monteiro et al, 2014; Monteiro, 2017).

Third, keeping in mind the principle of legal pluralism discussed below, it is important to understand which legal regime will be used to determine the CPD legal regime and see how statutory and customary legal regimes intersect in this context. Who should define the CPD and how should it be defined?

III. Legal and Institutional Pluralism and Community-based Land and Natural Resources Management

Similar to many other countries, in Mozambique legal pluralism refers to the recognition of different traditional (customary) normative systems existing in the country alongside the statutory (European) legal system inherited from the colonial regime (Wily, 2011a).³⁷ The 1997 Land Law is perhaps the first instance where legal pluralism was formally integrated into a nationally important law, which recognises land rights acquired through ‘customary norms and practices’ as DUATs, and gives local communities the power and mandate to manage land and natural resources using such norms and practices.³⁸

This specific use of legal pluralism for land was extended universally to all areas of legislation by the 2004 constitutional review which formally adopted legal pluralism as a core constitutional principle³⁹. This constitutional directive gave a much greater

35 Land Law, Article 1, No.1.

36 Community land rights delimitation is specified in a 2000 Ministerial Diploma accompanying the 1998 Land Law Regulations.

37 Sousa Santos (1974) has suggested that legal pluralism can also comprise other sets of norms fitting neither in the formal nor in the customary systems – the so-called informal norms.

38 1997 Land Law, Article 12 and 24 respectively

39 CRM 2004 (Article 4)

weight to the already formalised participation of local communities in land and natural resources management and extended the principle to all other areas of the national development process. At least in principle, customary norms are now treated as equivalent to statutory norms insofar as they do not contradict constitutional principles.

Legal pluralism is also the legal basis for community participation and is applied to the promotion of community-based land and natural resource management (CBN-RM). This participatory model firstly emerged with the approval of the 1997 land law and the 1999 forestry and wildlife management law.

In terms of land administration, and as mentioned above, the Constitution and land legislation confer legal validity to the various traditional systems of managing land and natural resources, including transferring and inheriting rights, and recognizing the role of local communities in the prevention and resolution of conflicts⁴⁰. Through community structures, local communities also participate in the demarcation and registration of new DUATs allocated to investors⁴¹. A key element in this context is the requirement for investors to consult with and secure local community approval before they are able to obtain a DUAT⁴². Tanner (2002) underlines the legal definition and recognition of the ‘local community’ as the main entry point for integrating the various entities who use or may want to use community-managed land. He further argues that the local community is best seen as an extensive land holding and resource management unit, defined in relation to local production and social systems that involve a wide range of resources and dynamic patterns of land use (Ibid). This view is also shared by others (José Monteiro, pers. Comm, 2018)

Through its Article 24, the land law also gives community structures a key role in identifying their own areas of jurisdiction and defining their borders. In this way, local people have the right and duty to participate in the delimitation of the collectively-held local community DUAT. Community structures represent their members and participate in the titling of new DUATs awarded by the state (through the community consultation mechanism) to external parties, as well as in the identification of and - if they so wish - the titling of their own individually-held plots and other resources over which they have specific rights.⁴³

Table 7 shows how the 1995 NLP established the foundation for this recognition of local community land management powers.

40 CRM 2004, (Article 223, No.2); 1997 Land Law (Article 24).

41 Ibid

42 Ibid (Article 13)

43 Land Law (Article 24)

Table 7. National Land Policy Guidelines for Investments on Community Land

Paragraph 20	The main political decision in relation to the system (family sector) is the recognition by the Land Law of customary rights in relation to land access and land management. Included in this context are the various systems of transfer and inheritance rights, as well as the role of local leaders in preventing and resolving conflicts and in legitimizing and legalizing the occupation of a particular area.
Paragraph 23 (in fine)	It is necessary to identify the areas of community occupation, whose territories will be demarcated and registered in the National Register.
Paragraph 61	In areas where the family sector predominates, customary norms will prevail in land use rights transfers. Investor access to these areas will be negotiated and agreed upon by the community. This negotiation with communities should be supported by competent State bodies at the various levels.

Source: Author

The underlying philosophy of the NLP has had a great influence on the content not only of the 1997 land law, but also of other key natural resource laws such as the 1997 Environment Law and the 1999 Forestry and Wildlife Law, and later laws regulating Territorial Planning (2007) and Biodiversity Conservation (2014). Indeed, all legislation regulating use of natural resources in a range of different contexts (fisheries, tourism, mining, etc.) clearly shows the imprint of the participatory and inclusive model created by the NLP. Most significantly, the concept and definition of the local community created by the 1997 Land Law is adopted and used in all other natural resource legislation.

However, there is considerable debate over the extent to which the management role of the local community and the concept of community public domain extends to natural resources other than land within its identified boundaries. In other words, is there total compatibility between land legislation and the legislation for other resources, such as forests, wildlife, and minerals, with respect to community use and management rights? This debate arises from the fact that only customary land rights, in their stricter sense, are automatically recognized by the constitution irrespective of any formality, while rights to access and use other resources existing in community lands, such as minerals, wildlife, and forests are subject to prior government authorization and conditioned to a number of bureaucratic as well as technical and financial hurdles. Some analysts have therefore argued that the land legislation was not adequately matched by the legal instruments regulating access and use of resources from other sectors, so community rights to use and manage ‘their’ natural resources (i.e. those existing within their delimited borders) cannot be assumed (Nhantumbo and Macqueen, 2003; Siteo and Guedes, 2015). This then limits the way in which communities can directly engage in economic ventures that

would allow them to generate substantial revenues from ‘their’ resources (Siteo and Guedes, 2015; Tanner, 2017).

A note should be left here in relation to how legal pluralism could work as a basis for participatory land governance. Both with regard to the complexity associated with the coexistence of statutory and customary norms (Wily, 2016a,b), and also with regard to the treatment of gender issues in customary settings (Meizen-Dick et al, 2011), legal pluralism is a theme that should not be overlooked when addressing participatory land governance in an African context.

IV. Administrative Decentralization for Participatory Governance

This section analyses how the government has organized itself to operationalize its obligation to promote participatory governance and how this mandate has been pursued in practice at the local level. Therefore, the section below analyses both government institutional structure and performance based on the constitutional principles highlighted above.⁴⁴

1. The Role of Local Governments in Promoting Participatory Land Governance

After the peace agreement signed in 1992, and after more than a decade of a centralized one-party state with government powers deeply concentrated in the central government, efforts were initiated for the establishment of a more balanced distribution and sharing of state powers. These powers were to be shared not only within the public administration hierarchy, involving central, provincial, and district levels (administrative decentralization), but also between state institutions and other public entities, such as municipalities (democratic decentralization). The decentralization process also aimed to promote closer interaction between those institutions and non-state entities, such as community authorities, to which state powers could be delegated.⁴⁵

As a participatory governance model, the justification for decentralization as presented by the Mozambique National Decentralization Strategy⁴⁶ reflects the subsidiary principle according to which adequate powers and resources allocated at the

44 An expanded analysis by the author was included in a paper written by the author as contribution to a 2016 LANDac Working Paper (Baltissen and Van der Haar, Eds, 2016)

45 CRM 2004 (Article 263, No.5)

46 GoM 2012. Estratégia Nacional de Descentralização.

institutional level should be better placed to address and respond to local needs (Ribot, 2001, 2002, 2003, 2004)). This is grounded on at least three factors, namely the fact that (a) local governments are closer to the population and better placed to identify and attend to their needs and priorities; (b) participatory design of development plans and programs, as well as budget planning and monitoring, are opportunities to give voice to poor and marginalized populations, thus allowing local plans, programs, and related budgets to target strategic groups in the quest for poverty alleviation; (c) budgets designed and revenues accrued at the local level that are intended to cover public expenses and investments at that level have a better potential of being invested in accordance with local needs and priorities (GoM, 2012). Ribot and Larson (2013) and CIP et al (2016) have also argued that the main role of local governments, and their comparative advantage in relation to the central government, is qualitative improvement and expansion of basic services to citizens, both in urban and rural areas, as well as the good governance of available resources, the local economy, and local public administration.

Public administration in Mozambique has been institutionally structured with a hierarchical political order, which is also linked to the country's administrative territorial division.⁴⁷ In this context, there are the "central" (i.e. national level), "provincial," and "district" political and administrative levels. The principle of decentralized public administration was also adopted in the land sector. In this context, Table 8 indicates how the land law has distributed competencies and responsibilities for land decisions among different government entities.⁴⁸

Table 8. Land Law Provisions on Mandates Distribution for Land Rights Allocation

Entity	Competence to Allocate Land Use Rights
Provincial Governor	a) Allocate land use rights for areas that do not exceed 1.000 hectares; b) Authorize special licenses in partial protection zones; c) Issue opinions regarding applications for land use and benefit in areas that fall within the competence of the Minister of Agriculture and Fisheries.
Minister for Land, Environment, and Rural Development	a) Allocate land use rights for areas that are between 1.001 and 10.000 hectares; b) Authorize special licenses in total protection zones; c) Issue opinions regarding applications for land use rights in areas exceeding the minister's competence for approval.
Council of Ministers	a) Allocate land use rights in areas exceeding the competence of the Minister of Agriculture and Fisheries, provided they are covered by a land use plan or that they may be integrated in a land use map; b) Create, modify or extinguish total or partial protection zones; c) Decide on the use of the territorial waters' bed and continental shelf.

Source: Author

47 CRM, 2004 (Article 7)

48 Article 22

Considering that most district governments have no urbanization plans nor land cadastres, in practice they have limited powers to allocate land use rights. Due to this, it is important to look more closely at the legal framework and at how power-sharing mechanisms play out within the current public administration structure and administrative decentralization model. This includes the interaction between central government institutions and district governments. Based on the land law power-sharing distribution included in Article 23, some DAs have concluded that district governments have very limited or even insignificant powers to manage land and other resources in their territories (Massingir District DA, pers. comm, 2017). This, however, may not necessarily be the case, as discussed below.

2. The Role of Local Governments in Promoting Participatory Land Decisions

The district is the lowest administrative and political level, governed by the District Administrator (DA). Districts are subdivided into lower government units, namely administrative posts, localities, and settlements (povoações). Government offices and representatives are established and located up to the locality level. Localities are thus the lowest public administration territorial base and the contact point between the district government and the respective population. Contrary to Presidents of municipalities, who are elected, District Administrators, heads of administrative posts (Chefe do Posto), and heads of localities (Chefe de Localidade) are appointed.

Due to lack of fulfilment of the conditions imposed by the land law for local governments' intervention, the land law power distribution seems to exclude district (local) governments. However, although DAs have not received powers to grant land use rights in their territories, except in cases where they have land cadastres and land urbanized plans⁴⁹, they have important responsibilities and powers in promotion of community rights protection and sustainable land-based investments in their territories conferred to them by other legal instruments. Aside from having the power to authorize land use rights for areas covered by urbanization plans and manage district land cadastre services, the Land Law Regulation⁵⁰ also gives DAs the responsibility to conduct community consultations for all land use rights applications and to facilitate negotiations of partnerships between investors and local communities, safeguarding state interests in this process. Furthermore, in 2007 the legislation on territorial zoning and planning⁵¹ was adopted, filling an important

49 Land Law, Article 23

50 Decree No.66/98, of December 8.

51 Law No.19/2007, Article 3 and Article 5

legal gap aimed at ensuring the organization of the national space and the sustainable utilization of natural resources. This law regulates the relationship among the different levels of state administration, as well as the relationship between the state and other public and private entities in regards to territorial planning and management. In their interventions related to territorial zoning and planning, DAs and Mayors must pursue public interest and respect citizens' rights, freedoms, and guaranties⁵². This law distributes mandates for territorial zoning and planning decisions among the Cabinet, the provincial government, the district government, and municipalities⁵³. Development of land zoning and planning instruments is mandatory for municipalities and districts⁵⁴. This process should result in the development of District Land Use Plans (Planos Distritais do Uso da Terra – PDUTs) which must be designed and approved by the district government and then ratified by the Provincial Governor. PDUTs should then be registered at the Ministry of State Administration and Public Function, before publication in the official gazette.

Due to the land allocation power distribution included in the land law, and despite their crucial role in community consultations, many government officers feel that local governments lack power to lead land governance at the local level (anonymous pers. comm, 2017). A combined reading of provisions from the entire legal framework, however, leads to a different conclusion. This perception from government officers is nonetheless indicative of the discrepancy between policy and legal formulations and the practice on the ground. In fact, and as suggested above, DAs should play a crucial role in community consultations where they are responsible for ensuring protection of community land rights and ensuring both political and economic inclusion in the context of public and private investments. Although DAs powers have been conditioned to the existence of a land cadastre and a land urbanization plan, which most districts do not have, where these tools are in place, DAs have considerable power. Furthermore, since PDUTs are aimed at integrating legally pre-determined components listed below, the fact that DAs have the power to design and approve these plans means that they can determine⁵⁵:

1. District land occupation patterns;
2. Land zoning principles and norms for the respective jurisdiction;
3. District biophysical, geological, geographic, political, and administrative characterization;
4. District demography and human settlement characterization;

52 Article 5

53 Article 13.1

54 Article 13.2

55 Article 34

5. Economic, social, and cultural activities of the district and their growth pattern;
6. District geographic descriptions covering forests, agriculture, and coastal areas;
7. Identification of environmental protection zones as well as areas of ecological importance;
8. Description of the district forests and wildlife potential and their location;
9. Definition of public infrastructure, as well as social and collective infrastructure and their respective distribution and location;
10. Indication of strategies directed at eliminating socio-economic asymmetries as well as developing the district infrastructure and social equipment;
11. Allocation of responsibilities for implementation of strategies for infrastructure and equipment development;
12. Indication of the budget required to implement the plan;
13. Maps and graphic schemes translating the content of the plan.

Reinforcing provisions from the land law, the territorial planning and zoning law require public participation in the development, implementation, alteration, and review of land zoning and planning instruments⁵⁶ and determines that local communities should participate in the development of land zoning and planning instruments, in coordination with the state local organs⁵⁷.

With regard to participation of rural communities and their authorities in decision-making processes as part of the decentralization process, a specific piece of legislation directed at orienting the actions and relationship between local government (district administrations), municipalities, and community authorities was approved in 2000 (GoM, 2000)⁵⁸. This imposed participation of government-recognised community authorities in local decisions, including decisions on land access and use. This legislation further complicated the already challenging question of who represents the local community in land matters, with specific reference to the question of community-investor consultations and the ability of state structures to override the wishes of local people expressed through the consultation mechanism.

How all these different approaches to decentralized public administration play out and intersect with the different aspects of the state identity and institutional hierarchy is an essential element in understanding why the progressive policy and legal framework has perhaps not been applied in accordance with the established principles of good governance, thus failing to deliver its full potential for equitable and sustainable development. An important issue discussed in the following chapters is

⁵⁶ Article 22.2

⁵⁷ Article 22.3

⁵⁸ Decree No. 15/2000, of June 20.

related to the reason why none of the 154 rural districts have their land use plans duly approved and the resulting impacts.

3. Community Consultations and the Role of Local Governments in Land Rights Allocations to Investors

The land use rights granting process and the environmental licensing processes, as well as the resettlement plan designing and land use planning processes, all imply the need to conduct specific and dedicated community consultation meetings. Community consultations are a mandatory requirement *sine qua non* the decision is rendered illegal and the DUAT issued is considered null. This is indicated in a provision included in Ministerial Diploma approved in 2011 (GoM, 2011):

“Consultations that do not respect procedures indicated in this Ministerial Diploma and other relevant legal instruments are not valid.”

According to the Land Law and Land Law Regulation (GoM, 1997; 1998)⁵⁹, community consultations pursue a specific and legally determined outcome namely to confirm that the area is free and has no occupants.

“The land use and benefits rights titling application process shall include a statement by the local administrative authorities, preceded by consultation with the respective communities, **for the purpose of confirming that the area is free and has no occupants.**” (emphasis added)

Moreover, the District Administrator is legally responsible for chairing and facilitating consultation meetings. His or her opinion must be issued after consultations have taken place that have legally predetermined content, as indicated by the land law regulation (Ibid):

“The opinion of the District Administrator will focus on whether there is a land use right recognized by occupation on the required area. In case of pre-existing rights in the targeted area, the opinion shall include the terms that will govern the partnership between the holders of land use rights acquired by occupation and the applicant.”

Considering that the mere fact of having to conduct a community consultation means that the land has occupants, the first directive is superfluous and misleading as it infers that one can go to a community land and find unoccupied areas. In legal

59 Land Law, Article 13.3; Land Law Regulation, Article 27.3

terms, this is not possible in the Mozambican context, which merits review of the concept of community 'occupation'. With this concept in mind, the first directive from the law should be interpreted as meaning that land use rights should be maintained with the original holders unless they freely decide otherwise. The second legal directive is that external entities may still access and use community land for their envisaged purposes if communities are interested and if they agree with the terms to be negotiated between the two parties. Therefore, the primary role of the district government in community consultations is not to negotiate in the name of either communities or investors. The role of the government is to facilitate negotiations and ensure that all parties enter in the negotiation process with the best position possible in terms of access to information and knowledge; access to government technical, institutional, and political (governance) support; and access to impartial dispute mechanisms when necessary (Salomão and Matose, 2007). An added responsibility should be highlighted here, however. By constitutional imposition, as a representative of the state, the district government has the constitutional responsibility to protect citizen and community rights in all contexts, including in the context of community-private negotiations.

Government understanding of the basic principles of the land law and other natural resource legislation is crucial in all of the case studies presented below. This applies especially to the principle of consulting with communities that already occupy and use the land in question. It must also be noted that the two directives mentioned above apply not only to cases where private investors are looking for land, but also to situations where the state is the entity seeking to take over land occupied by local communities and their members, under the argument of public interest, public utility, or public necessity. Again, the identity of the state, which increasingly intervenes as an investor and thus has a vested interest in community consultations and negotiations, represents an important element in community consultations. This double identity of the state - sometimes acting as facilitator/protector and other times acting as an investor - as well as the confusion and conflicts of interests it creates, is one of the major points discussed in all chapters of this dissertation.

Of particular importance and complexity in the discussions about state identity is the situation when the land process involves the need to expropriate local rights and to impose forced population resettlement, justified by the existence of superior public interests. In all cases, but particularly those involving rights expropriation and involuntary resettlement, the role of the state should be to ensure that the land occupation and the consequent state obligation to compensate are adequately conducted, involving open, just, and transparent consultation processes for negotiation of fair compensation packages.

Community consultations are thus a vital negotiation process between local communities and private investors and between local communities and the state/investor, for which all parties, but specifically the government that has the responsibility to conduct and facilitate them, must be adequately prepared. What this dissertation tries to demonstrate is whether the government, particularly local governments, have been up to this task.

V. Land-based Investments and Community-Investor Partnerships

Since the 1992 Peace Accord, and after a series of peaceful elections and changes of government, the country has been able to maintain a climate of steady peace which has in turn attracted investors and boosted economic performance. Indeed, in spite of recent tensions and a resurgence of conflict in the northern part of the country, Mozambique has been seen as a safe ground for both national and international investors. The consequent surge in demand for land has pushed the legal framework to the limit and this is why it is an ideal case study to analyse the research questions. This section discusses how the state has framed and implemented its investment promotion strategy and the impact that this has had on both citizen/community rights and on state constitutionally defined interests and priorities.

1. Mozambique Investment Promotion Strategy and the Reality on the Ground

With land and natural resources owned by the State in the name and on behalf of citizens, the legal position and role of the government as the representative of the state in land management and administration and in investments promotion gains particular importance. This is more so in a context of government promotion of accelerated land-based economic and development growth, which has sparked growing interest in the occupation of large tracts of rural lands for large scale land-based public and private projects (also known as mega-projects). Mega-projects have been promoted in various economic sectors including agriculture, mining, hydrocarbons, forestry, tourism, and nature conservation sectors, as well as in the public infrastructure sector (roads, bridges, airports, power line transmission, pipelines, refineries, and so on).

The Government has long seen the attraction of investment, especially foreign investment, as the best and fastest way to speed up development, to secure funds to reconstruct and build new social and economic infrastructure, and to exploit the

country's natural wealth (GoM PARPA 200, 2005, 2009; GoM Agenda 2025, 2000; GoM Agenda 2015-2030, 2015). Attracting investments by providing secure land rights to investors was thus one of the principal objectives of the 1995 National Land Policy (NLP). The goal behind this objective was to allow investors to invest and secure a return on their capital, as well as to provide new instruments designed to respect local rights and facilitate negotiated access to local land that would bring benefits to local people from the investment process.

The requirement to consult with local people was imposed as a secure platform for public and private investor use of community lands with the guarantee that this will be done while respecting local rights and that investors will bring real benefit to local populations and the state. In this context, if mutually agreed upon, partnerships for public or private use of community lands should be negotiated during consultation processes, thus allowing economic activities to be undertaken in community lands but in a way that does not undermine their rights and livelihoods. Together with requirements to present workable and well-funded projects, and to secure environmental licenses, community consultation is a procedure that combines both procedural and distributive justice perspectives and also follows the free prior and informed consent (FPIC) principle promoted at the international level (Tanner, 2002; CTV, 2009; GoM, 2010; FCT, 2012; Wily, 2011a; CTV 2012; Cotula, 2012; OXFAM, 2014; Cabral and Norfolk, 2016).

In all contexts, but particularly in the context of investment protection, community consultations were specifically meant to pursue four main objectives, namely (1) rights protection, (2) political participation, (3) economic inclusion, and (4) benefit-sharing. However, a recurrent claim in land debates in Mozambique and elsewhere is that, in reality, there has been a considerable gap between theory and practice, with a progressive framework unmatched by unequal outcomes. In the last decade, the government, responsible for ensuring that community consultations are effectively carried out, has been increasingly seen as failing to protect the rights of the rural populations by favouring private interests (IESE, 2012; OMR, 2015). It has also been accused of promoting rural land grabbing by both national elites and foreign investors (AUSCULT 2017).

Investors, in turn, are also accused not only of violating citizens' rights but also of failing to produce expected outcomes in terms of economic inclusion and benefit sharing (IESE, 2012, 2013, 2015, 2017). The results of this are increasing tensions among local communities, the government, and the private sector. Local communities, whose land is the main target of investors' land-seeking movements and who are also the main target of this procedure, are generally caught by surprise,

unaware of their rights and obligations and unprepared to adequately participate in community consultations (DPC President, Rebeca Mabui, pers. comm, 2015, 2017, 2019). These claims were recently expressed by community representatives from different parts of the country who attended the 1st National Congress on Involuntary Resettlement, organized by the Civic Coalition for Extractive Industries (CCIE) in February 2019.

Behind the gloomy picture of ineffective community consultations and socially contested investments, some claim that the problem is due to inadequate and incomplete provisions to guide investors and others in relevant procedures. However, other evidence points to law and legal processes simply being set aside or at best manipulated by both government and private sector representatives, to give a cosmetic impression of participatory decision-making processes (Tanner, 2010).

For Durang and Tanner (2004), the NLP established a sufficiently clear rights-based approach to guaranteeing land for the Mozambican people, including investors. This policy was also integrated with other measures to form a strong development instrument designed to promote new investments in the country in an equitable and sustainable manner. For them, these aspects are summarized in the NLP central mission statement, namely “safeguarding the diverse rights of the Mozambican people over land and other natural resources, while promoting new investment and the sustainable and equitable use of the resources” (Ibid).

The NLP provides a concise blueprint for sustainable investments and development, which include the following basic principles that must be kept in place when discussing the role of land-based private and public investments in Mozambique’s sustainable development process:

1. Guaranteed access to land for the population as well as for investors
2. Guaranteed rights of access to land by women
3. Promotion of national and foreign private investment, without prejudice to resident populations and ensuring that they benefit from the investment
4. The active participation of nationals as partners in private enterprises
5. The definition and regulation of basic guidelines for transferring state-allocated land use rights
6. The sustainable use of natural resources that guarantees the quality of life for present and future generations.

2. Investor Rights, Due Process, and Rural Development

The main claim made in the previous section is that Mozambique's legitimate interest in attracting investments has materialized in a context characterized by poor government rigor in protecting community rights, especially the rights of rural and peri-urban communities. This is problematic especially considering how ill-prepared many rural citizens and communities are. Poor land zoning and territorial planning, particularly at the district level, can be added to this situation, as until now no single PDUTs (district land use plans) have been published in the national gazette (and thus are legally non-existent). As a result, despite Mozambique's progressive legal framework, the demand for large areas of land for economic projects, but also for expansion or creation of urban areas triggered by such projects, has created space for conflicts between local communities and the government; between local communities and investors; and between local communities and the government and investors together (Nhantumbo and Salomão, 2010; Mosca and Selemene, 2012; HRW, 2012; Salomão 2005, 2015, 2016a,b; Salomão and Zoomers, 2013). Inter and intra-sectoral conflicts within and among government institutions are also notorious (Nhantumbo and Salomão, 2010; CTV, 2013).

Furthermore, the increasing occurrence of economic and physical involuntary re-settlements of local communities in the last few decades, to give room to public and private investments, has given rise to social protests, exacerbating tensions and conflicts amongst all those actors (CTV, 2013, 2016; SEKELEKANI, 2015; HRW, 2012; Osório and Silva, 2017; ICM, 2017; Mosca and Selemene, 2012; UNAC, 2014; ORAM, 2015; JA, 2012; CTV, 2015; OMR 2015). In fact, government investment promotion in Mozambique has placed this country on the route of the global rush, with government agents often taking the lead in this process. In spite of the stated justification for maintaining the principle of state property over land—ensuring that the rights of Mozambicans are protected—investment campaigns and the allocation of land to investors have not always been conducted in a manner that prioritizes protection of local land rights or pursuit of public interest defined in terms of what is best for 'the public': the people of Mozambique. LANDESA underlined the points above in a 2011 study when they concluded that "most of these farmland acquisitions are occurring in low-income and middle-income countries, often in settings where land property rights are weak, unclear, and poorly governed - creating enormous risks for poor people, investors, and governments" (LANDESA, 2011:1). Referring to Mozambique and Madagascar, LANDESA (2011:2) also claimed that these countries had received requests from investors for more than half of their total cultivable land area.

Thus, while such requests might not have all been positively responded to, the rush for lands in Mozambique has created a kind of ‘wild west’ situation where government agents and those close to them can manipulate the principle of state ownership in their favour, while weak land administration agencies fail to effectively implement even the safeguards that do exist in the land legislation (Selemane and Mosca, 2013). Consequently, as mentioned in Chapter One, Mozambique is also known for being one of the top targets of global land grabbing (GRAIN 2008; FIAN, 2010; ILC, 2010; World Bank, 2010; LANDESA, 2011; UNAC 2014; Castel-Branco, 2010).

In this context, a recent evaluation of the legal framework for land-based investments in Mozambique (Cabral and Norfolk, 2016) felt forced to remind readers of the guidelines contained in the Mozambique land policy, by stating that:

“The NLP clearly states that investments should not affect existing land rights and should provide real benefits to the residing populations. The LNP also clearly mentions the sharing of land resources between existing community businesses and investors. In other words, the strategy for promotion of land investments is subject to a development agenda, conceptualized to promote the well-being of the Mozambican people through a process of private investment in the field, managed by the State. It is not an agenda purely directed at facilitating access to land for the private sector.”

Another recent assessment of Mozambique land governance (Trindade and Salomão, Eds, 2016) indicates that government agents have deliberately chosen to subvert the principle of state ownership over land and to by-pass the legal procedures aimed at benefiting national citizens and serving national interests. This assessment shows that the principle of state ownership, combined with the argument about the need to combat poverty, has instead been used to justify allocating land use rights to investors over community lands, in both rural and urban areas, ignoring mandatory procedures imposed not only by the Constitution but also by the land and territorial planning legislation. In the context of land-based investments, this assessment indicated that both central and district governments are particularly failing to ensure observance of the following legally imposed procedures in the legally prescribed order, as follows:

1. Previous delimitation of community lands over which there is a public or private economic investments interest;
2. Formal declaration of public interest prior to any land allocation procedure;
3. Consultation and negotiation with local communities occupying the lands envisaged for public and private projects;

4. Prior negotiation and payment of fair compensation to affected citizens and communities before extinguishing pre-existing land use rights;
5. Formal declaration of extinction of individual and collective pre-existing land use rights;
6. Territorial zoning and categorization of the land envisaged by the projects, and issuance of new DUATs or special licenses, depending on the land category in question;

This report (Trindade and Salomão, Eds, 2016) highlights the importance of identification, declaration, and demarcation of public domain areas, in consultation with local communities and with respect to citizens' rights, as also imposed by the Constitution.

An updated review on the impact of Mozambique's investment strategy, particularly on citizen's rights, was published by Wise (2016), revealing that the Mozambican government remains committed to giving away good land to foreign investors despite persistent resistance from affected communities which, he claims, might have led to the considerable level of failure of such projects. Based on data from the Land Matrix, Wise (2016) states:

"In 2012, Mozambique was the second most important target in the world, with nearly 8 million hectares in reported agricultural deals. Now, the Land Matrix lists only 500,000 hectares in 65 concluded agricultural deals. Of the current projects, nine, on nearly 100,000 hectares, are listed as "abandoned," mostly biofuel projects. Data is scarcer on the area actually under production, but Land Matrix could confirm only 21,000 hectares in production. Large-scale projects have been more successful in forestry and tourism, with nearly two million hectares in concluded deals. And mining concessions continue to displace or threaten thousands of Mozambicans as the mineral boom continues." (Wise, 2016)

VI. Corruption, Political, and Military Violence and Impacts on the Land Sector

This section briefly discusses a characteristic of the Mozambican State which, although going beyond the land sector and beyond discussions on land governance, has profound implications in the manner in which this sector is managed. The issue under reflection here is how corruption as well as political and military violence in Mozambique might influence the way land and natural resources are managed and the country's prospects to pursue and achieve sustainable development. While the

thesis does not provide answers to these questions, it leaves some notes that might help in future research and reflections.

With regard to corruption, Mozambique is currently considered one of the most corrupt countries in the world, ranking 112/168 in the 2015 Transparency International Corruption Index, with a CPI score of 31. In the Africa Ranking website, the following sentence is linked to Mozambique: “Although the government of Mozambique has taken steps to fight corruption, it is still a big problem. Corruption remains in both the public and donors, who support almost half of the nation’s budget. On this regard, it is worth quoting a statement from the current President of the Republic, Filipe Nyusi, made during his visit to the Ministry of State Administration and Public Service, on April 28 2017, according to whom “corruption is threatening to destroy the State” (Jornal “Savana”, April 28, 2017; Jornal “O País”, April 28, 2017). In the speech offered by the President of the Republic on March 7, 2018, during a public presentation of the Anti-Corruption Strategy, he also affirmed that corruption undermines the public trust of institutions, promotes crime and its social and economic costs are unbearable. Still, according to him, more than ever it is time to act, relentlessly and firmly grasping its roots as simply characterizing this scourge will not lead to the eradication of corruption in the country (Jornal “Notícias”, March 7, 2018).

Regarding political and military violence, the African Union (AU) proclaims that peace, security, stability, and good governance are pre-requisites for development and social cohesion⁶⁰, but while it claims that the number of violent conflicts has reduced, it also recognizes that there are still many countries affected by conflicts that hamper their ability to achieve socioeconomic progress and well-being for all (AU, 2016). It further adds that by forcing people to leave their lands, by reducing the enjoyment of social and economic opportunities, and by limiting the ability of the State to provide social and economic services for all, violent conflicts (land related or not) represent a major threat to development (Ibid).

In this context, after a 20-year interval from when the last devastating war ended in 1992, Mozambique was back to civil war in 2012, a situation that raised many concerns internally and externally, and which also fed speculations on its real causes. For some, violence is a result of political disputes between FRELIMO and RENAMO. As the BTI 2016 country report indicates “twenty-three years after the Rome Peace Accords of 1992, the power balance between the former belligerent parties seems to have been re-established, which has undermined democratization.

60 Source: <https://www.au.int/web/en/auc/priorities/peace-and-stability> (accessed on 08.07.17)

Currently, the conflict between the two parties is a major concern for Mozambicans and the international community.” (BTI, 2016:3). Referring to the on-going armed conflict in Mozambique, Kortl (2015), who examined whether the outbreak of armed conflict in Mozambique is a resource curse, concluded that natural resources could be related to but were insufficient to explain the outbreak of armed conflict. For him, the new discovery of natural resources changes both the magnitude and distribution of rents and threatens the existing power distribution between the warring parties, Frelimo and Renamo. The change in power distribution, he adds, changes the socioeconomic and political context, or political settlement, and when these changes give rise to certain conditions, violent conflict emerges. He further concludes, that these conditions explain the outbreak of armed conflict in Mozambique. (Ibid).

Others, however, see a possible link between armed conflict and Mozambique’s resource abundance, arguing that this abundance has a potential to trigger or to fuel violent conflicts and other social disturbances particularly in a context of good governance weaknesses such as the one existing in Mozambique, including political exclusion (Columbia SIPA, 2013; Bucuane and Mulder, 2011; Santos, 2012; Castel-Branco, 2012; Doraisami, 2013, 2015; CIP, 2013, 2015; Macuane et al, 2018). The following statement by Green and Otto (2014), links the Frelimo-Renamo violent conflict to natural resources abundance, particularly to the issue of how rents deriving from the mineral and hydrocarbons exploitation will be controlled by and shared between the parties. This statement somehow illustrates the importance of participatory decision-making, economic inclusion and benefit sharing to avoid resources-related violent conflicts irrespective of the name given (Ibid:5,21):

“With new finds of coal and gas in Mozambique, serious concerns are being raised as to how the government will manage its persistent developmental challenges. It has been well established in academic literature that resource abundance does not necessarily result directly in economic growth or social development, and there is a vast array of theories examining the difficulties that resource-abundant countries experience. One of the resultant difficulties that has been found to be most detrimental to development is the increased risk of violent conflict. (...) If local communities and Renamo forces continue to perceive themselves as being economically and politically marginalized, increasing escalations of violence in Mozambique may be inevitable.”

Conclusion

In principle, the policy and legal framework discussed above, and the various principles on which it is grounded (legal pluralism and recognizing customary rights as DUATs, the local community concept, community land delimitations, mandatory community consultations, community public domain, etc.) provide a good platform for promoting the kind of democratic and participatory development model that the Mozambican State has espoused from its earliest moments. It also provides clear mechanisms that should ensure an equitable process of new investment, which safeguards the interests of local people and generates real benefits that should enhance their livelihoods and quality of life. However, Mozambique has become a by-word internationally for land grabbing and for setting aside established legal norms and principles. The role of the state and what and who the state are key here, and provide possible explanations on the reasons why the government (in its role as state representative) has failed to do its share of the task.

Both the constitutional set-up and the philosophical underpinnings of the FRELIMO government emphasize the notion that land and natural resources must remain the property of the state *in order to ensure* that the rights of citizens to access and use land are protected, and that land and natural resources are to be used for the ‘public interest’ (i.e. for national development). Yet, the discussion above shows how the rapid transition from a socialist-inspired approach to ‘democratic governance’ to a free-market system while still encumbered with the institutional architecture and ideology of the earlier regime, has created tensions between the people-centred agenda that is implicit in the progressive policy and legal framework for land developed in the 1990s and the neoliberal/capitalist agenda that is now strongly embraced by FRELIMO and national elites. The later creation of different levels of ‘public domain’ has further complicated this picture, together with a lack of clarity over the rights that local people have over the natural resources that exist within their ‘local communities’.

The next chapters look at how the different principles and related legal procedures have been applied in practice and the potential they still hold for contributing to good land governance in the face of the underlying political economy of the natural resources sector.

Four

The Case of the Limpopo and Mágoé National Parks in Massingir and Mágoé Districts: Assessing Community Rights Protection and Community-Public Partnerships in Biodiversity Conservation



Introduction

*“Rights Make Human Beings Better Economic Actors”
(2000 Human Development Report)*

As a result of the environmentalism movement of the 90s (Wolmer, 2003; Milgroom, 2012), Mozambique made several political and institutional decisions related to environmental management in general and to biodiversity conservation in particular. Motivated by global environmental commitments and the end of the 1976-1992 civil war, the country ratified key environmental conventions on biodiversity conservation, climate change, combating desertification, and banning the movement of hazardous waste across borders. In 1995, the first ministerial institution responsible for environmental issues was created (the Ministry for Coordination of Environmental Affairs-MICOA), followed by adoption of several new legal instruments for natural resource management, namely (a) the National Land Policy (1995); (b) a new Land Law (1997); (c) the 1997 Environmental Law; (d) the Forestry and Wildlife Policy (1995); (d) the Forestry and Wildlife Law (1998); the 2014 Biodiversity Conservation Law, and; the 2015 National Biodiversity Conservation Strategy and Action Plan.

Following international commitments assumed under the 1992 Convention on Biodiversity Conservation (CBC), the country also tried to increase the percentage of the territory reserved for biodiversity conservation. By 2013 about 26% of the national territory was reserved for that purpose (GoM, 2015; BIOFUND, 2016; WWF, 2016). The expansion of protected areas nationally was accompanied by a regional movement to create transfrontier conservation areas (TFCAs), linking territories from different neighbouring countries. Thus, from 2000 to 2005, Mozambique was involved in negotiations to create four TFCAs, namely the Great Limpopo Conservation Park (GLCP), linking Mozambique with South Africa and Zimbabwe (2001); the Lebombo TFCA, linking Mozambique with Swaziland and South Africa; the ZIMOZA TFCA, linking Mozambique with Zimbabwe and Zambia, and; the Chimanimani TFCA, linking Zimbabwe and Mozambique. To date however, only the GLCP has been formally established.

The most complex and difficult issue facing Mozambique nature conservation plans has been the presence of human settlements in these areas. With the exception of the Gilé Reserve in Zambeze province, and the Ponta D'Ouro Partial Marine Reserve in Maputo province, all nature conservation areas in Mozambique that were created both before and after independence maintain pre-existing human settlements within their boundaries (GoM, 2015). This situation obliged the

conservation movement to adopt an approach framed by political participation and economic inclusion. Breaking away from the fortress state-led model of biodiversity conservation, which favoured total separation between people and parks, with severe social impacts (Hulme and Mupfhee, 1999; Wolmer, 2003; Cernea, 2003, 2008; Chidiamassamba, 2010; Chidiamassamba et al, 2012; Milgroom, 2012, 2013; GoM, 2017), this movement defends the idea that local populations should be considered as part of the human capital of the conservation movement, as well as the main beneficiaries of protected areas. Indeed, following a regional trend in the 1980s and 1990s, many countries in the Southern African Development Community (SADC) region, including Mozambique, adopted national policies and laws stating explicitly that communities should be involved in all areas of environmental management in an active and direct manner, and that their values, norms, and practices should be taken into consideration (GoM, 1995, 1998).

National and regional nature conservation instruments created a dual objective to participatory natural resource management, namely to ensure biodiversity conservation with the participation of local communities and to promote the economic and social development of such communities through the use of the natural resources existing in their land (SADC, 1999). Thus, communities should not only share the benefits resulting from the use of wildlife, forests, and other resources, but should also participate in decision-making processes related to such use. With this premise in mind, community-based natural resource management (CBNRM) projects were started in the wildlife and forestry sectors.

Countries such as Namibia, Zambia, Tanzania, and Botswana adopted legislation encouraging and supporting community participation mechanisms (Wily, 2000, 2016; Johnston and Dannenmaier, 1998, 2000; Salomão and Matose, 2007). Mozambique joined this trend, beginning with provisions for community land rights and provisions for community-private partnerships included in the 1997 Land Law and then with the development and adoption of the 1998 Forestry and Wildlife Law. Upon approval of the latter law, many CBNRM projects were launched, mostly in areas adjacent to conservation areas, but also in community lands rich in natural resources such as forests and wildlife outside such areas (Sitoe et al, 2007; Sitoe and Guedes, 2015).

The CBNRM movement in Mozambique has stressed the role of local communities in national development. The land and forestry policy and legal frameworks have offered clear opportunities for both political and economic inclusion, enabling these communities to transform themselves from victims into investors and beneficiaries. CBNRM thus allows communities to gain economically from the use of the

large areas that have been the base of their livelihoods for generations and to intervene both as main actors and beneficiaries, clearly moving away from projects exclusively initiated by private and public entities, and also moving away from the fortress approach.

In spite of this legal and policy position, however, the Mozambican government has adopted a mixed and sometimes contradictory position (Serra, 2013). While in the majority of conservation areas (CAs) communities have been maintained in their land, the government has nonetheless withdrawn their land use rights and, in some cases, such as the Bazaruto National Park and the Limpopo National Park, communities were subject to both economic and physical resettlements.

Due to this discrepancy between policy formulations and reality, this chapter aims to analyse how the ambitions in the law hold out in reality and how the issue of affecting community rights, which the law seems to guarantee, is being justified by arguments related to nature conservation and other economic interests. In this context, this chapter outlines and discusses the immediate and long-term effects of community land expropriations (and involuntary resettlements) in the overall participatory land governance strategy as perceived by the people who are directly affected by creation of national parks. It also discusses opportunities for community-public partnerships and for community-based nature conservation projects where community rights are protected.

To support the discussions, the chapter reviews the case of the Limpopo National Park (LNP) in Massingir District, Gaza province, and the Cubo Community Game Park, located in the park's buffer zone. In addition, for comparative purposes, the chapter also includes another conservation area, located in the centre of the country, namely the Mágoé National Park (MNP) in Mágoé District, Tete Province, and the Tchuma Tchato Community Project, located within this park.

The chapter is divided in four sections. The first section presents details of the processes followed in the creation of the Limpopo National Park and the Magoé National Park and impacts on community rights. The second section discusses community rights protection, community-public partnerships and community land rights expropriation in the Limpopo National Park. The third section addresses procedural justice in the creation of the Limpopo National Park, while section four discusses distributive justice issues looking at whether and how opportunities for community economic inclusion and CBNRM within and around both parks were promoted and used.

I. National Parks and Community Lands

1. The Limpopo National Park in Massingir District

In 2001 the Government of Mozambique established the Limpopo National Park (LNP) which was later integrated into the Great Limpopo Transfrontier Park (GLTP), joining the South African Kruger National Park and the Zimbabwean Gonarezhou National Park (Figure 1). The GLTP covers about 32,000 square kilometres and at the time of its establishment about 500,000 people resided within its boundaries (MITUR, 2003). It must be noted that the GLTP is part of a much larger conservation area—the Great Limpopo Transfrontier Conservation Area (GLTCA)—involving two additional Mozambican parks, namely the Zinave National Park and the Banhine National Parks, both located in Gaza province (Figure 1). In total, the GLTCA covers 100.000 square kilometres.



Figure 3: Great Limpopo Transfrontier Park. Source: GoM/MITUR, 2003

On the Mozambican side, the area of the LNP had previously been used as an official hunting reserve called Coutada 16.⁶¹ This reserve was extended to form the LNP over an area of 1.123.316ha, expanding through three districts in Gaza Province, namely Massingir, Mabalane, and Chicualacuala (GoM/MITUR, 2003). In

61 'Coutada' is the Portuguese term for this kind of conservation area. Thus, they are referred to as 'Coutada 1', 'Coutada 2' etc. Most Coutadas were established by the Portuguese in the first half of the twentieth century.

Massingir District, the LNP covers 1.000.000ha, corresponding to 40% of the District area. When the Limpopo National Park was created in 2001, Massingir was (and still is) divided into 3 Administrative Posts and 8 localities (Table 2). A total of 7.000 people lived in the core of the park area (wilderness zone), while 20.000 others lived in the park’s buffer zone.

The totality of the park’s core area falls under the Mavodze Administrative Post, which is home to 8 communities, namely: Massingir Velho, Mavodze, Nanguene, Macavane, Machamba, Makhandazulo A, Makhandazulo B and Bingo (Ibid). The district was also divided into just two land categories, namely community lands (individual and common lands), and state public domain lands (areas occupied by public infrastructure and areas adjacent to partially protected zones such as roads, river margins, dams, etc).

Table 9: Massingir District Administrative Division and Traditional Community Occupation

Admin. Posts	Localities
Massingir	Ringane, Tihovene
Mavodze	Chibotane, Machamba, Mavodze
Zulo	Chissenguele, Chitar, Zulo

Source: GoM/MAE, 2014

As can be seen in the Massingir District Administrative Division map below, until the year 2000 most of the district lands fell under community domain (black dots in the map indicate the different local communities, comprising both collectively used lands and family lands. These are areas where land occupation and use are undertaken based on customary norms and where traditional leaders have constitutionally recognized powers to manage land and other resources according to such norms.



Figure 4: Massingir Administrative Division. Source: CENACARTA

The conservation objectives of the LNP were clear: “Considering the ecological characteristics, the existence of diversified ecosystems, scenic landscapes, species of endemic and endangered wildlife, it is necessary to strengthen the protection and conservation of the natural resources of Coutada 16, to ensure the continuation of ecological processes and preservation of natural values.” (GoM, 2001)⁶²

The government’s approach to solving the apparently incompatible coexistence between human populations and wildlife was to move all the communities out of the park’s core area. In 2003, a decision was taken to resettle the eight community villages that for many generations had occupied and used the land. While this resettlement has been presented as ‘voluntary’ (GoM/ANAC, 2017), the affected communities claim that they were not consulted about the creation of the park nor about the decision to resettle them. Throughout this process there has also been very little discussion about how the eight communities could benefit from the conservation and tourism activities that would take place as a result of the creation of the LNP. Consequently, the resettlement process has faced numerous social, technical, and financial hurdles and has still not been finalized.

Aside from extinguishing pre-existing community rights within the park’s core area and buffer zone, the creation of the LNP and the resettlement decision implied changes in community land occupation and traditional leadership. The land selected as the resettlement destination of the park communities is already occupied by other communities, with defined boundaries. These communities are: Chinhangane (host community for Nanguene), Banga, Mucatine, Tihovene, Chitare, Salane, Macuachane, Canhane (host community for Mavodze) and Cubo (GoM/ANAC, 2017: Volume I). The tables and map below show the destination of communities being moved from the park’s area.

Table 10. Communities awaiting resettlement.

Resettled Communties	Families	Host Communities
Massingir Velho	302	Mucatine
Nanguene	18	Chinhangane
Macavene	165	Tihovene e Banga
Total	485	

Source: CTV, 2018

62 Decree No 38/2001, of November 27, Government Gazette No.48, Serie 1.

Table 11. Communities under ongoing resettlement.

Ongoing Resettlement	Families	Host Communities
Bingo	225	Chitar
Makandazulu	130	Salane
Mavodze	720	Nkanhani e Macuachane
Total	1,075	

Source: CTV, 2018

Table 12. Communities under pending resettlement.

Pending Resettlement	Families
Machamba	150
Chimangue	150
Total	300

Source: CTV, 2018

As can be seen in tables above, some communities will be divided and sent to two separate destinations. This is the case of Mavodze, to be relocated in Nkanhani and Macuachane, and the Macavene community, which will be relocated in Tihovene and Banga.

According to Massingir District Administrator, in 2017 there were still about 1300 families in the park area. Since the park was created, only 485 families have been moved (GoM/ANAC, 2017)



Figure 5. Community resettlement-induced spatial redistribution.

Source: GoM/ANAC, 2017

2. The Mágoé National Park in Mágoé District



Mágoé National Park Landmark.

Source: GoM/ANAC, 2016

In 2013, thirteen years after the creation of the Limpopo National Park, the Mozambican government decided to create the Mágoé National Park (MNP) in Mágoé district, central province of Tete. Since colonial times, the Province of Tete has been used as a hunting zone due to its abundant wildlife, particularly in the northwest region where the Mágoé district is located (GoM/ANAC, 2016). Similar to the LNP, the Mágoé Park was also created to be used as a transboundary nature conservation area, in a joint initiative with Zimbabwe and Zambia with whom it shares borders, thus forming the ZIMOZA transfrontier Conservation Area. The ZIMOZA TFCA process was never finished.

The District of Mágoé is located in the Southwest area of the province of Tete, limited to the North by the Districts of Zumbo and Marávia, to the East and South by the Republic of Zimbabwe, and to the East by the District of Cahora Bassa. The surface of district1 is 8,583 km², and in 2012 its population was estimated at 87 thousand inhabitants. The district has 3 administrative areas (postos) and 8 localities (localidades) as shown in Table 12 below.

Table 13: Mágoé District Administrative Division and Traditional Community Occupation

Admin. Posts	Localities
M'phende	M'phende-Sede, Cazindira, Daque
Chinthopo	Chinthopo-Sede, Dewetewe
Mucumbura	Mucumbura-Sede, Mussenguezi, Chitete

Source: GoM/MAE, 2014



Figure 6. Map of Mágoé District Administrative Division.

Source: GoM/MAEPF, 2016

With the MNP, the government envisaged similar objectives as those pursued by the LNP, by stating that:

“Considering the ecological characteristics, diversified ecosystems, rich biodiversity, scenic landscapes and endemic species of wildlife, it is necessary to guarantee the protection and conservation of natural resources, ecological processes and the preservation of natural values.” (GoM, 2013)⁶³.

63 Decree No.67/2013, from December 13. Boletim da Republica, I Série, No.99

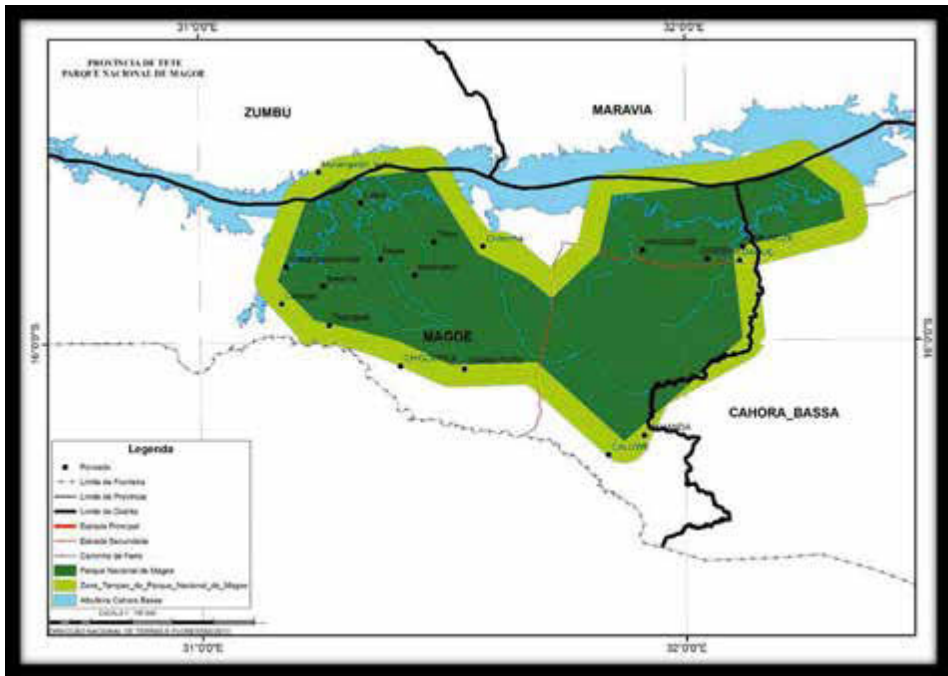


Figure 7. Mágoé National Park area including a buffer zone.

Source: GoM, 2013

The 5 localities of the district of Mágoé that are covered by the extension of the Park have a total of 30,452 inhabitants (Ibid). Two of these localities had previously housed a community-based wildlife conservation project, the Tchuma Tchato Project detailed in Section IV.2 below.

At the heart of both park's challenges lies the issue of how community lands were occupied by the parks and the implications derived from the existing legal framework in terms of procedural and distributive justice, including the interface between the constitutional principle of state ownership over land and natural resources and the principle of legal and institutional pluralism highlighted in the chapter's introduction about the responsibility of the state to protect community rights and ensure their political and economic inclusion. These are the issues that the next sections will discuss, comparing processes conducted in both parks where possible.

II. Rights Protection, Community-Public Partnerships, and Expropriation of Community Rights in the Limpopo National Park (LNP)

Despite adoption of the community-based land and natural resources management approach in the wildlife and forestry sector, the LNP was created following the ‘fortress conservation’ model by determining not only that human presence is incompatible with nature conservation - hence the resettlement decision - but by deciding also that community rights should be withdrawn (Wolmer, 2003; Milgroom and Spirernburg, 2008; Milgroom, 2012, 2013 ; Serra, 2013). Local communities from the LNP, however, seem to disagree with this approach, when they claim that they have lived with wildlife all their lives. In this regard, the leader of the Mavodze community commented that while they have recognized the objectives of the LNP, they have also offered alternative solutions to remain in their lands (Mavodze leader, pers. comm.). According to him, in the first communications about the park, they expressed their willingness to stay in their lands and the government committed to putting a fence around the community residential areas, farming, and grazing areas to protect them from wildlife attacks so that they could remain on their land (Ibid). Members of Machamba and Chimangue communities also held the view that the interest in wildlife conservation should not imply community loss of their land rights nor displacement from their land. For them, alternatives existed, including fencing out their residential and farming areas, to pursue the government’s nature conservation plans while also ensuring that community rights were not jeopardized. In spite of these claims, the LNP was created, ignoring these possibilities. According to Alberto Valoi, leader of Mavodze Community, the park initiated the process of installing a fence but never completed it. Later, in 2003, they were simply informed that a decision had been made to completely move them out of the park area.

The obligation to negotiate partnerships provided for in the land legislation aimed at maintaining land rights in community hands reinforces the objective of protecting community rights, applying also to situations where the entity interested in occupying community land is a public entity. In fact, and with that objective in mind, the guidelines provided by the 1990 Constitution and by the 1995 National Land Policy, as well as provisions from the 1997 land legislation, the 1997 environmental legislation, and the 1999 forestry and wildlife legislation, all promote the establishment of partnerships between the government and local communities for the purpose of biodiversity conservation or other purposes. This is also aligned with provisions from environmental conventions such as the 1992 biodiversity convention.

However, concerns expressed by Mavodze and other communities regarding the LNP land occupation process suggest that the opportunity for a community-public nature conservation joint venture, with community land rights maintenance as envisioned in the legal framework, was never explored.



Roundtable with members of the Mavodze Community in August, 2017.

Source: CTV, 2017

Because concerns expressed by communities regarding the process have not been considered, and because they had previously been informed by the LNP managers and the Government of the Massingir district that they would not be removed from their villages, some members of communities that are still in the park area still insist that they are not happy with the resettlement decision. This position was voiced by the leader and members of the Mavodze community.

One community member lamented that:

They created a rule here according to which if we kill a bird or any other animals, we must pay a fine to the park. But we are surprised because when our cattle are killed by lions nothing happens. They don't pay us anything even if ten cows are killed. They claim that we know that this is a park area. However, they forget that nobody refused to leave the park. They are the ones who are having difficulties in building houses for us.

According to the Mavodze community leader:

“It has been said that nature should be protected but that our rights should also be respected. We have been respecting animals and stopped hunting and eating them as we used to do. But our rights are not being respected. They must also respect how we live because if they want to move us as they are doing, we are heading to suffering.

Another community member added to these lamentations by saying that:

“People pay taxes and pay for everything they do here. They even vote. Animals do not vote but the park staff has more respect for animals because they gain money through them. For the government we, people, don’t count because we don’t generate any money for them.”

Some members of the affected communities also indicate that they never wanted to leave the park and that they were being forced out by the government, before whom they feel powerless. Others also indicate that they do not want to leave the park because promises made are not being fulfilled by government authorities. As pointed out by the leader of Bingo Commu:

“We are not happy with the resettlement decision and will only leave because the government wants us to do so. We are not happy because we are used to living here and we will not have land for grazing and for farming.”

These community positions sparked aggressive reactions from the local government and the park management. With assistance from the district and provincial government, the LNP team used various manoeuvres to persuade those communities to accept the resettlement decision. In this ‘mobilization’ process, some government agents addressed the communities in an authoritarian and coercive manner, informing them that they would be resettled, even if they did not want to, and giving as an example Frelimo’s victory over Portuguese colonialism.

For the LNP communities, this analogy, which implied that communities are seen as enemies, was basically equated to saying that since Frelimo had won the battle against colonialism, therefore, it would also win the battle against communities. For them, this could only mean using state power, including violence, to breach the law with impunity.

III. Procedural Justice in the Creation of the Limpopo National Park

As mentioned in Chapter Three, citizens and local communities in Mozambique enjoy strong rights, which are protected through imposition of mandatory procedural steps that must be followed by the government whenever an external party intends to occupy community land either for private or public purposes. In these situations, the land law regulation imposes prioritization of community land

delimitations and community consultations. Additionally, when land rights expropriations are inevitable, the Constitution, the land law, and the territorial planning law impose prior conduction of an expropriation process as well as prior payment of fair compensation to affected families and communities. Thus, the following two sections describe the extent to which these procedures were addressed in the LNP creation.

1. Community Land Delimitations and Consultations

Although the land legislation states that the delimitation⁶⁴ of community land should be a priority (1) in areas with land and/or natural resources related conflicts; (2) in land where there is interest in implementing development projects; as well as (3) at the request of local communities, none of the communities affected by the creation of LNP (both resettled and host communities) have had their land previously delimited with certificates issued, as required by land legislation.

Lack of prior delimitation of both resettled and host communities has several implications. First, this means that community land boundaries have not been physically confirmed before deciding to create the park and before deciding to resettle pre-existing communities, so neither the government nor the affected communities know the total size of the land occupied by each community. Consequently, these communities don't know exactly how much land they have lost to benefit the park, either by ceding land to make room for wildlife, or by ceding land to accommodate resettled families.

64 Community land delimitation is a formal process that confirms community DUATs acquired by occupation and then identifies and registers the physical limits of this DUAT. While it is a formal, legally-defined process, the methodology is highly participatory and centres around a series of interactive techniques that communities are guided through by trained teams. The core information is provided by the community itself, which describes its land use systems and shows the delimitation team where the borders are between the community being delimited and its neighbours. Ideally, the team should walk across the community territory, analysing what the land is being used for and its potential for future use. Where borders are not identifiable in remote imagery (for example, tracks and rivers that show up in aerial or satellite photos), GPS readings are taken at points agreed by the community members. Participatory maps are then prepared and confirmed with different groups (men, women, younger people, etc). These sketch maps are then transferred to topographical maps along with any GPS readings that might be required. At this point the process passes to the official land administration services. The data and maps are verified and transferred to official topographic maps, and if all is in order, a 'community land certificate' is issued. While community land delimitations are a mandatory and priority procedure when investments are planned for community lands, so far none of the communities within the LNP were delimited. In Mágoé, CTV delimited 27 communities but the government refused to recognize their land rights and to issue certificates alleging that their territories were too large and they had no capacity to manage the large sums of money they would receive from private operations (CTV, 2012; Serra, 2013).

Second, community land delimitations are important and indispensable for calculating collective, family, and individual compensation packages, as well as for calculating the size of land that should be requested from potential host communities.

Communities residing within the LNP area also claim that no community consultations were organized prior to the creation of the LNP to legitimize occupation of the lands that had been used by them. They also claim that no community or public consultations were organized to identify environmental risks and impacts that would arise from the creation of NLP, as required by the environmental licensing processes. The affected communities further claim that they were not consulted about the creation of the park nor about the decision to resettle them (Mavodze and Nanguene leaders, pers. comm, 2015; 2017). According to them, two years after the creation of the LNP, the Massingir District Government and Park Administration simply announced in 2003 that all communities would need to be resettled, starting with Nanguene, Macavene, and Massingir Velho.

The decision to resettle communities residing within the LNP was grounded on the need to ensure appropriate conditions for wildlife (GoM/MITUR, 2003). As mentioned earlier, the LNP management argues that this resettlement was ‘voluntary’. In a contradictory comment, however, they claim that World Bank guidelines for involuntary resettlement were used⁶⁵ (LNP resettlement officer pers. comm. 2017), while also recognizing that the land legislation provisions for land rights expropriation were totally ignored (LNP Resettlement Consultant, pers. comm., 2017).

The resettlement of the first three communities occurred without any consultations with the affected and interested individuals. Failure to hold public consultations prevented affected families from negotiating compensation and expressing their views on the risks and impacts that physical and economic displacement would bring to their lives. The results of the socio-economic census carried out in the affected communities were not shared and/or discussed with the families concerned prior to the payment of compensation.

Furthermore, a functional grievance mechanism was not established and concerns of affected families were not adequately addressed. As claimed by Fernando Chilaúle, president of the LNP resettlement committee and leader of the Chimangue community, community rights are not being respected (TVM, 2018). This leader also commented that:

65 The LNP resettlement process was initiated before the adoption of national guidelines which were only approved in 2012. However, the 1990 Constitution, as well as the 1997 Land Law, already provided the main guidelines for fairness and due process.

“Even us, the leaders, are not informed of anything. We only hear that people are going to be sent to this or that location. They only come to us when problems arise and things get ugly”.

2. The Expropriation Process and Community Rights Extinction for Nature Conservation in the LNP

To contextualize discussions in this section, it should be noted that legitimate land rights expropriation can only be legally justified through a formal declaration attesting to the existence of public interest, utility, or necessity. To be valid, the declaration must be issued by the government and published in the national gazette. In Mozambique, the state is the only entity that can extinguish rights, including environmental rights, and expropriate citizens' assets, having a non-transferable obligation to compensate those affected by such a decision.

According to the Mozambican constitution and land law, land used for public nature conservation areas falls under the public domain of the state where land use rights cannot be recognized. As such, the mere establishment of the park should mean that communities that resided in its interior automatically lost their land use rights.

Additionally, the increase in wildlife since the park's creation has resulted in livelihoods within the park becoming severely compromised due to restrictions imposed on them concerning access to farming and grazing land and freedom to undertake other livelihood activities. As a consequence, by losing access to land, these communities could be considered *de jure* and *de facto* landless communities. However, for reasons that the government has so far failed to explain, these rights were not subject to the mandatory expropriation process imposed by the Constitution, the land legislation, and the territorial planning legislation.

The consequence of this procedural omission is very serious, not only because it means that the LNP is illegal but also because of the impacts on people's livelihoods. This illegality extends to community lands in the buffer zone, to the extent that these lands were also affected by the park's creation. The LNP boundaries include lands within what is considered its buffer zone (GoM/MITUR, 2003). The LNP buffer zone occupies an area of 2,337 km² which corresponds to 20.9% of the park's total area, with a range 10 km wide and 320 km long, along the western margin of the Limpopo River and the northern bank of the Elephant's River downstream of the Massingir Dam (Ibid). Additionally, the entire buffer zone of the LNP is within the limits of the Park (Ibid). In other parks, while subject to control

measures to prevent threats to the park objectives, land occupation and use of resources in buffer zones is freely done and these zones are not converted into state public domain land (Marcos Pereira, 2018, pers. comm).

In addition, the process of transferring land and respective land use rights from host communities to resettled communities should have followed a due expropriation process, but this was never conducted.

In the context of duly justified and conducted expropriation processes, community consultations aim at offering affected citizens, families, and communities an opportunity to be informed about the project, to contribute to the project's social, economic, and environmental impact assessment, as well as to negotiate a fair compensation for loss of legitimate rights and assets prior to project implementation.

In the context of expropriations, consultations are not conducted to obtain community consent to the state's decision to exercise its eminent domain. However, they are nonetheless required to ensure procedural and distributive justice. In these contexts, affected families have the right to participate in the assessment of public interest and to participate in the assessment of whether, and the extent to which, such interest implies unavoidable limitations on their rights.

In summary, the following illegalities were found in the LNP case:

1. Failure to conduct community consultations and delimitate community lands, in both resettled and host communities;
2. Failure to formally justify the need for resettlement and to conduct an expropriation process to legally extinguish legitimate community rights;

Furthermore, as the government also failed to plan and finalize the resettlement process prior to the creation of the park and prior to opening the area to wildlife imports mainly from South Africa, those communities have had their lives and livelihoods seriously impaired by wildlife attacks on people and cattle, as well as by wildlife invasion into community farming areas. This raises serious human rights concerns. At present, out of the 1800 families that should have already been moved out of the park area, only 486 families have been moved in the seventeen years that have passed since the park's creation (CTV, 2017; TVM, 2018).

3. The Limpopo National Park Resettlement Process

Communities within and without the park area claim that a consequence of disregarding this important procedure is that their present and future needs in terms of access to land and other resources for different purposes will not be met. As a female member of the Mavodze community, and also the focal point of the community association, commented:

“We are not happy with the park that wants to resettle us. We agreed on the process to be followed. We showed them our assets, houses, trees and farming areas and they even took measurements. But they don’t tell us how much money we will be paid for our farming land. Secondly, they haven’t shown us the model of the good house they promised to build for us. They don’t pay us but make lists and want to take measurements of farming land every day. Meanwhile, our crops are eaten by hippopotamus, who also attack and kill people. Boats are wrecked and people die. Additionally, they are bringing wild animals in while we are still here. How can we leave with those animals?

A single mother raising her children by herself also had concerns about housing options. She couldn’t understand how her children’s needs would be attended to when they grow up, or how polygamous situations will be addressed:

“As you can see, I have a house that I have built with my own money. I don’t have a husband. So, we will have to agree on what I want to receive for my assets, my things, my patio, my canhu tree and everything I built here. For example, I have small children and they are building a house only for me. So where will my children live when they grow up? If my children won’t have where to sleep, I will not rest. And they can’t wake up and give money just to one person. They should move us all at the same time and pay us the same money for our assets. Here at our village we have men with five wives each with her own house.

In this regard, others also feared that this might lead to future conflicts between resettled and host communities, especially considering the trend of population growth in the country. Due to the shortage of farming areas, families from Nangwene and Macavene, already resettled in Chinhangane and Banga respectively, indicated that they had to buy farming plots and/or borrow them from families in host communities. Additionally, lack of sufficient grazing land has led to livestock disbursement as families are forced to travel long distances in search of pasture. In these movements, many animals escaped the control of the shepherds and got stolen. Complaints about lack of access to water were also generalized. In a meeting

with the Nanguene community, participants expressed a deep deception. One member of this community commented that:

“The park came to ask for the land where we used to live and for us to move out so that development could be promoted and also for us to benefit from the activities that would be undertaken there. But we are not seeing any development.

In the same line, a female community member added that:

“Lack of access to water is a serious problem for us and we cry to the government day and night because we are suffering. Many people are unable to carry buckets of water. Even myself, I am young but I can’t. I woke up at three o’clock in the morning. Do you know at what time I returned? I returned at eight o’clock but I left at three. We asked the park to give us water because they should do what they promised so that we can live with dignity. We are suffering a lot now.”



Young women from Nanguene on their daily journeys to fetch water in the river.

Source: CTV, 2017

A senior woman from Nanguene also complained about lack of water as well as about lack of a school.

“They moved us from a place where we had good houses built based on our knowledge and a school for our children. They promised to give land, water, schools and electricity. But they gave us all only one hectare of land. The park spoke only with the leaders and then decided to give us only one hectare on unfertile land. So, each of us has to struggle to find land. We borrow land from a family member and farm, but in the following farming season the owner takes his land back.”

Lack of access to electricity is the biggest problem for a young member of this community who was a child when his community was moved from the park. As he pointed out:

“We were moved 10 years ago and still have no electricity.”

The Nanguene leader summarized his community sentiment in the following terms:

“We have been presenting these complaints to the park and the government for 10 years. Every year they come and make very beautiful promises, guaranteeing that we will have water, and then they leave. They don’t do anything afterwards. They are just cheating us. Each time they come they say that “you will have water still this week”. Because of these false promises people told the park and the government that they are going back to Nanguene “you will have to resettle us back again”. It never occurred to us that the situation could reach this point and that we would be forced to resort to other entities in Xai-Xai to present problems. We never thought about that. What we think about mostly now is returning to our origins. We don’t know if the government will take us all to jail because we have returned to our homes in the park.”



Roundtable with members of the Nanguene community in August 2017.

Source: CTV, 2017

Generally, discussions about land rights loss and compensation focus on communities targeted for resettlement. However, these communities are being moved to areas already occupied by other communities, whose land rights are equally protected by the law. The resettlement regulation is silent about the rights of host communities, but guidelines to address their rights and interests are already provided in the general provisions on land rights expropriation included in the land legislation and the territorial planning legislation. By being forced to cede their land to resettled

communities, host communities must also benefit from an expropriation process conducted the government. These communities are thus entitled to the same procedures, including prior negotiation and payment of fair compensation.

In an interview with the private television station STV (2015), the then Massingir District Administrator, Alberto Libombo, commented that the process was too complex and costly. According to him, despite these constraints, the government wanted to conduct a rapid resettlement process. A couple of years later (2017) members of the LNP team recognized that the resettlement process was conducted with major legal deficiencies, hence the need for its entire review (LNP advisor, pers. comm., in meeting with CTV, 2017). The LNP Communication and Resettlement officer commented that:

“The resettlement process should ensure that affected families improve their life conditions and it comprises several components including land access. It is important that the destination of resettled families is clearly identified, and this implies to negotiating with host communities and families. It also implies negotiation and coordination with other government agencies.

The current District Administrator of Massingir, Sergio Moiane, summarized the complexity of the situation as follows:

“The government has the responsibility to ensure that each family has land for farming, for housing and to work, including families being resettled by the park. Moving people from one place to another is not easy and it is not automatic and we had many difficulties in the beginning. We still have about 1000 families to move from the park and will initiate building 750 family houses in October. One reason for the delay in building houses and moving families was related to the need to approve the district general urbanization plan as well as partial urbanization plans integrating the new settlements.”

IV. Rights Protection and Procedural Justice in the Mágoé National Park (MNP)

The creation of the Mágoé National Park (MNP) provides an interesting example of a dubious, half-hearted and hesitant public commitment to fully pursuing the NLP and land law directives on community rights protection and procedural justice.

Similar to the LNP case, the creation of the MNP implied the extinction of pre-existing land use rights, but as is the case in the LNP, no expropriation process was

conducted, also rendering this park illegal. Contrary to the LNP case, however, the MNP was created in an area where community lands had been delimited, although the process was not finalized by the government, for reasons explained in Section V.2. below.

In the MNP case, the respective management plan (GoM/ANAC, 2016) adopted a relatively different approach from the one used in the LNP regarding the presence of human settlements. On the one hand, recognizing the existence of communities residing within the PNM area, the management plan recommends that detailed work be done to better organize community settlements within the park, respecting animal corridors and the objectives for which the Park was created (Ibid). On the other hand, it recognizes that local communities and their traditional leaders play a very important role in the definition and enforcement of rules of access and control of natural resources and in the resolution of conflicts that emerge in their areas based on local norms and customs. However, it also indicates that local communities were not involved in the decision to create the park nor in the definition of the park's boundaries (Ibid).

The MNP management plan also recommends that a land zoning exercise be conducted to identify areas suitable for community settlements and for development of livelihood activities. It further recommends that, where possible, human settlements should be concentrated in the buffer zone, but stresses that any resettlement should be voluntary (Ibid). Additionally, it recommends the promotion of community development programs, alternative income generation activities, and the sharing of revenues accrued from the activities developed in the park (Ibid).

Still contrary to what happened in the LNP, in the MNP case, the government decided that the decision to resettle the Mágoé communities is subject to a prior feasibility study, to be undertaken with the involvement of affected communities (Ibid). Additionally, it has also been determined that any resettlement must be voluntary with communities having the right to decide whether to move or not after being informed of the advantages and disadvantages of each option. Those choosing to move will have the right to pick the resettlement location (Ibid).

With regard to community-public partnerships in nature conservation, an important point must be made. The MNP was created in an area where, before independence, concessions for hunting safaris used to be granted to private investors. These concessions continued after independence. In the early 90s, conflicts between safari operators, local communities, and the government arose, allegedly because communities did not benefit from such investments (GoM/ANAC, 2016). To resolve

these conflicts, in 1994 the first CBNRM pilot project was created, strongly inspired by similar experiences implemented in neighbouring countries (especially the CAMPFIRE project in Zimbabwe and the ADMAD project in Zambia). This project, known as the “Tchuma Tchato Project” (TTP), was created in Mágoè District, administrative post of Chintopo.

‘Tchuma Tchato’ means ‘Our Wealth’ in Nyungwe, one of the local languages spoken in the province of Tete. This project started in an area of approximately 200 000 hectares, in which a private hunting safari operator - Safaris de Moçambique - was licensed by the Government in 1987. The TTP emergence was founded on the need to resolve permanent conflicts between local communities and the private operator and also aimed to (i) promote the conservation of natural resources in the region with the involvement of local communities; (ii) promote the sustainable use of natural resources; (iii) ensure that benefits derived from the exploitation of natural resources are positively felt by local communities; (iv) promote local sustainable development; and (v) minimize conflicts over land use and its resources between affected and interested parties (Chidiamassamba, 2010).

Despite its initial relative success, which granted it the status of Mozambique’s CBNRM flagship, the TTP was unilaterally eliminated by the government through creation of the MNP, whose territory overlaps with the area where this community project was located. So far, no public justification has officially been advanced for this decision that has aborted the country’s attempt to test and eventually materialize community-public partnerships in nature conservation with both community rights maintenance and community planned and organized co-existence with wildlife.

V. Distributive Justice Within and Around the Limpopo and Mágoé National Parks

This section moves the discussion from fortress conservation to analysing the possibility of community-based nature conservation as proposed in the forestry and wildlife legislation and in the biodiversity conservation law, as well as preferred by local communities. So far, the chapter has shown that contrary to policy guidelines, the LNP has adopted a fortress conservation model with forced expropriations and resettlements. CBRM was not considered as an option for communities pre-existing within the park area. However, there have been attempts at setting up more inclusive conservation models in the trend of CBNRM, in the LNP buffer zone and in the MNP area. This section looks into how this participation model has worked out in practice.

1. The Cubo Community Game Park in Massingir District

The creation of the LNP in Massingir District has also opened space for private and community economic investments, particularly in the tourism sector. This was supposed to happen both within the park's core area and in its buffer zone, as the LNP buffer zone was classified as adequate for ecotourism projects (GoM/MITUR, 2003), such as game reserves. Since the establishment of the LNP, about five private projects and two community projects were approved for the buffer zone. The first community projects were set up by the Nkanhani and Cubo Communities located in the LNP buffer zone, with support from international NGOs, Helvetas and African Wildlife Foundation (AWF), respectively. These communities were not affected by the LNP physical resettlement process, except to the extent that they had to host communities resettled from within the park. This is the case of the Nkanhani community, which will host part of the Mavodze community. This section addresses a community project implemented by the Cubo Community.

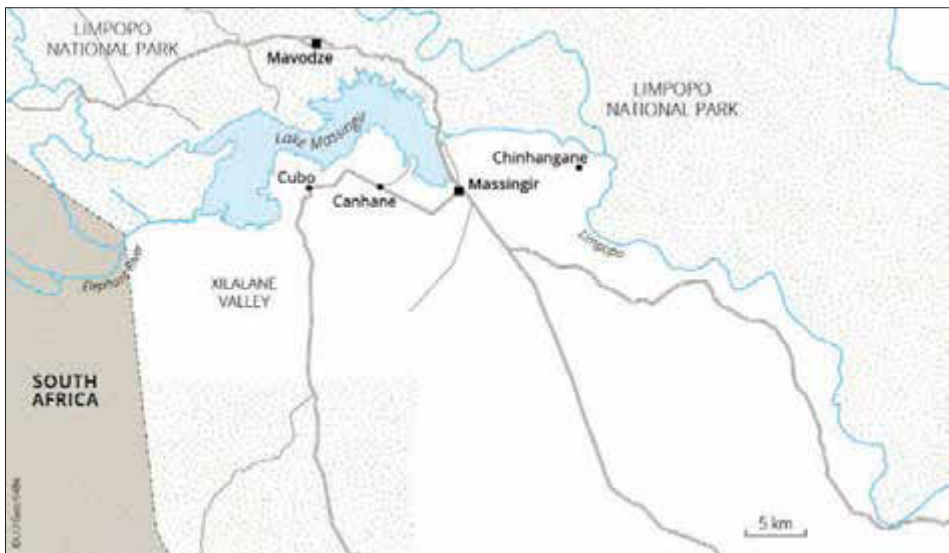


Figure 8. Location of the Cubo Community in Massingir

Source: UU Geo, 2017

Cubo is a local community located in the buffer zone of the Limpopo National Park, and bordering South Africa (and thus the Kruger Park). With the creation of the LNP in 2001, and after the government's decision to use the LNP buffer zone to attract investors for conservation projects, the Cubo Community was 'mobilized' to cede 20.000ha of its land to 'investors' interested in nature conservation.

Half of this land was taken by the then provincial governor and the other half by the then National Directorate for Forests and Wildlife in the Ministry of Agriculture and Rural Development. Both acquired DUATs with the aim of establishing private game reserves. The governor created a company named Ngeneya Project and since the National Director was unable to implement his project, he transferred his DUAT to the Ngeneya Project (Cubo Committee President, pers. comm. August 2017). In turn, and also due to lack of funding, Ngeneya established a partnership with a South African investor, the Twin City (TC), to secure the necessary funding for the project.

An account of the process followed in the land use rights allocation to investors in Cubo is provided by the President of the Cubo Community Association, who recalls how everything started:

“In 1999 the government came to inform the community that the war is over and what we want now is development. What do you think? The people who attended that meeting were the elders who said that were happy for the end of the war and that they too wanted development and work. Then the government asked: if an investor comes will you accept him? And they said ‘Yes’. After that they were given papers to sign. Around the year 2000 Adolfo Bila informed us that the land belonged to him because he was given it by the three community members and local government officers. He said that the land belonged to him now and that he was going to give jobs to the community members to overcome poverty. Bila then came with people from the cadastre services to demarcate the land and included the Xilalane Valley. We complained to the government. Bila came and we moved the fence line away from the Xilalane Valley. In 2011, Bila called a meeting with the community to inform that “I am unable to continue working here. I had invited three whites to work with me but they are mistreating the community, so I am passing my land to Mr Numayo. He will be the person managing everything now. Anything you want you should talk to him”.

The joint venture between Numayo’s Ngeneya Project, Twin City and other Mozambican private companies who also held land rights on the portion of the LNP buffer zone located in Magude District in Maputo Province, resulted in the establishment of the Karingani Game Reserve (KGR).



Karingani entry to the Balule Lodge in Massingir.

Source: Author, 2017

As a strategy to prevent further land loss and also as a way to intervene in revenue generation initiatives promoted by the government, the Cubo Community delimited its land in 2003 with the help of the African Wildlife Foundation (AWF). In 2006 it created a Community Association (Associação Tlharihani Vaka Cubo) and submitted a proposal to the government to use part of its remaining land, a total of 10.000ha, to implement an ecotourism project in partnership with interested investors. In 2008, along with assistance from AWF, it negotiated a partnership and joint venture with the Ngeneya Project, resulting in the creation of the Cubo Game Park (CGP).

Cubo was expected to contribute to the project with land, using its DUAT, while Ngeneya would bring the financial and technical resources necessary to operate the game reserve. The business plan also involved the construction of a community lodge, an agriculture project comprising an irrigation scheme, water supply to the community, as well as class rooms and employment. But as Ngeneya still did not possess any financial capacity, the funding for this was secured from TC in 2014. Due to its precarious financial situation, Ngeneya transferred its land use rights to TC (anonymous pers. comm., 2017). As a consequence, its position in the partnership with Cubo was changed and since then Ngeneya started acting more as an intermediary between the Cubo community and TC, with TC becoming Cubo's main partner.

As with the arrangement made between TC and Ngeneya, TC insisted and arranged for the transfer of Cubo's DUAT over the project area to the CGP joint venture, through a land title issued by the Gaza government in 2017. TC justified

its push for the DUAT transfer based on its need to secure protection for its investment in infrastructure building (lodge, offices, etc). According to the TC lawyer (pers. comm, 2015), this was necessary because the company was going to build infrastructure (lodges and other facilities) in the Cubo land, and this infrastructure would be the property of both Cubo and TC. Therefore, she assumed, Cubo and TC should also share the DUAT. To formalize the CGP/TC joint venture, two legal documents were adopted by the parties, namely a Memorandum of Understanding and formally approved statutes of incorporation. As a result of the combination of the land occupied by all these entities, including the Cubo Game Park, the KGR project, completely dominated by TC (anonymous pers. comment) currently occupies a total of 140.000ha in two districts from two different provinces, namely Massingir District, in Gaza province, and Magude District, in Maputo province (KGR representative, 2017, pers. comm).

In Massingir District, the project covers the 20.000 ha that were given by the Cubo Community.



Balule Lodge Minister's inauguration mark.

Source: Author, 2017

2. The Cubo-Karingani Partnership and the Role of the Government

Since 2014, a dispute between the parties Ngeneya/Karingani and the Cubo Community has put the partnership at risk, for the following main reasons:

1. Lack of fulfilment of promises made by Ngeneya and the other national investor (Director of DNFFB) when the first 20.000ha were ceded, namely: provision of water, construction of classrooms, job creation, and disputes over boundaries.

2. Cubo claimed that the companies had taken 500ha of their land in excess of what had been agreed, and that the fence had been installed in a zig-zag line resulting in inclusion of Cubo farming lands in the company area.
3. A dispute over Ngeneya's intention to co-share the CGP DUAT and become land rights holders together with Cubo when they were supposed to enter in the partnership as funding partners only. Contrary to what had been agreed between ATVC and the Ngeneya project, Ngeneya arranged for the title over the Cubo 10.000ha to be issued in favour of the joint venture (i.e. in the name of the Cubo Game Park) and not in favour of the ATVC as the community wanted (ATVC Committee President pers. comm, February 2015). Ngeneya managed this using its political influence, taking advantage of the illiteracy of the Cubo Community committee, and with the connivance of the Gaza provincial cadastre services (Serviços Provinciais de Geografia e Cadastro-SPGC).
4. TC's attempts to add 3.000ha more to their original area to give wildlife access to water from the Massingir dam as well as an attractive view to their tourists "who did not want to see cattle or farmers when sight-seeing from the villas, [and which was] planned to be built as part of the Balule Lodge" (Ngeneya Director, Eugenio Numaio, pers. comm, February 2015). The area envisaged by the KGR is an area that the Cubo Community uses for farming and cattle grazing at the margins of the Elephants' River - the Xilalane Valley.
5. Lack of complete fencing of the Ngeneya/TC area, resulting in wildlife attacks to people and destruction of crops in the Xilalane Valley;

The Cubo Community resisted Karingani's demands for more land and indicated its willingness to withdraw from the partnership because Ngeneya had failed to fulfil its promises to install a drinking water supply system and an irrigation system for agriculture, and also failed to create jobs for community members. The partnership slid into a crisis that escalated in mid-2014. At the end of 2014, the Cubo community requested CTV legal assistance to oppose the investor's intentions and to ensure that the partnership was implemented without communities losing their right to the land. They also wanted the partnership to be implemented in a way that would bring concrete and tangible benefits for the community. On February 2015, Ngeneya also approached CTV and requested its intervention as mediator in the conflict. Ngeneya's request for CTV help was intended to secure Cubo's agreement to share the DUAT over the CGP land as well as to secure Cubo's permission for TC to access and use the Xilalane Valley.

CTV mediation resulted in the renegotiation and signature of a new agreement between the two partners in December 2016. Since a DUAT had already been issued as a co-title between the Cubo Game Park and the Ngeneya Project based on

a letter that had been signed by some members of the community committee granting approval, Cubo decided to ‘agree’ to share the DUAT provided that Ngeneya would fully fulfil all its commitments and promises to the community. Despite this, however, the tension between the parties worsened due to persistent failure from Ngeneya/TC to install a fence in the area belonging to KGR, and also due to KGR’s insistence in occupying the Xilalane Valley despite community refusal. As explained by Jonas Mongué, member of the Cubo community and secretary of the ATVC:

“They are our partners in the 10.000ha where we will build a lodge with their help, but they are also the investors occupying the 20.000ha which they want to expand against our will. This means that one day we are seating on the same table as partners but on the next day we are holding swords against each other as enemies. That is not right.”



Roundtable with Members of the Cubo Community Association on February 2017.

Source: CTV, 2017

In a meeting organized with women from the Cubo community, participants claimed that:

“When we gave land to Twin City we did it thinking that both men and women would be working in the project. But, so far, we only have two women working there. The other women that work there do not belong to the Cubo community. They come from other communities. We are worried with the Xilalane Valley grabbing because that is where we do our farming.”

These issues, combined with the government’s failure to impose on the investor the legal requirement to fence its area, has resulted in renewed and increased tension

between the government and the community. Although the Cubo community presented its concerns to the Minister for Land, Environment, and Rural Development in a visit to the community organized in May 2016, and also to the President of the Republic in a public rally organized in Massingir in August 2016, these concerns continued to be ignored by both, and the problem persisted through 2017. It should be noted that in 2016 the current Minister for Land, Environment, and Rural Development decided to inaugurate the Balule Lodge while the Cubo Community and the KGR were still in conflict due to KGR's intention to expand its project into what remains of the Cubo community farming land to build luxury villas (KGR South African Representative, pers. comm. 2017). The Minister's attitude moved communities to the conclusion that the government only gave priority to the company's interests. Cecília Cubai, President of the Community Association, demanded more respect:

“We want them to respect us and to have a good relationship with us. We want the company to give us jobs because this is what we expected to get when we gave them permission to use our land so that we would end hunger and poverty.”

In the first semester of 2017, when the number of cattle killed by lions reached over a hundred cows, the tension between Cubo and TC reached its peak. As a result, the community started to kill lions and other wild animals and threatened to burn down the Balule Lodge. On July 2017, as a way of pleasing the investor and stopping Cubo resistance, provincial and district government officers went to Cubo and organized a meeting where they announced that the Xilalane Valley had been turned into a State land reserve by the Minister of MITADER. As explained by Jonas Mongué, a member of the community committee, this meant that it would be fenced off by the government and barred to community access.



Members of the Cubo Community in a meeting with the author on August 2017.

Source: Author, 2017

As a response to the government decision, the Cubo leader took his official uniform off, announcing that he would no longer serve as the liaison to a government that did not respect the rights of his community. FRELIMO party members followed his example and also returned their party cards, threatening to vote for other political parties in the next elections. As he explained:

“The Cubo community has decided that if the government doesn’t resolve the problem we have with Twin City, we will not follow many government instructions as, for example, participating in the upcoming population census. When elections come, we will vote but will vote on other parties and not on FRELIMO to show our dissatisfaction. Or we can simply not vote. We will also not participate in the electoral census and will not pay taxes. Furthermore, if Twin City doesn’t put the fence or puts it differently from what we have instructed them, we will invade and vandalize their area, cut and burn trees, so that they understand that we don’t like what they are doing to us”

The importance of the Xilalane Valley was eloquently explained by the President of the Massingir CSO Platform:

“The Massingir dam and surrounding land are used for both farming and fisheries by all communities in Massingir. The conflict between TC and Cubo is due also to the fact that the Xilalane Valley is very fertile and used for agriculture by all communities from Massingir. When the dam water is low, everybody comes to farm in Xilalane and this is also why this land should remain with Cubo. In fact, Xilalane is Massingir’s barn.”

On August 1, 2017, when the national population census started, the Cubo community refused to participate, claiming that if their rights did not count, then they should not be counted as part of the Mozambican population.

These positions prompted precipitated trips to Cubo by both the Provincial Governor of Gaza and the Minister of MITADER. Both made promises to the community, repeating their commitment to protect the rights of the community over the Xilalane Valley and promising that the fence would be installed following the line indicated by the communities. By the end of 2017, none of these promises had been fulfilled, and the number of cattle killed had reached 117 cows.

As central government officers continued making unfulfilled promises while intentionally disrespecting the law, the company also kept itself busy trying to get access to the Xilalane Valley. For this, it used a number of open and disguised land grabbing manoeuvres, including claiming that it had received guarantees from high level government officers that it would have access to the Xilalane Valley, arranging

for the government to illegally declare state land reserves and also arranging for the issuing of a new DUAT to Cubo cutting out the Xilalane Valley from the community land. Additionally, both the government and the company decided to accuse the community of illegal poaching, using this as a justification for their attempt to withdraw the community right over the Xilalane Valley. In a meeting with the author and the Massingir DA, the company representative went as far as threatening the local government that it would withdraw its investment funds – allegedly 30 million Rands - if the community continued to refuse to give them access to and rights over the valley (TC representative, pers. comm, August 2017). Clearly, the government was giving mixed signals both to the community and to the investor, as the following statement made by the Karingani Mozambican representative shows:

“We are working on the fence issue. I had the opportunity to show you that we already have the fence material and are ready to install it. It just happens that in our conversations with the government about fencing or not fencing the area, the government told us to wait because they are still resolving the issues related with the fence. They will then tell us “you should put the fence here or there”. The investors are really tired of this climate of tension and are threatening to abandon the project because of this disagreement. We have about 200 people working here and the number is growing. This means that many families depend on this project for their livelihood. What will happen to these families if they abandon the project? If this happens many people will suffer and the country will not progress. It is said that the project is grabbing land but we have enough land.”



Fence material shown to the author by a Karindani representative who was awaiting government authorization.

Source: Author, 2017

Since the peaceful negotiations that had so far been conducted with CTV assistance had failed to produce expected results, the Cubo community committee decided to

take the matter to the office of the President of the Republic. With CTV support, it submitted petitions to the office of the President and to other institutions, including the National Human Rights Commission and the National Ombudsman. With CTV assistance, a process to take the matter to court was initiated at the end of 2017. Caught in the middle of pressures from both the company and the community, and clearly feeling powerless to resolve the issue due to interference from higher levels of government, the Massingir District Administrator limited himself to commenting that “the CGP is a community-private joint venture that responds well to government efforts to promote rural development with the active participation of local communities” (pers. comm. 2017) but falling short of using the powers accorded to him by the law to take the necessary actions to resolve the dispute. In an interview with the author, his words were as follows:

“This problem was created because the company is not honouring the agreements reached with the Cubo community during community consultations. These agreements, including fencing the company area, are registered in the consultation minutes so we also want to understand why the company is taking so long to fulfil its responsibilities. Communities today know the law and know their rights. Today it is not easy for anyone to go to a community and do things at margins of the law because communities understand. We must continue protecting our communities. We need to continue attracting investments but without forgetting that communities must always have land for farming and land for housing. This right cannot be withdrawn from them. Communities must also benefit from the resources existing in their land.”

In early 2018, because of CTV’s permanent presence in Cubo since 2015, combined with interventions from the Massingir District CSO Platform and an extensive media exposure and the threat of a court case, the central government seems to have finally been convinced the company needs to respond to Cubo demands. The immediate reaction from the National Ombudsman also played an important role in that decision. Immediately upon receiving a complaint prepared by CTV in favour of the Cubo Community, the National Ombudsman demanded an explanation from the Provincial Governor on the Cubo situation. The provincial governor recognized that mistakes had been made and committed to solving them.

On January 25, the minister of MITADER returned to Cubo to announce again that the fence would be installed. This time the Minister indicated that the company had three months to complete the work. On February 28, 2018, the company paid for the 117 cows killed and promised to fulfil all its promises, including starting to build the community lodge. On March 5, the District Administrator launched the beginning of the fence construction, which must follow the line indicated by the community.



Xilalane Valley.

Source: CTV, 2017

As commented by the Coordinator of Massingir CSI Platform, for now the Xilalane Valley is saved from land grabbers disguised as partners.

3. Government Benefit Sharing with the Cubo Community

Since the approval of the forestry and wildlife legislation, local communities are entitled to share royalties received by the state from investments in the nature conservation and tourism sectors, including ecotourism. However, when in 2017 the author asked about the 20% nature conservation revenue sharing that communities are entitled to receive from the government, the Cubo community leader and the ATVC secretary had very little to say, indicating that the community had no control of or influence over this matter. Jonas Mongué, ATVC secretary explained that:

“We have raised this issue several times but the company’s answer is always that they have paid the money to the government and that it’s the government who should then channel the money to us.”

Adding to this comment, the Cubo Leader commented that:

“The answer to your question about how much money from the 20% we have received is ‘zero, zero’. In the beginning the government told us that there was no money because Twin City had not started its operations. The government said that they would start paying after starting their operations, building lodges and other activities. So, we are waiting to see what will happen at the end of 2017, if we will share their revenues from 2016. What really concerns us most at this moment is that they should put the fence in a straight line to return the 500ha they have taken from our land with the curvy fence line, and pay for the killed cattle.”

4. The Tchuma Tchato Community Project in Mágoé District

As mentioned above, the MNP was established in a land that not only has pre-existing communities but also housed the first CBNRM project, the Tchuma Tchato Project, created in 1995. Although resulting from a government-led initiative, the TTP was established with financial support from the Ford Foundation. In its initial phase, the TTP covered two districts (Mágoé and Zumbo), and until 2000 the project was managed by a local team led by the Tete provincial government. Due to financial management problems, the Ford Foundation's technical and financial support was suspended in 2000 but was resumed again in 2005 with a different strategic approach and financial support mechanism.

In this context, in 2006 CTV was invited by the Ford Foundation to provide technical support and to serve as the vehicle for channelling financial resources to the project activities. In its second phase the TTP received support to (1) delimit community lands; (2) create and train community committees; (3) review benefit sharing arrangements; and (4) support the establishment and legalization of the Tchuma Tchato Association. A decision was also taken to expand the project to other districts. For this latter purpose, in partnership with ORAM, the National CBNRM Forum, the Tete Provincial Directorate of Tourism (DPTT), and Tete district governments, CTV led the process for delimitation of community lands in the original project areas (Mágoé and Zumbo) but also of communities from other neighbouring districts that joined the project.

Therefore, in 2007 a total of 27 communities were delimited and the respective files were submitted to the provincial cadastre services (Serviços Provinciais de Geografia e Cadastro-SPGCs) for registration in the national land cadastre. By 2010, the TTP covered 8 districts, namely: Mágoé, Cahora Bassa, Zumbo, Changara, Chiúta, Chifunde, Marávia and Macanga, involving a total of 27 communities. A study by Chidiamassamba (2010) estimated that the number of people benefiting from the program was about 135,000, in a total area of 3,928,911.40 hectares (ha).

In 2008 and 2009, community land delimitations were complemented by community land zoning and land use plans. This zoning process identified the following areas: (1) residential areas; (2) areas for human settlement expansion; (3) farming areas; (4) grazing areas; (5) places of historical and cultural value; (6) areas for conservation and preservation of forest and wildlife potential; (8) sacred areas; (9) hunting areas; (10) areas for forestry and wildlife exploitation and other areas that deserved special attention according to the reality of each community.

In July 2009, while awaiting the issuance of community land certificates, draft statutes for creation and legalization of TTP district associations were produced and submitted to the respective district governments. After the creation and legalization of community and district associations, which involved contacts with all district governments for joint preparation of draft statutes, preparation work for legalization of the Tchuma Tchato Association also ensued. This included a review of the revenue sharing scheme, intended to secure a larger revenue share for local communities. This effort, however, did not produce the expected results for the reasons explained in the section below.

5. The Tchuma Tchato Project and the Role of the Government

In spite of the progress made by the TTP in terms of social preparation, territorial organization, institutional organization (including internal governance instruments), and financial benefit sharing schemes, the government was not satisfied and refused to issue community land certificates. It also unilaterally decided to cancel the delimitation process altogether, alleging that community lands were too large and that communities were receiving too much money which they did not have the capacity to manage (Land Cadastre Director pers. comm, iTC meeting, Manica, 2010). Due to CTV insistence in pushing the TTP forward, in 2010 the author was summoned to a meeting attended by the then Tete Provincial Director (and TTP coordinator), the National Coordinator for Transboundary Conservation Areas, and an officer from the state national security services (Serviço de Informações e Segurança do Estado-SISE). In this meeting, the author was threatened and warned by the SISE agent that she could be accused of committing crimes against the state if she continued to push for formalization of the Tchuma Tchato Program and if she continued to insist that the community land delimitation processes should be completed.

This incident prompted the Ford Foundation to definitively cut its financial support to the program in 2010. The worsening tensions between CTV and both the provincial and central government prevented CTV from continuing its technical support of the Tchuma Tchato program, even with funds from other sources. Consequently, CTV direct support to the Tchuma Tchato Community Project was also suspended in 2010. Since then, both the Tchuma Tchato Program and the ZIMOZA plan were kept away from public scrutiny. Thus, without any public involvement, in 2013 the government published a Cabinet Decree in the national gazette formally creating the Mágoé National Park in the TTP land. A review commissioned by ANAC (2016) reveals that no records were found of public or community consultations organized in the processes followed in this park's creation.

Among the main reasons for the Tchuma Tchato failure, the following stand out:

1. Government incoherence related to community participation in land and natural resource governance, resulting in withdrawal of political, technical, and economic support to the project;
2. Donors' excessive reliance and focus on the government and lack of alternative strategies to maintain community, technical, and financial support in adverse political situations;
3. CSOs inability to intervene and provide assistance to communities without donor funding and government support.

In 2017, CTV was approached by the park's Administrator (who happened to be the same person that in the past assumed the role of Tchuma Tchato Coordinator (1994-2005), Provincial Director for Tourism responsible for coordination of the Tchuma Tchato Program (2005-2010), and Mágoé National Park administrator (2013 to date). In a letter sent to CTV, the MNP Administrator shared his intention to revitalize the Tchuma Tchato Program "benefiting from all the work done and experience accumulated by CTV in that program" (Namanha, 2017).

It remains to be seen whether the Tchuma Tchato Program will finally be allowed to give merit to its name and how the Mágoé National Park will manage to revert unnecessary land rights expropriation and promote only indispensable resettlement, with adequate consultations and effective involvement of local communities as indicated in its management plan.

6. Government Benefit Sharing with Tchuma Tchato

The Mozambican government support to the TTP was formally expressed through a ministerial diploma issued in 2003 which approved a revenue distribution scheme⁶⁶. Thus, revenues deriving from hunting safaris in the TTP area were to be shared between the government and local communities as follows: central government (15%); Mágoé District Administration (20%); TTP management fees (32%); and, local communities (33%).

66 GoM, Ministerial Diploma No.63/2003, from June 18.

Table 14: Current Revenue Distribution in the TTP

No	Beneficiaries of PTT Revenues	Percentage to be Received	Observations
1	Communities	33%	Management has been controversial due to interference of local governments (Administrative Posts and others)
2	TTP Management	32%	Insufficient for the TTP management
3	Local Governments	20%	This is not advisable since the conservation area that oversees the technical management of PTT or the community conservation area such as PTT covers the management activities that were the responsibility of local governments. In practice, since the creation of PTT, local governments have always been controversial in rendering accounts (ie. funds that are outside PTT's philosophy and thus hinder PTT's operation).
4	National Treasure	15%	Important for the national budget, but should be reduced

Source: TTP Management (2017)

In a letter issued by the MNP manager in 2017, it was indicated that this distribution does not allow proper functioning of the TTP, hence the suggestion that the current revenue sharing should be adjusted as indicated in Table 15 below, which corresponds to the revenue distribution proposal submitted in 2008 when the project was still active. According to the MNP Manager, the 2008 proposal has already been resubmitted to the government.

Table 15: Proposal for the Readjustment of Ministerial Diploma 63/2003

No	Beneficiaries of TTP Revenues	%
1	Community	60%
2	TTP Technical Functioning	30%
3	Local Governments	10%
4	National treasure	10%

Source: TTP Management (2017)

While no clear link has been established between the park's existence and operations and the eventual revitalization of the TTP program, in the letter mentioned above the MNP manager indicated that this revenue distribution adjustment would allow effective functioning of the TTP and payment of its operating expenses, including salaries of existing community guards and other staff costs.

Conclusion

This chapter analysed how procedural and distributive justice materializes in the nature conservation sector. In particular, this chapter analysed the role of the state in protecting community rights and in establishing partnerships and promoting benefit sharing in the biodiversity conservation sector, having shown a number of situations that give weight to those claiming that the state 1) has distanced itself from its rhetoric on political and economic inclusion; 2) has shown incoherence in law interpretation; 3) has used double standards and a tendency to be drawn by hypes; and 4) has been dismissing the importance of prior and adequate planning and preparation in land and natural resource management. All these factors help to portray a state with a half-hearted commitment to participatory land governance, with total disregard to both the procedural aspects and the social and developmental outcomes prescribed and envisaged in the legal and policy framework, giving merit to Amanor's (2012) critique on the concept of sustainable development. Indeed, an abstract notion of sustainable development seems to have been applied in the Mozambican case, a notion delinked from both social and economic aspects that are relevant for securing communities' right to development.

The examples of the Limpopo and Mágoé national parks, as well as the Tchuma Tchato Program and Cubo Game Park cases, show that the author claim made in 2007 continues to be valid today. In 2007, the author claimed that unjustified rights expropriation, with total disregard to other less harmful options such as the use of the CBNRM approach, suggested that the government was giving participation '*privileges*' that could be given and taken, and not exactly participation 'rights' (Salomão and Matose, 2007).

Furthermore, the chapter shows that where space has been opened in the legal framework for community participation in decision-making processes over natural resources and in revenue generation activities, the government has reserved for itself the discretionary power to withdraw community "rights" and to limit or eliminate the possibility for community direct negotiation and access to revenue generation opportunities and to substantial accrual of benefits, including financial benefits, deriving from the use of natural resources existing in their land.

Through review of the community consultation procedure, the partnership mechanism, and CBNRM experiences, the chapter critically analyzed both processes and outcomes of devolution of management powers to local communities in Mozambique. In this context, it has shown that while local communities have in theory gained legal power to exercise control over lands, forests, and other resources in

their areas through the progressive laws of the 1990s, this has been limited by barriers of various dimensions. The chapter clearly shows that because of the government's unwillingness to respect community rights and to recognize the role and place of customary norms vis a vis statutory norms in decisions related to access and use of resources existing in community lands, neither community norms nor community institutions have been used and involved in decisions relevant to community lives, showing also that the influence of community norms and leaders in the decision to create national parks and to resettle affected families is minimal.

In general, the Mozambican experience in devolution or even delegation of powers can be considered ambiguous and fragmented, largely reflecting a lack of a consistent strategy. While the land policy sought to extend secure land rights through the legitimization of customary land rights, such reforms have not been matched by appropriate provisions in the formal laws regulating the use of the resources that exist on the land within the boundaries of a local community (forests, wildlife, water, minerals, fisheries, and others). Rights to negotiate land occupation and to dispose of valuable trees, wildlife, minerals and high-quality tourism sites are still retained by the line ministries and not held by the communities who occupy the land. Much of this can be addressed by the practical application of the concept of community public domain, which would give management powers over all of 'their' resources to the delimited local communities.

Finally, the constitutional principles addressed in this chapter and all the instruments that comprise the legal framework for land and natural resource management, provide a good base for efficient and effective community land management, at least in theory. Thus, the chapter also supports the argument presented in Chapter Three, in the sense that the absence of a specific instrument to regulate 'Community Public Domain' cannot justify the current level of community marginalization and by-passing in decisions related to their lands and other resources, as shown in the LNP and MNP cases. Instead, the chapter concludes that this marginalization reflects a generalized resistance on the part of the government in recognizing and respecting local communities as legitimate holders of real, and thus irrevocable, rights and powers in natural resource management.

Five

Anadarko Liquefied Natural Gas Project in Palma District: Community Consultations and Participation in Practice



Community Meeting at Quitupo Village in Palma District.
Source: Author, 2013

Introduction

“...Human rights are not, as has sometimes been argued, a reward of development. Rather, they are critical to achieving it” (UN, 2000).

Until recently (2012) Mozambique was seen as a safe ground for both national and international investors. This was due to its success in maintaining a climate of steady peace, with regular and peaceful elections since 1994, and also as result of its economic performance, which showed promising growth. Attraction of investments, especially foreign investments, has been seen as the best and fastest way to speed up development and to secure funds to reconstruct the social and economic infrastructure network destroyed by the prolonged civil war but also to boost exploitation of the country's natural wealth. Due particularly to progressive provisions with procedures intended to balance community and investor land rights, Mozambique is known for having a good policy and legal framework for participatory land and natural resource management.

Among such procedures, the “community consultation” is certainly the most acclaimed procedure in the Mozambican land legislation, which has been replicated in many other instruments related to natural resource management approved subsequent to the 1997/1998 land legislation. Intended to be organized before decisions are taken, and integrated as a mandatory requirement in land use and environmental licensing processes, community consultation in Mozambique is a procedure that combines both the procedural and distributive justice perspectives presented in the thesis introduction and is also in line with the ‘free, prior and informed consent’ (FPIC) approach (Tanner, 2002; CTV, 2009, 2012; GoM, 2010; FCT, 2012; Wily, 2011b; Cotula, 2012; OXFAM, 2014; Cabral and Norfolk, 2016). As also mentioned in the thesis introduction, this procedure is meant to pursue four main objectives, namely rights protection, political participation, economic inclusion, and benefit-sharing in both public and private interventions, including land-based public and private projects. It must be noted that community consultation is a cross-cutting and mandatory procedure to be followed in all decision-making processes that involve or impact community rights and interests, including land rights.

However, despite progressive constitutional principles and procedural provisions for participatory and sustainable land management for rural development, which have turned Mozambique into a positive reference in Southern Africa and beyond (Wily, 2011b; Amanor and Moyo, 2008; Cabral and Norfolk, 2016), many researchers, CSOs, community members, and even government representatives claim

that there is a considerable gap between theory and practice (Milgroom, 2012; Trindade and Salomão, 2016; CCIE, 2016, 2017). As a mechanism for participatory land governance aimed at promoting both procedural and distributive justice, provisions on community consultations and the practice in their implementation leave much to be desired (FCT, 2012). In this context, the government, which is the entity responsible for conducting them, has been increasingly seen as failing to effectively protect the rights of the rural populations by favouring private interests, particularly in the context of large-scale land based investments, and has also been accused of promoting rural land grabbing by both national elites and foreign investors (UNAC, 2014; Mosca and Selemane, 2012; IESE, 2012, 2015; JA, 2011, 2012; AUSCULT 2017; ICM, 2017). Investors, in turn, are accused of failing to produce expected outcomes in terms of economic inclusion, benefit sharing, and local development, thus being a source of increasing tensions in their relations with local communities. Local communities, the main target and beneficiaries of this procedure, are generally caught by surprise, unaware of their rights and obligations in the context of community consultations and thus precariously represented and prepared.

Against this background this chapter examines the extent to which community consultation objectives (rights protection, political participation, economic inclusion, and benefit sharing) were pursued and achieved in land and environmental licensing processes conducted for Anadarko Liquefied Natural Gas Project in Palma District, Cabo Delgado Province, examining also the limitations identified in community consultations as a mechanism to ensure participatory land governance. The chapter includes three sections. The first section introduces Anadarko's LNG Project and describes the Palma District socio-economic and ecological profile, including community lands. The second section describes how the first two objectives pursued through community consultations - rights protection and political participation - were addressed in the land rights allocation to the project, as well as in environmental licensing and resettlement plan design. The third and final section reviews the last two objectives - economic inclusion and benefit-sharing - in the same processes.

I. Anadarko LNG Project in Palma District and Community Lands

According to Mozambique's 2014 Natural Gas Master Plan – MGNP (MIREM, 2014), “Mozambique has an enormous energy potential, which provides the country with favourable means to fulfil both its domestic needs and regional energy

needs for Southern Africa and beyond”. As also indicated in the Master Plan, to date two natural gas areas have been identified and mostly surveyed, confirmed and conceded to investors, namely the Mozambique Basin and the Rovuma Basin (Ibid) shown in the map below. The Mozambique Basin covers some 300,000 km² of onshore and offshore territory and is located in the central region of the country (Ibid). Currently, the Pande and Temane fields have been awarded as concessions to the South African company SASOL (Ibid). The Rovuma Basin is located in the north of the country in the Province of Cabo Delgado. It covers a land and sea area of approximately 60,000 km² (Ibid).

In 2010, the American company Anadarko confirmed the existence of what are considered the third largest world-class gas fields (USAID, 2013; GoM/MIREME, 2014). In the same basin, the Italian company ENI also confirmed considerable quantities of natural gas in an area adjacent to Anadarko’s fields (GoM/MIREME, 2014).

Anadarko’s concession was granted in 2010 and ENI’s concession was granted in 2014. Since then, both firms have proceeded to develop projects to commercially exploit natural gas. To do this, Anadarko has planned to build significant onshore infrastructure and port facilities. Although no details have so far been provided on the exact amount of land involved, the company has acquired land use rights for over 7.000ha arguing that the infrastructure and facilities require a large area of surrounding land for supporting social and economic services, housing for about 10.000 workers, and processing and other facilities (Anadarko, 2014a, b, c; Anadarko, 2016). This land, located in Palma District Afungi Peninsula, was found in areas long occupied by several communities of subsistence farmers and coastal fishing settlements (GoM/MAE, 2014; Mário, 2013).

The District of Palma covers 3,537 km² (GoM/MAE, 2014). Nearly all economic activity involves natural resources, mainly agriculture and fisheries, which provide the livelihoods for 86% of the district’s working population, of which 69% are self-employed peasants, mostly women (Ibid). Communities also depend heavily on access to forest resources, and currently unused land is held in store for future crop rotation as soil fertility declines in order to accommodate the growing population.

As happens in other rural areas of the country, most of the land in Palma is not titled (Ibid). Community occupation is legitimized under customary law (GoM, 1990, 1995, 1997, 2004), and it forms an intrinsic part of the integrated production system that has supported local livelihoods for generations. According to the government, in 2012, the district did not present any notable land conflicts (GoM/MAE, 2014).

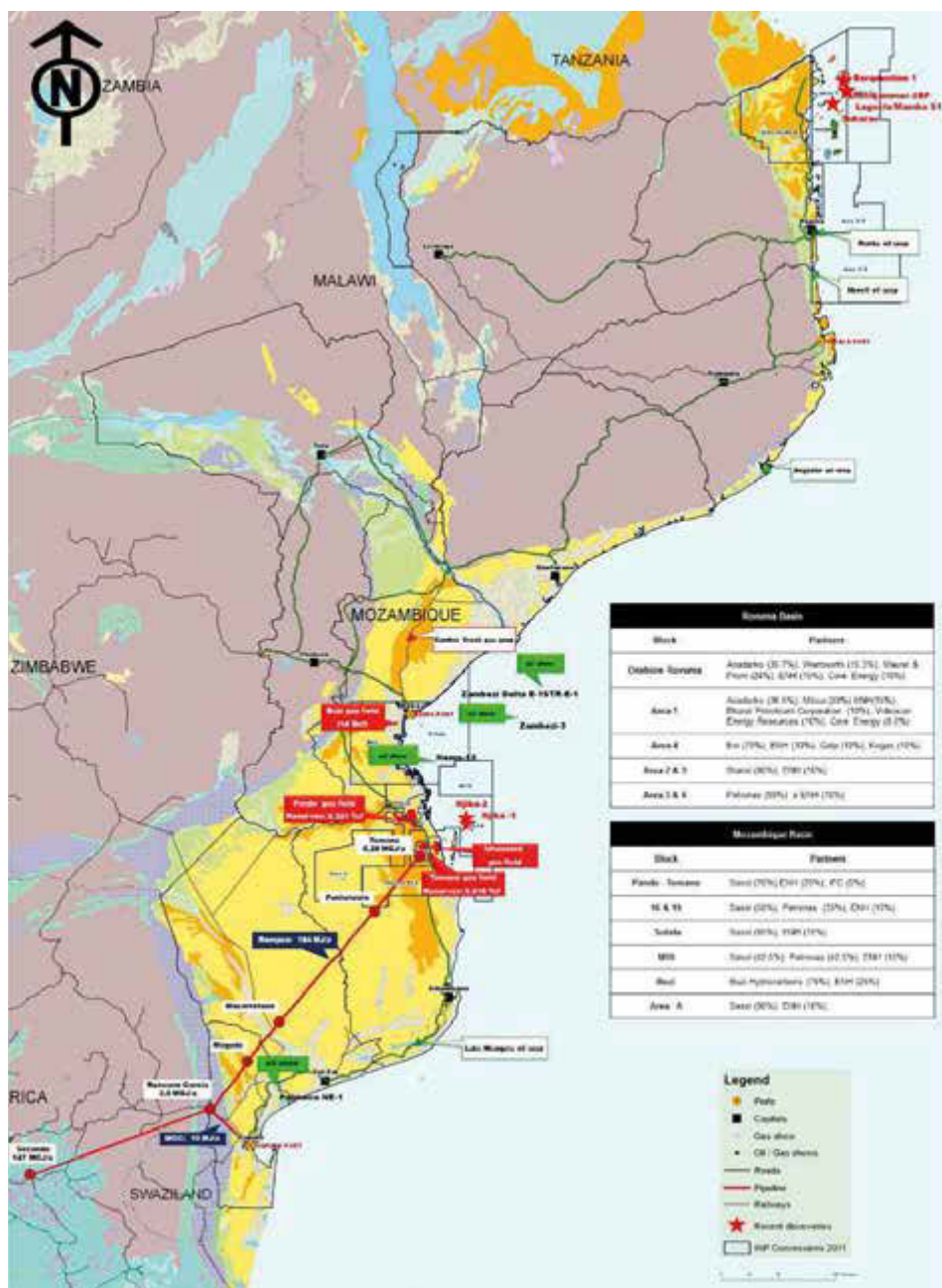


Figure 9. Natural Gas Occurrence in Mozambique.

Source: MIREM, 2014, citing INP

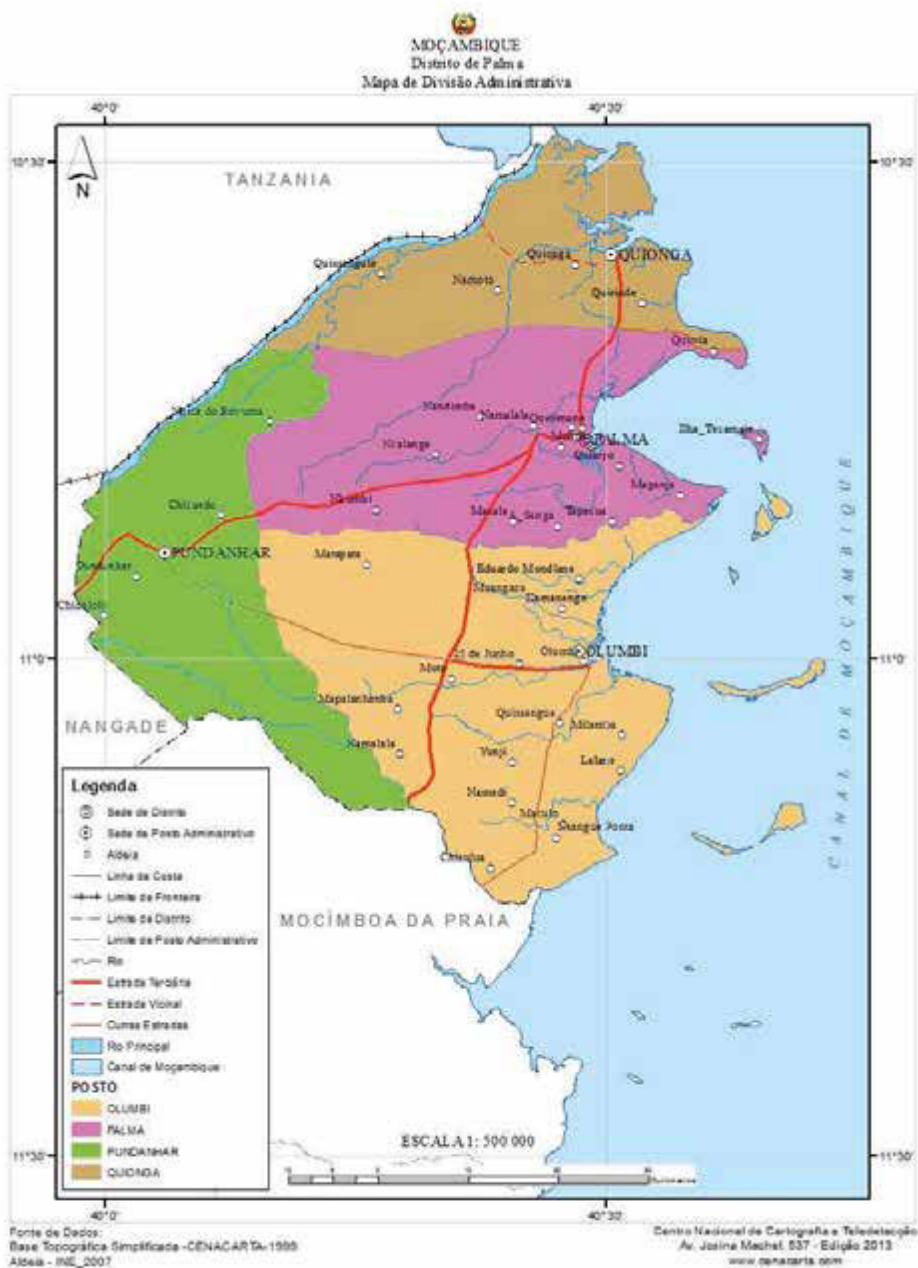


Figure 10: Map of Palma District in Cabo Delgado Province.

Source: GoM/MAE, 2014

Palma District is divided into four administrative posts and 6 localities. Table 16 below includes the four administrative posts and respective localities.

Table 16. Palma District Administrative Division

	Admin. Posts	Localities
1	Olumbe	Olumbe-Sede Quissengue
2	Palma	Mute Palma-Sede
3	Pundanhar	Nhica Rovuma
4	Quionga	Quirinde

Source: GoM/MAE, 2014

The Afungi Peninsula, the site selected to accommodate the LNG infrastructure as well as the associated industrial town, is located in Palma-Sede Administrative Post and is occupied by 12 local communities. The project sits squarely in the middle of Palma’s so-far pristine and unspoiled natural resource base and will inevitably have a major impact, not just on local rights and livelihoods but also on the ecology and biodiversity of this region and its coastline.



Figure 11. Anadarko onshore and offshore infrastructure and facilities.

Source: <https://www.offshoreenergytoday.com/anadarko-targets-first-half-of-2019-for-mozambique-lng-fid/>

Anadarko's LNG project involves two footprints, namely the maritime footprint and the land footprint. The maritime footprint begins in the deep sea, where natural gas will be extracted from gas reservoirs below the seabed. This gas will then be collected and transported to the LNG plant by undersea pipelines. The land footprint comprises infrastructures where natural gas will be processed and converted into liquid and stored in tanks. According to the company (Anadarko, 2014), aside from a multi-purpose dock and on-shore LNG processing and export facilities, these infrastructures will also include temporary and permanent worker accommodation and associated facilities; a 3.5km airstrip and associated facilities; infrastructure such as roads and facilities for water treatment, wastewater treatment, waste management, storage, office buildings, etc.⁶⁷



Figure 12. Illustration of onshore structure.

Source: Anadarko/ENI EIA Final Report, 2014, Vo.I, pg 6

With regard to Anadarko's project impacts, the company's 2014 EIA report indicated that:

⁶⁷ <http://www.erm.com/PageFiles/13352/Draft-EIA-Aug2013/Chapter-1-LNG.pdf>

“The Project expects that everyone residing within the Afungi Project Site will be permanently displaced, resulting in loss of dwellings and infrastructure associated with the household, livelihood activities, and community assets within the Afungi Project Site. Access to areas of collective natural resource value (e.g. forests, wooded grassland, flood plains/lowlands, dune shrub vegetation, fruit trees, and coconut plantations) will be permanently lost due to the acquisition of land required for the Project. In addition, fishing and sea-based transportation will be affected by Project activities in Palma Bay during the construction and operational phases of the Project due to increased vessel traffic and safety exclusion zones around Project infrastructure. The impacts associated with physical and economic displacement are expected to be of MAJOR significance both during the construction and operational phases. Following the implementation of the Resettlement Action Plan (RAP), the significance will be reduced to MODERATE.”

The EIA report produced by Impacto, Lda (a Mozambican consultancy firm hired by Anadarko) was the first project document made accessible to the public (including to local communities and CSOs) on July 2014. This report indicated that of the potential 8 areas identified in Cabo Delgado province to house the infrastructure, the Afungi Peninsula was selected due to its low population density and environmental risks. However, as mentioned above, this land is home to 12 communities. The DUAT awarded to Anadarko completely overlaps with the land occupied by one of these communities, Quitupo, which in 2012 had around 2750 inhabitants (Anadarko, 2014). To make room for the project, Quitupo has been targeted for complete physical and economic resettlement.

According to a letter issued by the Ministry of Agriculture in 2014, in 2010 Anadarko requested an area of about 25,731ha of land for the LNG project, but the government decided to adopt a phased approach and issued an initial land occupation license (preliminary DUAT) granting land use rights to Anadarko over an area of only 7,000ha for the project’s on-shore infrastructures. Off-the-record comments by government officers indicated that this approach was imposed because some members of the Cabinet expressed reservations towards allocating such a large amount of land to a single company and without proper justification in a context of increased public concerns related to land grabbing. Some Cabinet members also suspected that land speculation intentions involving high level government officers were behind Anadarko’s request. Also according to MINAG (2014), the government preferred to allocate land use rights for such a strategic project to a national entity. As a result, the National Hydrocarbons Company (Empresa Nacional de Hidrocarbonetos-ENH) replaced Anadarko in the land application.

However, while the land use application was being processed, ENH, through its subsidiary, ENH Logistics, joined Anadarko AMA1 (the designation under which the company is registered in Mozambique) to create a consortium under Mozambican law called Rovuma Basin LNG Land, Ltd. (RBLL), a limited liability company. The RBLL articles of association indicate that “The company’s main objective is to acquire Land Use Rights (‘DUATs’) for the development of a proposed liquefied natural gas [project] in Afungi Cape in Cabo Delgado (‘LNG Project’).” The DUAT over the 7000ha was subsequently issued in the name of RBLL, of which Anadarko is also a shareholder. Consequently, in legal terms Anadarko is a co-title holder of the DUAT. Furthermore, immediately after receiving the DUAT, the RBLL signed a land leasing agreement with Anadarko AMA1, through which the latter was granted exclusive rights to use the 7,000ha. In other words, the creation of RBLL was a mechanism used by the government to quickly grant a DUAT to Anadarko but avoided the alleged land rights ‘foreignization’ (Sekelekani, 2015; CIP 2015).

The map below shows the boundaries of Anadarko’s LNG Project DUAT area marked in yellow. This is the land that belonged to the Quitupo village, including its fishing settlements (Milamba 1, Milamba 2, Ngoji 1, Ngoji 2).

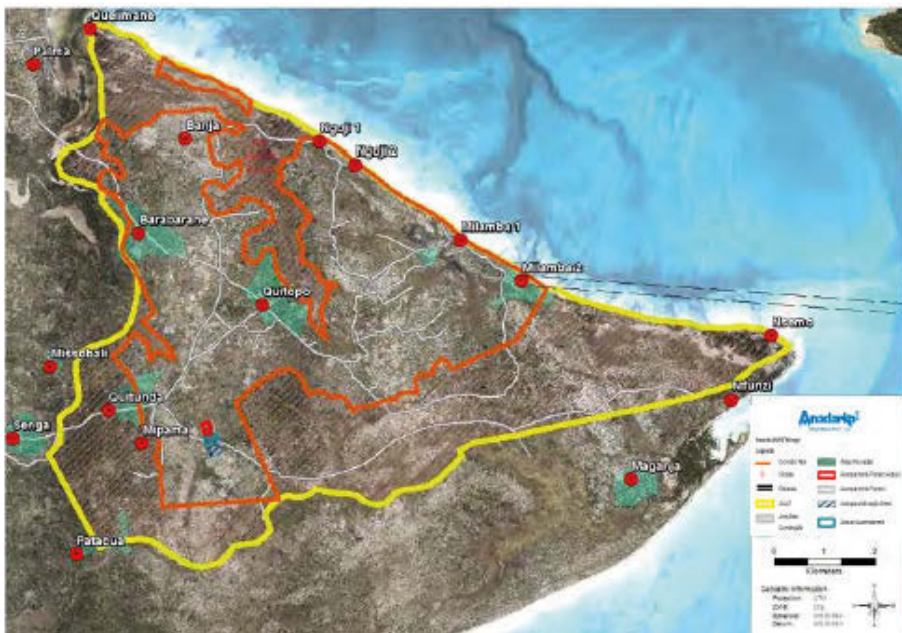


Figure 13. Anadarko LNG Project Area.

Source: Anadarko EIA Final Report, 2014

Similar to the rest of the population in Palma District, the Quitupo population is mainly comprised of farmers and fishermen. The main groups dedicated to fishing are based in two fishing settlements by the coast, Milamba I and Milamba II. Fishing settlements were to be the first to be resettled in early 2019, according to the resettlement plan (Anadarko, 2016). Aside from Quitupo, which will suffer complete resettlement, all communities from the Afungi Peninsula will be substantially affected by the LNG project, particularly those adjacent to Quitupo, namely Maganja, Senga, Patacua, and Mondlane, which used to undertake economic activities within Quitupo lands. Senga and Mondlane will also be particularly affected by having to cede parts of their land to the resettled families from the Quitupo community.

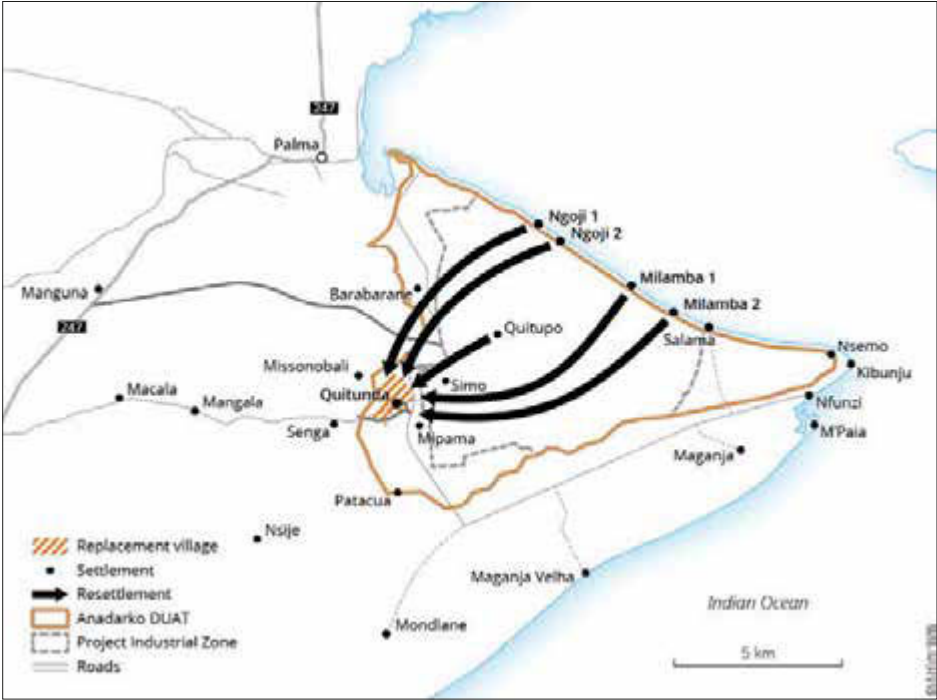


Figure 14. Community Resettlement-induced Geographical Relocation.

The following section analyses the main legal processes around which consultation happened or should have happened, namely consultations for land rights allocation, for environmental licensing, and for design and approval of the Quitupo resettlement plan.

Although the author was unable to attend consultation meetings under the land allocation process because none were organized, the author attended most

community meetings organized in Quitupo between February 2013 and December 2015, as well as public meetings organized in Maputo in that period, related to the LNG project environmental licensing process and Quitupo resettlement plan design and approval. Still in this period, the author led the CTV team in several meetings organized with the company and also had the opportunity to interact informally with several community members, government officers at all levels, as well as with company representatives.

Based on information gathered in these meetings it was possible to reconstruct Anadarko's land allocation process. Anadarko's preliminary land use right (licença provisória) was issued in December 2012, and the definitive DUAT (licença definitiva) was issued in April, 2017. Table 17 below includes a timeline of the main public processes related to the Palma LNG project, as well as CTV/CSO Platform interventions, involving the author:

Table 17. Timeline of the Main Palma LNG Project Processes and CTV Interventions

Year	Palma LNG Project Public Process	CTV intervention
2012	<ol style="list-style-type: none"> Two meetings were organized by the government and the company, the first on August 7, to inform the Quitupo community that 'a project' would be implemented on their land and would give them jobs, and the second one, on August 24, to inform them that project works would be initiated on their land but they shouldn't worry about it. Government issuance of a preliminary DUAT for the project over Quitupo land without consulting with the community (December) ENH creates a company jointly with Anadarko (RBLL) with the sole purpose of receiving a DUAT over Quitupo land (December) ENH and Anadarko sign a Land Leasing Agreement based on which Anadarko receives exclusive rights to access and use the Quitupo land (December) 	<ol style="list-style-type: none"> Recording of Documentary "Land: Tomorrow will be Late", which revealed that a resettlement process was planned for the Palma District and that communities were worried about lack of information about project details Meeting with Anadarko's social and environmental officer at the company's request (October)

Year	Palma LNG Project Public Process	CTV intervention
2013	<ol style="list-style-type: none"> 1. First meeting with the Quitupo community to respond to concerns about DUAT allocation to the project (August) 2. Second meeting with Quitupo community to communicate about the resettlement decision (September) 3. Public hearing organized in Maputo at the CSO Platform request (September) 	<ol style="list-style-type: none"> 1. First visit to Palma on February, followed by monthly visits until December 2014 3. Meetings with Ministry of Agriculture (DNTF) and Ministry of Environmental Affairs (DINAIA/ DINOTER) to discuss the Palma case 2. Community legal training and legal advice (June) 3. Roundtables with Afungi communities in preparation for community consultations (July-December) 4. Attendance at community meetings with government and the company (August-September)
2014	<ol style="list-style-type: none"> 1. First community consultation meetings ever organized in Afungi, under the EIA/Resettlement Plan design process, held in Quitupo, Senga, Maganja and Mondlane (July 8-12) 2. Second community consultation meetings under the EIA/Resettlement Plan design process, organized in Quitupo, Senga, Maganja and Mondlane (August 11-14) 3. Public consultation meeting organized in Maputo (April) 4. Public Consultation meeting organized in Maputo for presentation of the Afungi Industrial Town Urbanization Plan 	<ol style="list-style-type: none"> 1. Provision of legal support to the Afungi communities 2. Attendance at community consultations under the EIA/Resettlement Plan design process 3. Attendance at public hearing and public consultation meetings
2015	<ol style="list-style-type: none"> 1. Afungi communities social and economic census 2. Third community consultation meetings under the EIA/Resettlement Plan design process resumed in Quitupo, Senga, Maganja and Mondlane (August 18-22) 3. Fourth and last community consultation meetings under the EIA/Resettlement Plan design process, organized in Quitupo, Senga, Maganja, and Mondlane (August 14-19) 	<p>Independent legal audit to Anadarko Land allocation process undertaken</p> <p>On January 2015 a new government was sworn in and a new Ministry for Land, Environmental, and Rural Development was created. In February, CTV submitted the legal audit report on the Palma project DUAT process to the new Minister who decided to postpone community consultations allegedly to correct the illegalities identified.</p>

Year	Palma LNG Project Public Process	CTV intervention
2016	1. Community land delimitation in Senga, Maganja and Mondlane (exact dates unknown) 2. Initiation of resettlement village construction	Field visits to Palma organized for the Mozambican Bar Association (MBA) in preparation for the judiciary process challenging the legality of the project DUAT as requested by the CSO Platform
2017	1. Resettlement Moratorium declaration (barring communities from undertaking any developments on their land and assets (December)	Assessment of the resettlement process and report publication (available at: www.ctv.org.mz)
2018	1. Quitupo community land delimitation (exact dates unknown, one community meeting for multiple boundaries) 2. Issuance of the final DUAT to RBL (April)	1. MBA submission of court file to the Administrative Tribunal 2. CSO Platform resettlement monitoring visit to Afungi and report publication (available at: www.sekelekani.org.mz)
2019	1. Administrative Tribunal ruling in favour of the project (July) 2. First families from Quitupo fisheries settlements (Milamba I and Milamba II) moved to the resettlement village in October	1. First Congress of Communities Resettled by the Extractive Industry and report publication (February) 2. MBA public repudiation of court ruling (September)

Source: Author

II. Community Consultations for Rights Protection and Political Participation in the Allocation of Land Use Rights to Anadarko

Any analysis of the community consultation procedure must be undertaken in line with the four objectives for which this procedure was adopted, namely: rights protection, political participation, economic inclusion and benefits sharing. In this context, it is important to recall the guidelines included in Article 27 of the land law regulation, which indicate that community consultations aim at determining if the area envisaged by investors is free from occupants. In other words, and firstly, being free from occupants equates to being free from legitimate holders of land use rights or from legitimate land users in accordance with customary norms. Secondly, and in accordance with the constitutional directive on legal pluralism, it also equates to assessing ‘occupation’ as seen by the community itself, in accordance with traditional norms.

This provision (Article 27 of the land law regulation) further adds that if the land is occupied, the District Administrator will register the terms of the partnership to

be established between communities and the investor. This provision is clear about both the role of the District Administrator—confirming land occupation and support negotiations—and about the content of the opinion that he/she is mandated to issue, which is to register the terms of partnerships negotiated between communities and investors. Thus, it seems safe to conclude that the rationale behind community consultations is that when external parties are interested in occupying community land, pre-existing land use rights should be kept with the respective holders, i.e. the local community, which has powers to decide about such interests.

As a consequence of this understanding, three possible scenarios should be considered: firstly, the community may refuse to cede its land; secondly, the state may impose its eminent domain⁶⁸ based on public interest but subject to a duly conducted expropriation process, and; thirdly, the community may accept to negotiate with the investor, be it public or private. In this latter situation, local communities have the right to determine the terms of engagement with investors interested in occupying and using their land and a couple of results can derive from this negotiation, including (a) maintenance of land use rights in community hands but allowing investors to use the land through a land leasing agreement or another type of agreement (b) permanently ceding part of its land and corresponding land use rights based on pre-negotiated terms (including financial conditions). Whatever the community decision, the expected outcome from the community consultation is a negotiated agreement to the terms of which the local community has the right and the power to determine.

1. Irregularities in Anadarko Consultation Meetings

The existence of a DUAT was communicated to the Afungi communities by the company for the first time in August 2013, eight months after the DUAT had been issued, through a leaflet distributed in Quitupo, Maganja, Senga, and Patacua. The leaflets were distributed during meetings organized by the company and the government month in response to community protests related to the company's activities and rumours about resettlement. In these meetings, also attended by CTV (involving the author and other CTV staff) and other CSOs based in Palma, Pemba, and Maputo, both the government and the company considered the two meetings organized in August 2012 as 'community consultations', but this was consistently and loudly challenged by local communities who refused to accept them as such.

68 Eminent domain refers to the power of the government to take private property and convert it into public use justified by pursuance of public interest objectives.



Members of Maganja community attending the first community consultation for the RAP design in August 2013, and protesting against information provided to them in maps they could not understand and not on the ground.

Source: CTV, 2013

All communities with which the author had the opportunity to interact both formally and informally within and around project areas claimed that Anadarko's land use rights (DUAT) were issued without a single community consultation meeting. When the author first met with members of Quitupo and other adjacent villages in February 2013, they all claimed that no single consultation had been organized in relation to a DUAT allocation to Anadarko's project, neither in form nor in substance. As mentioned by the leader of the Quitupo community:

“The District Administrator came here last year (2012) and said that there was an investor interested in implementing a project and that he needed land. After that, he said that the project will create jobs; build schools, clinics, and roads; and promote community development, and asked if we wanted the project. Our answer was yes, because we want jobs and we want to get out of poverty. He then asked us to sign a paper.”

Still according to the Quitupo community leader, in 2012, the year that the DUAT was issued, the local government organized only two meetings, one on the 7th and the other on the 24th of August 2012.

“In the first meeting, they came to tell us that there was an investor interested in occupying our lands. In the second meeting they came to tell us that the company was going to start doing some works and we shouldn't be surprised by their presence. And they offered us T-shirts and hats”.

Another community member also pointed out in May 2013:

“Officers from the district administration only come here to accompany officers from the provincial or central government, who are the ones that conduct the meetings. The district officers only sit there. When the meetings end they leave and never come back to talk to us and to answer our questions.”

On July 2013, CTV organized legal awareness and training sessions for the Afungi communities as part of its work plan under the Community Land Fund Program (Iniciativa para Terras Comunitárias-iTC), but also to respond to a request from the Palma DA. The Palma DA had lamented that villagers in his district were selling their land to foreigners who offered what villagers considered to be a lot of money, without considering that land is the basis of their present and future livelihoods. Therefore, he argued, they needed to be made aware of risks and of their land rights and responsibilities (PDA, pers. comm. February, 2013). The DA was referring to land transactions involving newcomers attracted by the potential economic opportunities expected to be triggered by Anadarko’s project.



Roundtable with members of the Quitupo Community in May 2014.

Source: CTV, 2014

After the training sessions with CTV, and when project impacts, particularly the decision to resettle Quitupo, started to sink in, community members started to ask

questions and to demand explanations from the local government based on the new legal knowledge acquired in the training sessions. They wanted to know why they had not been consulted about the decision to cede their land to the company and about the decision to resettle them. They also wanted to know why the project could not be implemented in a way that maintained them in their land. They wanted to know why the government was not talking to them. The government and the company's approach to community questions (and the need to get their consent) was as follows⁶⁹, according to people's recollections:

“We came here to tell you that the government and the company have decided that you must be resettled, and you will have to leave, willing or not!”



Government and company meeting with Quitupo in August 2013.

Source: Author, 2013

This response, given by the Palma District Permanent Secretary, sparked protests and revolt in the communities, exacerbating tensions in their relationship with both the government and the company. Claims of lack of consultations and government cheating escalated and were repeated by community members in all community

69 Palma Permanent Secretary comment on a meeting with the company and the Quitupo community, in August 2013.

meetings and in other occasions when the author met with them. Faced with this situation, and because of its involvement in the training sessions and in providing copies of land legislation to communities, the district government changed its mind and decided to accuse CTV of distributing reactionary information and documents. These accusations referred to copies of legislation distributed during training sessions. CTV was further accused of creating agitation within communities and of mobilizing them against the project (Palma Police Chief of Operations, pers. comm., 2013; Palma DA, pers. comm., 2013, in Palma-Sede public consultation meeting).



Roundtable with members of the Maganja community in May, 2013.

Source: CTV, 2013

Contempt against CTV did not come only from the district government. As a way of stopping CTV community support work (legal training and assistance) and community protests, the provincial government organized a public meeting in Quitupo later on in the same month. The declared intention was to prove that community consultations over the Anadarko DUAT allocation had indeed been carried out, contrary to what both the communities and CTV were claiming. Documents intended to provide such proof and presented as consultation minutes were exhibited before the cameras of the national public television (TVM) and to journalists from other media, in a meeting organized on August 2014 attended by the author and other CTV staff, as well as representatives from other CSOs.

Technical staff from the Cabo Delgado Provincial Department of Agriculture (Direcção Provincial de Agricultura-DPA), together with staff from the National Hydrocarbons Company (Empresa Nacional de Hidrocarbonetos-ENH) showed copies of consultation minutes allegedly signed by members of the Quitupo community. According to the Provincial Permanent Secretary, in these minutes the community had agreed with the land rights transfer to the company. However, all those whose names were read out loud in this meeting and who belonged to the community, denied ever having attended any meeting in which the issue was discussed and also denied having signed any consultation minutes. The drama reached its peak when one of those members asked to see his signature. When he was shown it, he explained that:

“I asked to see my signature because I am curious. Was it an oral or written signature? Since I can’t read or write I can’t see how I could have signed this document. I have never held a pen in my life.”

After realizing that signatures included in government ‘minutes’ had been forged, a great agitation ensued among community members, both men and women, who shouted that government agents were liars and that they wanted to create problems among community members.



Members of the government showing documents with signatures to community members.
Source: CTV, 2013

When participants were calmed down by the community leader, community paralegals, and the local police, he then added:

“Today, the government will incite trouble, because they have indicated people who haven’t signed anything. The community doesn’t understand when the government says that these people have signed the minutes. People don’t even know what it is and what they have signed. Three men here have been indicated as having signed the minutes. We don’t know what will happen to them until the end of the day.

Box 2 contains an extract of a news report published by the Mozambican Information Agency (Agência de Informação de Moçambique-AIM/ News Letter. September 17, 2013) describing this event. Images and community statements from this meeting were also registered in a documentary produced by CTV in 2014 (“Quitupo Hoye!”).

Box 2. Extract of AIM News Report on Quitupo Consultations

“Public consultation over major economic projects can be a stormy affair, with unpleasant surprises, as government officials in the northern province of Cabo Delgado found on 13 September when a consultation meeting degenerated into a shouting match. A government delegation, led by the Cabo Delgado permanent secretary, Lina Portugal, went to the village of Quitupo, in Palma district, to discuss the project of the American company Anadarko to set up a natural gas liquefaction plant...Within a few minutes of the start of the meeting, it became clear that there was deep distrust among the Quitupo community. One man claimed that a land title (DUAT) to the Quitupo area had been given to Anadarko, without any prior consultation with the community. The provincial director of agriculture, Mariano Jone, explained that, in reality, the DUAT has been issued in the name, not of a private American company, but of the publicly-owned Mozambican Hydrocarbon Company, ENH, which has a stake in all oil and gas exploration activities. Furthermore, it was untrue that there had been no consultation. In August 2012 a consultation on precisely this issue had been held at Quitupo. “Some of those present here today signed the minutes of that meeting”, said Jone. Noisy dissent among the audience grew louder. The villagers seemed to be denying either that there had ever been such a meeting or that they had been present. Their minds were not changed when they were shown photographs of the August 2012 meeting. Jone showed the meeting the August 2012 minutes. The law requires a minimum of five signatures, and there were eleven signatures on these minutes. As he read the names out, the meeting became ever rowdier. People were on their feet shouting and gesticulating – quite unlike the calm, orderly atmosphere of most official meetings in Mozambique. Some of those who signed in August 2012 were not present. Others denied they had signed. Three men claimed that, since they are illiterate, they couldn’t have signed. Even the community leader, Luis Abdala, whose name topped the list of signatures, denied he had been present.”

Source: Agência de Informação de Moçambique (AIM) September 17, 2013.

Both as coordinator of the CSO Platform and as legal advisor to the Quitupo Community, CTV also reacted to this meeting by publishing a letter in which it stated that: “Forging signatures constitutes a crime in our country and we believe that the attorney general’s office should take the necessary measures to determine responsibility and ensure accountability. In parallel, we are hopeful that the Minister of

Agriculture will take the initiative to declare the nullity of this DUAT, thereby restoring the legality of the project's licensing process. For the benefit of the entire public, TVM⁷⁰ should be allowed to fully display the footage of that meeting, a copy of which can also be obtained from CTV.” (Jornal Savana, September 2013).



Members of Quitupo protesting against forged signatures.

Source: CTV, 2013



Anadarko representative, Roberto Abib, indicating to the Afungi communities the land taken by the company. This was done for the first time in October 2013, nine months after obtaining the DUAT.

Source: CTV, 2013

70 TVM-Televisão de Moçambique

Similar to the biodiversity cases discussed in Chapter Three, irregularities encountered in Anadarko's process also imply that the DUAT issued for the company's benefit is illegal. These irregularities were later confirmed by an independent legal audit commissioned by the CSO Platform for Natural Resources and Extractive Industries (Trindade et al, 2015). In their report, the auditors concluded that the acts of the agents of the District Government of Palma, the Provincial Government of Cabo Delgado and the Central Government did not always obey legal provisions, and clear violation of various legal provisions were committed by them. In particular, they highlighted violations of provisions concerning the allocation of the Land Use Right to ENH, EP and/or Rovuma Basin LNG Land, Limited. According to them, the opinions of the Palma District Government and the Provincial Government of Cabo Delgado on the availability of land where the Natural Gas Liquefaction Plant was to be planted, as well as the decision of the Minister of Agriculture, were illegal, as they all knew that there were local communities living in the envisaged land. As pointed out in this report, a number of key procedural requirements were disregarded in the land allocation process for the Anadarko investment (similar to the conservation cases described in Chapter Three, Section VI.2), namely:

1. Prior community land delimitations
2. Prior community consultations
3. Prior and formal expropriation justification published in the national gazette
4. Prior and formal land rights expropriation
5. Prior payment of compensation to affected communities, both individually and collectively

Aside from lack of community consultations, the illegality of this DUAT stems from other reasons. For example, by issuing a DUAT to the project, the government contradicted both the land law and the petroleum law determination that the presence of oil and gas infrastructure automatically transfers the land over which this infrastructure is located into the public domain of the state. As also explained in Chapter Three (Section II.1), no land use rights can be recognized in public domain land, and activities in such land are undertaken based on special licenses⁷¹.

Furthermore, and still in contradiction with the principles governing state public domain lands, the 7.000ha of land allocated to the LNG project were also transferred from public administration control to the company's private control, with the prerogative to lease the land to other entities. In fact, the land leasing agreement signed between ENH and Anadarko meant that the Quitupo land was transferred

71 1997 Land Law, Article 9.

from community domain into the private domain of the company and not into the public domain of the state.

These aspects are pointed out here because they are important to understand the extent to which there was an effort on the government's side to protect community rights and prevent incongruent positions. Two issues remain unclear and should be addressed with regard to the government's obligation to protect community rights, namely: (1) the need to extinguish community rights to house a private project (without formal demonstration of public interest, utility, and necessity, and when the mining legislation gives communities precedence in the reoccupation of land after project completion); (2) the need to transfer land from community domain to the private domain of the company (when expropriation can only take place for public interest motives, which impose transfer of land from community or private domain to the public domain of the state).

The Quitupo community never had the opportunity to say "No!" and to discuss whether their land use rights would be temporarily, permanently, totally, or partially transferred. Since no consultations were conducted, these issues were never discussed. Attempts by the Quitupo community, by CTV and by other members of the CSO Platform to address them during the EIA consultation meetings were dismissed by both the government and the companies. When questioned by the author about the validity of the DUATs allocated to the Palma LNG project, where none of the procedural requirements were followed, and about the legal base for the RBLL/Anadarko land leasing agreement, statements from high level public officers were self-explanatory:

"The State is sovereign. Natural resources belong to the State, so the State doesn't need to consult with anyone to authorize land use rights to investors".

This statement was made by a representative of the National Department for Lands and Forests, in a meeting with the author in February 2013. This statement was used to justify his refusal to provide copies of minutes of community consultation meetings, allegedly organized by Anadarko in the context of the land use rights allocation process for this project, but which communities claimed did not take place. Later in that same month (August 2013), the Palma District Administrator (Palma DA) was challenged by members of Quitupo. They accused him of prioritizing the interests of the company by failing to conduct consultations as imposed by the land law. The Palma DA lamented to the author in the following terms:

“Communities must understand that the government is trying to overcome poverty and to create conditions for development. They should know that not everything must be done according to the law.”

He then added:

“Communities and the NGOs that support them must know that they don’t have the power to stop a project.”

As the author kept pointing out the illegalities of the process, he insisted:

“We must not focus on mistakes and try to uncover irregularities from the past. Let’s move on since what we all want is national development. In that process communities will also benefit.”

In effect, this statement amounts to the Government arguing that it can act outside the law, citing the constitutional principle of state ownership of land and natural resources to shield it from the rule of law. The Mozambican law requires that any investment, such as the project being implemented in Palma, must involve consultations with the local communities and, if an agreement is reached, such consultations must also involve negotiation of the terms under which companies can occupy land over which those communities have land use rights. While the government has advocated strongly for the project in the national interest, it has failed to conduct mandatory legal procedures to demonstrate that and to legitimize land occupation by the project.

A paralegal from the Quitupo community understood this well, as is shown in the comment he made during a meeting organized by the government and his community on September 13, 2013:

“We know that in order for a DUAT to be taken from us, there must be meetings so that we know what is happening. We are seeing our land being taken without our consent. When we asked Anadarko what was happening, they told us that the government had already authorized them. We want them to show us the minutes of the meetings the district government says that were held. Because we don’t recognize having had those meetings in Quitupo.”

Community comments above show that the land allocation process was handled by the Government at all levels with little regard for procedural guidelines and for the pre-existing rights of the local communities living on the Afungi Peninsula. At least

the Palma DA knew that twelve communities had been occupying and using that land as their home for several generations. Therefore, the first directive from the community consultation procedure - to confirm whether Quitupo land was free and with no occupants - required no particular effort or skills from anyone at any government level, much less at the local government level. But since no community consultations for the DUAT process were ever organized, this community did not have the opportunity to protect its rights through this procedure or even to participate in the project's economic, social, and environmental viability assessment, including how it would contribute to community development.

A note should be left here about the role of local governments. Anadarko's land allocation and environmental licensing processes show that Quitupo and its neighbouring communities were not the only entities marginalized in this project. The processes analysed show how the local government was by-passed and completely overshadowed by the central government. In fact, in the whole land rights allocation controversy, it was common to hear off-the-record comments from government officers indicating that:

“When an investor comes to the districts, the decision to secure him the land he has chosen or requires has already been made at the central level, so the consultation meeting is just a formality with no value, simply aimed at informing communities about a decision already made” (MICOA provincial representative under anonymity, April, 2013).

2. Community Consultations and Free, Prior and Informed Consent: Consent for What?

Community consultations also aim to secure the community's consent to occupation of their land by external entities and consent to the social, economic, and environmental impacts associated with projects proposed by such entities, as part of the objective of ensuring relevant political inclusion through community participation in land decisions. While the FPIC principle is not explicitly formulated in the Mozambican land legislation, it can nonetheless be inferred from the mandatory requirement for investors to negotiate with pre-existing legitimate land occupants. This requirement is not discretionary since it is also imposed upon district governments. As mentioned elsewhere, the opinion to be issued by the District Administrator after conducting community consultations has a legally predefined content, namely “to indicate the terms of the partnership negotiated between communities and the investors.”

A key question raised by the Quitupo example is related to the issues for which community consent should be sought in community consultations. With reference to the Palma LNG project, community consent should have been sought in relation to at least four issues:

- a. The right of the communities to freely and consciously accept or reject occupation of their land. Unless the state has grounds to exercise its eminent domain, communities have the right to say ‘NO!’ and are free to take this position with regard to any project planned to be implemented in their land, or in relation to the terms proposed for any external occupation.
- b. The terms of the agreements to be negotiated between communities and the investor. This involves the possibility opened in the land law for communities to establish partnerships through land leasing agreements or other mechanisms. Considering the constitutional recognition of a community public domain, instead of transferring the Quitupo land to the public domain of the state and thus expropriating land use rights, it could have been located in the public domain of local communities, in a duly demarcated area, where the same legal principles and restrictions applied for the state public domain land could be applied (occupation by simple licenses and pursuit of public interest). A key issue to be noted here, again, is the fact that the land that houses oil and gas infrastructure is automatically converted into public domain land, and that pre-existing communities from project areas have priority in reoccupying their land after project completion.
- c. The selection of relocation sites, based on an exact and joint determination of the amount of land effectively required for the LNG project infrastructure and buffer zone. Both the government and the company have so far failed to share this information. Instead, a large ‘blanket’ area was identified and transferred to Anadarko. The Quitupo relocation site was imposed by the government, failing to properly address the needs of fisheries and farming families. Lack of farming lands and the distance from the sea in Quitunda would have certainly been considered by both groups if they had been given the chance to discuss and consider all existing alternative options. Even today, members of the fishing settlements of Milamba I and Milamba II contest the decision to relocate them to Quitunda, more than 6km away from the sea.
- d. Selection of Quitupo resettlement village structure, house models, and monetary and other compensation mechanisms for present and future generations and for tangible and intangible assets. The houses to be built for resettled communities were designed in the government and company offices, without any involvement of the affected people. The same happened with the urban structure and design of the resettlement villages. Communities were simply expected

to take what they were offered. Monetary payments for community assets were also unilaterally established by the company and the government, forcing community members to struggle to get an opportunity to negotiate and get a fairer compensation. Community influence in improving house models and compensation packages was greatly helped by CSOs interventions (CTV, 2016, 2018; Sekelekani, 2015, 2016)

- e. Consent to social and environmental impacts and proposed solutions. In response to the legal requirement that conditions the issuance of environmental licenses to receive approval of resettlement plans (RP), Impacto initiated community consultations on July 2014, about two years after the issuance of the DUAT. These consultations were focused on the Resettlement Plan design process and not on discussing the social and environmental impacts identified in the EIA report. In fact, all the information provided by both the company and the government focused on the benefits that the resettlement process would provide to the affected communities, especially modern houses for Quitupo.

3. Value of EIA processes and Precedence of the Environmental License

Based on provisions from the environmental legislation, in a meeting with CTV and the head of the EIA department at the then Ministry for Coordination of Environmental Affairs (MICOA-DINAIA), the author argued that the DUAT granted to the LNG project by the Minister of Agriculture in December 2012 was issued in violation of the principle of precedence of the environmental license. The author claimed that the DUAT should not have been issued prior to the issuance of the environmental license. The explanation obtained from this officer in fact corroborated that interpretation. As she explained, “It was decided that an exception had to be made to the Anadarko Project, to speed up the licensing process for the company, so that it could obtain the necessary funding to implement the LNG project” (pers. comm., 2013).

Since the mandate to change legal provisions lies exclusively with the Parliament, this justification was a direct challenge to the rule of law. Additionally, both MICOA representatives and the company advisors publicly defended a position which revealed that they failed to understand the logic behind the legal determination that the environmental license must precede other permits. In a public hearing about the EIA process, held in Maputo in September 2013, and in meetings held with MICOA before and after that, participants were also informed that the government had decided to reverse the order of precedence of the two licenses because “it would be difficult for the investor to carry out the EIA without a DUAT to the area envisaged.”



Public hearing on Anadarko's EIA licensing process, organized in September 2013.

Source: CTV, 2013

During the public hearing, the author argued that by claiming that it was necessary to issue the DUAT to the company so that it could carry out environmental and social impact studies, MICOA had disregarded the fact that the principle of precedence of the environmental license is an important sustainability pillar and a legal expression of the principle of prevention (CTV, 2013). In fact, the Environmental Law determined that the EIA process, which is the basis for the environmental licensing process, is a preventive management tool⁷². The author also argued that MICOA officers were confusing the need to determine the territorial basis for conducting an EIA with the need to grant a DUAT over the targeted area, thus confusing “prior identification of the land” with “prior acquisition of DUAT”.

In another meeting that was requested by CSOs and also held in Maputo in 2014, the author's claim that the precedence of the environmental license over any other licenses was imposed by law was also vehemently opposed by representatives of the National Department for Lands and Forests (DNTE). To justify the controversial fact that the DUAT was issued before conduction and conclusion of the EIA process, and even before approval of the resettlement plan, the government's legal argument was that the DUAT was a ‘right’ and not a ‘license’. This interpretation was opposed by a representative of LIVANINGO, one of the oldest Mozambican environmental organizations, who claimed that through distortion of legal semantics, the government and the company disregarded the fact that a DUAT is both a legal and a social license, without which no project should be implemented.

72 Article 1, No. 5,

This is an important debate, and LIVANINGO's comment is particularly relevant with regard to DUATs issued for economic activities. According to the land law, DUATs for economic activities can only be issued based on an application submitted to the government by the interested party, which must be authorized. Contrary to community and citizens DUATs, whose rights are automatically recognized by the state based either on customary norms or good faith occupation, DUATs for economic activities are conditioned to the issuance of a license and can only be authorized when supported by a prior social and environmental sustainability assessment. It must be noted that while for the first cases (rights derived from customary norms or good faith occupation) DUATs are 'recognized' (meaning that they are not 'given' by the state), in the second case (application to the government) DUATs are 'authorized' (meaning that the government has the prerogative to accept or refuse granting such right).



From left to right, representatives from ENH, DINAT, and Anadarko attending the September 2013 public hearing.

Furthermore, LIVANINGO's interpretation also merits consideration as it is more aligned with the spirit and the letter of the environmental legislation, which determines that the issuing of a DUAT for economic activities does not preclude obligation of acquisition of "any other licenses", and conditions project implementation to the existence of a duly approved DUAT. The expression "any other licenses" implies that legal semantics are, after all, relevant.

Response to the author's insistence in clarifying this issue moved the government and company from legal semantics to appeals on the author's 'patriotic spirit', as expressed by both MITADER Provincial Director and the representative of the

National Petroleum Institute (INP-Instituto Nacional de Petróleos), in the public consultation meeting organized in Maputo in April 2014.

MITADER Provincial Director argued that:

“In my opinion, we are somehow repeating and insisting on the DUAT issue, on how it was issued. In order not to delay this process which is beneficial to all of us, to the country and to many others beyond the country, and as matter of gaining time and moving forward with this process, I would like to propose that besides raising questions, suggestions should also be offered as to how the issue can be resolved.”

The INP representative, in turn, made an appeal in the following terms:

“As a Mozambican citizen I would like to request Dr. Alda’s collaboration in smoothing the potential impacts and problems that are occurring in Quitupo. We all know what happened. But I would like to request more collaboration towards the progress of this project because we all have high expectations that it moves on yet in a harmonious manner.

In that same meeting, a more open and direct answer came from a representative of the company responsible for conducting the EIA process, Impacto, who claimed that:

“It seems to me that there is a possibility of an understanding regarding the doubts that were raised since the beginning of this process. Some of them, the most important, central, and crucial refer to procedures, to the regulatory framework, to the legislation, which in some cases leaves a grey area and in other cases is still being created. But these are not issues specific to this project alone. I am sure that Dr. Alda and all the colleagues from civil society know that these same issues are affecting other major projects in the country. Therefore, and since we are here in a meeting aimed at presenting, studying, and debating the EIA of a project of great national interest as already mentioned in this room, and which nobody, none of you, wants to penalize, I suggest that the chair allows that a specific space is created so that issues needing clarification but which span beyond this project can be resolved.”

However, by the end of 2014, both DNTF and Impacto positions were not supported by the review of the mining and oil laws, which clearly impose the precedence of the environmental license over the DUAT issuance, thus seconding the author’s interpretation.



IMPACTO Director intervening in the public hearing.

Source: Author, 2014

Not all government officers, however, had the same view on this issue. In the interviews conducted by the author in 2015, when monitoring the Jangamo district heavy sands project being planned in Inhambane province, MICOA staff in that province expressed concerns over the issue. According to them, by issuing DUATs before assessing projects' social and environmental implications, the government creates space for irregular and illegal project approvals, thus placing the state in an irregular legal position. As they noted (under anonymity):

“Often times, EIA processes show that a certain project cannot be granted a DUAT for the land requested by the investor due to overlaps with community or other pre-existing occupations, but since the DUAT has already been issued, we have no option but to approve it and allow it to be implemented. This has caused many conflicts and we are the ones being blamed by the communities and accused of favouring investors. And they are right.”

The Palma case has reconfirmed the risk of conducting EIAs after issuing DUATs in what respects state obligation to respect pre-existing rights, as well as the risk that this represents to the state legal responsibility towards private companies. In some instances, the government ends up in a situation where it faces threats of legal battles both from communities and CSOs and threats (even if not so openly) from companies. In the Palma case, CSOs continue to claim that the DUAT issued in Anadarko's favour is illegal. Companies claim that “we received a DUAT and believe that the government knew what it was doing and we were assured that everything had been done according to the law” (Anadarko representative

anonymous pers. comm. 2013)⁷³. This is a clear freeriding move on the government's back that can hardly pass a judicial test.

By the end of 2017, this particular aspect remained a source of continuous tension between CSOs, the company, and the government (CCIE, 2017). Due to this illegality, subsequent to the findings of the legal audit, at CTV's request and in the name of the Afungi Communities, the Mozambique Bar Association opened a judicial case against the State, requesting declaration of nullity of the DUAT issued on behalf of Anadarko's Palma LNG Project (OAM, 2018). Due to the court's long delay in issuing its ruling, the CSO coalition on extractive industries (Coligação Cívica para Indústria Extractiva-CCIE) requested the OAM to issue a public note appealing for judicial celerity.

In an anonymous comment made to the author in March 2019, and without further explanation, a high-level government officer from MITADER affirmed that this DUAT simply could not be cancelled. Notably, without a single reference to the merit of the case, in July 2019 the Administrative Tribunal issued a decision alleging that the DUAT could not be cancelled because communities were happy with the resettlement, are interested in seeing the project being implemented, and are no longer contesting the DUAT. In reaction, the OAM issued a communique protesting this decision and also filed an appeal (Annex 7).

4. Community Representation in Decision-making Processes

When the Anadarko process began, Quitupo and other communities in Afungi Peninsula were represented by both their Traditional Leaders (chosen by the communities following their customary norms) and by the Community Authority (mostly people chosen by the government (or with very strong government influence) in the context of administrative decentralization guided by Decree 15/2000) (Forquilha, 2009, 2010, 2017). However, both of these community leadership structures were completely ignored and by-passed in the land rights allocation process.

When the Quitupo community started to question the DUAT issued for the LNG project, the Quitupo leader was the first person to be pressured and threatened by both the government and company representatives. By mid-2014 this leader had been totally silenced and distanced from his community members, and by the end of the year traditional leadership had been replaced by what came to be known as 'Community Committees'. These committees, introduced to communities by the

73 Meeting with the author and other CTV team members, in Maputo, in 2013.

government as community institutions, were in fact created by the company and the government overnight to ‘facilitate’ project processes, particularly the interaction between the company, the government, and communities (‘facilitation’, according to off-the-record comments by company representatives, aimed to save time, complications, and financial costs associated with communicating with large community groups).

In Quitupo, the leader was given the list of the community committee members a few hours before a meeting organized in August 2014, where selected members were presented to the larger community by the then Provincial Permanent Secretary, Lina Portugal. From that moment onwards, this committee has been the only interlocutor between the company, the government, and the community. Significantly, its members were hired as project workers entitled to receive a monthly salary of about US\$200 (two hundred dollars). The Quitupo community initially involved some of the most influential members, including the leader and a number of those who had been very vocal about community concerns related to how the DUAT allocation process had been conducted and the resettlement decision. The intent of the company and the government with salary payments was to silence them and mobilize them to give support to the project. Some of these members, however, maintained their positions and tried to continue defending community interests. It was essentially due to these members, together with their traditional leader, that the government and Anadarko were forced to conduct community consultations under the resettlement plan design and to address some of their questions and demands.

As a result of their position, some of them were expelled from the committee and threatened. This was the case of a member of the Milamba I fisheries settlement and of the coordinator of Quitupo community paralegals. This situation, particularly the fear that was instilled within the community through police pressure and threats, created severe friction and divisions among community members and weakened community cohesion and strength that had helped them to achieve some success in imposing law compliance by both the company and the government.

The Palma process was also characterized by marginalization of women and the elderly. While many women and some elderly of the Afungi communities attended the resettlement plan design consultation meetings, their interventions in these meetings were very rare and no attempts were made by the government or by the company to engage them in the discussions. This is why a male member of the Maganja community made a point of voicing women’s concerns in the first meeting that Anadarko organized with his community. After saying that Anadarko should

not try to fool the community and that the community did not want to see the company's land limits in maps but on the ground, he added:

"I forgot to mention something that some of the senior women of Maganja were gathered some days ago and said that with the injustice that Anadarko is doing they rather continue poor, because being poor is natural to us Africans. Thus, they prefer that Anadarko refine their gas in Nacala."

Anadarko's project exposed a number of issues around community representation that are pertinent to other communities and contexts where communities must be involved and heard, namely mechanisms for selection of community representatives and representation of marginalized groups. A common concern voiced by community members with regard to committee members was related to the fact that community members were controlled by the company and only responded to company and government interests. Community members claimed that:

"Since the committee was created, the company stopped talking to us. We don't know what is happening as they only work and interact with the committee members. While the committee belongs to us, they don't give us any information."

Another Quitupo resident commented:

"When you work for someone, you are going to do what the person that pays your salary says. This is what they are doing. The company told them not to talk to us and because they are afraid of losing their money, they now only respect the company and the government. The committee is not accountable to us and they don't take our concerns to the company."

The fact that committee members were required to wear T-shirts containing the wording "Comité Comunitário do Projecto de Gás" (Community Committee for the Gas Project) contributed to the mistrust between committee members and the rest of the community residents.

5. Government Identity Confusion and Impact on Community Rights Protection and Political Participation: Facilitator or Investor?

As mentioned before, the legal audit commissioned by the CSO Platform in 2015 (Trindade et al, 2015) confirmed that none of the legally required procedures for land rights allocations to investors on community lands had been followed in the Anadarko project, and that no measures were taken by the local nor by the central

government to correct the situation. Both the MITADER (minister and national director for territorial planning) and the company expressly acknowledged this illegality in meetings with CSOs and with local communities. In June 2015, the then new Minister for Land, Environment, and Rural Development, summoned CTV and Anadarko to inform them that the government recognized the illegality and was going to take appropriate corrective measures. This position was also repeated in meetings with members of the civil society platform for natural resources and extractive industries. However, without taking such measures or disclosing any information in that regard, in December 2016 the government approved the Afungi Resettlement Plan (ARP), with only 4 consultation meetings formally organized between 2014 and 2015 under the resettlement plan designing process and with no prior and adequate community preparation, including lack of provision of adequate information.

In December 2017, the Provincial Governor of Cabo Delgado declared the start of a moratorium which prevented communities from undertaking any activities that might imply compensation. According to the resettlement regulation, a moratorium is the temporal interval established by affected families in resettlement processes after which no further compensable assets can be acquired or improved. Requests of copies of the approved RP submitted to both the company and the government by CSOs and the affected communities in January 2017 were only responded to in December 2017, after the moratorium declaration.

The Palma case confirms what many researchers have already found in the sense that most consultations undertaken, as well as the ‘negotiations’ they involve, reveal an unequal negotiation leverage between communities and investors, with distorted assessment and distribution of benefits, dominated by informality and lack of investor accountability for failure to fulfil promises (Gaventa, 2002; Cotula et al, 2009; Fairbairn, 2013; Cotula, 2011). An important issue raised by Mozambique land governance analysts is related to the legal value of consultation minutes (Nhantumbo and McQueen, 2003; Cabral and Norfolk, 2016). So far, the minutes of consultation meetings are not treated as legally binding documents, and no sanctions are in place to be used in the event that private investors do not respect the promises made to the community.

Furthermore, the wording used in the minutes is also generally vague, providing little or no information on what was discussed and agreed upon and omitting any negative positions or comments that communities might have offered. As they are issued by the government, generally the DA opinion is biased in favour of the investor, as the Palma case shows. In 2015, the author and the team leader of the Palma

LNG project legal audit report were authorized by the Minister of MITADER to review Anadarko's land process file, and were shocked to notice that the government had produced consultation minutes *a posteriori*, all of which, including the one referring to Quitupo, had received the same opinion from the Palma DA:

“Communities are happy to have the project implemented in their lands. They expect to have a good relationship with the investor and to receive benefits from the project. Therefore, the project can be implemented!”

While companies can and should be blamed for the poor consideration given to procedural and other legal requirements, this could only happen because they enjoyed open and constant support from the government. In the guidelines approved in 2012, the FCT recommended promotion of investor-community partnerships where the DUAT is retained by the communities but allows for their land to be used by investors, based on previously agreed upon terms and conditions between the parties (FCT, 2012). It was also the view of the FCT members that resettlements should be an exceptional decision when duly justified. Another recommendation was that partnerships should be formalized through contracts or other legal documents that give them legal value and which contain provisions to allow them to be easily monitored. The FCT recommendations were repeated by participants of the 2019 resettlement congress. It is worth noting a comment made by a Kenmare representative, who publicly indicated that:

“I need to say something that I know is problematic, but which is also essential if we want to improve the relationship between investors and communities. All parties need to do their part. Often times, we want and are prepared to minimize negative impacts on communities as best as possible and request the government to give us options and to do their part. The government simply doesn't do its part. And we are the ones taking all the blame. In Moma, we wanted to give better compensation packages, but the government instructed us not to do so. We asked the government to give us options to avoid touching a sacred hill in Tuipito, but they instructed us to proceed.”

Recommendations in the same line had been made by several researchers and analysts of the land sector (Nhantumbo and Salomão, 2010; Cotula, 2011; Cabral and Norfolk, 2016; Tanner, 2002, 2010, 2016) and by the government itself (GoM/MITADER-DINAT, 2011; iTC and DINAT, 2017). In the extract below, the author summarizes findings from her assessment of community consultations undertaken in 2010 in the biofuels sector. The Anadarko processes show that the findings and conclusions from the 2010 report (Nhantumbo and Salomão, 2010) are still valid today. In this report, the authors claimed that:

“The inability to enforce the provisions of the progressive legislation that regulates natural resource management, protects community rights, and reconciles the interests and rights of competing resource uses, results in threats to community rights over land and other resources (...) To date, the effectiveness of community consultations as a tool to protect community rights remains questionable. None of the case studies examined in this report involved genuine and enforceable partnership agreements between investors and communities.”

Ironically, the Palma District 2014 Profile includes a section on Good Governance that reads as follows:

“Governance is the driving force behind the entire district development process. Good Governance means guaranteeing access to quality public services for citizens, respect for human rights, safeguarding physical and moral integrity, ensuring the active participation of the citizen in the socio-economic and political processes of the district as well as the valuing of their ideals. It is therefore a strategic objective of this area, which is fundamental to the socio-economic development of the district, to: ensure the population of Palma a comprehensive, efficient, effective, and responsible public service that meets the needs of citizens; ensure the crucial issues in this area are to fight against corruption; strengthen local institutions of state organs; and to place compliance and taxation by the law in force.”

III. Community Consultations for Economic Inclusion and Benefit Sharing

As discussed in the introduction to the previous section, a key element of the community consultation procedure is to allow communities to negotiate, if interested, the terms by which community land is ceded to investors who need land for economic development projects approved by the state. This element derives from the National Land Policy directive according to which communities must be included in development processes and that investors and the government must share the revenues and other benefits they accrue from such investments. It is worth recalling here specific directives from the National Land Policy related to this topic, included in Points 25 and 61 transcribed below:

Point 25: Obligation to negotiate with local communities for access to land occupied by them. The community can enter as a partner with sharing of profits and benefits resulting from investments. The State, at various levels, should follow consultation and dialogue between investors and local communities.

Point 61: Prevalence of customary law in the transmission of land use rights in areas where the family sector predominates. Investor access to these areas will be negotiated and agreed with the community. This negotiation with the community should be supported by the competent bodies of the State at various levels.

Therefore, at the end of the day, the question that must be answered is whether and to what extent communities have gained from the project's presence. As shown in Chapter Three, gaining from investments projects require prior community preparation without which substantial gains will hardly be achieved. In the Palma case, lack of prior territorial and social preparation, through prior community land delimitations and prior community legal training and advice, as well as lack of partnership negotiations, represented an important bottleneck, as explained below.

1. Negotiation of Community-Private Partnerships

Neither the LNP nor the land law specify the types of partnerships that communities may establish, thus giving communities the opportunity to negotiate the various models offered by the business law and the principle that parties enjoy freedom of negotiation within the limits established by law. Under this premise, important instructions can be identified from these LNP provisions, which must be kept in mind when analysing the Palma and other cases implemented on community land. First, in alignment with the principle of legal and institutional pluralism, customary norms must be used for land use rights transfer in community lands and the role of traditional leaders in this regard must be recognized. Second, investors are obliged to negotiate with local communities who can be shareholders in the businesses, with the right to share profits and other benefits resulting from investments implemented in their lands. Third, the role and obligation of the government at the various levels is to support community-private negotiations. As shown in the previous section, however, Quitupo and other communities affected by the LNG project did not have the chance to negotiate anything. Instead, negotiations took place only between ENH and Anadarko. Fourth, the Anadarko-ENH land leasing agreement was concluded when the National Consultation Forum on Land (Forum de Consulta sobre a Terra-FCT), donors, and the private sector were working on drafts to regulate the possibility of land leasing agreements. In spite of the absence of such regulation, both the government, through ENH and RBLL, and Anadarko went ahead and signed a land leasing agreement in 2013 over Quitupo lands, ostensibly by-passing both the community and the growing consensus coming through discussions at the national FCT that communities themselves can and should be able to enter into leasing agreements over the use of their lands.

The process that was followed and the terms of this agreement remain a secret despite CSOs attempts and requests to have access to the document, particularly its financial details. CSOs claim that the Anadarko-RBLL agreement is illegal for at least three reasons: (i) illegitimacy of the parties (Quitupo is the entity that should have signed the agreement with Anadarko, since neither ENH nor RBLL have ever held a DUAT over any lands in Afungi); (ii) procedural irregularity (lack of contract registration at the notary); and (iii) lack of legal base (norms and procedures to guide this agreement have not been approved).

The process followed also denoted total lack of consideration to policy guidelines by the very institution that was responsible for ensuring law compliance, the National Department for Land (Direcção Nacional de Terras-DINAT). The legality of the land leasing agreement and its use have been the subject of discussion amongst policy makers for several years, and until 2012 the prevailing view of the government, i.e. DINAT, was that such agreements did not have a legal basis as the provision from land law regulation required further regulation before they could be used as a mechanism to transfer land use rights. However, DINAT was the government agency that processed the Anadarko-ENH land leasing agreement, approved by the Minister of Agriculture.

It might be worth mentioning here that in 2012, the National Consultation Forum on Land (Forum de Consulta sobre Terras - FCT), produced guidelines on responsible land-based investments (Annex 9) and, as mentioned earlier, it also initiated a process to draft a regulation for land leasing agreements provided for in the Land Law Regulation. The first initiative was strongly promoted by CSOs and the second initiative had a strong push from the private sector (USAID/SPEED, 2015). CSOs also supported the latter initiative believing that this regulation would essentially help communities to attract and negotiate investments without losing their land rights.

However, the then Minister of Agriculture, José Pacheco, who chaired the FCT, unilaterally blocked adoption of the guidelines and the land leasing regulation drafting process was never concluded. Thus, when news that the government (i.e. MINAG) had authorized the process for the land leasing agreement signed by RBLL and Anadarko became public, the reputation of the FCT initiated its decline with CSOs questioning the relevance of this platform and seriousness of the government in creating it. They were revolted by the fact that instead of organizing and supporting local communities, as the legitimate DUAT holders, the government had chosen to unilaterally withdraw Quitupo land rights so that it could negotiate occupation of the community lands with Anadarko at a profit, without knowledge of or any financial benefit to the affected communities.

As the author commented in a public audience: “We are all eager to learn about the terms and conditions under which this deal was signed and the grounds for resettlement. Information about the value of this contract will be very useful as a reference for negotiations regarding compensation with affected communities. The FCT has set up a working group that is still working on the land leasing regulation, so that there can be a legal basis for its operationalization. In the absence of this regulatory instrument, it would be useful if ENH or the Ministry of Agriculture could publicly clarify the legal basis that allowed the conclusion of the contract with Anadarko.” This information was never provided.

Refusal to provide access to consultation minutes and other relevant documents, such as a copy of the Anadarko-ENH land leasing agreement did not happen by chance. It was a consequence of an institutional culture deeply enshrined in many institutions, including DINAT. The then head of the national land cadastre declared in a public meeting that:

“It is not common practice of public administration to provide copies of file documents to people that do not have direct interest in the issues being handled by the State. However, it is the duty of the State—and our own interest—to inform all the stakeholders about the decisions taken by the State concerning the various issues. And, should it be the case, explain the procedures followed and the legal base used to support those decisions.”

Due to the secrecy surrounding concession contracts signed between the government and the company, the link between the results of consultations and the content of such contracts, including the land leasing agreement, is hard to establish. The Palma case reconfirms Zoomers (2013) assertion that this is a generalized situation, when she pointed out that:

“It is now commonly acknowledged, even by the World Bank, that local populations are not being included in the negotiation process. Local groups are *not informed* and do *not participate* in decision making. Insofar as agreements are made between governments and investors, arrangements are mostly confidential, and nobody is in a position to control (not even parliament). In addition, local groups often do not receive *compensation* and if they do the amount of money is not enough to buy new land, due to the increasing pressure on the land.”

This assertion was also voiced by a member of Maganja community, who saw the LNG project as representing FRELIMO and the government betrayal to the people:

“This is an injustice which is normal of FRELIMO. When they took power, they were singing: “Frelimo is fighting for freedom”. But where is the so-called freedom that we always stood up for? Because today there is a different scenario. Today they want to resettle all the population from the coast, from Quionga to Makulu, at Nsangué. What I feel is that Anadarko came to Mozambique and spoke to the government. Then gave money to the government so they could control Maganja and the whole coast of Palma. After that the government said: “Go work”. The government gave Mozambique to Anadarko! They identified the places that have natural resources and forgot about community rights. Where is democracy? Democracy must exist everywhere, not only in the United States of America! Because each one of us has rights. The right to eat what we like, the right to live where we like. I saw the compensation list of the government. They want to pay 1000mts for a coconut tree that was grown by my grandmother!”

But similar to many governments, communities also see investments as opportunities for job creation and for social infrastructure needed in most rural areas. This expectation was not different in the Palma case. During consultation meetings, although land rights were a concern, the communities’ major preoccupation was related to access to farming land and access to employment opportunities. Due to this, discussions on economic inclusion were often limited to these two aspects, leaving aside discussions about opportunities for community entrepreneurship and other forms of economic engagement.

Promises of employment raised high expectations, which were rapidly frustrated by the company’s limited ability to accommodate unqualified personnel. The need for specialized staff and the high illiteracy incident in the villages automatically excluded community members from employment opportunities created by the company, many of which were occupied by people from Pemba, Maputo, and other parts of the country, as well as from abroad. Employment of ‘outsiders’ was a source of violent protests in 2018. Thus in order to create technical capacity within the Afungi communities and reduce the need to hire outsiders, the government and the companies⁷⁴ established a technical training school.

A recent development in Mozambique in response to the conflicts generated by projects like the Palma LNG investment, has been the emergence of “Community Development Programs”, designed under corporate social responsibility (CSR) programs. Many private investment projects in Mozambique are designing and approving CDPs as part of their CSR programs. Until 2002, in the oil and gas

74 Anadarko was later joined by the Italian company ENI, which was granted concessions for natural gas exploitation in adjacent blocks (MIREME, 2014). ENI chose to conduct onshore operations but shared Anadarko offshore land in Quitupo for its ground operations.

sector, this was done on a voluntary basis through processes totally controlled by investors. In 2014, the government approved the Policy on Corporate Social Responsibility for the Mining Sector Extractive Industries (GoM, 2014). The main guidelines and strategic actions included in this policy that are relevant for this chapter's topic are listed as follows:

- a) Involvement and participation of all interested parties in decision-making processes related to social investments;
- b) Coordination of corporate social responsibility investments;
- c) Transparency in the relationship between interested parties;
- d) Involvement of interested parties, including communities, in monitoring and evaluation of corporate social responsibility actions and associated initiatives, particularly in what respects social investment; and
- e) Grievance mechanisms for conflict resolution

In 2016, the government, through the minister of MITADER signed an MoU with the company, where the company committed to invest USD\$180.000.000 both for the Afungi resettlement Plan and for its community development programme⁷⁵. When asked about this programme in 2017, community members commented that Anadarko and the Government of Palma had asked the communities from Maganja, Mondlane, Quitupo, and Senga to sign agreements with content that was unknown to them and which were later explained as being related to the company's Corporate Social Responsibility (CSR) program. None of the Afungi communities participated in Anadarko's CSR program design nor had the opportunity to contribute to the content of the agreement signed by the Minister.

2. Prior Community Land Delimitations

When Anadarko DUAT was granted, the Palma district had not conducted strategic social and environmental impact assessments, had no approved District Land Use Plan (DLUP) nor District Strategic Development Plans. Above all, it had not undertaken community land delimitations (CLDs), a priority procedure imposed in the context of economic investments in rural lands. This means that the district government responsibility to advise the provincial and central government decision-making on this and other projects approved for implementation in the district territory was performed without accurate and updated information of the social, environmental, and economic realities of this jurisdiction vis a vis the project's presence, needs, and impacts. The presence of human settlements and economic

⁷⁵ <http://portaldogoverno.gov.mz/index.php/por/Imprensa/Noticias/Governo-e-Anadarko-assinam-memorando-para-reassentamento-em-Palma>.

activities such as family farming, fisheries, and other activities, should have prompted the government to undertake a careful and strategic assessment of territorial occupation and of social, environmental, and economic aspects, which would then assist it in assisting the parties in the negotiations processes triggered by the project. As they are known, such assessments represent a preventive land management approach and are meant to harmonize and accommodate the several social and economic interests existing in a district and prevent, as best as possible, land occupation illegalities and conflicts.

The importance of Community Land Delimitations (CLDs), already mentioned in Chapter Three, should be highlighted here again in relation to community economic inclusion and benefit sharing. Aside from formalizing recognized land rights acquired through customary norms, community land delimitations (CLDs) also have the objective of preventing conflicts and strengthening land tenure security for the rural communities. These objectives are important in the context of economic projects and promotion of sustainable rural development, but also for prevention of intra and inter-community conflicts⁷⁶. Additionally, CLDs serve as opportunities for community capacity building in various aspects of their life, particularly in institutional organization and preparation for partnership negotiation. As mentioned in Chapter Three, CLDs are processes through which the boundaries of the land occupied by communities are (re)confirmed using customary norms and registered in the national land cadastre.

In the context of land-based investments implying community involuntary resettlement and negotiation of compensation packages, CTV insistence with prior community delimitations has been grounded on three arguments. First, delimitations are important to determine the boundaries and land size of each community. With this information, the government and the investor will have a clear idea about which communities are affected and to what extent. For example, apparently only Quitupo will be affected by both physical and economic resettlements. The other communities adjacent to Quitupo and those outside the park area are, in principle, to be affected only by economic resettlement. These details are important for negotiation and determination of compensation packages. Second, and for the same purpose, the land size of communities is important as, aside from individual family

76 The Technical Annex to the Land Law Regulation states that the delimitation of community lands must be a priority in cases where the state and/or other investors intend to launch new economic activities and/or projects and development plans in community land. The same article provides that “when the delimitation is conducted due to new economic activities and/or projects and development plans, the costs are borne by investors”. CLD is also a process aimed at integrating the customary land management system into the formal administrative system through the issuance of community land certificates by government institutions, namely the Provincial Geography and Cadastre Services (Serviços Provinciais de Geografia e Cadastro-SPGCs).

lands, compensation packages should also include the loss of common lands, as well as the loss or disruption of communities' collective social structures, networks, and support systems. Third, CDLs also help to ascertain the dimension of the land that the government must secure for resettled communities in host communities that should have their territorial and legal profile clearly determined. These communities are also entitled to negotiate compensation for their land loss. As the Massingir cases have shown, host communities are concerned about the land dimension needed by the resettled for farming and for cattle grazing. Lack of farming land is currently the major concern of both Quitupo families and host communities in Senga and Mondlane. Fourth and finally, by allowing communities to identify, assess, and plan the use of their lands and resources, CLDs are a fundamental development tool, particularly because they involve both community-based land zoning and planning which then serve as the basis for community socio-economic development planning (Monteiro, 2014, 2019). Thus, if undertaken as prescribed in the Technical Annex, CLDs can indeed promote and stimulate intra-community participation in land decisions, promote prior community preparation to interact with external actors in a much better bargaining position (iTC, 2018; José Monteiro pers. comm., 2019), and allow communities to use data produced during CLDs to feed company-led processes of designing community development programs and/or corporate social responsibility programs in a more informed manner.

In the Palma case, due to the risk of resettlement presented by the LNG project, in 2012 this district was classified as a land conflict hotspot by the Community Land Initiative (Iniciativa para Terras Comunitárias-iTC), a donor funded program created to support the national land program. In 2013, iTC had planned to delimit all community lands from the Afungi Peninsula. However, due to contradicting directives from the Technical Annex, such as being a priority procedural requirement in the context of public and private land-based investments, community land delimitations in Palma have not received any attention from the government or from Anadarko. Neither the district administration nor the provincial government of Cabo Delgado, or even the investor showed any interest in this process. iTC work in Afungi was cancelled in 2014, with the argument that the project was too complex and risky (iTC Director pers. comm., 2013).

When CTV tried to undertake those delimitations in 2013, it was also barred from doing so by the District Administration and was only able to briefly organize short information dissemination programs on environmental legislation.



Author explaining the land legislation to members of the Quitupo community.

Source: CTV, 2013

But even these activities were later aggressively opposed, with the CTV being accused of agitating communities against the investment (CTV, 2013, 2014; Mário, 2014). In a letter issued in January 2014 in response to a CTV request to delimitate Quitupo, Senga, and Maganja lands, the District Government alleged that the company had hired another organization to do the work. One year later, CTV learned that Anadarko had hired the NGO Forum Terra, from Nampula Province, to do the work. Surprisingly, in 2017, only three communities had apparently been delimited (Senga, Maganja, and Patacua). Once again, Quitupo was left out of this process. However, by the end of 2017, none of the delimited communities had received land certificates. Outside the Afungi Peninsula, no delimitations have so far been undertaken although there are indications that this is going to happen for the Quionga Community, at the margin of the Rovuma River and far away from Afungi. The justification for this selection is unknown.

In February 2018, the last time the author and representatives of other CSO at the CCIE visited Quitupo and the other communities, the institution that had delimited the land of Maganja and Senga organized the first meeting with this community to finally initiate its delimitation. That meeting was aimed at reconfirming Quitupo land boundaries jointly with representatives (community leaders) from its neighbouring communities of Maganja and Senga. The question asked, however, was whether the land occupied by Quitupo belonged to this community. About fifteen Quitupo residents affirmed that ‘this is our land, which has been occupied by our ancestors’. Both Maganja and Senga publicly recognized the legitimacy of Quitupo land occupation. Paradoxically, both the question and the answer were presented

at a moment when Quitupo was formally no longer the holder of a valid DUAT over the land it still occupied. The DUAT had long been transferred to RBLL and then to Anadarko.

A couple of hours later, on the same day, in an informal conversation with the leader of Senga, the author asked him if he had a copy of his community land certificate. He said that he didn't have it but added that 'we have problems with this delimitation process'. When asked to explain why, he said:

"We confirmed that the land belongs to Quitupo but the boundaries are not correct. The limit of our land is the stream that you find as you go up to Quitupo. That's where our land ends but now they have said that the limit is different and have included our land in Quitupo area."

When asked why he did not raise that question in the meeting he mentioned his fear of triggering undesired conflicts with Quitupo when it was the responsibility of the government, who knew about the problem, to help communities to peacefully sort out these kind of issues.

Senga's complaint over a boundaries dispute with Quitupo seems to have merit when the maps produced by the Cabo Delgado provincial cadastre services (shown to the author under confidentiality) are carefully reviewed. In one map, the site selected to resettle Quitupo families, Quitunda, is included within Quitupo land. In another map, Quitunda is shown as located in Senga. In yet another map, designed after the so-called community land delimitations, community boundaries are quite intriguing. If these boundary lines are correct, Anadarko has taken substantial extensions of land not only from Quitupo but from the other three communities as well. In the yellow line demarcating the projects, DUAT goes beyond Quitupo and also includes land from all the adjacent communities, including Mondlane. However, the EIA report indicates that only Quitupo land would be affected. It was only after the DUAT issuance that Senga learned that Quitunda was going to be occupied to host the Quitupo families. In the Maganja case, according to this map, the project occupies about half of this community land which raises serious legal issues. Curiously, the boundaries between Maganja and Quitupo are not shown in this map. The Green line demarcating Quitupo land is incomplete. It is based on this kind of technical data that permanent decisions over the land and livelihoods of entire communities are taken.

Conclusion

Several analysts of the natural gas sector support the government of Mozambique's claim that, if well exploited, Mozambique gas deposits at the Rovuma basin are a 'game changer', as they have the potential to generate substantial financial revenues for the country with the corresponding potential to take it out of poverty (GoM/MIREME, 2014). This chapter shows that despite repeated government and company discourses on their interest in protecting community rights and ensuring their participation in decisions, the Anadarko project was characterized by complete disregard to minimum legal requirements, particularly requirements directed at ensuring procedural and distributive justice through properly conducted community consultations and fair community-private negotiations. Following due process for achieving fair outcomes in terms of rights protection, political participation, economic inclusion and benefit sharing was never a concern for both the company and the government albeit public discourses indicate the contrary. Such discourses served solely for political purposes as they were intended to be materialized in practice. The result of this reality was community land loss and compensation packages 'negotiated' with unprepared families and communities. Thus, they were basically determined by the government and the company with marginal influence from those affected.

In fact, the chapter also illustrates how the persistence of a strong 'dictatorial' mentality in the government aligns with private sector interests to effectively marginalise and even set aside the progressive legal framework, citing 'national interest' and other elusive development justifications such as 'combat against poverty'. With the argument that there is an "urgency" in combating poverty and in stimulating the interest and motivation of those who want to 'help' the country in achieving economic development, both the government and investors spare no efforts to see investments initiating and flourishing. In this process, outright violations and shortcuts to legal procedures, and lack of transparency dominate institutions involved in natural resource management, which use the minimum standards possible, including community intimidation, to circumvent the social licensing scrutiny.

Anadarko's land use and environmental licensing processes were characterized by ostensive offenses to the rule of law, with government officers overriding precedence rules with regard to when community consultations should be conducted and environmental licenses issued, and investors taking advantage of weaknesses within communities, especially lack of legal knowledge. Ethical weaknesses within public institutions were also used by the company to achieve quick and easy gains and benefits putting the state and local communities in jeopardy. The approval of

the Afungi Resettlement Plan in December 2016, and the moratorium declaration in December 2017, both taken with a major pending illegality, made it clear that both the government and the company have decided to ignore the law, thus backing up the District Administrator's claim that "not everything must be done according to the law." The court decision upholding the illegality committed in the DUAT issuing process makes it very clear that in Mozambique the law is not to be followed and that separation of powers is still a mirage. Manipulation of the judiciary was evident in the Palma case, where legal violations were resolved through court arguments void of basic legal analysis and conveniently using subjective and unfounded perceptions of 'community satisfaction with the project and compensation packages'. How this perception was established by the court remains to be investigated.

As a final remark, a comment should be left here about the important role played by CSOs. This chapter has shown the importance of local people having prior preparation and adequate legal support to engage in land decisions. This support was clearly provided by CSOs and their presence in the Palma consultation meetings organized to discuss the resettlement plan, and their comments on the drafts and related issues made a difference in the quality of this process. It was principally due to the combination of persistent pressure from CSOs working with the communities, and of community members themselves, that the government and the company organized the four minimum meetings imposed by law and promised to take into consideration some aspects raised by community members, such as the request for relocating fisheries groups to alternative coastal lands and not to the hinterland.

The chapter shows, however, that while CSOs seem to have a positive impact, without a conscious and committed contribution from the government and investors, the prospects of a development process grounded on participation and other good governance principles, where people are not only heard but their contributions have a concrete impact on public decisions, will never be achieved in Mozambique. Notably, in spite of public promises, fisheries settlements were the first ones to be moved to Quitunda (hinterland) in mid-2019, and not to an alternative coastal location, leaving both local communities and CSOs with a generalized sense of frustration and impotence.

The Palma case is, in fact, emblematic of how concerns with procedural and distributive justice are far from being a priority in public and private land governance processes, in spite of legal requirements in that sense.

Six

The Maputo-Katembe Bridge Project in Maputo City: Assessing Investments Benefit Sharing and Contribution to Local Development



Maputo-Katembe Bridge. Source: Noticias.sapo.mz

Introduction

“By its nature, as defined in economics, compensation is neither a ‘benefit’ to displaced oustees nor an investment in their development (as it is often falsely claimed to be): it is only an (incomplete) restitution for what is taken away from those displaced.”

(Cernea, 2008)

The focus of this dissertation has so far been on the governance of rural lands and on how rural communities are involved and affected. However, it has been increasingly recognized that urban communities and urban land issues are as pertinent for the land governance question as rural lands and rural communities are (Pieterse, 2014; Pieterse et al, 2017; UN Habitat, 2014, 2015; Lage and Mazembe, 2016; Shannon et al, 2017; van Noorloos, 2018). In debates about the governance of land access and tenure security in urban centres, it has been argued that, while urban areas are often seen as places of economic opportunity, in some cases urban poverty is even more pronounced and severe than rural poverty, given the scarcity of subsistence alternatives available for the poor in cities (Pieterse et al, 2014; UN Habitat, 2014, 2015). Furthermore, in the context of involuntary population displacements, identifying rural-urban linkages is important for understanding the dynamics of poverty and poor household survival strategies and the mutual dependency between rural and urban populations on land access and use, and the impact that resettlement might have on urban communities’ social safety networks (Ros-Tonen et al, 2015).

According to the UN-Habitat (2014, 2015), there will be increased investment in urbanization and a converse disinvestment in rural areas, particularly in developing countries. This raises the problem of land governance in urban areas, independently from investment projects, as more and more rural people and smallholder farmers move to urban and peri-urban areas and have to share diminishing land resources and already-stretched poor services with those already living there (Ibid). The urban/rural connection is also important for the Mozambican case because people affected by land-based investments in both rural and urban areas resettle themselves or are relocated by the government either in peri-urban areas (mostly slums), or in rural lands subjected to urbanization processes (i.e. organized settlements with public infrastructures such as roads, water, electricity, and formal markets). Compared to rural settings, the urban settlements format presents significant differences with respect to both land size and livelihoods base, and life dynamics.

While urbanization and urban land management, including resettlement-induced rural-urban and urban-rural migration, are not the main topic of this thesis, this

topic certainly deserves attention as scarce urban lands experience greater pressure and urban/rural frontiers become increasingly more blurry (Shannon et al, 2017; Ros-Tonen et al, 2015). The merit of the topic is confirmed, for example, by the 2016 UN-Habitat World Cities Report (UN Habitat, 2016) which highlights the environmental, social, and economic impacts of the current urbanization models in general, claiming that “although urbanization has the potential to make cities more prosperous and countries more developed, many cities all over the world are grossly unprepared for the multidimensional challenges associated with urbanization.”

Among the main challenges, scholars have highlighted the dilemma between the need for infrastructure and better planning and the problems of pre-existing populations with legitimate rights affected by involuntary resettlements (Zoomers et al, 2016; Pieterse, 2014; Pieterse et al, 2017; Shannon et al, 2017; Vanclay, 2017). Shannon et al (2017:15) argue that Africa’s urban land is by definition already occupied, and the surge in infrastructure interventions comes hand in hand with a surge in DID (development-induced displacement) and resettlement. They also claim that “how forced displacement and resettlement play out in the urban context, and how they relate to issues of sustainability, is currently poorly understood” adding that “these dynamics have not been analysed in detail in the urban context and exhibit some fundamental differences with DID and resettlement in the rural realm.” (Ibid).

Thus, as a contribution to discussions on participatory land governance but focusing on urban areas, this chapter assesses development-induced displacement and resettlement (DID) contributions to community development, furthering contributions by Zoomers et al (2017), Shannon et al (2017), and van Noorloos (2018). For this purpose, the chapter reviews land occupation and resettlement processes related to a public infrastructure project implemented by the Mozambican government in Maputo City, Maputo Province, namely the Maputo-KaTembe Bridge and Highway project. This project was selected due to its physical dimension (it is considered the third largest suspended bridge in Africa (GoM, 2018)); due to its social impacts (about 1200 urban-based families had to be displaced and resettled in rural areas); and due to the financial controversy that surrounded it (it has been argued that project costs were inflated by corrupt interests) (OMR, 2018). Last but not least, the project was also selected due to lack of inclusion of resettlement funds in the project budget (DINOTER, 2019, pers. comm.) and due to its controversial impact on local development (OMR, 2017).

The project was marketed by the government as an enabling factor for boosting economic development in the southern part of the country, particularly in the

tourism sector (GoM, 2012). Officially presented as an opportunity to boost economic growth and to improve the conditions of local families affected by the resettlement, the bridge was inaugurated by the President of the Republic in November 2018, who claimed in his inaugural speech that (GoM, 2018):

“It was thinking about the potential of infrastructure to leverage the Mozambican economy that, without hesitation, we decided to move firmly towards the completion of the bridge. This is an achievement of all Mozambicans and must be defended by all of us. When we have an achievement there are those who do not like and attack. The bridge is synonymous with our national unity, overcoming our difficulties and differences, because it will connect the country from Rovuma to Maputo, a dream of Samora Machel and Joaquim Chissano, materialized by Armando Guebuza, and which we witness today.



President of the Republic inaugurating the Maputo-Katembe Bridge on November 10, 2018.
Source: Jornal Noticias (November 10, 2018)

The company that conducted the Environmental Impact Assessment (EIA) studies, presented the project in the following rather optimistic words:

“Tomorrow, a better life ... On the other shore of Maputo Bay, KaTembe district is currently a sparsely populated territory when compared with Greater Maputo, and it can only be accessed by the water/river. The demographic scenario is about to be changed

by development projects. A new road will soon link Maputo and KaTembe. Besides the increase in access through the new road, the comfort and safety will indicate a better life for the population of the capital of Mozambique.”⁷⁷

However, communities affected by the project did not see it in the same way. Between 2014 and 2018, the project was frequently exposed in the media due to tensions between Maputo-Sul and communities targeted for resettlement who complained that: (1) they were not properly consulted nor given the chance to negotiate compensation packages; (2) they were sent to places without adequate social infrastructure (access to public transport, water, electricity, schools, and health clinics) and an inadequate environment (swamps and bush), and (3) compensation amounts did not correspond to the cost of building new houses and reconstructing their livelihood base. These issues will be addressed in the different sections of this chapter with the intention to ascertain how they impact and influence community perceptions on procedural and distributive justice as well as perceptions on the socio-economic development linked to this infrastructure project.

This chapter includes three sections. The first section presents the project details and describes how land occupation occurred. Sections two and three focus on DID distributive justice and describe how affected families, both from resettled and host communities, perceive the projects’ resettlement processes and corresponding impact on their individual and collective lives and livelihoods. Based on data from the two previous sections, the fourth and last section discusses resettlement contribution to community/local development, using indicators identified in both the legal framework but also in the literature cited in this dissertation.

I. The Maputo-KaTembe Bridge Project, Community Lands, and Resettlement Procedural Justice

Maputo City is the capital of the Republic of Mozambique located in the southern part of the country, in Maputo Province. Maputo City was built by the Portuguese and is both the country’s political and economic centre. Like many cities in Africa, Maputo city is composed of formal, urbanized neighbourhoods, following European urbanization standards, with typical public facilities such as large, paved and electrified roads, and houses with treated and piped water. Next to these neighbourhoods lies a large extension of informal settlements that lack minimum conditions for a healthy lifestyle and which, in many cases, lack access to clean water, as

77 www.betar.pt/upload/pdf/pdf-1383128883pdf (accessed on August 28, 2016)

well as lack regular and legal access to electricity. In these settlements, sanitation conditions and environmental quality are generally deplorable (UN Habitat, 2007).

Maputo city has 300km² and, according to preliminary results of the 2017 population census (INE, 2017), Maputo population totals 1.101.170 people. In terms of territorial administrative division, the city has 7 Urban Districts (Distritos Urbanos-DUs) each with a number of neighbourhoods and settlements. The Urban District 1 (KaMphumo), comprises the central and main urbanized part of the city, while until 1986 the remaining 6 DUs were part of the rural districts of Marracuene and Matutuine, which have been integrated in the city by an administrative decree issued that year (Araújo, 2006). According to Araújo (2006), the most populated neighbourhoods are also the less urbanized ones, which since colonial times have housed populations comprised of low payment workers and other less favoured groups.

Due to the war-induced rural-urban migration in the late 80s, Maputo was flooded with people coming from all parts of the country who settled themselves wherever there was any available and safe space, generally in unplanned land and precarious housing conditions (Give, 2016; Maloa, 2016). As time passed and people settled themselves more permanently in these unplanned settlements, informal neighbourhoods became part and parcel of the city structure and land occupation gained legitimacy through long term and peaceful occupancy. For the purpose of this chapter's discussions, two preliminary key issues should be understood, namely the concepts of 'local community' and the concept of 'community land rights' as applied in urban areas. In urban areas, the notion of local community is, somehow, replaced by the notion of poor neighbourhoods (*bairros de lata* - tin neighbourhoods).

The notion of community land, as a space of collectively held land use rights over diverse resources with joint sociological and economic goals (Tanner, 2017), is replaced by the reality of individually held shacks and rare and minimal common spaces. It is generally comprised of the so-called informal markets, churches, and almost non-existent recreational facilities. Land use rights here do not enjoy the same level of social and legal protection as those enjoyed by rural communities, mostly due to legal incongruences and a diffuse social and institutional base. These latter factors render urban populations settled in peri-urban and unplanned settlements easy targets of forced evictions and displacements. Maputo city sub-urban neighbourhoods and '*bairros de lata*' are places of extreme poverty, struggles, and vulnerability, particularly when compared to rural areas. However, as the next sections show, they are also places of impressive economic vitality and creativity,

social networks, dreams, and joy not necessarily associated with large extensions of land and collective approaches to local development.

Due to this reality, in order to understand the ‘urban land question’ it is important to understand the specificities of ‘the city’, in order to also understand the socio-spatial and economic dynamics triggered by development-induced displacements perceived by some as opportunities and by others as a disadvantage. With due consideration to intangible goods, this section argues that in some contexts, such as peri-urban unplanned slums, people’s perceptions on DID’s negative impacts might be influenced more by perceptions on procedural justice than on land and asset loss.



Skyline of Maputo city as viewed from KaTembe.

Source: Maputo Municipality website.

In 2010, the Government of Mozambique (GoM) approved an infrastructure project, funded by the Government of China, comprising the construction of over 200 km of a ring road around the national capital city of Maputo, the Maputo-KaTembe bridge linking the main city (Maputo) with the town of KaTembe across Maputo bay, and a road linking the bridge to South Africa via the coastal district of Matutuine, where the Ponta D'Ouro Marine Reserve is located. To manage these projects, a State-owned company was established in 2010 (Decree n°. 31/2010, from 23 August), named Maputo-Sul. Through Maputo-Sul, the China Export Import Bank (EXIM BANK) provided a loan of US\$681.6 million, to be repaid in 20 years with a five-year grace period and an interest rate of 4%. The project, costing a total of US\$725 million, was awarded to the China Roads and Bridges Corporation (CRBC), which was also awarded the tender to build the ring road around the Mozambican capital. The same Chinese bank also provided a subsidised loan of US\$72.5 million for this project and the remaining funding is covered by the State budget.⁷⁸

78 www.macauhub.com (Accessed on Aug 28,2016)

The cost of this project, especially the bridge, estimated at around US\$750.000.000, gave rise to controversy within the country, due not only to the amount of funding involved, which was seen as highly exceeding what would be expected for an infrastructure of that kind (OMR, 2018), but also due to doubts about the priority and relevance of building a bridge in that location vis a vis other parts of the country, particularly the allegedly disadvantaged northern part of the country (Ibid).

The Maputo-Katembe Bridge project also gave rise to major concerns related to social impacts.



The line in red indicates Malanga neighbourhood, where part of the families resettled by the bridge construction used to live in Maputo city.

Source: news.cgtn.com

The project required the resettlement of approximately 1200 families from three informal neighbourhoods in Maputo city, namely: Malanga, Luis Cabral, and Gwachene. Some families and individuals from these neighbourhoods were moved to Chamissava neighbourhood in KaTembe municipal district (located about 30 km away on the other side of Maputo Bay), others to Tenga which is a rural village in Moamba district (located 56 km away), and others to the Mahubo rural village in Boane district (located 42 km away). Other affected families relocated to areas of their choice within the city and outside these three locations.

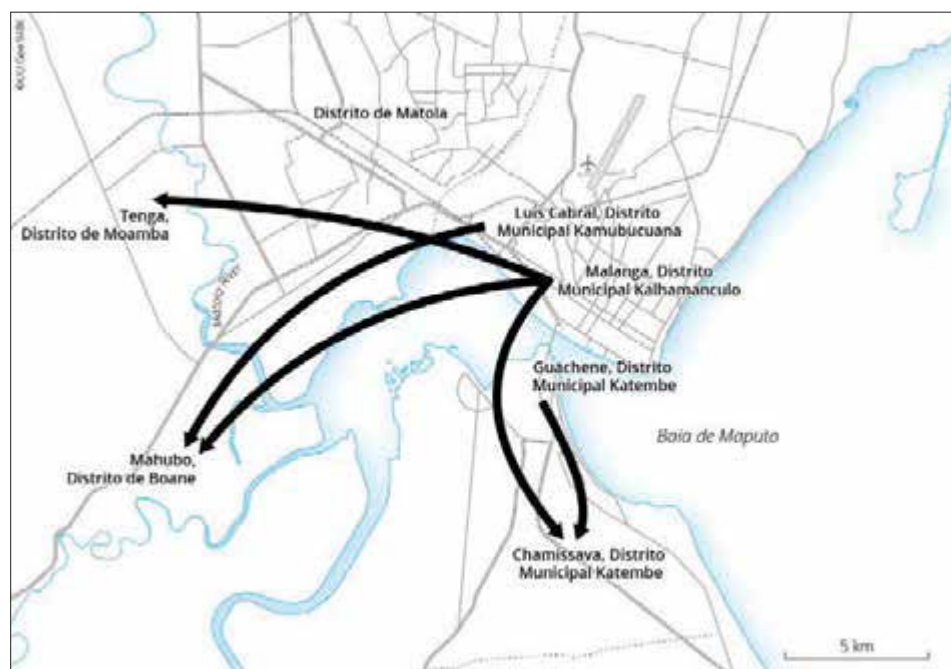


Figure 15. Maputo-Katembe Bridge Community Resettlement-induced Relocation

The Maputo-Katembe Bridge project raises interesting legal, political, financial, and social challenges that need to be addressed to enrich discussions about a context not yet well explored and understood – urban land management and urban-based local communities as well as rural-urban land linkages (Ros-Tonen et al, 2015; Give, 2016; Maloa, 2016; Shannon et al, 2017).

Community concerns and complaints mentioned in the introduction to this chapter match the information provided by a Maputo-Sul representative (under anonymity) in 2016. This representative indicated that, due to the time-sensitivity of the project funding, the company was instructed to initiate its operations as soon as possible. For this reason, the company initiated the bridge construction process—including the resettlement of affected communities—without an environmental license, without an approved resettlement plan, and without negotiated, formalized, and previously paid compensation packages. He further noted that they received clear and high government level instructions to ensure project completion in the shortest time possible, so that the funding would not be lost. Social and environmental concerns and due process were, therefore, not to be prioritized (Ibid).

These facts were confirmed by an independent audit of the land occupation and environmental licensing processes commissioned by CTV in 2016 (CTV, 2016).



Woman speaking during a public consultation meeting with Maputo Sul, December 2014.
Source: CTV, 2014

As occurred in the Massingir and Palma resettlement processes, no legal procedures were conducted in Maputo to legitimize land rights extinction and expropriation of assets belonging to members of Malanga, Luís Cabral, and Gwachene communities. Information provided by Maputo-Sul made it clear that no formal procedures for land rights expropriation had been conducted, including lack of formal declaration establishing existence of public interest. In an interview given to the audit team in 2016, the then Maputo-Sul CEO, commented:

“It is not enough for me to appear there and say that this is a public utility project – and for people to say yes to it. This public utility needs to be officially declared by the Council of Ministers. So, I started a process with MITADER, asking them to issue the public utility declaration for the Maputo-KaTembe Bridge. It soon became clear that by following this path, this declaration would come when the project was completed”.

According to the Maputo-Sul CEO, the company also started the project without an environmental license and a resettlement plan duly approved. The company submitted the resettlement plan and other documents such as the EIA report to MITADER but, for reasons apparently unknown to the company in 2016, it did not receive any response from this institution. As explained by the Maputo-Sul CEO (pers. comm., 2016):

“When this noise arose, MITADER sent us a notification giving us three days to present an approved resettlement plan. Look how interesting this is. I am waiting for them to approve the documents submitted and they are demanding me to present those same documents. And here I have to open a parenthesis because I have no other details, but I am undertaking a public interest project. Once again, I responded within the deadlines, providing them with CDs containing all the documents that I had already submitted on

my own initiative. I wrote back to MITADER simply indicating that the requested documents had been sent on the day X of this year.”

In a joint interview with the National Director for Territorial Planning (Director Nacional de Ordenamento Territorial e Reassentamento-DINOTER), with a staff member from the National Environmental Directorate (Direcção Nacional do Ambiente), and the Deputy National Director for Municipal Development (Directora Nacional Adjunta de Desenvolvimento Autárquico), conducted by the author in January 2019, the situation was explained in following terms:

“Both the Maputo-Katembe Bridge project and the Beltway were subject to environmental assessment processes and the EIA reports were approved. However, environmental licenses were not issued for any of the projects because their resettlement plans were not approved by the government.” (DINAMB representative)

When questioned about how such a grave legal situation could have happened, the head of DINOTER explained:

“There is an issue that maybe Maputo-Sul should have explained better. What happened was that the company received funds from the Chinese government to build the infrastructure only. Those funds did not include expenses with resettlement. So resettlement costs had to be covered by the government using state funds, which the government did not possess.”

II. Resettlement Distributive Justice and Community Perceptions on Fair Compensation and Development

In the regulation approved by the government in 2012, resettlements’ general objective is described as follows⁷⁹:

“Resettlement aims to promote the country’s socio-economic development and to ensure that the affected population will enjoy better quality of life and social equity, with consideration to the need for physical, social, environmental, and economic sustainability”.

The same regulation⁸⁰ recognizes the following rights to those affected by involuntary resettlements:

79 Decree 35/2012, Article 5

80 Ibid, Article 10

- a) Restoration of revenue base and living conditions to similar or higher standards than those enjoyed in the previous location;
- b) Live in an area with social infrastructure and equipment;
- c) Access to transportation to move family assets to relocation sites;
- d) Access to space to undertake subsistence activities;
- e) Opportunity to give an opinion on the whole resettlement process.

This section discusses distributive justice in development-induced displacement and resettlement and presents community perceptions on how resettlement has contributed to their socio-economic development. This is done based on how they assess the way compensation negotiations were conducted, the quality of the compensation packages received, and how they evaluate the quality of their life in the new locations. Because they were also impacted by the project and equally entitled to share benefits from investments, perceptions from host communities are also included in this section.

1. Voices from Resettled Communities

At the end of 2014, eight hundred and four (804) families living in Malanga and Luís Cabral neighbourhoods, on the outskirts of the capital city, whose homes were located on the perimeter of the bridge project, were apprehensive about the proposed resettlement in the KaTembe Municipal District. Maputo-Sul had announced the transfer of those families to the Inkassane and Chamissava districts, both located in Katembe. On December 27, 2014, the Maputo-Sul managers organized a public consultation meeting to discuss the resettlement process with affected communities from Malanga and Luís Cabral.

As witnessed by the author in this meeting, most of the comments offered by participants indicated that the affected families were exhausted and no longer trusted the company's promises. Most of those who spoke in the meeting claimed that the company had last been heard of and seen two years earlier and people had even doubted that the project would move forward. While the company alleged that it had continued conducting meetings with community representatives, it became apparent that communication channels between such representatives and their respective communities were ineffective.

One resident of Malanga pointed out the poor communication between families affected by the project and the company representatives and demanded that they be finally informed about the resettlement process. As he commented:

“Since then, there has been no further discussion on this issue. We want to receive concrete information.”

He also recalled that in 2012, the Maputo City Mayor had told them that there were three options for resettlement sites, namely Matola-Gare, Boane, and Marracuene, where new houses could be built for the affected families.



Maputo-Sul officials making a presentation at the December 2014 consultation meeting with the affected communities.

Source: CTV, 2014

In the December meeting, and as mentioned by the Maputo-Sul Director, families were still offered three options in terms of relocation sites, but in different locations, namely: Katembe in Maputo Municipality; Mahubo, in Boane District, and Tenga, in Moamba District. Furthermore, it was also apparent that the company had planned to build housing units (apartments) to accommodate the resettled families, a vertical resettlement approach. Construction of these apartments would imply urbanization of selected areas, and installation of infrastructure for social and other services that would secure a decent life for the resettled families. However, most of the families who attended the December 2014 consultation meeting complained both about the housing model and the destination. Some families did not want to move to KaTembe, allegedly for superstitious reasons claiming that “people from KaTembe are witches”. Others did not want to live in apartments located in “tall buildings”. People’s concerns focused mainly on the following three points:

a) Selection of Resettlement Location

Despite the company promises of better housing conditions in the host area, the families affected by the project were not interested in moving to Katembe, much less to live in flats. One resident from the Malanga neighbourhood commented that:

“We’ll go to Katembe because we are being forced, but please note that it is not our will.”

This feeling was not changed by the company’s arguments on the conveniences that a flat can offer compared to the precarious houses occupied by people affected by the project. The same person maintained that this type of housing was inadequate for the way local families lived and commented that:

“Maintaining hygiene in a building is complicated and requires some civic education; there are families that will not be able to do it, so I would like to know what the project management will do in this regard.”

This idea was seconded by another resident of Malanga, who commented that:

“Apartment buildings are not viable for us, because most of us use firewood for cooking. In addition, when the flats are damaged, their repair costs a lot of money. And senior citizens will have difficulty in going up and down the stairs to access their homes.”

In Malanga residents’ view, a commission should have been set up to advise and support families who would be resettled in flats, in order to help them adapt to this new reality.

Compensation packages for these families were also discussed in the meeting. The company informed them that cash compensation would be offered as an alternative to in-kind compensation, based on the assessment of the assets that each family possessed, combined with distribution of land plots for do-it-yourself construction. This modality was the one most favoured by the families that attended the meeting. However, the then National Director for Territorial Planning at the Ministry for the Coordination of Environmental Affairs, who was also President of the National Resettlement Commission, advised the families not to embark on this kind of compensation and explained:

“You must be very careful with money. There are cases where one of the spouses, especially the man, receives the money and disappears. In other cases, the family receives the money and applies it to other expenses and not to building the house.”

Along the same lines, the then Maputo-Sul CEO spoke of the risk of compensation money being stolen. He said that this had happened in the northern province of Nampula, involving one of the households affected by the resettlement induced by the Nacala Development Corridor.

This meeting with the Malanga residents and other users of the neighbourhood space (such as Malanga Nwankakana market vendors), highlighted both their indecision and lack of understanding regarding the compensation packages to which they were entitled and the poor assessment by the company of the families' needs. It was very clear that inadequate attention had been given by the company to community preparation, including the provision of relevant information for their participation in public consultations and in the negotiation of compensation packages. The guideline included in the resettlement regulation to accommodate the principle of free, prior, and informed consent was ignored.

In that meeting, the company also announced that 804 families were expected to leave their houses by April 30, 2015, to allow effective start-up of works on the bridge. However, Maputo-Sul was fully aware that new housing would not be completed by then, as the company advanced the option of renting houses to temporarily accommodate some of the families until the new houses were ready. Where these houses would be rented and for how long was not indicated in the meeting.



Families from Malanga and CTV staff attending the December 2014 public consultation.
Source: CTV, 2014

According to a man and a woman moved from Malanga to Tenga and Mahubo respectively, the selection process involved mostly the leaders. As the woman commented:

“First, the company took our leaders to see three sites, one in Katembe, another in Moamba, and the other one in Boane. When they came back they asked us to choose the sites of our preference. For all cases, the company told us that the families would find public services and clean plots to build the houses on the sites, which was not the case. We had to pay to move our stuff, clean the land, buy water and had no electricity. The company did not fulfil its promises.”

b) In-kind and Cash Compensation Complexities

In 2016 and 2017, disputes emerged between Maputo-Sul and affected families regarding compensation payments and relocation sites, capturing media attention and subsequently, attention from different institutions, namely from the Parliament Commission for Social Affairs, the National Human Rights Commission, political parties, and NGOs. According to the company CEO, the initial proposal advanced by Maputo-Sul consisted of in-kind compensation.

More than a year later, Maputo-Sul abandoned the option of building houses for the affected families, allegedly due to internal administrative problems and budget constraints, as well as pressure to complete the work as quickly as possible (Ibid). This resulted in the decision to compensate the families through cash payments only.

The choice of compensation payments did take into consideration the special treatment legally accorded to orphaned children, and families that were headed by minors did indeed get keys to houses built by Maputo Sul. However, this consideration in the compensation process did not extend to those with disabilities or the elderly, as indicated by a woman interviewed in Tenga:

We wanted them [Maputo-Sul] to build houses for us, not to give us money... the only thing we wanted them to say was: “Here is the key. Your house is here.” This is the option we preferred. See this mama here? She is old and her children are not nearby to assist her. Who will help her with the process of clearing the plot of land and building a new house?”



Improvised kitchen of a family resettled in Mahubo, Boane district, August 2016.

Source: CTV, 2016

Maputo-Sul's choice to pay cash compensations only (except in exceptional cases of orphans, for whom they built houses) resulted in amounts that only covered houses. Construction of physical and social infrastructure was not covered, although it is the government's obligation to provide this infrastructure even in the case of in-kind payment. This option - land parcels and cash payment for houses, excluding government provision of infrastructure - had negative consequences on the resettlement process. Resettled families in Tenga, Mahubo, and Chamissava - where most families received land parcels - were forced to open access roads by themselves and to pay to clear land where the new houses would be built. In addition, the relocation destinations had no water or electricity supply systems in place, which forced the resettled families to buy water (for consumption and for construction) at exorbitant prices. As explained by the women resettled from Malanga to Mahubo:

“When they first came, they said that ‘we are going to build houses for you’. After some time they came back and said, “We are no longer building houses for you because there is no time. We are now going to give you money for you to build houses in the locations we will show you. We will first take the heads of neighbourhoods to see if they approve

the sites.” After that they said that we would receive 30mx40m land parcels. They also said that we would find the parcels clean but they didn’t do that. All they did was to divide the plots. They had also said that “you will find water there. You will find water, electricity, schools, hospitals and everything”. But when we arrived here there was nothing. Not even water. My life here is not going on well. For example, in Maputo I used to receive social support money given to the elderly. I am not given that money here and I have to farm to find something to eat. I am very tired of carrying water buckets. We also had to pay money to bring our stuff from Maputo, to get our plots cleaned and to buy water to build our houses.”



Water tank at resettled family home under construction in Mahubo, Boane district, August 2016.

Source: CTV, 2016

Public services such as schools, hospitals, police, and transport, were also lacking at the relocation sites. For example, some of the resettled families had high school and college level students. For these families, the issue of how to ensure continuity of studies was a major concern. A statement from a resettled resident of Mahubo explains this problem, highlighting important issues such as distance to schools and cost of transport; access to jobs and business opportunities; and access to public services such as electricity:

“The school is there on the road and we are very far from the point where we can get transportation. For example, my child must be at school at 6:45 am. He is in seventh grade. The other girl is in tenth, in high school. Here there is no secondary school, and we also do not have seventh grade classes. I have to spend money every week for them to go to school, but I am a single parent, mother and father at the same time. Here I do not work; I do not do anything. Back in Gwachene my job was to braid people’s hair. I had my clients who came to braid. It also took me a long time to get electricity. We spent a year here without electricity.”

Due to lack of schools in the relocation sites, some families were forced to distribute their children (or other dependents) among relatives or friends living in or near Maputo so that they could continue going to school. But for other families the issue was not related to lack of schools but to the fact that resettlement had not been properly articulated with the school calendar.

“One of my kids leaves the house at 4:30 in the morning to get to the bus stop to be able to catch the first boat. When he reaches the other margin, the money is not enough to catch another bus to school. He has to make the distance on foot. On his return he must pay five meticaís to cross to KaTembe and from KaTembe he pays another nine meticaís to get home. So school is a big problem. We have already channelled this concern and they said that after the tests students are taking now they will be awarded semester grades and only then they can be transferred to KaTembe. The school here has already confirmed vacancies to receive the resettled.”

A similar problem arose for people who worked in the city of Maputo or who are engaged in some other economic activity. They were deprived of income, as Maputo-Sul did not create or promote alternative income-generating activities at the relocation sites. Therefore, the principle of maintaining or improving income was not observed, thus violating one of the basic rights granted to resettled populations.

c) Compensation Negotiation, Cash Amounts, and Payment Timing

The testimony below also attests to the lack of negotiation between the company and the residents of the affected neighbourhoods:

“They came and ‘filmed’ the house: if there were trees, they listed them down. I only had one bathroom. I did not have anything else there because it was an open area. We did not negotiate anything, they just said we would receive “X.” I received 154,912.00 MT. I went to pick up the check and deposited it in the bank.”

With regard to compensation amounts and the time they had to wait to receive it, and the worsening of living conditions, another resident expressed a common feeling among the families contacted:

“I lived in Malanga. They have paid me compensation, but it is very low. You can say that it’s a lot of money in words only. I lived near the hospital, near the school, close to my job. They gave money, but they took more than four months to give us the land. I’m in the bush now. There is no electricity and no water. I work in Maputo. I have two daughters who study in the city, one at night and the other one in the afternoon. What to say? It is the government that is chasing us away.”

The main concerns related to compensation negotiation and payment can be summarized as follows:

1. Differences in asset valuation, which denoted a certain level of subjectivity. The very concept of “house for house” has led to divergent assessments by Maputo-Sul and by members of the resettled communities. The criteria used by the latter was the use they made of houses and not the characteristics presented by such houses.
2. Compensation amounts were based on the market price established in 2010, the date of approval of the government Directive on Expropriation Processes for Territorial Planning Effects. Between 2010 and 2016, however, market conditions had changed drastically in Mozambique. For example, payment of compensation in the amount of 200,000 Meticaïs in 2010 corresponded to around US\$6000. In 2015, due to meticaïs’ currency devaluation, the dollar value for this amount of meticaïs was reduced in half. As a result, with 200.000Mt in 2016, resettled families would no longer be able to build a new residence and resume their lives. Furthermore, as mentioned above, the law requires that compensation amounts should cover the value of expropriated assets at the date of payment, as well as current and future losses resulting from such expropriation.
3. Substantial time lapse between the moment when the socio-economic census was undertaken (survey and registration of existing assets) and the date of the actual compensation payment. This was a critical factor in disempowering those affected by resettlement. The census was carried out in 2012 and compensation payments were made in 2016. While municipal authorities advised the families not to undertake further construction, in that long interval some families made investments or repairs on their properties.
4. Part of the compensation amount to be paid to resettled families was expected to also cover the cost of transportation to the relocation destinations, as well as all costs associated with clearing and preparing the land, and with setting up

water and electricity supply systems. These families considered that this was an unfair burden on them and that the company should bear these costs. It must be noted here, that by law the government is responsible to cover these costs.

5. No amount was reserved to compensate for loss of intangible assets as well as for disruption of social cohesion, which, as indicated in Chapter Four, must also be included in negotiations between investors and affected communities. It was not possible to identify any negotiation process related to this matter.
6. Lack of prompt response by Maputo-Sul to complaints presented by affected families (for example requests for review of compensation amounts), forcing some families from the Malanga neighbourhood to continue living in their homes even after demolition of neighbouring houses. These residents began to live in the midst of rubble, in very precarious conditions.

2. Voices from Host Communities

a) Consent to Land Occupation by Host Communities

Host communities in Mahubo, Tenga, and Chamissava indicated that all resettlement sites were selected by the company and the government. While the Moamba District Administrator claimed that land occupation by resettled families in Tenga was decided in consultation with community authorities, the problems listed below clearly attest to the contrary:

1. Land used by the host communities for agriculture and collection of forest resources such as firewood in Chamissava, negatively affected the availability of land for these purposes for host communities;
2. An aggravation of land conflicts, especially in Tenga, where conflicts already existed opposing private investors, local communities, and the district government;
3. Land allocation to resettled families in the vicinity of sacred sites (family cemeteries), against the culture of the resettled population. This has been negatively reflected in the relationship between resettled families and host families in Chamissava. Due to this, some of the resettled families even considered leaving their plots;
4. Community authorities' resentment for being by-passed by community members in conflict resolution.

The Moamba District Administrator explained the process in the following terms:

“To be honest, I must say that this process was not easy. It was a long process that started in 2010 until 2015, a period during which we were looking for space to accommodate the resettled families. In this country it is not possible to easily find free and continuous

space to host 300 families. So we had to negotiate with the original populations in host communities to see if they could understand the importance of this project which I consider to be of national interest and if they could accept to host the families. The process was complex, difficult and not very peaceful, because when the resettled people arrived in the host locations, they did not find what they expected. They were forced to start their life from scratch. But we have to see this as part of the country's economic situation. On the one hand, the government was building the bridge with external funds and, on the other hand, the issue of creating complete and adequate conditions for the resettled families was not addressed."

While this comment doesn't offer insights about whether and how consultations with host communities were conducted, it nonetheless sheds some light on the tensions surrounding the resettlement decision and implementation process.

b) Equal Rights, Equal Treatment!

Host communities of Tenga and Chamissava ceded part of their land, expecting to share some of the benefits or services promised to resettled families such as piped water, roads, and electricity, for example. There was a partial or total failure of Maputo-Sul to honour promises assumed in compensation agreements reached with host communities related to transfer of their land for use by the displaced families. To respond to these expectations in Tenga, Maputo-Sul promised to build a road linking the Tenga Administrative Post to the main road. However, the company was unable to fully fulfil and honour this promise, leaving the host community of Tenga bitter and suspicious.

The following testimony is illustrative of host communities' expectations:

"We were not invaded. We have been informed that there will be a need to use some of our lands to resettle people. The question we asked was "What is our benefit?" The government and the Maputo-Sul company said we should say what we want. We asked for roads, electricity, and water. They said they were going to open six roads, but so far only two roads have been opened, and the second one was only halfway. The road should come from Matola-Gare to Tenga. We still have no electricity or water" (Tenga original resident, 2016).

The head of Moamba District Planning and Infrastructure Services offered some clarifications on the issues raised by the Tenga community, including land conflicts:

"People were resettled on land that already had DUAT holders. We contacted the DUAT holders to negotiate the transfer of part of their land. But there were several demarcations

made on the land (without due process) by the Neighbourhood Secretaries (Secretários de Bairro), as well as other demarcations made by a person who also sold land. There were parcels that had been sold multiple times and therefore had two or three owners. We had to negotiate. As for the water pipes, the population sabotaged these pipes because their homes were being passed by the pipes, in favour of the resettled communities. They said that they wanted to put water in their homes too. But the host community is not covered by the electricity provision plan [and electrical post installation] because their land has not yet been parcelled out.”

It is clear from government comments that the importance of prior territorial planning, institutional coordination, and social preparation was also disregarded in this case.

III. Investments and Resettlement Contribution to Community Development: Challenges in Ensuring Procedural and Distributive Justice

Based on stakeholders’ views presented above, this section assesses how the Maputo-Katembe Bridge Project contributed or may contribute to community development, based on the indicators listed below and which were inferred from provisions from the land law regulation (Article 27) and the resettlement regulation (Articles 5 and 10) transcribed in Chapter Five and in the section above, respectively. These indicators were also inspired by resettlement experts such as Cernea (2008); Cernea and Mathur (2009) and Vanclay (2017), who discussed the prospects of compensation preventing impoverishment in involuntary resettlement situations. Vanclay selects key questions that have helped in analysing the Maputo-Katembe bridge project in terms of its contribution to community development, namely:

1. When and under what conditions should projects and/or their associated resettlement actions proceed?
2. What constitutes appropriate compensation, remediation, and restitution for being resettled?
3. How effective are the resettlement processes being implemented and how can resettlement practice be improved?
4. What is the business case for developers and funders to ensure that resettlement is done right?

Findings from the Maputo-Katembe bridge project that might provide insights to these questions and to selected indicators are summarized below:

Indicator 1: Resettlement Justification

Main Finding: While the resettlement of communities living in deplorable infrastructural and sanitation conditions in many peripheral neighbourhoods in Maputo merits consideration and might be an option to change the situation for the better in their own benefit, the circumstances that dictated the resettlement of Malanga, Gwachene, and Luis Cabral communities raised controversy and reservations due to the debatable and highly questionable economic need and feasibility of the bridge project. In fact, the resettlement was approved neither to respond to a national economic priority nor to improve the living conditions and socio-economic conditions of the populations. The Maputo-Katembe bridge project failed to be justified on both accounts.

Indicator 2: Rights Protection and Political Participation

Main Finding: The Maputo-Sul project initiated and was completed with no approved resettlement plan, in contradiction with legal procedures in force, and despite protests and legal audits by civil society organizations and confirmation of procedural violations by MITADER. While the government and the company managers claim to have produced an EIA report and resettlement plan, this was clearly not designed with the involvement of local communities and without prior negotiation and formalization of compensation packages. Mechanisms adopted by the company and by the Maputo Municipality to disseminate information in an accurate and timely manner to affected communities were not effective. They ignored the legal rights granted to resettled communities, especially relating to the right to access information on the criteria for calculation of compensation, the right of recourse to independent institutions or entities to file claims, and the right to initiate legal proceedings in case of disagreement. Widespread protests from affected communities strongly suggest that consultations for land occupation and for negotiation of compensation packages were poorly conducted in terms of both procedural aspects and outcomes. Public comments made by company representatives and representatives of local governments (district governments and Maputo Mayor) indicating their preoccupation with community rights while they were accused by affected families of not caring about their rights, also suggest that the process was jeopardized by serious communication failures.

Indicator 3: Access to Food, Health, and Education

Main Finding: In addition to a lack of at least minimal urban physical infrastructure, the new resettlement sites in the Maputo-Sul case lacked basic public services such as schools, hospitals, police, and transportation. Access to Maputo city for work, study, or for other activities, has become very difficult or even impossible for resettled communities. Government responsibility to restore income generation

activities and to ensure better living conditions and livelihoods, and the overall state responsibility to protect the resettled families' human right to food, health, and education was put at risk from the beginning as the government failed to include funds for the resettlement process when the loan to cover the bridge costs was negotiated.

Indicator 4: Economic Inclusion and Benefit Sharing

Main Finding: As mentioned in the beginning of this chapter, the Maputo-KaTembe bridge was marketed as a socio-economic development booster of the southern part of the country. However, opportunities for alternative employment or income-generating projects for those who have had to abandon their activities due to the resettlement decision were not discussed in family-by-family negotiations, which could have helped the company to respond specifically to each family situation. Promises of employment opportunities, markets, and so forth, made in consultation meetings and even registered in consultation minutes were generally not fulfilled.

Similar to lack of inclusion in the resettlement process, economic inclusion and benefit sharing were also not envisaged by this project. With regard to benefit sharing, the project's financial characteristics imply that possibility of revenue generation for both the state and the communities is highly unlikely.

While in the Boane Mayor's eyes the bridge and its associated infrastructure (i.e. the road to Matutuine and Ponta D'Ouro) stimulated economic activity and many economic projects, such as gas stations, he failed to identify concrete economic opportunities and benefits specifically created for affected families, who now have to spend a lot more money to cross the bridge and get their lives going in Maputo city since such opportunities are lacking in Tenga, Mahubo, and Chamissava. Therefore, resettled families' place in the Ponta D'Ouro touristic hub, long occupied by powerful economic actors from Maputo and South Africa, is yet to be secured. This includes their lack of capacity to pay the high toll costs for crossing the bridge and using the highway in the first place.

Indicator 5: Access to Better Living Conditions (better housing and environmental quality)

Main Finding: In addition to a lack of minimal urban physical infrastructure, the new resettlement sites lacked basic public services such as schools, hospitals, police, and transportation. However, as testified by some people resettled in Tenga, when compared to their former locations, in terms of environmental quality and housing quality, these people are much better off. Thus, from a purely materialistic and

infrastructural perspective, the resettlement caused by the construction of the Maputo-KaTembe Bridge did improve living conditions for most of those affected. In spite of better houses and larger land parcels, however, immaterial assets such as disruption of social networks and social cohesion, disruption of the sense of belonging and of an identity rooted in the neighbourhood, as well as lack of long term livelihood security undermine the sense of progress and better living conditions wrongly taken as secured by those material assets, particularly houses.

The Maputo-Katembe bridge project confirms Cernea's (2008) argument that "compensation alone cannot prevent the impoverishment of resettlers and cannot in itself restore and improve their livelihoods" and his conclusion that "profound reform in how involuntary resettlement is currently conceived, conducted, and financed in most developing countries is indispensable. Such reform must begin with the economic and financial foundations of planning for displacement and resettlement."

Again, the fact that the Maputo Katembe Bridge project resettlement process was not budgeted is self-explanatory of its unlikelihood to contribute to the sustainable socio-economic development of the new resettlement neighbourhoods.

Conclusion

This chapter discussed resettlement procedural and distributive justice perspectives in the context of urban land-based investments, highlighting the challenges associated with land rights expropriation and compensation negotiations, as well as challenges in discerning resettlement contributions to local development in its diverse dimensions.

This chapter shows that while constitutional and legal recognition of pre-existing rights imposes the conduction of formal expropriation processes, this did not happen in the Maputo-Katembe Bridge case. In this case, too, none of the mandatory procedures for rights protection were followed and procedures aimed at securing distributive justice through economic inclusion and benefit sharing were also disregarded. As a result, land occupation by the Maputo-Katembe Bridge project is tainted by a major illegality committed and openly assumed by the government at the jeopardy of both affected families and the state. Lack of rigour in following procedural aspects was exacerbated by lack of coordination between the different government institutions involved and deficient mechanisms for provision of relevant and timely information to affected families.

The chapter also provided an opportunity to compare participation processes conducted in both rural and urban settings. Essentially, it revealed no fundamental differences in the manner that communities are treated in both contexts. However, it highlighted a couple of important differences. While local communities in urban areas were equally affected by procedural irregularities, poor institutional preparedness at all levels, and the company's apparent incapacity to comply with legal procedures and to deal with the complexities of resettlement processes, their voices were better heard due to their proximity to central level public institutions, political parties, CSOs, and the media, which they used to expose and seek support for their claims. Nevertheless, like their rural counterparts, these families are equally ill-prepared to interact with public and private institutions and to confront and oppose illegal or irregular decisions. Here too, then, the need for community technical assistance, particularly legal advice, was evident. Additionally, the generalized sense of life and livelihood loss felt in the other resettlement processes described in this thesis, was not as impressive and mixed positions could be noted.

Furthermore, the Maputo-Katembe Bridge resettlement process, and the social movements it entailed, raised interesting urban-rural issues meriting further research. These include the issue of how geography shapes citizen's identity as expressed through their economic occupation and the multidimensional implications of citizens' overnight transformation from urban citizens into rural citizens (and vice-versa). The second issue is related to resettlement-induced land category conversion, mostly from rural lands to urban lands, to accommodate resettled families.

Regarding the first issue, the tears in Feliciano's eyes when seeing women from his former urban neighbourhood in Malanga transformed from market vendors into farmers were very revealing of people's feelings regarding abrupt changes imposed on their economic/occupational identity and how unprepared they were for this change. With regard to land category conversion triggered by resettlement processes, its consequent legal implications should be highlighted. In fact, the Maputo bridge project implied extension of the boundaries of the Boane Municipality to accommodate resettled families, thus transforming the Mahubo rural community settlement into an urban neighbourhood but also transferring it from Boane district domain into the domain of Boane Municipality. None of these changes were addressed. For the purpose of this dissertation, what lies at the heart of these land conversions and institutional jurisdiction transfers is the issue of how local population land rights are modified or extinguished in urban settings in terms of procedural norms. Additionally, and so far, none of the families resettled have new formal DUATs, a situation that might raise the issue of whether customary norms are to be applied in these now new urban settlements. Taking into account the trend

indicating increasing expansion of urbanization and an increasing number of public infrastructure projects in urban areas, this chapter suggests that these issues should be addressed in terms of both just procedures and outcomes.

Although it has been argued elsewhere in this dissertation that the law alone is not enough to ensure good land governance, a premise extensive also to urban areas, this chapter shows that strict observance and adherence to the law could have helped in protecting the Malanga, Luís Cabral, and Gwachene families' fundamental rights and in ensuring that resettlement represented an opportunity for all and not a regression in their socio-economic progress and well-being as felt by some families.

This chapter was also revealing in terms of individual/family perceptions versus collective/community perceptions on development and quality of life. On the one hand, although with audible nostalgia in her voice when mentioning that she missed her life in Malanga, Mariana recognized that, in spite of the challenge represented by difficulties in access to water and to her retirement pension, her living conditions had improved and she trusted that she would get used to the new house. In her case, the Maputo-Katembe Bridge resettlement represented an opportunity to improve her living conditions. On the other hand, however, this chapter clearly exposed challenges faced by many families in addressing the issue of access to public services and livelihood security both during and in the post-resettlement phase, showing the need for approaches that go beyond provision of better houses and monetary compensation packages grounded on a prior assessment of their long-term impact and sustainability. Notably, economic inclusion and benefit sharing concerns were ostensibly disregarded in both project planning and implementation. Therefore, the question that this and other resettlement processes analysed in this dissertation raise is what will happen to the resettled families when the compensation money ends, including those who are now happy with having a new house. Hence, the title of the 2013 Human Rights Watch Report merits mention here: "What is a house without food?"

Seven

Conclusion and discussion

“Leave No One Behind” (UN, 2015)

This dissertation asked, *“How have the main principles and procedures of Mozambique’s land policy worked out in practice with regard to community rights protection, participation, and benefit sharing in the context of land-based investments”*. Its point of departure was to analyze how Mozambique’s land and natural resources policy and legal framework works out in practice. Using social and environmental justice theories, it has analyzed the link between legal procedures and practical outcomes on the ground, in an attempt to determine the extent to which they provide the basis for fairness of procedures that then produce fair results. For this, it has identified four pillars in the Mozambican land governance framework that generally have been seen as representing a strong base for good land governance, grounded on concerns over rights protection and also over community political and economic participation, which granted this country recognition as a positive reference both at the national and international levels. These are: (1) state ownership over land for citizens’ socio-environmental, political, and economic rights protection; (2) legal and institutional pluralism for community-based land and natural resources management; (3) administrative decentralization for local government leadership of local development processes; and (4) investments for sustainable rural development. It then analyzed how, from a procedural and distributive justice perspective, land governance interventions in Mozambique have worked out in practice, and how its core ambitions - protection of community rights and promotion of mutually beneficial partnerships; promotion of community consultations for political and economic participation; as well as promotion of just and equitable benefit sharing in the context of land-based investments - are reflected on the ground.

Conclusion

The four pillars identified above have been assessed using a series of investment projects from different parts of the country. Based on the research findings, the main conclusion of this thesis is that there are good elements in the Mozambican legal framework for just, participatory, and inclusive land governance but, due to the double identity of the Mozambican state/government, in practice community rights protection, participation and benefit sharing do not materialize. What was noted on the ground was that neither procedural nor distributive justice have been inconditionally pursued and effectively achieved. Below I elaborate on these issues and indicate the main bottlenecks.

First, the dissertation shows that the reputation of the 1997 land law as a good and progressive instrument that includes solutions to the complex problem of securing land for investment where historical and customarily-acquired land rights already exist and require state protection is still justified. The dissertation also clearly shows that there is room and need for improvement, particularly in terms of better conceptual clarity; elimination of procedural gaps, space for political interference and for discretionary and detrimental public decisions over fundamental human rights; better linking between procedures and outcomes; as well as better accountability norms that address and punish law violations. The legal framework has not performed as intended and the dissertation identifies two main factors that explain the contradiction between theory and practice found in the case studies: confusion over state identity and political interference in public affairs.

The Mozambican reality of ‘good law, bad governance’ is shown to be the result of a state trapped between the democratic governance imperative embraced after the end of the Civil War in 1992, and the obsession of the FRELIMO party to control the state by maintaining hegemony over all areas of life, including land policy and land management, arguably as a strategy to protect national interest and to defend the people against the re-emergence of rentier capitalism and land-grabbing. Despite this commendable intention, however, the case studies have provided solid empirical evidence of the uncomfortable fact that state institutions and the actors that lead them are, in fact, a primary cause of bad governance, including land grabbing. In this respect, the dissertation has shown how these actors have used their different positions of authority and economic power to pursue a development model that has left local people more as victims than beneficiaries, in complete contrast to the underlying objectives and philosophy of the policy and legal framework.

In fact, all projects analyzed in the dissertation clearly show that the Mozambican government has been intentionally hindering implementation of the law by positioning itself in a way that is inconsistent with its duty and proclaimed commitment to protect the rights and interests of the majority of the national population as indicated in the Mozambique Constitution of the Republic. This situation has led to cosmetic adoption of laws that are progressive only on paper but deliberately not implemented or enforced in practice except to the extent that they have favored consolidation of party and personal interests and power.

The dissertation has also shown that the different identities of ‘the state’/government and the resulting tensions play a major role when it comes to deciding between state responsibility of protecting individual and collective rights of citizens simultaneous to the responsibility to pursue public interest and protect private interests and agendas. The projects show that in many instances, ‘the state’ or ‘the government’ simultaneously wear investor and FRELIMO party hats. The conjunction of political power, economic interest, and the continuance of underlying socialist principles in the conceptualization and interpretation of state ownership over land, then produce the injustices and bad land governance revealed in the projects review.

Second, with regard to rights protection, the dissertation has highlighted the importance of giving life to customary norms in a manner that not only serves to protect rights but also makes them visible and relevant for community-level land management and community interaction with public and private institutions in this sector. This dissertation found that reforms undertaken in 1997 to make the land governance framework work as envisaged in the 1995 National Land Policy (NLP), fell short of including specific provisions that would simultaneously ensure the effective recognition of community land management norms and rights, the integration of local land management structures and processes into the wider framework of public land administration, and properly conducted community consultations for rights protection and economic inclusion. Furthermore, the dissertation found that if supported by prior interventions for community preparation, including legal literacy and technical capacity building, such combination of provisions could potentially produce a better balance among community, public, and private interests with all parties participating in land decisions in an informed manner and with ‘bone fide’ spirit. This dissertation clearly shows that pursuit of public interest, if coherently conducted, can be achieved without jeopardizing protection of citizens’ collective rights and interests, including the right to participate in decision-making processes and in economic opportunities, thus giving substance to the 1975 motto that “power resides in the people”.

Third, regarding participation through community consultations, all projects reviewed have revealed intentionally ill-conducted community consultations that have put in jeopardy the rights and interests of local communities, clearly favoring the interests of investors over those of both the state and local people. In this regard, the dissertation highlighted the important role legally assigned to local governments in land decisions, but found that lack of prior preparation of local government, including clarity over where it stands politically in defense of 'the people' and their rights, proper and prior territorial organization and coherent development strategic planning, has been detrimental to the 1995 NLP directives in general, and to protection of both community and private interests in particular.

Furthermore, it is also clear from the dissertation that because in many situations the government is either both investor and promoter, or has close social and economic links to the investment and entrepreneurial class that is in turn asking the government for the land they need for their projects, local governments have been acting as mere intermediaries of public and private interests and of decisions taken at higher levels of government. For these reasons, the main features of the land legislation, particularly provisions on community consultations for rights protection, and for both political and economic inclusion, are not being adequately enforced by local level public institutions, or are being used cosmetically to give the appearance of participation while the reality is, in fact, quite the opposite.

Fourth, findings on benefit sharing made it evident that in the case of Mozambique a good land law on its own cannot achieve its intended objective of effective participatory and sustainable development, its desired outcomes of procedural and distributive justice and positive impacts on the SDGs and other socio-economic indicators. The case studies show how the land law has not generated the broad and transformational citizens' political and economic participation and strong and accountable public leadership that are the cornerstones of sustainable development. In this regard, the dissertation findings support the author's claim that to be fully effective and given space to achieve its intended goal - equitable and sustainable development with the private sector and communities working in unison - significant political and institutional reforms are needed. Without the reforms indicated above, millions of Mozambicans with acquired rights and who depend on land for their livelihoods, will continue to be at risk of becoming victims of both government and private condoned land grabbing. Thus, irrespective of geographical, cultural, sectoral, and institutional specificities, the current situation will only extend and consolidate the half-hearted and dubious commitment of both government and investors to good land governance.

Discussion

If Mozambique is to reverse its currently stained governance reputation and achieve the model of land governance that is provided for in its Constitution, the 1995 National Land Policy, the 1997 Land Law, and subsequent regulatory and other natural resources management laws, the dissertation argues that a number of key challenges have to be addressed.

1. Can Pro-Poor and Pro-Investments Agendas Be Made Compatible?

One aspect that this dissertation clearly highlights in Chapter Three is that the Mozambican land policy and legal framework entails a pro-poor development agenda, thus seeing investments as an enabling tool with a complementary and supportive role to government rural development efforts. As proclaimed by the 1995 National Land Policy (NLP), investments are to be attracted to promote rural development with due respect to, and protection of, community rights. Land occupation by investors in both rural and urban areas should, therefore, ensure that community rights are respected and that economic benefits are identified and shared with local communities. Where proper conditions exist, and subject to community prior and informed consent, formal partnerships can be established between investors and such communities.

In theory, rights maintenance and protection in the context of investments promotion is the main goal pursued by the Mozambican 1995 NLP. On paper, these two agendas are presented as complementary and mutually reinforcing, with the pro-investment's agenda seen as playing a supportive role to the pro-poor agenda. However, what the practice shows is the existence of two distinct agendas - the pro-poor agenda and the pro-investment agenda - in permanent tension and conflict, even suggesting a potential incompatibility between them.

The dissertation used selected projects to explore these tensions and investigate how the principles adopted in the policy and legal framework have succeeded or failed in delivering its fullest potential in terms of participatory governance and equitable and sustainable development. As the projects have shown, examples of alignment between the two agendas are non-existent and where this has started to occur, it has taken a considerable amount of pushing, struggling, and tensions before negotiation of acceptable partnerships could be effectively and consistently initiated. Both the Cubo and Tchuma Tchato projects have shown resistance from the government to abide by the NLP directives and by the land law procedural requirements.

Looked at from the point of view of a 'state' wanting to promote national development, the projects analysed support the claim that the Mozambican government has shifted its development approach from being a protector of the poor to being a promoter of investors. From the projects review, it was apparent that this shift from protecting the poor to favoring investment has been justified by a misinterpretation of what constitutes 'national interest' and 'economic efficiency'. The underlying assumption has been that any means are justifiable in the pursuit of 'public interest' including citizens' rights violations. Furthermore, investors are seen as having greater capacity to use the land more effectively, and thus contribute to economic growth and poverty alleviation through a presumed distribution of benefits and through employment and other consequences of an investment-driven model.

In particular, the chapters have shown considerable difficulty or resistance on both the government and investor's side to abide to the rule of law and to seek and promote economic inclusion in public and private investments, where community voices are heard and concerns are taken into account. In the face of generalized and persistent law violations by both government and investors shown in the different projects, involving legally unjustified rights extinction, land expropriation and involuntary resettlements, ill conducted community consultations, as well as illegal and illegitimate public-private land-leasing deals, the question that arises is whether developing governments have the necessary conditions to strike a balance between a pro-poor agenda and their interest in attracting foreign and domestic investments for rural development.

This dissertation argues that, so far, the balance envisaged by the 1995 NLP is very difficult to achieve due to absence of an enabling social, political, and economic environment. Concurring with Tanner and Bicchieri (2014) that the law alone is not enough, the dissertation shows that even in cases when the law is not to be blamed, good governance takes much more than good laws. The different chapters have also shown that law implementation and impact do not derive exclusively from good and progressive provisions.

Progressive legal provisions are certainly important and helpful but, above all, good governance derives from a combination of factors such as public and private political commitment, willingness and ethics, as well as community preparedness, confidence, and willingness to participate. So far, Mozambique cannot be taken as a good example of a well-balanced and well-achieved pro-poor/pro-investment agenda where the law is part and parcel of other equally important enabling conditions. The Administrative Court decision on the Anadarko DUAT process is self-explanatory in this regard.

2. Land-based Investments, Local Development, and the Land Grabbing Nexus

The role of investors in economic development is indisputable when abiding by good governance principles, but this dissertation has shown that although private and public land-based investments have been given a prominent role in the promotion of socio-economic development, so far they are failing in their legal, moral, and ethical obligation to respect citizens' rights, failing to produce expected rural socio-economic development outcomes. In this context, this dissertation has shown a worrying tendency of an increase in the occurrence of poorly planned economic and physical involuntary resettlements with questionable need for community rights withdrawal. And although in Mozambique there is resistance in using the term "land grab" because investors land occupation has been legitimized by government approval, the fact is that this phenomenon is indeed occurring. This thesis has shown the different ways through which land grabbing in Mozambique is manifested, including cases where government licences have been issued, suggesting that the fact that something receives a legal 'stamp' does not mean that it is not land grabbing.

The first dimension related to investors' identity as well as the issue of 'public' versus 'private' interests is a crucial issue to be reflected upon. In the case of Mozambique, it should be noted that in some cases the Government is the investor, acting individually on behalf of the state. This is the case in the Limpopo National Transfrontier Park and the Maputo-Katembe Bridge projects. The identity of the 'investor' here is clear. However, in other cases, the government joins forces with private companies in the realization of different projects, as is the case of the Palma LNG project, where, through ENH, the state has a 25% share in the business. In this latter case, particularly considering the level of participation in the business, it is difficult to say whether the land expropriations that technically took place can be justified by the need to meet 'public' purposes and interest when the state is a minority shareholder.

Confusion between 'government' and 'investor' is a feature that clearly came out in all projects, suggesting that there must be clear criteria to determine when a certain project is private or public, to avoid illegitimate opportunism by both governments and companies. In the Palma case, enormous difficulties still persist in terms of distinguishing what separates private from public interests in the manner in which land was allocated to the project and the resettlement decision was taken. As the dissertation has also shown, the identity of the investor is crucial because there are legal implications attached to it. For one, and as also pointed out in the dissertation, no land rights can be expropriated by the state to attend to private interests.

The second dimension is related to failure to follow due process. In this regard, in the different projects analysed, both public and private companies have exhibited an ostensive disregard to their obligation to follow due process and acceptable ethical standards. With the belief that government backing is good enough to shield them from legal obligations, companies involved in all projects have committed illegalities, showing a blind eye to illegalities also committed by the government (for their benefit).

Failure to justify rights extinction, failure to conduct expropriation processes, and lack of environmental licences, including lack of approved resettlement plans, are illustrative of the level of disregard to the rule of law principle. In addition, by implying illegitimate and illegal community land possession and occupation, these investments clearly represent outright land grabbing.

This dissertation has thus made it clear that the problem with Mozambique investment strategy does not lie in the fact that national governments are enabling and supporting investments. This is actually necessary and desirable. The problem exposed by this dissertation lies in the fact that government efforts to attract investments are being made at odds with national laws as well as international best practices. Therefore, this dissertation claims that securing land use rights through violence and intimidation also represents land grabbing.

The third dimension regards failure to justify the need or incapacity to effectively use large extensions of land. Both the LNP and the Procana projects in Massingir district are live examples of public and private investors incapacity to use and manage the large extensions of land allocated to them, due to both social and economic reasons. In both cases, however, no legal consequences have resulted from this fact. Still, in both cases, this land has been maintained under government control instead of being returned to its original occupants and land rights holders.

It is worth recalling here that the Twin City Project was initiated in a land ceded by Cubo to a government officer who, ten years later, recognized that he had no financial capacity to implement the project for which he had requested and received land and the respective DUAT. Instead of returning the land to Cubo, he transferred his DUAT to the Ngeneya Project through an illegitimate land rights transfer, since Cubo was not consulted. It is not difficult to detect a land grabbing manoeuvre when land use rights are acquired using the leverage and power of a government position but without the capacity to use the land.

In Palma, when the DUAT was issued to the LNG project in 2013, both Anadarko and the government were unable to justify the need for the 7.000ha allocated to this project, thus fuelling debates about the real reason behind the decision to completely displace Quitupo from its land. Furthermore, the fact that until 2017 no spatial data had been presented by Anadarko to justify the amount of land envisaged by the project seems to legitimate land grabbing accusations. Comments made by MITADER National Director of Territorial Planning and Resettlement in 2017 indicating that they were also having difficulties in obliging the company to submit this data was striking and illustrative of the position occupied by the government vis a vis powerful economic actors. Anadarko's financial weight seems to have forced the Mozambican government not only to disrespect community rights but also to accept disrespect to its own position as representative of a sovereign state. Thus, this dissertation argues that land grabbing also arises when national governments are forced to violate their own laws as a result of financial blackmailing exercised by foreign investors.

The fourth dimension concerns failure to produce announced and expected development outcomes. As Vanclay (2017), Cernea (2008) and Cernea and Mathur (2009) have pointed out, under certain conditions involuntary resettlements could indeed represent an opportunity for those affected.

This dissertation argues that in the Maputo-Katembe Bridge project and in all other cases analysed, resettlement decisions and implementation processes were not planned and conducted in a way that addressed the core of peoples' life interests, both tangible and intangible.

Thus, adding to what has been claimed above with regard to the legal value of community consultations and the value of community positions taken in such consultations, this dissertation defends that failure to fulfil commitments assumed in consultation meetings should also represent sufficient ground to hold investors accountable and similarly imply the nullity of the DUAT if affected communities and families so decide. This is a crucial point to be kept in mind in land allocation processes, since community consent to cede land use rights to investors is greatly, if not exclusively, motivated by their expectations to benefit from economic opportunities, particularly employment and access to social services such as roads, health, education services, etc.

In addition to its land grabbing tendencies and its intention to occupy land beyond the limits agreed with communities, the Twin City project was also involved in constant conflicts with the Cubo community due to failure to comply with other

commitments assumed in terms of provision of social and economic benefits, especially employment commitments. This failure was one of the reasons why in 2014 and 2017 the Cubo Community considered cancelling the partnership with the Ngeneya and Twin City projects, respectively, claiming that they wanted their land back because they had not seen any benefit in having entered into a partnership with the investor. Thus, acquiring land use rights based on false promises never intended to be fulfilled clearly amounts to cheating and, thus, to land grabbing.

3. State Ownership Over Land and Implications for Community Rights Protection, Participation, and Benefit Sharing

The different chapters in this dissertation have addressed and shown the challenges presented in the operationalization of Mozambique's land policy, in both conceptual, procedural, and distributive perspectives. The dissertation shows that the choice of state ownership over land and natural resources, which reflect the overarching principle that "power resides in the people" and which should have gained expression through the different complementary principles (legal and institutional pluralism, administrative decentralization and inclusive investments) and participation modalities (community consultations, community-based land and natural resources management, and community-private partnerships), has been jeopardized by incongruent conceptual interpretation and contradictory practices.

On conceptual terms, as shown in Chapter Five, confusion between the concepts of 'state' and 'government', have led many government representatives into believing and proclaiming that by 'belonging' to the state, the government had the power to unilaterally make decisions without consulting with legitimate land rights holders. Due to this reality, 'Who' and 'What' is the Mozambican 'state' are questions that deserve to be asked and answered in any debate about public land governance. By distorting the concept of 'state', the Mozambican government interpretation has intentionally detached and distanced its actions, as state representatives, from the rights and interests of the people who should always justify and legitimize them. The claim that "the state is sovereign and does not need to consult anyone" is emblematic and summarizes a profound misconception that has influenced how land decisions have been made and how the law has been regarded by those with the mandate to enforce it: as something not to be followed, or to be followed on a discretionary basis.

For this reason, it is worth insisting on clarifying the concept of 'state'. Public institutions (meaning government *lato sensu*) have a representation and instrumental role and should never be confused or placed at the same level as that of the people

whose interests they are mandated to represent, pursue, and protect. Based on this premise, this dissertation concurs with Cabaço (2007) by arguing that the relatively young Mozambican state (meaning its people, institutions, vision, and goals) has also been a victim of the same actors (government representatives) and powers (political and economic elites, both national and foreign) that throughout the years have threatened citizen individual and collective rights and interests in the land sector.

Discussions about whether private ownership over land is better than state ownership in terms of citizens' rights protection and in terms of political and economic inclusion have often been triggered by conflicts between communities and companies and between communities and the government as state representative. What this dissertation argues, and as the different projects clearly show, is that it is not the property regime that triggers mal-governance and that the property regime is irrelevant in the absence of good governance safeguards. As argued by Negrão (2004) and Serra (2013), in spite of state ownership over land, a highly lucrative (albeit illegal) land market exposes a legal reality in which land is the property of the state and cannot be sold or in any other form alienated. This is confronted by a reality characterized by generalized, continued, and persistent practice of private property-like land deals, conducted at the margins of state control or conducted with government involvement, and jeopardizing both state and community interests. This is what can be clearly inferred from the land transaction between the Ngeneya Project and the Twin City in Massingir and from the Anadarko/ENH deal.

As indicated in the 1995 Land Policy, justification for maintaining the principle of state ownership over land in the 1990 Constitution and 1997 Land Law has arguably resulted from the fear that land privatization would endanger the rights of poor citizens, particularly rural citizens. However as discussed in Chapter Five, the land deal signed between ENH (as representative of state interests) and Anadarko justifies scepticism about government commitment towards the rule of law and due process when it comes to protecting community rights. As a result of this kind of community rights by-passing, this dissertation argues that the principles of state ownership over land and the total prohibition of land sale and land rights transactions, have been interpreted and used mostly to promote land grabbing both by well positioned government agents and institutions, and by political and economic elites benefiting from state protection, thus transforming the state into the main land-grabber.

This dissertation provides food for thought in relation to these issues. First, it can be argued that fears about small farmers giving up their land in ‘distress sales’ and becoming landless reflect a paternalist approach to rural citizens, who tend to be seen not only as illiterate but also as ignorant, irresponsible, and unable to properly discern the risks and benefits of decisions and deals they make. As this dissertation shows, this perception is contradicted by reality. The only instances where families have lost all their land rights are those where the state has illegally expropriated their land rights without prior consultations and prior and fair compensation payment, such as in Massingir. Generally, families and communities who cede their lands for public or private investments always try to ensure that they retain the land necessary for their present and future social and economic needs, including land for housing, farming, grazing, and other social and economic activities.

Second, this dissertation concurs with Francisco’s perception (2013) that the apparent concern with ‘poor rural citizens’ becoming ‘landless’ is nothing but an ill-disguised manoeuvre to restrict the land market to national elites who seek to control it and then act as intermediaries between rural families, who occupy most of the lands, and investors, mostly foreign investors. In fact, this argument is used by the same people (government agents and political elites) who have along the years accumulated DUATs over large amounts of rural lands using their political influence over the state land administrations. As the Cubo case shows, these people have either then failed to use the land they have acquired or have intentionally acquired the land in order to later pass it on to foreign companies in secret deals.

Therefore, this dissertation argues that discussions over property regimes should be guided by concerns about how they promote procedural and distributive justice outcomes, as they do not necessarily constitute the main cause of mal-governance. Concurring with both Knight (2010) and Ribot (2004), this dissertation also claims that as long as public institutions do not exhibit political will to fulfil their role and responsibility to enforce norms and procedures to prevent land speculation and illegalities committed either by public officers or by private companies backed up by such officers, and as long as they remain unaccountable, this grave institutional weakness – i.e. lack of political will and public accountability - will continue to jeopardize the rights of citizens and communities in any land property regime, as the pressures over weaker groups outlined in the dissertation can also be exerted even in a situation where land is privately owned.

4. Community Rights Protection in Public Investments

The dissertation has shown the importance of the procedural safeguards that have been legally adopted - particularly the exceptionality of and limitations to citizens and community rights extinction and land expropriation - theoretically providing substantial protection to DUATs even against state decisions.

However, maintenance of unclear criteria for land rights expropriation, including criteria for establishing the existence of public 'interest', 'utility', and 'necessity', as well as criteria to determine incompatibility between public investment objectives and maintenance of community rights, represent one of the main legal gaps constraining the potential of the goal behind the land property regime adopted in Mozambique. The dissertation has further shown that by contradicting the constitutional directive that power resides in the people, attribution of a quasi-property right treatment to citizen's land use rights (DUATs) by the Constitution has, in reality, been voided of real significance in face of how the principle of 'state ownership' over land has been interpreted by the government.

The dissertation also shows that this lack of clarity, intentionally maintained to favour the prevailing political economy of natural resources access and control, has substantially weakened safeguards against government discretionary use of state eminent domain. In this context, the dissertation also argues that private ownership will not necessarily prevent poor and marginalized citizens from being evicted from their lands with or without insignificant compensation, and without benefiting from due process. Unchecked exercise of state eminent domain, combined with the power of private economic interests represented by those who also represent the state, will thus continue to dominate public land decisions to the detriment of citizens' individual and collective rights.

The dissertation has further argued that because the prerogative to undertake rights expropriation justified by public interest, utility and necessity is exclusive to the state, such a prerogative should not be used to protect private interests with the argument that the investment will bring great benefits (mostly focusing on financial benefits) to the country and help to combat poverty. These arguments are not only elusive but are also opportunistically used to cover up for political and economic decisions that could not be more distant from genuine concerns over public interests or equitable benefit sharing. In fact, since it should be expected that all projects must bring benefits, including social and environmental benefits, the question that arises is: under what circumstances should a private project justify the declaration

by the state of existence of public interest, utility or public need, and justify rights extinction, assets expropriation, and involuntary resettlements.

Although expropriations in Mozambique are treated as an exception to the rule, and that exceptionality of expropriations imposes that the state must formally justify its decision and secure prior compensation to all those affected by such decisions in a just and fair manner, this dissertation has also shown that procedural aspects, particularly procedures aimed at protecting rights, have been totally disregarded in all projects, with generalized cases of unjustified displacement and resettlements and cases of lack of citizen and communities involvement in decisions over development approaches or benefits accrual and distribution. As a consequence of disregarding constitutionally and legally imposed procedural requirements, land occupation in all projects analysed in this dissertation was and remains illegal. In spite of this, all projects have nonetheless been initiated. Some of them, such as the Maputo-Katembe Bridge, have already been concluded, and others, such as the Palma LNG project, have had their land occupation and environmental licensing processes completed and even upheld by court decision. Others yet, such as the Limpopo National Park, continue to be supported by the government and to benefit from donor support despite the referred illegalities and the evident social disaster and economic failure.

The Mozambican government and its counterparts from the countries of investors' origins (this includes investors leading the projects but also those involved in different capacities), have all applauded these projects either with a shocking and complicit silence about social, economic, and environmental concerns or by simply paying lip service when addressing social and environmental concerns. In face of such a blatant constitutional and procedural disregard it is justifiable to question whether it makes any sense to discuss distributive aspects. As claimed by Schlosberg (2003) and also defended by the author, fairness of outcomes is intrinsically linked to fairness of process. In the context of involuntary displacement and resettlement discussed in the thesis, disregard of procedures has substantially undermined the potential for distributive justice that should have been pursued in order to, somehow, alleviate the distress caused by such situations on affected families and communities. In all cases, poorly designed and conducted resettlement processes with lack of opportunities for real negotiation of compensation packages are already resulting in questionable outcomes in terms of distributive justice.

5. When and for Whom does Legal and Institutional Pluralism Serve?

In Chapter Four, this dissertation highlighted the close linkage between the principle of state ownership over land and other natural resources and the principle of legal and institutional pluralism not only with respect to rights protection (constitutional recognition and protection of land rights as established by customary norms) but also with respect to community rights to participate in natural resources management (participation in decisions over access, control and use of community resources through their customary institutions). The projects described in this dissertation have all shown that in spite of the principle of legal pluralism on which community-based land and natural resources (CBNRM) is grounded, in the context of public and private land-based investments, local communities, customary authorities, and their norms do not play any relevant role in land rights allocation processes. Projects' social and environmental impact assessments, management plans design, and environmental licensing processes (including resettlement plans design and approval) have all ignored customary norms or have simply given them a second category treatment.

Thus, the dissertation argues that in spite of constitutional proclamations, customary norms currently have no legal weight in investments' assessment and approval processes. Traditional leaders and their communities in the areas affected by the Limpopo National Park and the LNG project in Palma were unable to impose their norms to reduce the size of the lands sought by investors, to prevent the resettlement of their communities, to select the relocation sites, to prevent their family graves from being removed, or to prevent occupation of their sacred areas. In all cases analysed the state has imposed its power and will and marginalized community authorities and their customary norms.

In other instances, as was the case of the Limpopo and Mágoé national parks, the state has adopted inconsistent and different approaches for similar situations. While in Massingir pre-existing communities will have to be resettled, under the same circumstances and for the same objective, communities in Mágoé and other conservation areas are allowed to stay on their land, allegedly to preserve and protect their profound ties with the land and their ancestral traditions. Furthermore, while tradition strongly prohibits grave removal, this will happen in Palma. As indicated by the Massingir DA, however, in this district the government has agreed to leave the cemeteries in the LNP area, because "it would be culturally too complicated" (Massingir DA pers. comm., 2017), also allowing families to visit and perform their family ceremonies there. These and other situations indicate that the adoption of the principle of legal pluralism will only be relevant if there is clarity

about whose interests are served by the dual legal regime adopted by the Mozambican constitution. This principle needs to be clarified in a way that will help in determining when and to whom customary norms apply, what powers customary norms hold in face of statutory norms, and to what extent they can be imposed on the government.

Furthermore, it must be kept in mind that State affairs and government actions are conducted based on processes and procedures, and that all the situations that imply government decisions, including decisions adopted through written and formal documents to allocate or extinguish land rights, are taken based on statutory norms. In this regard, this dissertation argues that if the principle of legal pluralism is to be maintained, then the two legal regimes - statutory and customary - should be harmonized.

If customary norms are to be imposed upon and used by the government, including their use by the judiciary, it is important to figure out how prevalence of orality in customary regimes can be made compatible with formal processes or vice-versa, including, among other processes, negotiation and formalization of partnership contracts promoted by the land policy and land law.

Additionally, customary held rights, which are recognized mainly through oral testimony face a number of other problems, as lack of registration of rural land rights and consequent absence from official land cadastres and land use maps has opened space for land grabbing of community commons, with the government intentionally seeing them either as unoccupied or as falling outside of community jurisdictions. The interface between statutory and customary norms and practices also raises conceptual challenges as, for example, the concept of 'land use' in traditional contexts conflicts with the assumption from statutory law that 'land use' necessarily implies 'exploitative' or 'extractive' activities, and the consequent belief that leaving the land idle is not an acceptable form of land use. In this particular issue, a double standard is clearly used by the government as the risk of losing land use rights is not faced by investors when they fail to use the land allocated to them.

Based on the reality presented, this dissertation further argues that for it to effectively serve as a source of law integrated in a constitutional framework equally applied to all citizens and institutions, there is a need to identify areas of compatibility and discrepancy between the Constitution and the different customary regimes existing in the country and in the different spheres of social and economic life, both in rural and urban areas.

To the author, this concern arises because it should not be automatically assumed that by being closer to the people, all customary norms are necessarily good for everybody. In fact, data from this dissertation suggests the need to assess the extent to which customary norms contain (or may integrate) substantive, procedural, distributive, and institutional features that allow them to protect and promote both land and livelihood rights for rural citizens in general, but for women in particular, while also promoting democratic governance principles. This in turn implies the need to assess if the option for legal pluralism has helped or hindered a consistent and equal application of the progressive provisions of the land policy to all citizens.

In this context, the dissertation further argues that in social and cultural contexts such as the one existing in Mozambique, adoption of procedural and distributive justice principles by customary regimes might also help in ensuring their alignment with constitutional values and principles and their relevance to the majority of the national population—women—whose lives and rights, including land rights, are not managed by statutory norms.

Again, unless efforts are made for proper integration and harmonization between customary and formal regimes, including compatibility of principles and concepts, and unless there is clarification of the power that each regime carries, legal pluralism will only serve to perpetuate prevailing discrimination between rural and urban citizens, between those who have access only to subsistence uses and those who can pursue lucrative activities, between rich and poor citizens, between men and women, and between public and community institutions.

6. What Place should CBNRM Occupy?

With regard to the role that CBNRM should occupy, this question has to be addressed in the context of the value attributed to DUATs. In this context, what this dissertation shows is that the Mozambican government has adopted a pattern where pre-existing community land rights are withdrawn and permanently transferred to investors, with community land and other assets expropriated whenever an external project is planned to be implemented on community areas. In both the Massingir, the Mágoé, the Palma and the Maputo cases, community land rights were withdrawn from communities and granted to public and private investors without assessment of the possibility of maintaining land rights in community hands while still allowing projects to be implemented.

Similar to author's findings and argument from 2007 (Salomão and Matose, 2007), the cases reviewed in this dissertation show that for it to truly represent a

participatory modality with transformational potential, the role of the government within the whole CBNRM set-up should be to support community participation, to promote public and private social and environmental responsibility, and to ensure that communities receive their share of the revenues accrued by the state as a result of approval of concessions in community lands.

While the challenges imposed by a coexistence between human settlements and wildlife or between human settlements and large-scale infrastructure projects such as the Palma LNG plant or the Maputo-Sul Bridge can justify the need for resettlement, this dissertation shows and argues that it is not so linear that this incompatibility should automatically and necessarily imply land rights loss. Even so, in the Palma case, justification for both rights expropriation and the resettlement decision all taken illegally after the DUAT issuance remain highly questionable. The same can be said in the LNP case.

It is also worth recalling here the legal implications deriving from the creation of national parks and other nature conservation areas. As mentioned in Chapter Four, the mere creation of a national park should automatically imply land rights withdrawal. However, both in the LNP case and in the MLP where no resettlement decision has been made, this implication cannot be materialized as no expropriation processes were conducted in the parks. Two issues merit being highlighted in this regard. The first is related to the double standard used for communities in the same circumstances (involuntary resettlement imposed in the LNP but not in the MNP). The second issue is related to the extent to which there is need for land rights withdrawal for nature conservation projects, even when they justifiably impose community relocation.

The fact that the legislation on biodiversity conservation places great emphasis on community participation and includes community conservation areas as part of the list of protected areas, suggests that the LNP and MNP and all the other parks created on community lands could be 'community parks', where conservation purposes are pursued by local communities, with political, financial, and technical support from the state, the private sector, and donors where necessary. Hence, the question raised by these cases is whether communities have to lose their rights for investments in nature conservation to be implemented.

It is also worth noting that in the extractive industries sector, communities have priority in reoccupation of their lands after investments are completed, as determined in the recently revised 2014 mining and petroleum laws. Keeping the CBRM goal in mind, this legal directive suggests that there is no justification for land rights

loss if land leasing agreements can be negotiated with local communities, and there is no reason for this not to happen even when hydrocarbon exploitation projects are involved as is the case in Palma.

In line with legal provisions from both the biodiversity and the oil and gas sectors, this dissertation further argues that maintenance of community land use rights, despite public, private or public-private investments is what can finally give real meaning to the principle of community-based land and natural resources management, community investments, and community-public-private partnerships. This is what would give real value to the DUAT and would also represent a truly win-win situation as envisaged by the 1995 NLP.

7. Community Prior Legal and Technical Preparation for CBNRM

As explained in Chapter Four, community consultations also aim to give life to CBNRM by combining political inclusion—through community participation in natural resources decision-making processes—with economic inclusion, through shared access to revenue-generating opportunities. Thus, CBNRM in Mozambique and other countries should be conceived and promoted to not only bring other actors into decision-making but also into different ways of conducting business.

The Mozambican case shows that CBNRM objectives are still far from being pursued and achieved. Aside from incongruent interpretations and failure to duly link the constitutional principle of ‘state ownership over land and natural resources’ with the principle of ‘legal pluralism’, this dissertation has also exposed other reasons that have led to a massive CBNRM failure in this country, as indicated in the next sections. For example, Chapter Four shows the difficulty in opening space for new business actors, showing also that economic entrepreneurship continues to be associated with, and generally reserved for, urban-based private companies that manoeuvre within public and private circles both nationally and internationally. In those circles, space for rural communities, who are often seen as poor and illiterate, is very limited or simply non-existent.

Furthermore, and concurring with Fabricius (2008), the TTP and the CGP experiences show that, similar to what happens with political participation, economic inclusion in CBNRM contexts also requires community preparedness in legal, territorial, and business management aspects, without which failure is inevitable. Community preparedness, including legal literacy and technical capacity to navigate the political and business environment and deal with other actors, is also a determinant for community success in both the public and private worlds. Without

adequate and prior preparation for effective control and use of the consultation procedure and negotiation processes, local communities in Mozambique and elsewhere will continue to be important for political discourses but continuously marginalized in development decisions and processes.

Community prior preparation is vital for the success of any community project, and community businesses must follow the same rules applied to any business conceived and implemented either by the private sector or by the government. Without the necessary technical capacity, adequate financial resources, adequate management skills, and adequate business strategies and plans, any business, be it the Twin City or the Cubo Game Park, is condemned to failure.

Regarding community attempts to become economic actors and seize the economic and financial opportunities offered by the legal framework and the nature wealth existing in their lands, the government has shown a half-hearted approach to devolution and an inconsistent approach to supporting community business ventures. Both the Cubo and Tchuma Tchato projects have shown that the role of the government in providing an enabling political and legal environment is equally important as governments can use their power both to support or to undermine both private and community business initiatives. Ensuring government's clear and consistent support is, perhaps, the greatest challenge faced by the TTCP, the Cubo Game Park, and their private/CSO partners.

Thus, this dissertation argues that although the Constitution and principal laws are generally enabling with regards to community rights protection and participation in land decisions and in community-based land and other resource management, including participation in economic endeavors, much still needs to be done to improve both community institutional base (including good governance safeguards), and the way in which communities and their leadership are perceived and treated by the government and other more powerful actors who want to use and take control of their land and resources.

While the Cubo and Tchuma Tchato projects are examples of prejudices that communities have endured in their relationship with the government and private investors, they are also examples of the great potential offered by the CBNRM approach, particularly when strategic alliances and partnerships between local populations and other actors are developed. In this context, the role played by CSOs in both projects is worth being highlighted. In both CBNRM projects and other projects discussed in this dissertation, CSOs provision for legal advice to local communities has made a considerable difference. This alliance is gradually

helping in turning the tide in favour of community rights and interests, showing that aside from community preparedness, participation also requires willingness, determination, and a conscious effort to participate. As was the case in Palma where, in spite of pending illegalities, the project licensing process was substantially better in comparison to other processes in what respects community consultations, CTV legal support was determinant to the solution of the Cubo-Karingani conflict and to the creation of conditions for negotiation of a more fair and equitable partnership.

Thus, it seems fair to claim that the role played by CSO organizations since 1995 when the TTP was created has been crucial to keep the CBNRM vision and some community investments alive. It has also been particularly important to give communities the strength and conviction that they can fight for their rights because, in spite of existing legal, political, financial, and cultural constraints, the law is on their side. Exercise of active citizenship is thus required from them, so that they can make use of opportunities that the law has created.

Fabricius's assertion from 2008 in the sense that CBNRM should be about promoting the empowerment of people in rural areas, the conservation of biodiversity, the development of more secure livelihoods and the reduction of risk, resonates well with the Mozambique.

Until now, legal knowledge, institutional organization, and business negotiation skills are, so far, the major and crucial gains that CBNRM and community investments have provided to the Cubo Community with the potential to be expanded back to Tchuma Tchato Program. However, this dissertation also calls attention to the fact that the value and importance of financial benefits should not be underestimated as it represents the most important expectation and motivation for community involvement in CBNRM initiatives.

8. Community Consultations Objectives, Procedures and Outcomes: Consent and Partnerships for What?

The author concurs with the Amanor analysis on land and sustainable development in Africa (Amanor, 2008), where he concludes that in spite of the claims of stakeholder democracy, participation and poverty alleviation in the present world order, only certain sections of communities have the ability to express their demands and interests in policy circles, and that community participation has often been accompanied by politics of co-option and marginalizing and maligning

oppositional and critical social movements. These are issues that the dissertation has shown to merit further investigation in the Mozambican context.

Indeed, as they are currently addressed, both on paper and practice, community consultations are far from being a procedure that ensures protection of rights and political participation. Economic inclusion and benefit sharing are even further from reality. This dissertation shows that, aside from issues related to inclusion, representation and co-option, one of the major barriers to achieving community consultation objectives lies in the purpose with which the government conducts such consultations. In none of the projects analysed by the author in her professional experience, including the Palma case, has the government conducted consultations with the objective of maintaining community land rights and of assisting them in negotiating partnerships with investors interested in occupying their lands.

While the land legislation is clear in indicating that, in cases where land has occupants, community consultations aim at registering the terms of negotiation between legitimate occupants and external interested parties, none of the meetings organized as consultations had this objective in mind. On the contrary, in all cases analysed, communities were forced to permanently cede their land rights. In all cases, including the Palma case where meetings with communities under the resettlement plan design were much better organized, what was named ‘consultation’ was generally a superficial process, where communities were asked and expected to express their views based on generic, incomplete, and misleading information, statements, and data, and under intimidating conditions.

One of the main legal shortcomings identified by this dissertation lies in the fact that the legislation is not explicit in the indication that provision of ‘consent’ or of ‘lack of consent’, as well as indication of community explicit agreement to partnerships (which also entails community right to refuse engaging with investors), are the main goals of community consultations. So far, the “agreements” resulting from consultation processes undertaken by government agencies and the private sector reflect a great deal of manipulation and minutes produced are generally not respected as legally binding instruments either by the government nor by the private sector itself. The current setting, characterized by unequal preparation and negotiation leverage between communities and companies, and by government support tilted in favor of public and private investors is, therefore, potentially a breeding ground for land grabbing and rent capture by powerful and influential actors within state agencies and the private sector.

Furthermore, the cases show that despite sectoral and project specificities, including in terms of the social and environmental impacts involved, all consultations are conducted in the same manner, being allocated the same amount of time and without any prior community preparation. Projects that take more than five years to be designed and negotiated between companies and the government are presented to the public and to local communities in two to four meetings that last an average of two hours. The 'one-size-fits' all approach so far adopted for all consultation processes has proven to be at the root of amounting land conflicts. As shown in the Palma LNG project, these meetings have agendas pre-determined by the government and companies, and communities are barred from proposing other issues or from requesting further opportunities to get their concerns addressed. The Palma consultations were emblematic regarding the manner the Palma District Administrator used his power and the local police to intimidate both communities and NGOs, and also to limit the time allocated to the meetings as well as the issues that should be discussed.

Additionally, most consultations denote lack of clarity about whether and for what consent is being sought. The importance of clarifying the issues over which communities should express their 'consent' or their 'refusal to consent' should thus be highlighted. This thesis argues that in all cases consent should be sought not over the importance of projects, as putting things this way represents an elusive way of diverting people's attention from the legal, social, economic, and environmental issues that are at stake when community land is sought by external entities. Thus, community consent should be sought for their acceptance or lack of acceptance of both negative and positive impacts attached to projects and their acceptance or refusal of proposals advanced on how such impacts should be handled: i.e. project acceptance or refusal; project location, when accepted; need for rights expropriation; need for community relocation within its territory or for resettlement outside community land; consent on the type of compensation offered; consent on the type and length of benefits to be accrued from the project, among other issues relevant to community lives and livelihoods in the short, medium, and long terms.

This dissertation thus aligns with the position assumed by Hickey and Mohan (2005) and Peters (2008), who argue that community consultations can only contribute to participatory governance if procedural and distributive justice perspectives are addressed both in theory and in practice, and if participation processes are conducted as transformational opportunities. This dissertation shows that community consultations still have the potential to be an important participatory mechanism for socially sustainable land governance in Mozambique. However, it also shows that the manner in which land rights allocations to investors are granted,

including the manner that community-private partnerships are addressed, is not only favourable to land grabbing but hardly allows this procedure to represent meaningful participation. The dissertation further shows that currently the practice in community consultations falls short of securing both their procedural and distributive justice objectives, serving more as manoeuvres to withdraw recognized and legitimate rights and to limit access to economic opportunities for local communities in the use of their lands by external entities.

The government still has not put in place an unambiguous procedural base that espouses clear-cut principles for partnerships, with the effect being the prevalent clashes that occur between communities and the private sector. The very concept of ‘land leasing’ implies that the land rights holder (communities) - in face of a project opportunity (LNG), but recognizing their technical, financial, and managerial limitations to operationalize the project, or simply as a result of a cost benefit analysis—seek partners (public and/or private) to cover needs through negotiation of partnerships formalized via land leasing agreements or other business contracts.

Taking into account the guidelines provided by the NLP, the underlying principle in land leasing agreements and other partnership contracts, is that land rights remain with the community or individual land rights holder, but project exploration is performed by the external partner, under predetermined and previously negotiated conditions agreed upon between the parties and formalized in the contract. Therefore, LLA signed between ENH and Anadarko should have negotiated and signed with the legitimate land holder, namely the Quitupo community. Instead of by-passing Quitupo, the role of the local government should have been to assist the community in preparing itself for negotiation and ensuring that all parties would engage in such negotiation duly prepared and aware of their rights and responsibilities.

Based on findings from the different chapters, this dissertation highlights both legal and extra-legal aspects relevant for strengthening community consultations’ legal value as a mechanism to ensure both procedural and distributive justice in land decisions, namely:

1. The need to explicitly clarify consultation objectives and to identify specific procedures that must be followed to pursue each objective;
2. The need to adjust procedures to the specificity of each project and of the consulted groups;
3. The need to include procedural steps that ensure government impartiality and due process;
4. The need to clarify accountability mechanisms for all actors involved, including government, companies, and communities;

5. The need to clarify the legal value of community positions and the legal value of consultation minutes;
6. The obligation to formalize commitments assumed by the parties in consultation meetings;
7. The need to address community representation issues so that all groups, particularly women, are represented, and to ensure that community leaders are protected from co-option, manipulation, corruption or threats;
8. The need to attach monetary market value to the land and other resources (including the value of land use rights) with which communities can contribute to partnerships with investors, if and when they decide to engage in such partnerships, or when they negotiate compensation packages in resettlement contexts;
9. The need to ensure prior and adequate preparation of all actors involved in decision making processes, particularly community preparation, and;
10. The need to simplify mechanisms to hold public and private entities, as well as community representatives, accountable for breach of procedural requirements, breach of commitments, and other law violations.

Final Remark

A short and final remark is left in this dissertation related to the essential role that peace and stability play for any country's sustainable development. This includes Mozambique, a country that is again facing another cycle of brutal political and military violence, with severe violations to human rights. A possible link between Mozambique's armed conflict resurgence and the country's resources abundance, particularly the discovery of large amounts of valuable resources in the extractive sector, has been established by some analysts who see Mozambique's resource boom as having a potential to trigger or to fuel violent conflicts and other social disturbances, and to fuel resentment driven by perceptions of injustice and inequality.

As members of the Afungi communities of Quitupo, Senga and Mondlane recently commented to the author (February and August, 2019), with regard to military violence in Cabo Delgado Province, including Palma District:

“There are military bases around the company compound, and they are never attacked. How can the government only worry about protecting the company when we are dying every day? How can we be resettled in a war environment?”

In this context, I close this dissertation by recalling Point 35 of the UN Declaration on the Agenda for Sustainable Development, where it is affirmed that “The new Agenda recognizes the need to build peaceful, just and inclusive societies that provide equal access to justice and that are based on respect to human rights (including the right to development), on effective rule of law and good governance at all levels, and on transparent, effective and accountable institutions”.

This dissertation argues that prospects of Mozambique achieving or at least making substantial progress towards sustainable development in the next 15 years are very slim if cyclical violence continues to characterize the country. Sustainable development in Mozambique depends essentially on how the country manages to secure peace and stability that is necessary to allow it to respond to the governance challenges discussed in this dissertation. One cannot help but wonder about the extent to which the problematic land and natural resource governance issues discussed in this dissertation might have also triggered, or somehow supported, this new wave of violence, which is notably and most severely felt in the close vicinity of the most emblematic investment of the country in the last 10 years: the Palma LNG Project. In spite of the violence now affecting Palma and many other districts in Cabo Delgado province, the government and the company are still proceeding with the resettlement of the Quitupo community families, already affected and displaced by the horrendous military attacks, indicating that few lessons have been learned and that the conclusions above urgently need to be taken into account.

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Annexes

Annex 1. List of Author Publications

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2. Salomão, A. (2005). Participatory Natural Resources Management in Mozambique. WRI Working Papers. Washington, DC. USA
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Annex 2. Guiding Questions

Guião Temático para Entrevistas

1. Opções estratégicas de gestão e administração de terras em Moçambique, à luz dos seguintes pilares constitucionais:
 - a. Propriedade do Estado sobre a terra e recursos naturais (objectivos)
 - b. Reconhecimento e protecção de direitos comunitários (mecanismos)
 - c. Manutenção do pluralismo jurídico (objectivos)
 - d. Maneio comunitário de recursos naturais (mecanismos e objectivos)
 - e. Parcerias entre investidores e comunidades (objectivos e o papel do estado)
 - f. Aspectos de governação: legalidade, transparência, participação, justiça (consultas, descentralização, delegação)
2. Desenvolvimento Rural Sustentável e Grandes Investimentos
 - a. Pilares do desenvolvimento rural e a questão da gestão e administração de terras
 - b. Planeamento e ordenamento territorial e alocação de terras para investimentos (mecanismos de coordenação intersectorial)
 - c. Investimentos com reassentamentos: protecção de direitos, organização do território, modelo de desenvolvimento
 - d. Programa Terra Segura (visão, objectivos e estratégia)
3. Gestão de Terras e Administração do Território
 - a. Correlação entre administração territorial local e promoção do desenvolvimento local (MAE, MITADER, MEF)
 - b. Harmonização entre medidas de gestão da terra (zoneamento, planeamento, uso e exploração) e medidas de administração territorial (divisão administrativa, actores e competências de gestão). O papel e lugar das administrações distritais e das autoridades tradicionais
 - c. Conceito de comunidade local na perspectiva de divisão administrativa e na perspectiva de gestão de terras e recursos naturais
 - d. Cadastro de terras: vantagens e desvantagens da sectorização versus unificação
 - e. Descentralização administrativa e democrática na gestão e administração de terras: progressos e desafios

4. Mecanismos de Participação em Processos Decisórios
 - a. Dentro das instituições do Estado (mecanismos intra-institucionais)
 - b. Entre diferentes instituições do Estado (mecanismos inter-institucionais)
 - c. Acesso à informação sobre terras e transparência dos processos decisórios dentro do Governo
 - d. Relevância e impacto das consultas comunitárias

Annex 3:

List of Documentaries and Respondents to Interviews

1. Documentary Title: “Terra: Amanhã Será Tarde!”

Interviews/Recording Period: 2012

No	Interviewee Category /Institution	Location
1	Residente	Bela Vista/Matutuine
2	Arquitecto, Urbanista, Planeador Físico	Cidade de Maputo
3	Camponesa	Matutuine
4	Tratorista	Bela Vista/Matutuine
5	Residente	Bela Vista/Matutuine
6	Administrador Distrital de Matutuine	Distrito de Matutuine
7	Camponesa	Matutuine
8	Camponesa	Matutuine
9	Régulo	Ponta Malongane
10	Escritor - Biólogo	Cidade de Maputo
11	Centro Terra Viva	Maputo
12	Administrador da Reserva Marinha Parcial	Ponta de Ouro
13	Dona do Guludo Lodge	ucojo/Macomia - Cabo Delgado
14	Residente	Mucojo - Cabo Delgado
15	Gestor Provincial ITC	Niassa
16	Investigador	Cidade de Maputo
17	Régulo de Mussianhalo	Bárue - Manica
18	Director dos Serviços Distritais de Actividades Económicas	Bárue - Manica
19	Sociólogo	Cidade de Maputo
20	Coordenador União Nacional de Camponeses	Niassa
21	Camponesa	Licole - Niassa
22	CEO Chikweti	Lichinga - Niassa
23	Secretário Permanente Distrital	Metangula - Niassa
24	Régulo de Taninga	Manhiça
25	Presidente da Associação Bematchone	Manhiça
26	Economista - Director do IESE	Cidade de Maputo
27	Sociólogo	Cidade de Maputo

No	Interviewee Category /Institution	Location
28	Pescador	Praia da Barra - Inhambane
29	Direcção Nacional de Terras e Florestas	Cidade de Maputo
30	Governador	Cabo Delgado
31	Activista de Saúde	Quitupo - Cabo Delgado
32	Pescador	Quitupo- Cabo Delgado
33	Residente	Quitupo - Cabo Delgado
34	Ministro	Ministério de Planificação e Desenvolvimento
35	Presidente da União Nacional de Camponeses	Tete
36	Presidente Distrital das Associações Agro-pecuárias	Manhiça
37	Membro do Comité Central da Frelimo	Cidade de Maputo
38	Director Provincial de Turismo	Niassa
39	Director da Lipilichi Wildness	Niassa
40	Carpinteiro	Maumbica-Niassa
41	Camponesa - membro do comité	Maumbica- Niassa
42	Camponês da Associação de Produtores Agrícolas - Maguiguane	Provincia de Maputo
43	Um dos Autores da Actual Lei de Terras de Moçambique	Cidade de Maputo
44	Fórum Mulher /Marcha Mundial das Mulheres	Cidade de Maputo
45	Administrador do Parque Nacional do Limpopo	Parque Nacional do Limpopo
46	Director de Programas do Centro Terra Viva	Cidade de Maputo
47	Camponês e Electricista	Macavane (Parque Nacional do Limpopo)
48	Comité de Gestão dos Recursos	Licole - Niassa
49	Camponês	Licole - Niassa
50	Directora do Centro Terra Viva	Cidade de Maputo

2. Documentary tile: “Quitupo, Hoyê!”

Interviews&Recording Period: August 2013 to July 2014

No	Interviewee Category/Institution	Location
1	Director Provincial para a Coordenação da Acção Ambiental (MICOA)	Cabo Delgado
2	IMPACTO - Empresa de Consultoria na área de Meio Ambiente	Aldeia de Quitupo
3	Secretário Permanente	Distrito de Palma
4	IMPACTO	Distrito de Palma
5	ANADARKO	Distrito de Palma
6	Morador	Aldeia de Maganja
7	Morador	Aldeia de Maganja
8	Morador	Aldeia de Quitupo
9	Morador	Aldeia de Quitupo
10	Morador	Aldeia de Quitupo
11	Iniciativa para Terras Comunitárias (ITC)	Cidade de Maputo
12	Jornalista/Jurista	Cidade de Maputo
13	Jurista/ANADARKO	Cidade de Maputo
14	Empresa de Consultoria na área de Meio Ambiente (Impacto)	Cidade de Maputo
15	Directora da Direcção Nacional de Avaliação do Impacto Ambiental (MICOA)	Cidade de Maputo
16	Fórum Mulher	Cidade de Maputo
17	Empresa de Consultoria na área de Meio Ambiente (Impacto)	Cidade de Maputo
18	Fundação para o Desenvolvimento da comunidade (FDC)	Cidade de Maputo
19	Direcção Nacional de Avaliação do Impacto Ambiental (MICOA)	Cidade de Maputo
20	LIVANINGO	Cidade de Maputo
21	Empresa Nacional de Hidrocarbonetos (ENH)	Cidade de Maputo
22	Fórum das Mulheres Rurais	Cidade de Maputo
23	Direcção Nacional de Terras e Florestas (DNTEF)	Cidade de Maputo
24	Director Provincial da Justiça	Cabo Delgado
25	Administrador Distrital de Palma	Distrito de Palma
26	Morador	Aldeia de Quitupo

No	Interviewee Category/ Institution	Location
27	Direcção Nacional de Terras e Florestas (DNTF)	Cidade de Maputo
28	Presidente da Federação Nacional das Associações Agrícolas	Cidade de Maputo
29	Magistrado Jubilado	Cidade de Maputo
30	Observatório do Meio Rural	Cidade de Maputo
31	Sociedade Civil	Cidade de Maputo
32	Confederação das Associações Económicas (CTA)	Cidade de Maputo

3. Documentary Title: “8 Dias em Massingir: Os Animais Não Votam!”

Interviews&Recording Period: August 2017

No	Interviewee Category/ Institution	Location
1	Residente	Comunidade de Cubo
2	Residente	Comunidade de Cubo
3	Residente	Comunidade de Canhane
4	Residente	Comunidade de Canhane
5	Secretário da Associação Tlharihani Vhaka Cubo	Comunidade de Cubo
6	Líder Comunitário	Comunidade de Cubo
7	Presidente da Associação Tlharihani Vhaka Cubo	Comunidade de Cubo
8	Administrador Distrital de Massingir	Distrito de Massingir
9	Administrador do PNL	Parque Nacional do Limpopo
10	Gestor de Comunicação e Reassentamento	Parque Nacional do Limpopo
11	Coordenadora do Apoio Comunitário	Parque Nacional do Limpopo
12	Líder Comunitário	Mavodze
13	Líder Comunitário	Mavodze
14	Residente	Mavodze
15	Residente	Mavodze
16	Residente	Mavodze
17	Gestão de Conflito homem-fauna bravia	Parque Nacional do Limpopo
18	Gestora do Covane Lodge	Parque Nacional do Limpopo
19	Residente	Aldeia de Chinhangane
20	Residente	Aldeia de Chinhangane
21	Residente	Aldeia de Chinhangane

No	Interviewee Category/ Institution	Location
22	Líder Comunitário	Aldeia de Chinhangane
23	Coordenador da Plataforma Distrital da Sociedade Civil	Massingir
24	Ponto Focal do Comité de Gestão	Mavodze
25	Directora dos Serviços Distritais de Actividades Económicas (SDAE)	Massingir
26	Investigador	Parque Nacional do Limpopo
27	Representante Nacional da Karingani Game Reserve	Massingir

4. Documentary title: “A Minha Casa Era Aqui!”

Interviews&Recording Period: December 2018 to April 2019.

No	Interviewee Category/ Institution	Location
1	Residente original	Tenga
2	Residente original	Tenga
3	Reassentada	Tenga
4	Secretária Interina do Círculo	Tenga
5	Reassentada	Tenga
6	Reassentado	Tenga
7	Reassentado	Tenga
8	Reassentado	Tenga
9	Reassentado	Tenga
10	Reassentado	Tenga
11	Reassentado	Tenga
12	Reassentada	Tenga
13	Reassentada	Tenga
14	Reassentado	Tenga
15	Reassentado	Tenga
16	Reassentada	Mahubo
17	Reassentada	Mahubo
18	Régulo	Mahubo
19	Reassentado	Mahubo
20	Reassentada	Mahubo
21	Reassentado	Mahubo

No	Interviewee Category/ Institution	Location
22	Reassentada	Mahubo
23	Reassentado	Mahubo
24	Reassentada	Chamissava
25	Reassentada	Chamissava
26	Reassentada	Chamissava
27	Reassentado	Chamissava
28	Reassentada	Chamissava
29	Reassentado	Chamissava
30	Reassentada	Chamissava
31	Técnica da Direção Nacional do Ambiente (MITADER)	Maputo
32	Director Nacional de Ordenamento Territorial (MITADER)	Maputo
33	Directora Nacional Adjunta do Desenvolvimento Autárquico	Maputo
34	Analista Político	Maputo
35	Centro de integridade Pública	Maputo
36	Director da Sekelekani	Maputo
37	Vereador de Gestão Ambiental	Concelho Municipal de Maputo
38	Admimistradora Distrital de Moamba	Distrito de Moamba
39	Chefe do Posto Administrativo	Pessene
40	Técnica da Acção Social	Boane
41	Presidente do Conselho Municipal	Boane
42	Residente	Boane
43	Residente	Boane
44	Residente	Boane
45	Administradora Distrital de Boane	Distrito de Boane

Annex 4. Extract of CTV Report on Community Consultations Organized in Palma

6. Análise do processo de participação pública

Neste capítulo é analisado o processo de participação das pessoas interessadas e afectadas (PIA's), no âmbito da elaboração do Plano de Reassentamento de Quito-po. A análise é feita com base no Regulamento sobre o Processo de Reassentamento Resultante de Actividades Económicas, adiante designado por Regulamento de Reassentamento, e nos Padrões de Desempenho sobre Sustentabilidade Sócio-ambiental, da Corporação Financeira Internacional (IFC)⁸¹.

6.1. Mecanismos de Participação

A participação é um elemento fundamental para o sucesso de qualquer programa de reassentamento. A participação pública abrange a consulta e a audiência públicas e compreende: (i) Pedidos de esclarecimento; (ii) Formulação de sugestões e recomendações; e (iii) Intervenções em reuniões públicas (Decreto 31/2102 de 8 de Agosto).

Segundo o Regulamento de Reassentamento, a participação pública é garantida ao longo de todo o processo de elaboração e implementação dos planos de reassentamento. Por seu turno, os Padrões de Desempenho sobre Sustentabilidade Sócio-Ambiental da IFC, indicam que a participação das comunidades afectadas e pessoas interessadas é contínua, desde o planeamento do reassentamento, à execução, monitoramento e avaliação do pagamento de indemnizações, até à fase de implementação de actividades de recuperação dos meios de subsistência.

As consultas públicas, a Comissão Técnica de Acompanhamento e Supervisão do Reassentamento, os comités de reassentamento, de entre muitos outros, são elementos fundamentais para assegurar uma participação efectiva de todos actores.

81 O processo de participação pública é assegurado através da Consulta Informada e Participação (CIP), que compreende (i) a divulgação e disseminação prévias de informações relevantes, transparentes, objectivas, significativas e de fácil acesso no (s) idioma (s) local (ais) e em formato culturalmente apropriados e compreensíveis para as comunidades afectadas; (ii) a não manipulação, interferência, coerção ou intimidação externas, das pessoas afectadas e interessadas, durante as consultas, (iii) a captação das opiniões de homens e mulheres, por meio de fóruns separados; (iv) a reflexão sobre as suas diferentes preocupações a respeito dos impactos, mecanismos de mitigação e benefícios; (v) prestação de informação às pessoas afectadas e interessadas, sobre como as suas preocupações foram consideradas (Decreto 31/2102 de 8 de Agosto).

Neste contexto e apesar da complexidade do projecto e respectivos impactos, a empresa AMA 1 realizou apenas quatro rondas de consultas públicas sobre o plano de reassentamento, nas quais as comunidades afectadas pelo projecto e as pessoas interessadas, em representação de algumas instituições públicas, privadas e da sociedade civil afins, participaram.

As consultas públicas tiveram lugar entre Julho de 2014 a Dezembro de 2015, envolvendo, maioritariamente, as populações das aldeias de Senga, Maganja, Quitupo, Monjane e alguns moradores da vila sede do Distrito de Palma.

Para além dos encontros mencionados acima, foram realizados encontros com comités de reassentamento criados pela empresa para facilitar a ligação entre a empresa e a comunidade. Nestes encontros foram discutidos e negociados aspectos tais como selecção do local de reassentamento, pacote de compensação, tipo de casas a construir, etc.

No entanto, os comités foram criados pela empresa sem participação da respectiva comunidade e eram constituídos maioritariamente por pessoas adultas do sexo masculino. As mulheres foram representadas por uma a duas pessoas, que na maioria das vezes limitavam-se a ouvir os homens a falar, não colocando ideias nem sugestões que fossem do interesse do grupo que representavam. O mesmo acontecia com os jovens.

Por outro lado, os comités comunitários reuniam com as empresas, discutiam e tomavam decisões sobre diversos assuntos de interesse da comunidade sem o envolvimento dos restantes membros. Um dos aspectos mais preocupantes foi o facto de a empresa ter decidido aliciar os membros dos comités comunitários com pagamentos monetários, o que os transformou em trabalhadores da empresa ao invés de representantes das comunidades. Isto criou uma enorme desconfiança e ressentimento por parte dos restantes membros das comunidades.

6.1.1. Comissão de Reassentamento e o Papel dos Actores no Processo

O Governo de Moçambique reconhece o papel de diferentes actores no processo de reassentamento. Por isso, o Regulamento de Reassentamento prevê no Artigo 6, entre outros, a constituição da Comissão Técnica de Acompanhamento e Supervisão do Reassentamento que deve ser composta por representantes dos seguintes sectores:

- dois membros do sector de ordenamento territorial;
- um membro do sector da administração local;
- um membro do sector de obras públicas e habitação;

- um membro do sector de agricultura;
- um membro do Governo Provincial;
- um membro do Governo Distrital.

Podem, ainda, ser convidados a participar nas sessões da comissão representantes de outros sectores, especialistas e indivíduos de reconhecido mérito, sempre que a natureza do trabalho o justifique.

Participam ainda no processo de reassentamento os seguintes actores:

- cinco representantes da população afectada;
- um representante da sociedade civil;
- três líderes comunitários; e,
- dois representantes do sector privado.

Estas entidades, para além da mobilização, sensibilização da população, consciencialização sobre os direitos e obrigações, cumprem funções de fiscalização, podendo inclusivamente, comunicar às autoridades competentes as irregularidades detetadas no processo de reassentamento (Artigo 8 do Decreto 31/2012).

Dentre as funções da Comissão Técnica destacam-se as seguintes:

- acompanhar, supervisionar e dar recomendações metodológicas sobre todo o processo de reassentamento;
- emitir parecer técnico sobre os planos de reassentamento;
- elaborar relatórios de monitoria e avaliação do processo de reassentamento; e,
- propôr a notificação do proponente de uma actividade para prestar esclarecimentos sobre o decurso do processo de reassentamento (Artigos 6 e 7 do Decreto 31/2012).

Cada membro da Comissão Técnica tem responsabilidades específicas relacionadas com a área de actividade que representa. Destaca-se o Governo Distrital que, para além de garantir a disponibilização de espaços para o reassentamento da população afectada e a regularização da ocupação de terras, compete-lhe ainda fiscalizar os processos de implantação dos planos de reassentamento e disponibilizar espaços para a prática de actividades de subsistência (Artigo 12). Por sua vez, o Diploma Ministerial 155/2014 de 29 de Setembro (que aprova o Regulamento da Comissão Técnica) fixa as regras e composição dos órgãos de apoio da referida comissão:

No caso de Palma, a Comissão Técnica Provincial de Reassentamento foi constituída apenas em 2014, depois do início do desenho do plano de reassentamento, integrando apenas técnicos de nível nacional e provincial. Durante o processo de desenho do PR nenhum membro da comunidade ou da sociedade civil integrou esta

comissão, o que na prática reduziu a participação das pessoas afectadas e interessadas apenas às reuniões de consultas públicas, em manifesto incumprimento das disposições legais.

A sociedade civil teve de solicitar ao Director Provincial do Ambiente, na qualidade de presidente da comissão, a integração de um representante seu naquele órgão o que foi finalmente acatado. Mesmo assim, em nenhum momento a sociedade civil foi convidada a participar nos encontros da comissão, o que leva a concluir que a abertura manifestada pelo Director Provincial constituía apenas uma estratégia artificiosa, não tendo havido uma efectiva intenção de assegurar a participação de outros actores.

Em Junho de 2016, foi criada a Comissão Distrital de Reassentamento composta por membros do Governo Distrital (3), representantes das comunidades (6), do sector privado (2) e membros da sociedade civil (1). Na altura, o Governo solicitou à Plataforma Distrital de OSCs para indicar uma instituição que pudesse representar a sociedade civil tendo esta, em resposta, proposto duas organizações para que, no caso de indisponibilidade de uma, a outra pudesse participar.

No entanto, contra todas as previsões, o Governo ignorou as propostas avançadas pela plataforma e escolheu um membro de uma terceira organização sem nenhuma explicação. Com esta atitude, o Governo excluiu membros da sociedade civil eleitos por uma instituição colegial, que com as suas intervenções dariam mais qualidade ao processo, preferindo uma instituição que, na sua óptica, aceitará todas as propostas do executivo e da empresa.

O processo de eleição dos representantes da sociedade civil bem como das comunidades foi efectuado sem critérios claros, e sem sequer terem sido acautelados aspectos de legitimidade.

6.2. Realização das Consultas Públicas

Nesta secção é analisado o processo de marcação das consultas, o material de apoio facultado aos participantes e outros interessados no geral, as técnicas de moderação usadas pelos facilitadores e a forma como as comunidades foram preparadas para que contribuíssem efectivamente para um plano de reassentamento que respondesse às suas expectativas, bem como, que protegesse os seus direitos, plasmados no quadro jurídico-legal vigente.

6.2.1. Assuntos Discutidos nas Consultas Públicas

A primeira ronda de consultas públicas sobre o plano de reassentamento decorreu de 8 a 12 de Julho de 2014 e debruçou-se sobre o processo de reassentamento, área de impacto do projecto e local de reassentamento.

A segunda ronda teve lugar de 11 a 14 de Agosto de 2014, tendo como pontos de agenda a concepção do lugar de reassentamento, o conceito de habitação, modelo de aldeia e a integração das comunidades hospedeiras.

A terceira ronda de consultas públicas teve lugar entre os dias 18 a 22 de Agosto de 2015, tendo apresentado o ponto de situação do censo de pessoas afectadas e do inventário de bens, seguido da apresentação do pacote de compensação proposto pela empresa. Esta ronda fora inicialmente agendada para os dias 16 a 19 de Março de 2015, mas acabou sofrendo um adiamento por decisão do Ministro da Terra, Ambiente e Desenvolvimento Rural, alegadamente, para melhor inteirar-se do processo e permitir a correcção de erros denunciados por organizações da sociedade civil, principalmente, no que tange ao licenciamento do uso da terra e não disponibilização atempada da informação objecto de consulta.

A quarta e última ronda de consultas públicas decorreu de 14 a 19 de Dezembro de 2015. A Plataforma da Sociedade Civil sobre Recursos Naturais e Indústria Extractiva solicitou ao Governo o adiamento da realização destas consultas públicas. Em carta dirigida ao Ministério da Terra, Ambiente e Desenvolvimento Rural (MITADER), o grupo constituído por cerca de 50 organizações da sociedade civil, pediu o adiamento destas consultas públicas por considerar que as instituições interessadas no assunto, incluindo o próprio Governo, estariam a preparar-se para o fecho do ano e as comunidades afectadas estariam preocupadas com a quadra festiva que se avizinhava. O pedido não foi aceite e as organizações da sociedade civil decidiram boicotar a sua participação nos eventos.

6.2.2. Marcação das Reuniões e Distribuição de Material de Apoio/Consulta

A empresa realizou quatro rondas de consultas públicas nas comunidades de Quitupo, Senga, Maganja, Palma sede e Monjane. As reuniões de consultas públicas tiveram lugar de Julho de 2014 a Dezembro de 2015.

As quatro rondas previstas no Regulamento de Reassentamento foram marcadas, com pelo menos 15 dias de antecedência, através de jornais, televisão e anúncios colocados nas comunidades. Na maioria dos casos, os anúncios foram feitos faltando exactamente 15 dias. Este facto não permitiu a devida preparação das pessoas

interessadas e/ou afectadas que participaram nos encontros devido a dificuldades de deslocação a Palma, bem como a complexidade dos assuntos a serem discutidos.

Nas primeiras duas rondas, o material de apoio/consulta foi distribuído no dia dos encontros no acto de registo dos participantes e estava escrito em língua portuguesa. Os membros das comunidades e outras pessoas interessadas não tiveram acesso ao material com tempo razoável para analisarem, ponderadamente, os assuntos a serem apresentados. Por esta razão, a maioria dos participantes limitou-se a ouvir a explicação da empresa e somente depois dos encontros realizados é que tomaram conta da real situação, tal como aconteceu no final da segunda ronda de consultas realizada na comunidade de Quitupo onde um dos participantes pediu aos técnicos do CTV para explicarem o teor da seguinte frase: “Depois das casas serem ocupadas pelas comunidades reassentadas, quaisquer custos futuros de consumo de energia e água serão pagos pelas famílias”⁸².

Este caso revela claramente que a ausência de encontros de preparação para as comunidades sobre os assuntos a serem discutidos nas reuniões de consultas públicas pode levar à aprovação de um Plano de Reassentamento que não responde às reais preocupações das comunidades.

Na Vila Sede de Palma, durante a primeira e segunda rondas, as consultas públicas realizadas pela empresa foram destinadas aos membros do Conselho Consultivo Distrital (CCD), excluindo as pessoas afectadas. Os representantes de algumas organizações da sociedade civil participaram, por iniciativa própria e, como resultado, foram insultados e proibidos de estar presentes na sala, por alegadamente o encontro não se tratar de consulta pública, mas sim de uma reunião do CCD. Como resultado do protesto da sociedade civil, a empresa, em coordenação com o Governo do Distrito, reconheceram o erro e passaram a realizar as consultas públicas, na Vila Sede de Palma, fora das instalações onde se reúne o CCD, permitindo também a participação das pessoas interessadas e afectadas.

Na terceira ronda de consultas, depois de várias chamadas de atenção, a sociedade civil verificou uma vez mais que as comunidades não tinham recebido nenhum material de consulta e que mesmo no *website* da empresa indicado como o local onde se poderia aceder à informação, conforme o anúncio publicado pela empresa, não constava qualquer documento com informação relativa a essa ronda. Por este motivo, a Plataforma da Sociedade Civil sobre Recursos Naturais e Indústria

82 Frase extraída da página 6 do documento n.º 2 de informação do processo de reassentamento, distribuído nas comunidades de Palma durante a realização da segunda ronda de consultas públicas.

Extractiva, por carta endereçada ao MITADER (Anexo 1), solicitou o adiamento da terceira ronda de consultas que estavam marcadas para 16 a 19 de Março de 2015, o que acabou sendo respondido favoravelmente pelo Governo.

Aparentemente, a atitude da empresa ao marcar as reuniões de consulta com cerca de 15 dias de antecedência (o limite mínimo permitido por lei) e ao não disponibilizar atempadamente o material de consulta, foi apenas para cumprir com o formalismo legal e não com interesse de ter uma participação efectiva e informada que pudesse contribuir para o desenho de um plano de reassentamento que satisfizesse, por um lado, as expectativas dos afectados, e por outro, que fosse uma oportunidade para melhorar as condições das populações afectadas.

6.2.3. Moderação das Reuniões de Consulta Pública

As reuniões foram dirigidas pelo Administrador do Distrito e pelo Secretário Permanente (no dia em que o Administrador do Distrito esteve ausente), usando a língua portuguesa e tradução para línguas locais. Foram usados mapas para visualizar as diferentes zonas onde serão implantadas a fábrica, aeroporto, doca para atracagem dos petroleiros, bem como as zonas de exclusão total, zona acústica, etc. Os mapas apresentados não permitiram à comunidade aferir com exactidão o local que efectivamente será ocupado, o que suscitou dúvidas, tendo, as comunidades exigido ver o local *in loco*.

Infelizmente, em vez de orientarem as reuniões de forma a estimular a participação de todos, com intuito de obter o melhor plano de reassentamento possível, aqueles governantes aproveitaram a oportunidade para exibir a sua arrogância, menosprezando as normas legais. Através de actos de intimidação e de manipulação dos líderes comunitários, e com recurso à polícia, impediram praticamente que as comunidades do Distrito de Palma se expressassem de forma livre e aberta, tendo ainda as organizações da sociedade civil sido verbalmente ameaçadas e agredidas.

No primeiro encontro, realizado na aldeia de Senga, no dia 11 de Agosto de 2014, o Secretário Permanente do Distrito, uma vez mais aproveitando-se do facto de estar a dirigir o encontro, ao invés de responder ou comentar as questões apresentados pelos participantes, optou por confrontar-se com um dos intervenientes, pelo simples facto de este ter solicitado ao Governo que resolvesse a questão da liderança da comunidade. Para agravar a situação, um agente da polícia fardado, que fazia parte da comitiva governamental, interpelou um dos membros da comunidade que acabava de intervir perguntando-lhe o porquê de levantar questões já ultrapassadas.

Os encontros seguintes (de Maganja, Quitupo e Palma) foram dirigidos pelo Administrador do Distrito que, instituindo uma metodologia pouco interactiva, determinou que as consultas deveriam ter temas fechados, e os participantes tinham apenas uma oportunidade de colocar perguntas, impedindo, à partida, uma abordagem integrada dos assuntos e proibindo que as questões conexas e/ou pendentes dos encontros anteriores, ou ainda não devidamente esclarecidas, fossem colocadas ou esclarecidas, dificultando assim a compreensão da relação do tema agendado com os temas seguintes e anteriores.

Em Maganja, no dia 12 de Agosto de 2014, os participantes foram apresentados com atitudes de total desconsideração, através de comentários sarcásticos feitos pelo Administrador, mostrando que apenas contavam e valiam as palavras e os interesses do Governo e da empresa. A pressa de terminar os encontros e a preocupação em eliminar a possibilidade de apresentação e discussão de aspectos que o Governo considerava difíceis foi notória em Quitupo, no dia 13 de Agosto do mesmo ano, onde se eliminou qualquer espaço para interacção positiva e produtiva entre o Governo, a empresa e os participantes.

Nesta aldeia, visada para o reassentamento físico e económico, onde o Governo e a empresa deveriam conduzir os processos com o máximo cuidado, rigor e paciência, o medo estava estampado no rosto dos aldeões que, ainda assim, incentivados pela presença das ONGs, colocaram algumas das suas preocupações. Porém, numa atitude que deixou os representantes das organizações da sociedade civil e da comunidade absolutamente perplexos, nenhuma das questões colocadas pela comunidade foi respondida. E quando estes tentaram intervir, de novo, foram impedidos sob alegação de que a empresa tinha de respeitar o protocolo, e o Administrador já estava a pressionar para que se encerrasse o encontro. Na verdade, tanto em Quitupo, como nas demais aldeias, os encontros constituíram oportunidades para que o Governo e a empresa falassem à vontade, levando o tempo que lhes conviesse para enaltecerem os grandes benefícios urbanos que o projecto trará às pessoas afectadas. Mas para os aldeões e demais participantes, preocupados com a visão holística que se deveria dar ao valor que a terra tem para si e para os seus herdeiros, e preocupados com a falta de transparência e de detalhes em relação aos processos e aos referidos benefícios, o tempo que lhes foi reservado foi deveras insuficiente.

Um dos aspectos mais graves relativos à forma como o Administrador do Distrito de Palma orientou os encontros, verificou-se na consulta de Palma onde aquele governante decidiu usar o momento do seu discurso de encerramento para invalidar a consulta e afrontar as ONGs, declarando que aquele encontro era uma sessão restrita dos membros do CCD, ao qual as ONGs e o público não deveriam

participar, e que só não os tinha expulsado para não embará-los. Por outro lado, dirigiu-se de forma insultuosa contra as ONGs, alegando que as suas actividades visavam desestabilizar o processo de licenciamento do projecto e o desenvolvimento do país, acusando directamente os directores das ONGs Sekelekani e CTV de praticarem actos de feitiçaria e de propaganda anti-projecto. Por fim, acabou por instruir a empresa para assegurar que no futuro só participassem nas consultas públicas pessoas formalmente convidadas.

De toda a análise feita a este processo concluiu-se que embora os aspectos burocráticos ligados aos procedimentos de marcação e convocação das reuniões tenham sido formalmente observados, verificou-se, em contra-partida, o cometimento de violações grosseiras na forma como as reuniões são organizadas e orientadas. As falhas que se verificaram neste processo, colocaram em causa o princípio de participação pública, conforme o previsto no Decreto 31/2012, bem como o princípio de Consentimento Livre, Prévio e Informado (CLPI), o que poderá resultar, a curto e médio prazo, no agravamento das condições de vida das populações reassentadas e surgimento de contestação/manifestação tal como vem acontecendo em Cateme, na Província de Tete.

6.2.4. Preparação Social das Comunidades

O direito de participação pública, previsto no Decreto 31/2012, bem como o princípio de CLPI, pressupõe que as pessoas estejam devidamente informadas sobre o objecto de consulta, sobre as opções existentes, bem como sobre as implicações das diferentes opções em termos de possíveis impactos positivos assim como negativos na sua vida.

Partindo deste pressuposto, em Julho de 2013, o CTV, a Associação do Meio Ambiente (AMA) e outras OSCs, dispuseram-se, com a anuência do Governo (Distrital, Provincial e Central) a preparar as comunidades. Para o efeito, o CTV levou a cabo sessões de divulgação da legislação para os membros das comunidades e capacitações dirigidas a líderes e paralegais comunitários. As capacitações tinham como foco aspectos básicos e relevantes para os objectivos em causa e em conformidade com o direito vigente, incluindo a Constituição da República, legislação ambiental, de terras, de petróleos, de ordenamento territorial, de reassentamento, de direito à informação, direito de participação, etc.

Em todas as capacitações, o CTV teve o cuidado de partilhar a proposta de programa e de solicitar, inclusive, a presença de um ou mais técnicos do Governo mas, muito poucas vezes foi indicado alguém para fazer parte da equipa de trabalho.

Como resultado destas capacitações, as comunidades passaram de actores passivos a actores activos procurando perceber junto do Governo e da empresa os procedimentos usados para obtenção do DUAT, da licença ambiental, as razões para ocupação de 7 000 ha para construção de uma fábrica que provavelmente ocupará menos de 1 000 ha, de entre outros aspectos. Este facto, deixou, incompreensivelmente, o Governo desconfortável com a situação a ponto de usar a polícia e outras artimanhas para impedir a intervenção das organizações da sociedade civil.

Por várias vezes, a directora do CTV e respectivos técnicos foram notificados para irem prestar depoimentos na polícia, alegadamente, por agitarem as comunidades (veja-se o artigo publicado pelo Canal de Moçambique na Figura 5). Em outras circunstâncias, o Governo instruiu alguns líderes comunitários para que impedissem o trabalho das OSCs caso não estivessem acompanhadas por alguns elementos do Governo. Esta atitude de desrespeito pelas leis que regulam o funcionamento das Associações em Moçambique, deixou revoltados os membros das OSCs, também por contrariar o que vem acontecendo em situações similares em outros pontos do país.

Este conjunto de atitudes e de posturas oficiais, foram repudiadas através de cartas dirigidas aos Ministros da Agricultura e de Recursos Minerais e Energia e denunciadas por vários órgãos de comunicação social. Não obstante, não se registou nenhuma reacção adequada a nível institucional, pelo que a omissão se tornou permissiva a continuidade das intimidações, dando-se a entender que o Governo local tinha a cobertura de instâncias superiores.

Ambientalista levada à Polícia por distribuir legislação às comunidades

Maputo (Canalmoz) – O Governo do distrito de Palma, em Cabo Delgado, mandou a directora do Centro Terra Viva, Alda Salomão, depor na Polícia por esta ter distribuído a legislação ambiental às comunidades que estão a ser afectadas pelo projecto de exploração de gás levada a cabo pelas multinacionais norte-americanas e italiana, a Anadarko e ENI, respectivamente.

"Pelas seis horas da manhã de terça-feira, 20 de Agosto, a directora-geral do Centro Terra Viva – Estudos e Advocacia Ambiental (CTV), Alda Salomão, que se encontrava na Vila sede do Distrito de Palma, província de Cabo Delgado, em missão de serviço, foi conduzida à Esquadra da Polícia e acusada de desacato à lei e incitação à violência. O argumento apresentado pela Polícia, no interrogatório, que durou cerca de vinte e cinco minutos, foi o de que o Secretário Permanente Distrital, Abdul Chafim Cartela Piconês, instruiu a Polícia a interrogá-la e a exigir que a acusada apresente uma credencial que autoriza a sua instituição a operar naquele distrito", informou o CTV em comunicado enviado ao Canalmoz.

"Citando a Polícia, o CTV diz que a interrogação da directora da organização "foi tomada após aquele governante ter, alegadamente, constatado que as reuniões do Governo com as comunidades afectadas pelo projecto de exploração do gás natural, da Anadarko e ENI estavam a correr mal desde que o CTV divulgou e distribuiu, pelos membros das comunidades que serão afectadas pelo mesmo, cópias contendo extractos da legislação ambiental e de terras, mostrando os direitos e deveres dos cidadãos em relação à terra e a outros recursos naturais".

O CTV presta, desde o início do presente ano, assessoria jurídica às comunidades directa e/ou indirectamente afectadas pelo projecto de exploração de hidrocarbonetos naquele ponto da província de Cabo Delgado. Esta assessoria é prestada especialmente à comunidade de Quitupo, ao abrigo de um memorando de entendimento estabelecido com esta comunidade, a primeira a ser abrangida pela decisão de reassentamento por causa do projecto.

"Importa referir ainda que o administrador do distrito de Palma, o senhor Pedro Romão Jemusse, tomou conhecimento, formalmente, da existência deste memorando, tendo apostado a sua assinatura", alega a organização. (Redacção)


Fonte: Canal de Moçambique, sexta-feira 23 de Agosto 2013

Figura 5. Notícia publicada pelo Canal de Moçambique sobre o depoimento da Directora Geral do CTV à polícia.

Um facto atípico aconteceu em Novembro de 2014, quando uma equipa do CTV pretendia fazer uma visita de monitoria com alguns dos seus parceiros. Como de costume, o CTV remeteu ao gabinete do Administrador uma carta informando

sobre a realização da referida visita e na qual se solicitava um encontro de trabalho, bem como a indicação de um técnico local para fazer parte da equipa (Figura 6).

1

 **CENTRO TERRA VIVA**
Estudos e Advocacia Ambiental

Delegação Regional Norte – Pemba, Rua Ex-Capitão Curado, nº 253, Cell. 965638808

*Neste momento
é limitada a
circulação de
estrangeros
face as circunstâncias
de Ebola. Salvo
autorização
de Sine
Excelência o
Governador da
Província
de Inhhamitanga
04.11.2014*

Exmo. Senhor
Administrador do Distrito de Palma
Palma

Ref. 027/CTV/14
Pemba, aos 30 de Outubro de 2014

Assunto: Pedido de Encontro

O Centro Terra Viva esta a organizar uma visita às suas diferentes áreas de intervenção Juntamente com os seus Parceiros de Financiamento, estando prevista uma à Província de Cabo Delgado na semana de 10 a 14 de Novembro próximo. Neste contexto, vimos por este meio solicitar um encontro com V. Excia ou em caso de indisponibilidade com alguém que o possa representar. No referido encontro participarão o Chefe do Domínio de Governação, Sr. Sven Stucki, e o Coordenador de Programas, Sr. Maurício Sulila, ambos da Cooperação Suíça.

Por isso, caso não haja nenhum inconveniente propomos que o encontro seja realizado nas primeiras horas do dia 11 de Novembro de 2014. No âmbito do mesmo programa pretendemos visitar no dia 11 de Novembro as comunidades de Maganja e Quitupo, pelo que solicitamos a indicação de um membro do governo para fazer parte da referida visita.

Convictos de que o nosso encontro será acolhido favoravelmente, agradecemos antecipadamente a disponibilidade e endereçamos as nossas mais cordiais saudações.

Atenciosamente
CTV
CENTRO TERRA VIVA
CABO DELGADO
Renato Hélder Uane
(Delegado Regional Norte)

*Inf:
A tomada de contacto
de V. Excia proposto do SDPI+SDAE
para articular este encontro.
C. L. U.
03.11.2014*




Figura 6. Despacho do Administrador Distrital (em manuscrito) à Carta do CTV.

Paradoxalmente, o Administrador do Distrito alegou a precaução em relação à ocorrência de ébola para tentar “impedir” a realização da visita, lavrando em despacho de 4 de Novembro de 2014, que: *“neste momento é limitada a circulação de estrangeiros face ao alastramento de ébola, salvo autorização de S. Excia. o Governador da Província”*. Porque o argumento do despacho não se mostrava convincente, o CTV, em coordenação com os seus parceiros, sendo que um deles era moçambicano e o outro estava a residir em Moçambique há mais de um ano, decidiram ir à sede do Distrito para tentar perceber *in loco* a razão do referido despacho.

Em Palma, a equipa foi recebida pelo Secretário Permanente do Distrito, em virtude da ausência do Administrador na ocasião. Nesse encontro, o Secretário Permanente explicou que não se podia contrariar a decisão do Sr. Administrador. Porém, após vários contactos, foi autorizada a deslocação da equipa do CTV e parceiros, acompanhada por um técnico do Governo.

Pelo exposto, ficou demonstrada mais uma tentativa de se impedir o trabalho do CTV junto da comunidade, desta feita, através de um despacho do Administrador Distrital, tendo como justificativa a pandemia do ébola ocorrida na África Ocidental, sendo o CTV e parceiros uma delegação oriunda da capital do país.

6.3. Participação da Mulher

A CRM preconiza o princípio de universalidade e igualdade de género e afirma que todo o cidadão é igual perante a lei, no que se refere aos direitos e deveres, independentemente da sua origem, cor, sexo, posição social e todas outras características que diferenciam os indivíduos, e que a mulher em Moçambique é a principal utilizadora da terra, geradora de renda e veículo de disseminação de valores e educação na família. Por isso, a sua participação na gestão e administração da terra e outros recursos naturais é tida como imprescindível.

No entanto, a prática mostra uma situação completamente diferente. As mulheres são muitas vezes excluídas dos processos. As consultas públicas são feitas geralmente com uma grande presença de mulheres, mas sem nenhuma participação efectiva. O estudo efectuado por Rafael *et al.* (2015), mostrou que nas consultas públicas realizadas em Palma no âmbito da elaboração do plano de reassentamento de Quitupo, onde equipas do CTV tiveram oportunidade de participar, verificou-se que as mulheres representavam, em média, cerca de 60% dos participantes. Porém, nas duas primeiras consultas seleccionadas para extrair a amostra, registaram-se 22 intervenções das quais apenas duas foram de mulheres. Isto revela que a presença

física maioritária da mulher não significa necessariamente maior participação, sendo por isso importante e urgente adoptar medidas para inverter este cenário sob pena de as preocupações das mulheres não serem acauteladas. A timidez das mulheres aliada às práticas tradicionais em que as mulheres não podem contrariar os homens ou ter ideias diferentes das dos homens, contribui para esta situação, que também se reflecte nos comités comunitários.

Em Quitupo por exemplo, o comité comunitário é constituído por 16 pessoas, mas só duas são mulheres representando apenas 12.5%. A situação torna-se mais grave porquanto muitas vezes elas se mantêm caladas e secundam as ideias dos homens. Não existe um mecanismo de preparação e discussão prévia dos assuntos por parte das mulheres o que faz com que elas não defendam os interesses do grupo de que fazem parte.

A fraca participação das mulheres no processo de consulta poderá reduzir-lhes as oportunidades de emprego a serem criadas bem como a oportunidade de decidir sobre aspectos considerados como prioritários para elas, que estarão apenas sob a alçada dos homens.

Em Palma, muitas mulheres dedicam-se à agricultura, pesca artesanal e artesanato (produção de esteiras e cestos). O pacote de compensação prevê apenas compensar os campos agrícolas e pesca, mas não prevê nada resultante da perda do acesso aos recursos usados para a produção das esteiras e cestos que na zona são actividades essencialmente femininas. Estando em implementação o PR de Quitupo, mostra-se urgente organizar e preparar as mulheres para a sua participação efectiva de modo a que os impactos da sua fraca participação na fase do desenho do PR sejam minimizados.

Annex 5. Mozambique 1995 National Land Policy

Quarta-feira, 28 de Fevereiro de 1996

I SÉRIE—Número 9



BOLETIM DA REPÚBLICA

PUBLICAÇÃO OFICIAL DA REPÚBLICA DE MOÇAMBIQUE

SUPLEMENTO

SUMÁRIO

Conselho de Ministros:

Resolução n.º 10/95:

Aprova a Política Nacional de Terras e as respectivas Estratégias de Implementação.

Resolução n.º 11/95:

Aprova a Política Agrária e as respectivas Estratégias de Implementação.

CONSELHO DE MINISTROS

Resolução n.º 10/95

de 17 de Outubro

O Programa do Governo refere a necessidade da reforçar os mecanismos que assegurem o acesso à terra e ao seu uso e aproveitamento.

Tomando-se necessário estabelecer, no âmbito da implementação do Programa Quinquenal do Governo, as políticas sectoriais e as respectivas Estratégias de Implementação, ao abrigo da alínea c) do n.º 1 do artigo 153 da Constituição da República, o Conselho de Ministros determina:

Único: São aprovadas a Política Nacional de Terras e as respectivas Estratégias de Implementação, em anexo, que fazem parte integrante da presente Resolução.

Aprovada pelo Conselho de Ministros.

Publique-se.

O Primeiro-Ministro, Pascoal Manuel Mocimbi.

1. Fundamentação

1. Moçambique atravessa uma nova fase de desenvolvimento económico e social caracterizada por uma economia de mercado. É, pois, justificada a concepção de uma nova política de terras, diferente daquela que orientou a elaboração da actual legislação. Esta Política de

Terras parte do simples princípio de que a terra é um dos mais importantes recursos naturais de que o país dispõe, merecendo por isso ser valorizada.

2. O país também enfrenta o desafio da reconstrução e do desenvolvimento, depois de dois processos que influíram negativamente no acesso à terra: a guerra e a seca, que assolaram o país e destruíram a base produtiva da economia.

3. Com o declínio da produção e das outras fontes de rendimento, Moçambique tornou-se dependente da assistência externa e da ajuda alimentar, e tem hoje mais de 60% da população em estado de pobreza absoluta. É essencial agora estimular um crescimento económico equitativo e sustentável. Com abundantes recursos naturais e um grande potencial para restabelecer uma economia diversificada, será possível eliminar a pobreza e melhorar as condições de vida de grande parte da população. Neste contexto, uma Política Nacional de Terras é um elemento imprescindível de uma mais ampla e abrangente política nacional de desenvolvimento económico e social.

4. Porém, a problemática de terras é muito complexa. Em algumas áreas existem reivindicações de direitos sobre a terra com base em razões históricas. Noutras áreas os direitos sobre a terra têm origem mais recente.

5. Como consequência dos processos acima referidos, ocorreu a deslocação interna ou para os países vizinhos de 6,5 milhões de pessoas, a maioria das quais das zonas rurais. Embora o reassentamento da população esteja na sua última fase, grandes áreas ainda não estão recuperadas, induzindo à conclusão de estarem vazias ou abandonadas, livres para ocupação por outros grupos. Esta conclusão é ainda potenciada pela fraca densidade populacional em algumas regiões do país.

6. Nas áreas ocupadas, ou que nunca foram abandonadas, não tem sido possível restabelecer os antigos sistemas produtivos, por falta de diversos meios de produção, de incentivos e meios de escoamento dos excedentes produzidos. Em algumas regiões do país, quando as populações locais começaram meios para lançar novas actividades, encontram as suas terras já ocupadas através de processos formais de concessão.

7. Mesmo onde os terrenos concedidos não ocupam toda a área reivindicada pela população local, pode tornar-se inviável o sistema de produção integrado do cam-

ponês, o qual depende do acesso a vários tipos de terra para várias culturas ao longo do ano, numa estratégia de produção adaptada às condições agroecológicas existentes.

8. A esta problemática sócio-económica adiciona-se a insegurança quanto à titularidade dos direitos de uso e aproveitamento da terra, causada pela ambiguidade entre dispositivos legais que, por um lado, conferem prova plena aos titulares dos direitos de uso e aproveitamento da terra enquanto, por outro lado, dispensam de licença os terrenos para fins de agricultura familiar. Isto tem gerado conflitos na gestão de terras, dificuldades administrativas de cadastro e registo, além de inibição do investimento produtivo.

9. Isto ocorre apesar do país ter grandes dimensões territoriais e densidade demográfica relativamente baixa, além de possuir recursos naturais abundantes.

10. Cerca de 75% da população vive nas zonas rurais e depende do uso da terra para o seu sustento. Destaca-se aqui o papel da mulher na utilização e participação na gestão de terras para a produção de alimentos de subsistência familiar bem como de produtos para o mercado.

11. As áreas actualmente utilizadas para cultivo cobrem entre 12 a 16 milhões de hectares, somente 15% a 20% do território nacional dos 36 milhões de hectares aráveis. Existem 46,4 milhões de hectares de florestas (38% do território nacional), além de pastagens e águas interiores. Do total de florestas, cerca de 20 milhões de hectares (25% do território nacional) são florestas produtivas, a serem exploradas com técnicas de manejo racionais e sustentáveis, e cerca de 8,8 milhões de hectares (11% do território nacional) constituem parques nacionais e áreas de reservas de fauna e flora. Existem também centenas de quilómetros de praias belas, e outras áreas de alto potencial turístico, recursos minerais, e ainda zonas de grande importância ecológica que merecem um tratamento especial.

II. Uma análise de oportunidades e limitantes

12. O desenho da Política Nacional de Terras apoia-se em aspectos estruturais e conjunturais, e leva em conta os factores de força e de fraqueza e as oportunidades que o país apresenta, hoje, em relação ao acesso, uso e aproveitamento da terra.

Factores de Força

- grande extensão territorial do país;
- pouca população em relação ao território (não há pressão demográfica ainda);
- relativa abundância de recursos de solo, água, fauna e flora;
- cerca de 2500 quilómetros de costa e praias;
- solos com boa fertilidade, temperaturas e regimes de chuvas favoráveis à agricultura e florestas;
- clima, praias, flora e fauna favoráveis ao turismo;
- recursos do subsolo aparentemente abundantes (falta investigação)

Factores de Fraqueza

- maioria da população não tem segurança de acesso e uso da terra;
- pobreza e falta de educação formal da maioria da população;
- faltam capitais e tecnologia para explorar os recursos;

- infra-estrutura económica e social deficiente;
- serviços de apoio à produção são ausentes ou deficientes;
- sistemas de titulação, cadastro e registo da terra são deficientes;
- falta de definição de limites físicos e conceptuais para delimitação dos terrenos;
- sistemas de planeamento do uso do solo ineficazes;
- degradação ambiental

Oportunidades

- clima de paz;
- economia de mercado;
- o compromisso do Estado em preservar os recursos naturais.

III. Prioridades nacionais

13. A política de terras reflecte e apoia os objectivos principais da política económica e social do Governo, na que se refere à necessidade de crescimento da produção interna.

- eliminar a pobreza;
- promover o desenvolvimento económico e humano auto-sustentado.

14. No que se refere ao uso da terra e dos recursos naturais, o país deve alcançar os seguintes objectivos prioritários:

- (i) recuperar a produção de alimentos, para que sejam alcançados níveis de segurança alimentar;
- (ii) criar condições para que a agricultura do sector familiar se desenvolva e cresça, tanto em volume de produção como em índices de produtividade, sem que lhe falte o seu recurso principal, a terra;
- (iii) promover o investimento privado, utilizando de uma forma sustentável e rentável a terra e outros recursos naturais, sem prejudicar os interesses locais;
- (iv) conservar as áreas de interesse ecológico e gerir os recursos naturais de uma forma sustentável, que possa garantir a qualidade de vida da presente e futuras gerações;
- (v) actualizar e aperfeiçoar um sistema tributário baseado na ocupação e no uso de terras, que possa apoiar os orçamentos públicos aos diversos níveis.

IV. Política de terras

15. De acordo com as prioridades acima indicadas, a Política Nacional de Terras toma em conta os principais usos da terra, incluindo o uso agrícola, urbano, minero, turístico, e para infra-estrutura produtiva e social, tendo em conta a protecção ambiental.

16. A política de terras tem uma base consensual, e estabelece os mecanismos pelos quais os recursos naturais podem ser explorados duma maneira equitativa e sustentável.

17. Os princípios fundamentais da política de terras são os seguintes:

- 1 manutenção da terra como propriedade do Estado, princípio actualmente consagrado na Constituição da República;
- 2 Garantia de acesso e uso da terra à população bem como aos investidores. Neste contexto reconhecem-se os direitos costumeiros de acesso e

gestão das terras das populações rurais residentes promovendo justiça social e económica no campo;

— *Garantia do direito de acesso e uso da terra pela mulher;*

— *Promoção do investimento privado nacional e estrangeiro sem prejudicar a população residente e assegurando benefícios para esta e para o erário público nacional;*

— *Participação activa dos nacionais como parceiros em empreendimentos privados;*

— *Definição e regulamentação de princípios básicos orientadores para a transferência dos direitos de uso e aproveitamento da terra, entre cidadãos ou empresas nacionais, sempre que investimentos houverem sido feitos no terreno;*

— *Uso sustentável dos recursos naturais de forma a garantir a qualidade de vida para as presentes e futuras gerações, assegurando que as zonas de protecção total e parcial mantenham a qualidade ambiental e os fins especiais para que foram constituídas. Incluem-se aqui as zonas costeiras, zonas de alta biodiversidade e faixas de terrenos ao longo das águas interiores.*

18. Estes princípios norteadores e os objectivos da *Política Nacional de Terras*, contidos neste documento, podem ser resumidos na seguinte declaração:

«Assegurar os direitos do povo moçambicano sobre a terra e outros recursos naturais, assim como promover o investimento e o uso sustentável e equitativo destes recursos».

19. A *Política Nacional de Terras* considera como beneficiários vários sistemas (ou grupos sócio-económicos) que exercem direitos sobre a terra, ou que têm na terra a sua principal actividade económica, conforme os seguintes usos:

A. Uso agrário

(i) Sector Familiar

20. A principal decisão de política de terras em relação a este sistema é o reconhecimento, por parte da *Lei de Terras*, dos direitos consuetudinários em relação ao acesso e gestão das terras. Estão incluídos neste contexto os vários sistemas de direitos de transferência e de herança, bem como o papel dos líderes locais na prevenção e resolução de conflitos e na legitimação e legalização da ocupação de uma determinada área.

21. Estes sistemas consuetudinários já são um recurso inquestionável, e oferecem um serviço «público» a um custo quase zero para o Orçamento Geral do Estado, na administração e gestão de terras nas zonas rurais. Por exemplo, funcionaram de uma maneira eficaz na reintegração da população deslocada no interior do país e dos regressados dos países vizinhos. Portanto, estes sistemas, mas práticos que já se aplicam na vasta maioria dos casos de ocupação e uso da terra, deveriam ser considerados na legislação sobre terras.

22. Salienta-se neste contexto a necessidade de ter uma lei flexível, que não especifica o que fazer em cada situação cultural diferente, mas admite o princípio de que em cada região possa funcionar o respectivo sistema de direitos consuetudinários, de acordo com a realidade local.

23. Embora os detalhes devam ser mais tarde investigados, há a necessidade de assegurar os direitos da grande maioria de produtores, que ocupam áreas jurídica-

mente atribuídas pelas leis consuetudinárias das suas zonas e padrões culturais. Neste caso, é necessário identificar as áreas de ocupação, cujos territórios serão demarcados e registados no Cadastro Nacional.

24. Esta identificação cadastral servirá para estabelecer os direitos de acesso e de gestão da comunidade local, sobre uma área relativamente vasta, que certamente será maior do que a área actualmente explorada.

25. A partir do registo cadastral desta entidade, e o subsequente registo na Conservatória Predial, quer sob a forma de co-titularidade, ou condominial dos integrantes da comunidade, qualquer outra Entidade ou pessoa será obrigada a negociar com a comunidade local. Deste modo, por exemplo, a comunidade pode entrar como parceira no investimento, compartilhando os lucros e os benefícios resultantes do investimento. Entretanto, esta consulta e diálogo com a comunidade devem ser acompanhados pelos órgãos competentes do Estado, a nível central, provincial, distrital e/ou municipal.

26. As quantias a serem pagas e as proporções das contribuições poderão ser definidas por alteração da legislação tributária. Salientam-se, neste caso, as fortes ligações entre o processo da revisão da Lei de Terras, e a reforma dos órgãos locais do Estado.

27. O reconhecimento dos direitos consuetudinários também pode permitir a definição de limites ao redor de grupos colectivos, definidos por conceitos jurídico-culturais (por exemplo, todos os membros de uma linhagem ou clã), e deste modo oferecer-lhes um método relativamente fácil de conseguir um título formal. Os membros destes agrupamentos podem passar a ser tratados de uma maneira parecida com as associações, e podem pedir um processo de co-titularidade, sem passar pelo processo duplo de legalização como entidade jurídica e titularidade da concessão.

28. A combinação destas duas abordagens também oferece uma maneira eficaz de integrar pastagens e florestas comunais dentro de um esquema formal que possa garantir os direitos locais, enquanto que ainda permite o acesso a estes recursos por grupos externos em negociações com as comunidades que ocupam as áreas rurais.

(ii) Sector Empresarial

A Pequena e Média Empresas

29. Este sistema é uma forma evoluída do sector familiar, apesar de manter fortes ligações com o direito consuetudinário e cultural local. Incluem-se neste grupo as cooperativas e associações, as quais muitas vezes têm raízes culturais ou origens sociais locais.

30. As reformas propostas na Estratégia de Implementação desta Política Nacional de Terras, nomeadamente quanto ao sistema de cadastro, titulação e registo, podem ajudar este «sector», facilitando a sua formalização perante a Lei de Terras, com base numa concessão de título de uso e aproveitamento. Um bom exemplo é o da União Geral das Cooperativas de Maputo, que registou as suas áreas no cadastro rural da DINAGECA e na Conservatória do Registo Predial do Ministério da Justiça. Entretanto, outros grupos em várias partes do país têm encontrado dificuldades no processo de legalização de terras.

A «Grande» Empresa

31. O «grande» capital de investimento agrário pode ser tanto moçambicano como estrangeiro. Devido, por um lado, à escassez de capitais no país e, por outro, ao potencial agrícola, florestal e turístico que Moçambique possui,

é de se esperar que grandes investimentos sejam realizados no país. As reformas previstas na Política Nacional de Terras, quanto à revisão da actual legislação e o fortalecimento institucional, não determinam linhas de acção precisas para a instalação e operação deste investimento.

52. A nova Lei de Terras também deverá assegurar que para o investimento externo na agricultura, floresta ou turismo, deva haver coordenação entre o Ministério da Agricultura e Pecuária, o Ministério para a Coordenação da Acção Ambiental, o Centro de Promoção de Investimento (CPI) e outros Ministérios e instituições.

B. Construção e urbanismo

53. A política de terras considera as acções de construção e urbanismo de forma multifacetada:

- a terra para habitação própria é garantida pelo Estado;
- o processo de ordenamento e de planificação física é exercido pelo Estado, podendo ser realizado por agentes privados em condições regulamentares;
- o espaço urbano, não pode ser transferido quando sobre ele não tenham sido feitas construções ou outras benfeitorias infra-estruturais;
- as infra-estruturas realizadas no processo de urbanização, agregam valor à terra, que servirá como fonte de rendimento tanto para o Estado como para os agentes privados;
- o crescimento urbano, e a consequente ocupação de terras anteriormente atribuídas a outros usos, deve realizar-se tomando em conta as pessoas que aí estejam fixadas e as benfeitorias realizadas, salvo se já exista um plano de ordenamento territorial previamente concebido.

C. Recursos minerais

54. A propriedade dos recursos minerais e dos hidrocarbonetos pertence ao Estado, cabendo a este determinar as condições do seu uso e aproveitamento com salvaguarda dos interesses nacionais, independente da titularização do solo.

55. O direito de exploração dos recursos minerais e dos hidrocarbonetos é distinto e independente do direito do uso e aproveitamento da terra.

56. O direito de exploração dos recursos minerais é atribuído e exercido ao abrigo de uma licença, sendo diferenciado pelo tipo e características da actividade a realizar, desde uma utilização temporária precária e não exclusiva da terra até uma ocupação permanente e exclusiva.

57. Esta licença permite ao seu titular um uso e ocupação da terra ressaltando aos objectivos de determinado tipo de actividade mineira.

58. O uso e ocupação da terra para fins da actividade mineira não exclui a realização de outras actividades na mesma área, desde que essas não interfiram com a realização da actividade mineira. A actividade mineira deverá ser conduzida de forma a afectar o menos possível os outros usos e ocupações, e a evitar ou minimizar a poluição e danos desnecessários aos recursos naturais e ao meio ambiente, obrigando-se a restaurar a área explorada.

59. Quando existe um conflito entre a actividade mineira e outros usos e ocupações, aquela goza de uma preferência sobre a outra indemnização de qualquer prejuízo ou dano causado.

40. O titular da concessão mineira goza do direito de preferência para atribuição do título de uso e aproveitamento da terra. Para isso, é necessário uma forte articulação entre as concessões mineiras e o Cadastro Nacional, para minimizar os conflitos de titularização.

41. A exploração dos hidrocarbonetos é considerada uma actividade de interesse nacional estratégico e prevalece sobre as outras actividades de uso da terra.

D. Turismo

42. O turismo corresponde a um conjunto de actividades profissionais relacionadas com o transporte, alojamento, alimentação e actividades de lazer destinadas a visitantes dos sítios.

43. O turismo tradicional e o ecoturismo em Moçambique, pode ser de vários tipos, nomeadamente:

- turismo de praia e sol;
- turismo de aventura e/ou cinegético;
- turismo histórico cultural;
- turismo de negócios, congressos e feiras;
- turismo de saúde e estâncias termais.

44. A política de terras considera que estas diferentes formas de turismo ocorrem sobre um espaço territorial a ser devidamente regulado pela lei de terras e respectivo regulamento.

45. Isto deve ser visto dentro do princípio de que a terra tem um valor estético susceptível de ser transformado em fonte de rendimento para a satisfação dos variados objectivos económicos-sociais do Estado e do governo.

46. Deste modo o Turismo poderia:

- contribuir para a melhoria da qualidade de vida da população moçambicana;
- contribuir para o desenvolvimento harmonioso do País;
- contribuir para a reabilitação, conservação e protecção do património natural construído especialmente o de valor ecológico e histórico e para a valorização do património cultural.

47. Segundo o critério de «região homogênea», a Política Nacional de Turismo definiu as seguintes áreas de intervenção prioritária:

- Regiões de aproveitamento turístico;
- Eixos de desenvolvimento turístico;
- Pólos de desenvolvimento turístico;
- Regiões de expansão turística.

48. Uma vez que o Cadastro Nacional estabelece áreas prioritárias de intervenção a Política de Terras tem em conta as quatro áreas de interesse turístico acima representadas.

E. Infra-estruturas e obras públicas

49. A nova Política Nacional de Terras prevê a necessidade de áreas para obras de infra-estruturas (estradas, linhas férreas, linhas de transmissão de electricidade) e demais obras públicas.

50. Neste contexto, não somente deve se reservar áreas para a futura expansão das infra-estruturas, como para ampliação e manutenção dos sistemas existentes. As concessões de terras, portanto, deverão respeitar os limites dos terrenos marginais, onde nenhuma construção poderá ser permitida.

51. A dinamização do mercado certamente aumentará a pressão para a expansão e melhoria dos actuais sistemas de serviços públicos. A rede de estradas, por exem-

plo, possui 27 000 km de estradas classificadas, cuja utilização incorrecta pode elevar seriamente os custos de manutenção, para além da capacidade do Estado de preservá-las.

52. A concessão de terras e seu uso e aproveitamento, tanto para fins agrícolas, como para outras finalidades, irão provocar um impacto no sistema rodoviário não apenas com o aumento do tráfego de veículos, mas também mediante a aceleração de tendências para o corte de estradas, circulação de máquinas impróprias para as estradas asfaltadas, colocação de tubos e cabos, execução de obras e outras intervenções nas zonas de influência das estradas.

53. Situação semelhante poderá ocorrer nas demais infra-estruturas públicas, devendo o Estado antecipar-se a essa problemática mediante o planeamento territorial, com vista à construção, expansão e utilização racional destas infra-estruturas.

F. Outros usos

54. As reformas do sistema de cadastro previstas na Política Nacional de Terras levarão em conta a necessidade de terras para uso *Industrial e Comercial* conforme as prioridades previstas pelas respectivas políticas sectoriais.

V. Estratégia de implementação

55. Para que a população moçambicana tenha os seus direitos assegurados pela nova legislação, e para que o país alcance aqueles objectivos explicitados nas Prioridades Nacionais, o programa de acções para implementação da *Política Nacional de Terras* prevê:

- Revisão da Lei de Terras;
- Desenvolvimento Institucional.

A. Revisão da lei de terras

56. A revisão da legislação deverá ser feita em duas etapas:

- (i) *Revisão da lei actual* para eliminar contradições perante a nova situação sócio-política do país e perante a Constituição da República e para simplificar procedimentos administrativos, deve introduzir os seguintes elementos:
 - a) o reconhecimento dos direitos consuetudinários e do sistema consuetudinário de adjudicação/gestão de terras nas áreas indicadas;
 - b) a provisão de um sistema de transferência dos direitos de uso e aproveitamento;
 - c) a existência de somente um tipo de título de concessão, seja qual for a base legal dos direitos adquiridos;
 - d) um sistema tributário, tanto para os usos com fins agrícolas, como para fins habitacionais, industriais, mineiros e de turismo;
 - e) simplificação de procedimentos administrativos.
- (ii) *Revisão da Regulamentação da Lei de Terras*, para aprofundar e detalhar as condições de aplicação da Lei de Terras

57. A transferência de direitos mencionada no item (b) acima deverá observar a classificação de áreas de uso de

terras tipo A, B, C, D, previamente estabelecida pelo Ministério da Agricultura e Pecuária, a seguir transcrita:

Tipo A — Recursos com densa ocupação e utilização e com vários tipos de utilizadores. Normalmente os utilizadores deste tipo de recursos têm maior acesso ao mercado, sendo a capacidade de ampliação desses recursos limitada. Aqui os problemas urgentes a resolver são a conservação, segurança de posse e/ou uso;

Tipo B — Recursos com ocupação e utilização pouco densa, em geral pelo sector familiar/artesanal e normalmente com acesso deficiente ao mercado. Neste tipo de recursos, o problema é garantir o acesso e a segurança de posse e/ou uso futuro;

Tipo C — São recursos protegidos ou a proteger. Em princípio a exploração destes recursos é vedada, exceptuando os casos de projectos previstos nos planos directores;

Tipo D — São recursos virtualmente nunca ocupados ou explorados. Por definição, são recursos com certo grau de inacessibilidade. O seu potencial para ampliar o acesso está dependente da capacidade de investimento público e privado.

58. A definição dos quatro tipos de terra acima indicados toma em conta os seguintes critérios fundamentais:

- formas dominantes de uso e ocupação da terra (sector familiar, empresarial ou misto);
- zonas agro-ecologicamente aptas à prática da agricultura;
- diversidade dos utilizadores;
- intensidade da utilização;
- acessibilidade da terra;
- densidade populacional;
- o nível de inserção no fluxo de mercado.

59. Esta classificação deverá acompanhar a dinâmica do uso da terra para diversos fins e ajustar-se às mudanças que venham a ocorrer com o processo de desenvolvimento do país. Isto permitirá que terras de um determinado tipo possam passar de uma categoria para outra.

60. Nas áreas classificadas como Tipo A, onde predominam o uso urbano e o sector empresarial rural, regular-se-ão os mecanismos que permitirão a transferência onerosa de títulos de uso e aproveitamento da terra entre seus titulares, tanto entre nacionais como de estrangeiros para nacionais, sempre que investimentos tiverem sido feitos no terreno. Nestas áreas, deverão ser regulamentados também os tamanhos mínimos dos terrenos, de acordo com as suas finalidades. Serão introduzidos outros mecanismos que impeçam a especulação ou acumulação de terra mas que também incentivem o camponês familiar e o pequeno produtor, que ocupam terras do tipo A como meio de subsistência.

61. Nas áreas Tipo B, onde predomina o sector familiar, prevalecerá o direito consuetudinário na transmissão dos direitos de uso e aproveitamento da terra. O acesso do investidor a estas áreas deverá ser negociado e acordado com a comunidade. Esta negociação com a comunidade deverá ser apoiada pelos órgãos competentes do Estado, a vários níveis.

62. Nas áreas Tipo C, por se tratar de áreas protegidas, será vedada toda e qualquer transferência de títulos, ex-

ceptuando as áreas que venham a ser identificadas como sendo para a implementação de projectos previstos nos planos directores do Governo.

63. Finalmente, nas áreas Tipo D, de difícil acesso, além de ser possível a transferência e títulos de uso e aproveitamento da terra, serão instituídos mecanismos de incentivos fiscais e de mercado para atrair investimentos.

64. O registo da transferência do título deverá ser permitido somente após o pagamento do imposto ao órgão fiscal competente.

65. A legislação deverá ser um instrumento flexível, que permita a actualização ao longo do tempo sem recorrer à necessidade de fazer revisões periódicas. Neste contexto, a lei deve induzir à «formalização do informal» ao longo do tempo, principalmente no que respecta ao cadastro das unidades do Sector Familiar.

66. Resulta-se ainda a necessidade de harmonizar a revisão e regulamentação da Lei de Terras com outras leis e políticas já em curso ou programadas:

- o Programa de Reforma dos Órgãos Locais (PROL) e a Lei dos Municípios;
- a Lei das Finanças Locais;
- a Lei do Trabalho;
- legislações sectoriais sobre Florestas e Fauna Bravia, Águas, Minas, e Construção;
- a Política Nacional do Ambiente;
- a Política Nacional de Turismo e a respectiva estratégia de desenvolvimento.

B. Desenvolvimento institucional

(i) Cadastro Nacional de Terras

67. O Cadastro Nacional deverá ser um sistema único para todo o país, de tipo multifuncional, que utilizará um conjunto de metodologias cadastrais e será interligado por uma única rede informática, com padrões uniformes, para levar a cabo as suas funções.

68. O Cadastro Nacional terá a competência adicional de titular os direitos de uso e aproveitamento da terra, após a respectiva demarcação e adjudicação do terreno.

69. Esta entidade deve constituir-se numa instituição autónoma, independente da actual Direcção Nacional de Geografia e Cadastro — DINAGECA, que se encarregará das áreas de geografia e cartografia.

70. Dada a limitação de recursos, deverão ser escolhidas Áreas Prioritárias de Acção para cadastro e utilização, que serão identificadas de acordo com os seguintes critérios:

- incidência actual ou potencial de conflitos;
- alta pressão demográfica/demanda da terra (mesmo nas áreas aparentemente vazias);
- proximidade de áreas urbanas;
- potencial agrícola, florestal, mineiro e/ou turístico de uma área;
- vulnerabilidade ambiental.

71. Em cada área prioritária, deverão tomar-se as seguintes medidas para a organização do cadastro e titulação:

- (i) as concessões de terra ficam suspensas naquela área, enquanto se realiza o cadastro;
- (ii) o cadastro rural é preparado usando-se um conjunto de metodologias cadastrais;
- (iii) áreas de terra são adjudicadas a unidades de produção (individuais, cooperativas, empresas ou agrupamentos de base étno cultural);

(iv) títulos de uso da terra são emitidos para aquelas unidades cujos direitos não são contestados. Os casos de litígio serão resolvidos pela autoridade competente a ser especificada;

(v) títulos cujos direitos não são contestados, e que são portanto considerados como certos, são registados no Registo Predial Nacional, em nome dos seus legítimos possuidores.

(iii) Conservatória do Registo Predial

72. A Conservatória do Registo Predial necessita de um forte apoio na área de procedimentos operacionais, capacitação de pessoal e melhoria dos seus equipamentos e infra-estruturas.

73. Assim como o Cadastro Nacional, o sistema nacional de registo predial deve ser único, muito embora desconcentrado. É fundamental que os procedimentos e metodologias do cadastro e da Conservatória sejam compatíveis entre si.

(iii) Tribunais

74. Para a solução dos eventuais conflitos que possam surgir entre os titulares do direito de uso e aproveitamento da terra, após a concessão dos respectivos títulos, é necessário apetrechar e capacitar os tribunais distritais e comunitários, reforçando a função jurisdicional do Estado a nível local.

75. Além de implicar numa revisão da legislação quanto à competência jurisdicional desses tribunais, o sistema será fortalecido tanto no que se refere às instalações e equipamentos, quanto a um programa de capacitação dos juizes e auxiliares da justiça, especialmente para questões de terras.

(iv) Comissão Inter-Ministerial de Terras

76. A Comissão Inter-Ministerial de Terras será estabelecida a nível do Conselho de Ministros, para acompanhar o processo de revisão da legislação.

77. Esta Comissão será assessorada por um Secretariado Técnico, com representantes dos ministérios e instituições apropriadas.

(v) Acções fundamentais a serem levadas a cabo pelo Estado na implementação da Política de Terras e da sua estratégia.

78. Uma vez aprovada a Política de Terras o papel do Estado consistirá no seguinte:

- rever e manter uma base legal adequada à evolução da economia e da sociedade;
- fortalecer e manter sistemas administrativos eficazes para ordenar e agilizar o cadastro e registo da terra;
- fortalecer e manter sistemas judiciais eficazes e acessíveis para a solução de eventuais conflitos;
- divulgação da legislação sobre terras à população e criação das condições necessárias para a efectiva implantação da política de terras;
- actualizar e aperfeiçoar um sistema tributário baseado na ocupação e no uso e aproveitamento de terras;
- encorajar a participação da sociedade civil no processo de gestão da terra;
- elaborar um plano de investimentos.

79. Para a execução das acções previstas na Política Nacional de Terras e sua estratégia de implementação, será elaborado um programa detalhado de acções e respectivo plano de investimentos.

Annex 6: Mozambique 1997 Land Law (Law No.19/97)

Terça-feira, 7 de Outubro de 1997

I SÉRIE – Número 40



BOLETIM DA REPÚBLICA

PUBLICAÇÃO OFICIAL DA REPÚBLICA DE MOÇAMBIQUE

3º SUPLEMENTO

IMPRENSA NACIONAL DE MOÇAMBIQUE

AVISO

A matéria a publicar no «Boletim da República» deve ser remetida em cópia devidamente autenticada, uma por cada assunto, donde conste, além das indicações necessárias para esse efeito, o averbamento seguinte, assinado e autenticado: Para publicação no «Boletim da República»

ASSEMBLEIA DA REPÚBLICA

Lei n° 17/97
de 1 de Outubro

A garantia da independência nacional e integridade territorial, a consolidação da unidade nacional, o desenvolvimento do país, pressupõem a existência de uma Política de Defesa e Segurança que, inspirando-se na resistência secular do nosso povo contra a dominação estrangeira e atendendo às situações conjunturais no país, na região, no continente e no quadro internacional, estabeleça modalidades aptas a atender aos imperativos da defesa e segurança do país.

Assim, nos termos do disposto no n° 1 do artigo 135 da Constituição, a Assembleia da República determina:

SUMÁRIO

Assembleia da República:

- Lei n° 17/97:
Aprova a Política de Defesa e Segurança.
- Lei n° 18/97:
Aprova a Lei da Defesa Nacional das Forças Armadas.
- Lei n° 19/97:
Aprova a Lei de Terras e revoga as Leis n° 6/79, e 1/86, de 3 de Julho, e 16 de Abril, respectivamente.
- Lei n° 20/97
Aprova a Lei do Ambiente
- Lei n° 21/97.
Regula a actividade de produção, transporte, distribuição e comercialização de energia eléctrica, como a sua importação e exportação e na o Conselho Nacional de Electricidade.

CAPÍTULO I

DISPOSIÇÕES GERAIS

ARTIGO 1

(Definição)

A Política de Defesa e Segurança é um conjunto de princípios, objectivos e directrizes, que visa defender a independência nacional, preservar a soberania e integridade do país e garantir o funcionamento normal das instituições e a segurança dos cidadãos

ARTIGO 2

(Princípios básicos)

A Política de Defesa e Segurança assenta nos seguintes princípios:

- a) responsabilidade do cidadão na defesa da pátria e na promoção da segurança do Estado e da ordem pública;
- b) envolvimento de todos os sectores do Estado e da sociedade na defesa e segurança nacional;
- c) unidade da Nação e na defesa dos seus interesses;
- d) reforço da unidade nacional;

CAPÍTULO II

PROPRIEDADE DA TERRA E DOMÍNIO PÚBLICO

ARTGO 2

(Prinzipiell)

A terra é propriedade do Estado e não pode ser vendida ou, por qualquer outra forma, alienada, hipotecada ou penhorada.

ARTIGO 4

(Fundo Estadual de Terras)

Na República de Moçambique, toda a terra constitui o Fundo Estatal da Terra.

ARTICOLO 5

[Centro Nacional de Regu]

1. O Cadastro Nacional de Terra compreende a totalidade dos dados necessários, nomeadamente para:

- c) desenvolver a atividade econômica, a partir das terras disponíveis para a produção, a fim de obter o desenvolvimento econômico e a melhoria da qualidade de vida, mantendo, portanto, reservas suficientes de floresta de floresta, zonas de proteção ambiental e de aproveitamento turístico;
- d) garantir, através da melhoria da terra, sua proteção e conservação;
- e) determinar as regiões adequadas para produção sustentável.

2. O Conselho Municipal de Juruá presta a qualificação contábil das contas públicas no âmbito municipal, presente artigo, de modo a permitir fundamentar a planejamento e a distribuição dos recursos do cash.

ARTIGO 13

¿Domínio público?

Si el dominio público es zona de protección total e impari:

ARTICO 7

(Zonas de protecção total)

Consideram-se zonas de proteção total as áreas destinadas a atividades de conservação ou preservação da natureza e de defesa e recuperação do litoral.

ARTICLOS

(Zonas de protecção parcial)

Consideram-se zonas de protecção parcial:

- a) bacia das águas interiores, de mar territorial e de zona econômica exclusiva;
- b) plataforma continental;
- c) faixa de cabotagem e os contornos de ilha, baía e estuário, medida de linha das máximas preamaras até 100 metros para o litoral de terra firme;
- d) faixa de terra no 100 metros contígua com as margens de água;

Justiça de terreno no contorno de barragens e albufeiras, 111
236 metros

As faixas ocupadas pelas linhas fixas de interesse público e pelas respectivas estações, com uma faixa constante de 50 metros de cada lado do eixo de via;

ARTICLE 2

(Licencias especiales para el ejercicio de actividades en zonas de protección total y parcial)

Na semana, professores e pais recebem uma avaliação sobre o desenvolvimento da criança, período, rotina, socialização, linguagem e habilidades para o exercício de atividades determinadas.

CASTLETON

DIREITO DE USO E APROVEITAMENTO DA TERRA

AR5760 10

(Sujetos nacionales)

1. Podem ser sujeitos do direito de uso e aproveitamento da terra as pessoas nacionais, coletivas e singulares, homens e mulheres, bem como as comunidades *lowa*.

2. As passagens singulares ou seletivas permitem isolar e obter o efeito de uma captação ou de uma, isoladamente ou em conjunto com outras passagens singulares ou seletivas, sob a forma de um fluxo isolado.

3. O direito de uso e aproveitamento da terra das comunidades locais atrela-se aos princípios da co-determinação, para todos os efeitos desta Lei.

ARTIGO 11

(Suficitos est, in refros)

As passagens singulares e selectivas auctoriaes podem ser sujeitos do direito de uso e aproveitamento da terra, desde que tenham projecto de investimento devidamente aprovado e observem as seguintes condições:

- 4) sendo pessoas singulares, desde que tenham há pelo menos cinco anos na República de Moçambique;

ARTIGO 12**(Aquisição)**

O direito de uso e aproveitamento da terra é adquirido por:

- a) ocupação por pessoas singulares e pelas comunidades locais, segundo as normas e prazos estabelecidos no quadro contido no anexo seguinte;

b) ocupação por pessoas singulares ou entidades que, de facto, estejam a utilizar a terra há pelo menos dez anos;

c) outorga de um pedido apresentado por pessoas singulares ou entidades na forma estabelecida no presente Lei.

ARTIGO 13**(Habitação)**

1. O título registado pelas Serviços Públicos de Cadastro, garante o usufruto.

2. A natureza do título não prejudica o direito de uso e aproveitamento da terra adquirido por ocupação nas terras das alíneas a) e b) do artigo anterior.

3. O processo de aquisição do direito de uso e aproveitamento da terra inclui o parecer das entidades administrativas locais, procedendo-se consultá-las respectivas comunidades, para efeitos de confirmação de que a terra em questão é alié com ocupação.

4. Os títulos emitidos para as comunidades locais não nominativas, contêm a designação por elas cedida.

5. As pessoas singulares, famílias ou múltiplas, membros de uma comunidade local podem solicitar títulos individualizados, após demonstrarem o direito de uso e aproveitamento da terra da comunidade.

ARTIGO 14**(Registo)**

1. A constituição, modificação, transmissão e extinção do direito de uso e aproveitamento da terra estão sujeitas ao registo.

2. A natureza do registo não prejudica o direito de uso e aproveitamento da terra adquirido por ocupação, nos termos das alíneas a) e b) do artigo 12, desde que deva cumprir as condições da presente Lei.

ARTIGO 15**(Revoga)**

A revogação do direito de uso e aproveitamento da terra pode ser feita mediante:

- a) expiração do respectivo título;
- b) prova testamentária apresentada por membros, famílias e múltiplas, das comunidades locais;
- c) prescrição e outros meios permitidos pela lei.

ARTIGO 16**(Transmissão)**

1. O direito de uso e aproveitamento da terra pode ser transmitido por herança, sem distinção de prazo.

2. Os titulares do direito de uso e aproveitamento da terra podem transmitir, entre vivos, as suas estruturas, constituições e benefícios respectivos, mediante escritura pública precedida de autorização da entidade estatal competente.

3. Nos casos referidos no número anterior, a transmissão é atestada no respectivo título.

4. No caso de pedidos unânimes, sem a transmissão do imóvel transmitido se o direito de uso e aproveitamento do respectivo terreno.

5. O titular do direito de uso e aproveitamento da terra pode constituir hipoteca sobre os bens imóveis e os benefícios que, devidamente autorizada, edifica no terreno ou sobre os quais legalmente tenha adquirido o direito de propriedade.

ARTIGO 17**(Prazo)**

1. O direito de uso e aproveitamento da terra para fins de actividades económicas está sujeito a um prazo máximo de 50 anos, renovável por igual período a pedido do interessado. Após o período de renovação, um novo pedido deve ser apresentado.

2. Não está sujeito ao prazo o direito de uso e aproveitamento da terra:

- a) adquirido por ocupação pelas comunidades locais;
- b) destinado à habitação própria;
- c) destinado à exploração familiar exercida por pessoas singulares ou famílias.

ARTIGO 18**(Extinção do direito de uso e aproveitamento da terra)**

1. O direito de uso e aproveitamento da terra extingue-se:

- a) pelo não cumprimento do plano de exploração ou do projecto de investimento, sem motivo justificável, no sentido estabelecido no respectivo título de direito, mesmo que as condições de facto tenham sido cumpridas;
- b) por revogação do direito de uso e aproveitamento da terra por motivos de interesse público, precedida de pagamento de justa indemnização pelos compensados;
- c) pelo termo do prazo ou da concessão;
- d) pela renúncia do titular.

2. No caso de extinção do direito de uso e aproveitamento da terra, os beneficiários não removem os bens do terreno.

CAPÍTULO IV**EXERCÍCIO DE ACTIVIDADES ECONÓMICAS****ARTIGO 19****(Plano de exploração)**

O requerente de um pedido do direito de uso e aproveitamento da terra deve apresentar um plano de exploração.

ARTIGO 20**(Licenciamento e direito de uso e aproveitamento da terra)**

A aprovação do pedido do direito de uso e aproveitamento da terra pelo processo ordinário de licenças ou outros meios legais exigida por:

- a) legislação aplicável ao exercício das actividades económicas respectivas, nomeadamente as que se referem

a) agro-indústria, indústria, comércio,
pesquisa científica e protecção do ambiente;
b) directiva dos planos de uso da terra.

ARTIGO 21

(Área de protecção)

Ao longo da linha e por prazo definido de acordo com a legislação aplicável, independentemente do prazo relativo para o exercício do direito de uso e aproveitamento da terra.

CAPÍTULO V

COMPETÊNCIAS

ARTIGO 22

(Autorização cobrada por planos de urbanização)

Compete ao Conselho Municipal, no âmbito da urbanização, compete:

1. Ao Governador Provincial:

- a) autorizar pedidos de uso e aproveitamento da terra de áreas até ao limite máximo de 3000 hectares;
- b) autorizar licenças especiais nas zonas de protecção rural;
- c) dar parecer sobre os pedidos de uso e aproveitamento da terra relativos a áreas que correspondam à competência do Ministro da Agricultura e Pecuária.

2. Ao Ministro da Agricultura e Pecuária:

- a) autorizar pedidos de uso e aproveitamento da terra de áreas entre 3000 e 35 000 hectares;
- b) autorizar licenças especiais nas zonas de protecção rural;
- c) dar parecer sobre os pedidos de uso e aproveitamento da terra relativos a áreas que ultrapassem a sua competência.

3. Ao Conselho de Ministros:

- a) autorizar pedidos de uso e aproveitamento da terra de áreas que ultrapassem a competência do Ministro da Agricultura e Pecuária, desde que inscrite num plano de uso da terra cujo aproveitamento seja permitido num mapa de uso da terra;
- b) emitir, modificar ou extinguir zonas de protecção rural e rural;
- c) delimitar entre a utilização do solo das águas territoriais e do plataforma continental.

ARTIGO 23

(Conselho Municipal e do Povoamento e Administração do Distrito)

Compete aos Presidentes dos Conselhos Municipais e do Povoamento e Administração do Distrito, nos termos da lei, emitir, dentro do âmbito municipal, autorizar pedidos de uso e aproveitamento da terra nas áreas cobertas por planos de urbanização e de áreas que tenham serviços públicos de utilidade.

ARTIGO 24

(Comunidade local)

1. Nas áreas rurais, as comunidades locais participam:

- a) na gestão dos recursos naturais;
- b) na resolução de conflitos;
- c) no processo de diálogo, confirmação e actualização do nº 1 do artigo 13 do presente lei;
- d) na identificação e delimitação dos limites das terras para o seu uso.

2. No âmbito das comunidades rurais nas áreas a e b) do nº 1 do presente artigo, as comunidades locais utilizam, entre outras, reuniões e práticas tradicionais.

CAPÍTULO VI

PROCESSO DE AUTORIZAÇÃO E RECURSOS DE USO E APROVEITAMENTO DA TERRA

ARTIGO 25

(Autorização provisória)

1. Após a apresentação do pedido de uso e aproveitamento da terra, é emitida uma autorização provisória.

2. A autorização provisória tem a duração máxima de cinco anos para as parcelas agrícolas e de dois anos para as parcelas urbanas.

ARTIGO 26

(Autorização definitiva)

Desde que cumprido o plano de exploração dentro do período de autorização provisória, é dada a autorização definitiva de uso e aproveitamento da terra e emitida a respectiva título.

ARTIGO 27

(Revogação de autorização provisória)

No âmbito da autorização provisória, quando o não cumprimento do plano de exploração não tiver justificação, pode a mesma ser revogada, sem direito a indemnização pelas investidas não recuperadas durante a realização.

CAPÍTULO VII

PAGAMENTOS

ARTIGO 28

(Taxa)

1. Os titulares do direito de uso e aproveitamento da terra estão sujeitos ao pagamento de taxa, cujo valor é determinado tendo em conta o carácter da terra, o seu tamanho e o finalidade do seu uso e aproveitamento, a saber:

- a) taxa de autorização;
- b) eventual, a qual pode ser paga em parcelas ou em prestações, de acordo com os investimentos realizados.

2. São isentados os pagamentos para as entidades municipais.

Annex 7. OAM Communique on Anadarko Legal Process



COMUNICADO DE IMPRENSA

Primeira Secção do Tribunal Administrativo nega julgar o mérito da causa sobre a declaração de nulidade do DUAT atribuído à exploração exclusiva, pela ANADARKO, no contexto do projecto de Gás em Palma

I.CONTEXTUALIZAÇÃO:

A **Ordem dos Advogados de Moçambique (OAM)**, no âmbito do projecto de Monitoria Legal dos Direitos sobre a Terra e Segurança Alimentar das Comunidades Afectadas pelos Grandes Investimentos, requereu ao Tribunal Administrativo, a declaração de nulidade do direito de uso e aproveitamento da terra - DUAT sobre uma área de 6.475 hectares de terra para fins de aproveitamento de indústria, para o projecto de exploração do Gás Natural Liquefeito (GNL) na região do Cabo Afungi, Distrito de Palma, na Província do Cabo Delgado.

A OAM interpsôs este processo em defesa dos direitos sobre a terra das comunidades vítimas da usurpação de terra em causa, do princípio da legalidade, do interesse público, do Estado de Direito e sobretudo dos direitos humanos, em cumprimento das suas atribuições legais. Para o efeito, a OAM reuniu elementos bastantes, demonstrativos da ilegalidade do processo de atribuição do referido DUAT.

Este processo correu seus trâmites na Primeira Secção do Tribunal Administrativo durante um ano.

Em julho 2019, a OAM foi notificada do Acórdão n.º 91/2019, relativo ao Processo n.º 58/2018 - 1º, que põe fim a este caso, em primeira instância.

Através deste Acórdão, a Primeira Secção do Tribunal Administrativo decidiu negar, sem fundamentos aceitáveis, provimento à pretensão da OAM, de obter judicialmente a declaração de nulidade do DUAT ilegalmente atribuído à exploração exclusiva pela ANADARKO.

II.FUNDAMENTOS DO ACÓRDÃO

A Primeira Secção do Tribunal Administrativo alega, a título de opinião, que as comunidades afectadas estão conformadas e satisfeitas com o polémico DUAT atribuído à exploração exclusiva pela ANADARKO. O tribunal alega ainda que a aceitação da pretensão da OAM poderia prejudicar as comunidades afectadas, porque estas têm interesse na implementação do projecto do GNL e no reassentamento.

Ora, essa não é a questão principal deste processo, senão o esclarecimento quanto à legalidade ou ilegalidade do DUAT em causa, independentemente das comunidades estarem satisfeitas ou conformadas, considerando que este alegado sentimento das comunidades não transforma em legal um processo de DUAT ilegal.

Em bom rigor, o Acórdão não apreciou as questões de Direito suscitadas.

III.REACÇÃO DA OAM AO ACÓRDÃO

Inconformada com o Acórdão, a OAM interpsôs o competente recurso ao Plenário do Tribunal Administrativo, em busca da serena e almejada justiça para as comunidades afectadas, na expectativa de que o fundo da questão deste caso seja julgado no respeito pelos princípios da legalidade e da justiça e no respeito pelos direitos e liberdades fundamentais consagrados na Constituição da República.

Maputo, aos 13 de Setembro de 2019

Por Uma Ordem Dinâmica,



Inclusiva e Descentralizada

Summary

The interest in the governance of land and other resources in developing countries has intensified over the past two decades due not only to increased pressure from global interests to remedy the food and energy crisis of the 80s but also as a result of public and private interests and investments involving large extensions of land in nature-based tourism, extractive industries, industrial agriculture, forest plantations, and public infrastructure.

Interests in mitigating climate change impacts and in increasing biodiversity conservation have also added to these pressures. The manner in which these interests and investments have been addressed, however, has fuelled concerns both at the national and international levels due to negative social and environmental impacts, particularly the impact on the rights and livelihoods of rural populations in developing countries.

Arguably, a major cause of concern voiced in these debates is that, in general, land-based investments have failed to respect and protect citizens' rights, resulting in local citizens and communities often being marginalized in decision-making processes, losing their land rights permanently, or seeing their rights substantially restricted in both size and quality.

Furthermore, these investments have also failed to produce their proclaimed development outcomes, especially in terms of rural development. The investments' underperformance in terms of citizens' land rights protection and achievement of expected economic development results is seen as a consequence of national governments' lack of interest in prioritizing and ensuring citizens' political and economic participation in land decisions, even in countries where progressive policies and laws have been adopted.

Many countries also claim to be democratic states that conduct governance processes—including land and natural resources governance—through participatory and inclusive approaches formalized in policy and legal instruments. With this context this research aimed to analyse engagement modalities used in interactions between governments, investors, and rural communities to identify factors within and

beyond the law that may explain such a generalized failure in implementation of those instruments.

Mozambique is the case study selected for this dissertation. Mozambique has been considered an exemplary case of a country with a progressive policy and legal framework containing provisions that balance community and investors' land rights so that local communities can effectively benefit from land-based investments. Thanks to these provisions, the Mozambican 1997 Land Law has been described as one of the best in Africa.

However, this country has also been extensively mentioned in land debates and research because government implementation of the land law has shown a substantial gap between theory and practice. The government is seen as failing to effectively protect the rights of poor rural and urban populations by intentionally ignoring legal norms and procedures adopted to benefit citizens and local communities and by ostensibly favouring private interests, especially foreign investors. So far, available evidence shows that the number of community land delimitations is far less than expected; community consultations are not undertaken in a manner that involves and considers community positions and priorities and that pursues prior and informed consent; and benefits promised by investors have not materialized.

Furthermore, the race of foreign investors to obtain large tracts of rural land for agriculture, agrofuels, minerals, tourism, forestry, and many other resources and economic opportunities, has kept Mozambique steadily in the list of countries where global land grabbing is taking place with involvement of both national and foreign actors.

This research contributes to on-going research aiming to discern what is failing and why. To contribute to these debates, the dissertation assesses whether land-based investments in Mozambique have led to sustainable rural development through just and fair land governance as intended by the land policy and legislation.

This was done by focusing the research on the identity and role of the state/government, taking into account the ongoing dilemmas of states in balancing conflicting interests in the land and natural resources sector, especially the need for investments to boost economic growth while also guaranteeing community rights.

In this context, the data collected was from land-based public, private, and community investment projects that had been implemented in different geographical

locations and different economic sectors, namely nature conservation, oil and gas, and public infrastructure. This data was used to respond to a key question:

How have the main principles and procedures of Mozambique's land policy worked out in practice with regards to community rights protection, participation, and benefit sharing in the context of land-based investments?

To contextualize the research question, the thesis includes a review of selected concepts, starting with the concept of the 'human right to development' and complementary concepts such as 'sustainable development'; 'good governance'; 'good land governance'; 'responsible investments'; procedural, distributive and environmental justice'; 'participation', 'community-based land and natural resources management' and 'land grabbing'. The role played by 'participation' through the 'community consultation' procedure in the pursuit of procedural and distributive justice in land governance, is highlighted in this dissertation as the thread used in the thesis reflections. Furthermore, as participatory and inclusive governance in Mozambique is derived from constitutional principles and legal directives, namely 'State Ownership over Land and Natural Resources', 'Legal and Institutional Pluralism', 'Administrative Decentralization' and 'Land-based Investments for Rural Development', in its core chapters the dissertation reviews and discusses how these principles and directives intersect with the conceptual framework indicated above.

The dissertation argues that, recognizing that large land concessions may represent a potential threat to local land rights and to more equitable and sustainable rural development, the Mozambican National Land Policy approach suggests that it is necessary and possible to develop and implement institutional and procedural mechanisms that can integrate such concessions into the priorities, interests, and socio-cultural concerns of rural communities.

Under this premise, and although there is room for improvement in terms of gap-filling and conceptual clarity, the dissertation further argues that Mozambique's reputation as a positive reference in terms of containing progressive policy guidelines and procedural norms for participatory and inclusive land and natural resources governance is still quite defensible.

This country is also a good reference in terms of showing that there are limitations to what a law alone can do, in the absence of other equally important factors, particularly extra-legal factors. In this context, based on the projects reviewed, this dissertation concludes that:

1. Although the Constitution and principal laws are generally enabling with regards to community rights protection and participation in land decisions and participation in economic endeavors, much still needs to be done to improve both the institutional infrastructure (including improved procedural aspects directed at strengthening good governance safeguards and improved public and private ethics and leadership) and community preparedness so that fairness of process and fairness of outcomes are secured and intrinsically linked.
2. Government identity confusion has influenced the manner in which land rights allocations to investors are granted, including the manner that community consultations and community-public/community-private partnerships are addressed. As things currently stand, this situation has not only been favourable to land grabbing, but it has also prevented those procedures and mechanisms from guaranteeing meaningful participation.
3. The reason the legal framework is failing and the reason why there is no real participation is because of the nature of the current leadership of the state, which is led by a government formatted and used to suit the needs of today's political and economic elites.
4. While community consultations indeed have the potential to be an important participatory mechanism for economic and social sustainable land governance and although the importance of investors' role in economic development is indisputable, as long as public institutions do not exhibit political will to fulfil their role and responsibility to enforce norms and procedures to prevent illegalities committed either by public officers or by private companies backed up by such officers, and as long as these actors remain unaccountable, the prospects of Mozambique achieving, or at least making substantial progress towards, sustainable development in the next 15 years are very remote.
5. If the current 'bad governance curse' scenario prevails, it will not only affect how resource abundance will be handled but will also determine whether Mozambique can pursue its development path in an environment of peace, stability, and transparency, which is essential for any country's sustainable development.
6. Local citizens' and communities' preparedness to engage constructively with both the government and private investors is an essential pillar for participatory land governance and sustainable development. In this context, Mozambican civil society organizations, particularly public interest advocacy organizations, have been playing an important role in helping rural communities and farmers, including rural women, to protect their rights to access and use land and natural resources, as well as their rights to economic inclusion and benefit sharing so that no one is left behind.

Resumo

O interesse pela governação da terra e outros recursos nos países em desenvolvimento tem sido um tema amplamente debatido, facto intensificado nas últimas duas décadas devido não apenas às crescentes pressões de interesses globais em remediar a crise alimentar e energética dos anos 80, mas também como resultado de interesses e investimentos públicos e privados envolvendo grandes extensões de terra no sector do ecoturismo, da indústria extrativa, da agricultura industrial, das plantações florestais e infraestruturas públicas. Tais pressões foram agravadas por interesses em mitigar os impactos das mudanças climáticas e em expandir a conservação da biodiversidade. No entanto, a maneira como tais interesses e investimentos foram abordados exacerbou preocupações ao nível nacional e internacional, decorrentes dos impactos sociais e ambientais negativos envolvidos, particularmente o impacto sobre os direitos e meios de subsistência das populações rurais dos países em desenvolvimento.

Uma das principais causas de preocupação manifestadas nesses debates tem a ver com o facto de que, em geral, os investimentos baseados na terra têm falhado no seu dever de respeitar e proteger os direitos dos cidadãos, com situações de cidadãos e comunidades locais muitas vezes marginalizados nos processos de tomada de decisão, perdendo permanentemente os seus direitos à terra, ou vendo tais direitos substancialmente reduzidos tanto em termos de dimensão como de qualidade. Além disso, estes investimentos também têm falhado na produção dos proclamados resultados em termos de desenvolvimento, especialmente no respeitante ao desenvolvimento rural. O desempenho insatisfatório dos investimentos em termos de protecção do direito dos cidadãos à terra e de produção dos resultados de desenvolvimento económico esperados são vistos como consequência do desinteresse dos governos nacionais em priorizar e garantir a participação política e económica dos seus cidadãos nas decisões sobre acesso e uso da terra, mesmo nos países que políticas e leis progressivas foram adoptadas.

Neste contexto, e considerando que muitos países afirmam ser estados democráticos que conduzem processos de governação, incluindo a governação de terras e outros recursos naturais, por meio de abordagens participativas e inclusivas formalizadas em instrumentos políticos e legais, esta pesquisa teve como objetivo analisar

as modalidades de engajamento usadas nesses países na interação entre governos, investidores e comunidades rurais para identificar factores legais e extralegais que possam explicar a falha generalizada na implementação de tais instrumentos.

Moçambique é o caso de estudo selecionado para esta dissertação. Moçambique tem sido considerado um caso exemplar de um país com um quadro político-legal progressivo por conter disposições que procuram equilibrar os direitos das comunidades e dos investidores sobre a terra, para que as comunidades locais possam beneficiar-se efetivamente dos investimentos baseados na terra. Graças a estas disposições, a Lei de Terras de Moçambique aprovada em 1997 é considerada uma das melhores leis de terras de África.

No entanto, este país tem também sido amplamente mencionado nos debates e pesquisas sobre terras, devido a discrepâncias substanciais entre a teoria e a prática na maneira como o governo tem implementado a lei de terras. O governo é acusado de não proteger efetivamente os direitos das populações pobres rurais e urbanas, ignorando intencionalmente normas e procedimentos legais adotados para beneficiar cidadãos e comunidades locais e favorecendo ostensivamente interesses privados, especialmente interesses de investidores estrangeiros. Até ao momento, as evidências disponíveis mostram que o número de delimitações de terras comunitárias é muito menor que o esperado; as consultas comunitárias não são realizadas de maneira a envolver e considerar as posições e prioridades da comunidade e de maneira a obter o seu consentimento prévio e informado; e, os benefícios prometidos pelos investidores não são materializados.

Além disso, a corrida de investidores estrangeiros para a ocupação de grandes extensões de terra rural para agricultura, agro-combustíveis, minerais, turismo, silvicultura, entre outros recursos e oportunidades económicas, manteve Moçambique constantemente na lista de países onde a usurpação global de terras está ocorrendo envolvendo actores nacionais e estrangeiros. Esta dissertação contribui para as diferentes pesquisas em curso conduzidas com o objetivo de discernir o que está falhando e porquê. Como forma de contribuir para os referidos debates, a dissertação avalia se os investimentos baseados na terra em Moçambique têm promovido o desenvolvimento rural sustentável por meio de uma governação justa e equitativa da terra, tal como almejado pela política e legislação de terras.

Esta análise foi feita concentrando a atenção da pesquisa na identidade e papel do Estado/governo, tendo em consideração os dilemas enfrentados pelos Estados na procura do equilíbrio entre interesses conflitantes no sector de terras e recursos naturais, especialmente a dificuldade associada à necessidade de atrair

investimentos para impulsionar o crescimento económico, mas garantindo, ao mesmo tempo, os direitos da comunidade. Nesse contexto, os dados coletados em projetos de investimento público, privado e comunitário implementados em diferentes áreas geográficas e em diferentes setores económicos, como a conservação da natureza, petróleo e gás e infraestruturas públicas, foram utilizados para responder à seguinte questão-chave:

Em que medida é que os principais princípios e procedimentos da política de terras de Moçambique funcionam na prática no concernente à protecção dos direitos das comunidades, à promoção da participação e à partilha de benefícios no contexto de investimentos baseados na terra?

Para contextualizar a questão que orientou a pesquisa, a tese inclui uma revisão de conceitos selecionados, iniciando desde logo pelo conceito de “direito humano ao desenvolvimento”, e incluindo conceitos complementares como “desenvolvimento sustentável”; ‘boa governação’; ‘boa governação de terras’; ‘investimentos responsáveis’; ‘justiça processual, distributiva e ambiental’; ‘participação’, ‘gestão comunitária de terras e recursos naturais’ e ‘usurpação de terras’. O papel jogado pela ‘participação’, através do procedimento da ‘consulta comunitária’ na busca da justiça processual e distributiva na governação de terras, é destacado nesta dissertação como o fio condutor usado nas reflexões nela contidas.

Além disso, uma vez que a governação participativa e inclusiva em Moçambique resulta de princípios constitucionais e diretrizes legais, a saber ‘Propriedade do Estado sobre Terras e Recursos Naturais’, ‘Pluralismo Jurídico e Institucional’, ‘Descentralização Administrativa’ e ‘Investimentos para o Desenvolvimento Rural’, nos seus capítulos principais a dissertação revê e discute a medida em que, na prática, estes princípios e diretrizes estão alinhados à base conceitual que suporta a tese.

A dissertação argumenta que, reconhecendo que as grandes concessões de terras podem representar uma potencial ameaça para os direitos locais sobre a terra e para um desenvolvimento rural mais equitativo e sustentável, a abordagem da Política Nacional de Terras de Moçambique sugere que é necessário e possível adotar e utilizar mecanismos institucionais e processuais que possam integrar tais concessões nas prioridades, interesses e preocupações socioculturais das comunidades rurais. Com base nesta premissa, e embora exista espaço para melhorias em termos de preenchimento de lacunas e clarificação conceitual, a dissertação argumenta ainda que a reputação de Moçambique como referência positiva por conter diretrizes políticas e normas processuais progressivas para a governação participativa e inclusiva da terra e outros recursos naturais ainda absolutamente defensável.

Este país é também uma boa referência na medida em que demonstra que existem limitações para o que a lei, só por si, pode fazer, na ausência de outros factores igualmente importantes, particularmente factores extraleais. Nesse contexto, com base nos projetos analisados, esta dissertação conclui que:

1. Embora a Constituição e as principais leis sejam no geral favoráveis à protecção dos direitos da comunidade e à sua participação nas decisões sobre terras e nos empreendimentos económicos, ainda há muito a ser feito para melhorar tanto a infraestrutura institucional (incluindo aspectos processuais melhorados com vista ao fortalecimento dos padrões de boa governação, e da ética e liderança no sector público e privado) como a preparação da comunidade para que a justiça processual e a justiça distributiva sejam garantidas e intrinsecamente interligadas.
2. A confusão de identidade do governo influenciou a maneira como a atribuição de direitos sobre a terra para investidores é efectuada, incluindo a maneira como as consultas comunitárias e como as parcerias entre comunidades e entidades públicas e privadas são abordadas. Actualmente, esta situação não só tem sido favorável à usurpação de terras, como também tem impedido que estes procedimentos e mecanismos assegurem uma participação significativa.
3. A razão pela qual o quadro legal parece estar a falhar, e a razão pela qual não há participação real tem a ver com a natureza da liderança actual do Estado, encabeçada por um governo formatado e usado para atender às necessidades das elites políticas e económicas do momento.
4. Embora as consultas comunitárias tenham de facto o potencial de ser um importante mecanismo de participação para uma governação da terra económica e socialmente sustentável, e embora a importância do papel dos investidores no desenvolvimento económico do país seja incontestável, enquanto as instituições públicas não demonstrarem vontade política para cumprir o seu papel e responsabilidade de fazer cumprir as normas e procedimentos para a prevenção de ilegalidades cometidas por funcionários públicos ou por empresas privadas apoiadas por tais funcionários, e enquanto estes atores permanecerem sem responsabilização, as perspectivas de Moçambique alcançar ou, pelo menos, fazer progressos substanciais em direcção ao desenvolvimento sustentável nos próximos 15 anos são muito remotas.
5. Se o cenário atual de ‘maldição da má governação’ prevalecer, isso afectará não apenas a maneira como a abundância de recursos será tratada, mas determinará também se Moçambique será capaz de perseguir o seu percurso de desenvolvimento num ambiente de paz, estabilidade e transparência, que é essencial para o desenvolvimento sustentável de qualquer país.

6. A preparação dos cidadãos e comunidades locais para que se relacionem construtivamente com o governo e com investidores privados é um pilar essencial para a governação participativa da terra e para o desenvolvimento sustentável. Neste contexto, as organizações da sociedade civil moçambicana, em particular as organizações dedicadas à advocacia de interesse público, têm desempenhado um papel importante no apoio às comunidades e agricultores rurais, incluindo mulheres rurais, na protecção dos seus direitos de acesso e uso da terra e recursos naturais, bem como direitos à inclusão económica e partilha de benefícios, para que ‘ninguém fique para trás’.

Samenvatting

De afgelopen twintig jaar is de interesse voor de governance van land en andere natuurlijke bronnen in ontwikkelingslanden toegenomen, niet alleen als gevolg van de steeds hogere druk die wordt uitgeoefend door de wereldwijde behoefte om de voedsel- en energiecrisis van de jaren tachtig te remediëren, maar ook als gevolg van belangen en investeringen van zowel particulieren als de overheid waarbij grote stukken land zijn betrokken in het kader van natuurtoerisme, de winningsindustrie, industriële landbouw, bosbouw en publieke infrastructuur.

Belangen die relevant zijn voor de beperking van de gevolgen van klimaatverandering en meer behoud van biodiversiteit hebben deze druk nog verder verhoogd. De manier waarop deze belangen en investeringen vorm hebben gekregen, hebben echter op nationaal en internationaal niveau tot bezorgdheid geleid vanwege de negatieve maatschappelijke en milieutechnische impact hiervan, met name de gevolgen voor de rechten en het levensonderhoud van plattelandsgemeenschappen in ontwikkelingslanden.

Er kan worden betoogd dat een belangrijke oorzaak van de zorg die in deze debatten wordt geuit is dat bij landgebaseerde investeringen in het algemeen de burgerrechten van lokale bewoners en gemeenschappen niet zijn gerespecteerd en beschermd, doordat gemeenschappen vaak worden gemarginaliseerd bij besluitvormingsprocessen, hun landrechten permanent verliezen of merken dat hun rechten zowel qua omvang als qua kwaliteit substantieel worden beperkt.

Daarnaast hebben deze investeringen niet geleid tot de voorspelde ontwikkelingsresultaten, met name wat betreft ontwikkeling van het platteland. Het onderpresteren van investeringen met betrekking tot de bescherming van de landrechten van burgers en de realisatie van de verwachte economische ontwikkelingsresultaten wordt beschouwd als een gevolg van het gebrek aan aandacht van nationale overheden voor het waarborgen van, en prioriteit geven aan, de politieke en economische participatie van burgers bij besluiten die land betreffen, zelfs in landen waar progressief beleid en wetgeving van kracht zijn.

Tegen die achtergrond, en ook omdat een groot aantal landen beweren democratische staten te zijn die governance-processen (inclusief voor governance met betrekking tot land en natuurlijke bronnen) hanteren door middel van participatieve en inclusieve benaderingen die zijn geformaliseerd in beleid en rechtsinstrumenten, is dit onderzoek erop gericht geweest om de modaliteiten van betrokkenheid te analyseren die een rol spelen bij interacties tussen overheden, investeerders en plattelandsgemeenschappen, om zowel binnen de wetgeving als daarbuiten factoren te identificeren die een verklaring kunnen vormen voor het algeheel falen van de tenuitvoerlegging van die instrumenten.

Als onderzoeks casus voor dit proefschrift is Mozambique geselecteerd. Mozambique wordt al lang beschouwd als een uitstekend voorbeeld van een land met een progressief beleidskader en juridisch kader, die voorzieningen omvatten om de landrechten van gemeenschappen en investeerders met elkaar in evenwicht te brengen opdat lokale gemeenschappen effectief kunnen profiteren van landgebaseerde investeringen. Dankzij die voorzieningen is de landwet van Mozambique van 1997 wel de beste in Afrika genoemd.

Het land wordt echter ook vaak genoemd in debatten en onderzoek met betrekking tot land, omdat de tenuitvoerlegging van de landwet door de overheid een substantiële kloof tussen theorie en praktijk laat zien. De perceptie is dat de overheid er niet in slaagt om de rechten van de arme rurale en stedelijke gemeenschappen effectief te beschermen, doordat zij opzettelijk juridische normen en procedures negeert die zijn aangenomen ten bate van burgers en lokale gemeenschappen, en kennelijk particuliere belangen, met name die van buitenlandse investeerders, voorrang geeft. Tot nu toe wijst het beschikbare bewijs erop dat het aantal afbakeningen van gemeenschapsland veel lager ligt dan verwacht, dat overleg met gemeenschappen niet plaatsvindt op een manier die de standpunten en prioriteiten van gemeenschappen in overweging neemt en gericht zijn op geïnformeerde toestemming vooraf, en dat de door investeerders beloofde voordelen niet worden gerealiseerd.

Daarnaast heeft de run van buitenlandse investeerders op grote stukken platteland voor landbouw, biobrandstoffen, mineralen, toerisme, bosbouw en andere natuurlijke bronnen en economische kansen ertoe geleid dat Mozambique stevast wordt genoemd als een van de landen waar sprake is van lokale landroof waarbij zowel nationale als buitenlandse partijen betrokken zijn.

Dit proefschrift levert een bijdrage aan lopend onderzoek dat als doel heeft te bepalen wat er precies misgaat en waarom. Om een bijdrage aan deze debatten te leveren wordt in dit proefschrift beoordeeld of op land gebaseerde investeringen in

Mozambique hebben geleid tot duurzame ontwikkeling van het platteland en rechtvaardige en eerlijke governance zoals beoogd door het beleid en de wetgeving met betrekking tot land.

Hiervoor heeft bij het onderzoek de focus gelegen op de identiteit en rollen van de staat/overheid, met inachtneming van de dilemma's waarmee staten doorlopend worden geconfronteerd wanneer zij zoeken naar een balans tussen conflicterende belangen in de land- en grondstoffensector, met name de noodzaak van investeringen om economische groei te bevorderen en tegelijk gemeenschapsrechten te waarborgen.

In deze context zijn gegevens gebruikt die afkomstig zijn uit landgebaseerde investeringsprojecten van de overheid, particulieren en gemeenschappen die zijn uitgevoerd op verschillende geografische locaties en in diverse economische sectoren, namelijk natuurbeschoud, olie- en aardgas, en openbare infrastructuur. Het doel was om antwoord te verschaffen op een belangrijke vraag:

Hoe hebben de voornaamste uitgangspunten en procedures van het landbeleid van Mozambique in de praktijk gefunctioneerd met betrekking tot de bescherming van de rechten, participatie en het delen in de voordelen van gemeenschappen in de context van landgebaseerde investeringen?

Om de onderzoeksvraag te contextualiseren bevat het proefschrift een beoordeling van geselecteerde concepten, beginnend met het concept van 'het recht van de mens op ontwikkeling' en aanvullende concepten zoals 'duurzame ontwikkeling', 'good governance', 'good governance met betrekking tot land', 'verantwoordelijke investeringen', 'procedurele, distributieve en milieutechnische rechtvaardigheid', 'participatie', 'gemeenschapsgebaseerd beheer van land en natuurlijke rijkdommen' en 'landroof'. De rol die wordt gespeeld door 'participatie' via de procedure voor 'gemeenschapsconsultatie' in het nastreven van procedurele en distributieve rechtvaardigheid bij land-governance wordt in dit proefschrift gebruikt als de rode draad bij de overwegingen. Daarnaast wordt – aangezien de participatieve en inclusieve governance in Mozambique is gebaseerd op grondwettelijke beginselen en juridische richtlijnen, namelijk 'land en natuurlijke bronnen als staatseigendom', 'juridisch institutioneel pluralisme', 'decentralisatie van bestuur' en 'landgebaseerde investeringen in plattelandontwikkeling' – in de centrale hoofdstukken van het proefschrift beoordeeld en besproken hoe deze beginselen en richtlijnen aansluiten op het hierboven aangegeven conceptuele kader.

In het proefschrift wordt betoogd dat, aangezien grootschalige landconcessies een potentiële bedreiging kunnen vormen voor lokale landrechten en een meer rechtvaardige en duurzame ontwikkeling van het platteland, het nationale landbeleid van Mozambique erop duidt dat het noodzakelijk en mogelijk is om institutionele en procedurele mechanismen te ontwikkelen en te implementeren waarmee dergelijke concessies kunnen worden geïntegreerd met de prioriteiten, belangen en sociaal-culturele bekommernissen van plattelandsgemeenschappen.

Met dat als uitgangspunt (en rekening houdend met het feit dat er ruimte voor verbetering is met betrekking tot lacunes en conceptuele duidelijkheid) wordt in het proefschrift verder betoogd dat de reputatie van Mozambique als positief referentiepunt dankzij de aanwezigheid van progressieve beleidsrichtlijnen en procedurele normen voor participatieve en inclusieve governance van land en natuurlijke bronnen nog steeds verdedigbaar is.

Daarnaast is het land een goede referentie om zichtbaar te maken dat er beperkingen zijn aan wat er bereikt kan worden met uitsluitend wetgeving bij afwezigheid van andere, hoofdzakelijk buitengerechtelijke, factoren die even belangrijk zijn. In deze context worden op basis van de beoordeelde projecten in dit proefschrift de volgende conclusies getrokken:

1. Hoewel de grondwet en belangrijkste wetgeving in het algemeen mogelijkheden bieden met betrekking tot de bescherming van de rechten en participatie in landgerelateerde beslissingen van gemeenschappen en de participatie daarvan in economische ondernemingen, moet er nog steeds veel werk worden verzet ter verbetering van zowel de institutionele infrastructuur (inclusief betere procedurele aspecten gericht op de waarborging van good governance en betere ethiek en leiderschap in zowel de particuliere sector als bij de overheid) als de paraatheid van gemeenschappen, opdat de rechtvaardigheid van processen en de rechtvaardigheid van resultaten gewaarborgd en intrinsiek aan elkaar gekoppeld zullen zijn.
2. Onzekerheid met betrekking tot identiteit bij de overheid is van invloed geweest op de wijze waarop landrechten aan investeerders worden toegekend, inclusief de manier waarop wordt omgegaan met overleg met gemeenschappen en samenwerkingsverbanden tussen gemeenschappen en de overheid en gemeenschappen met de particuliere sector. De huidige situatie werkt niet alleen landroof in de hand, maar heeft daarnaast de waarborging van betekenisvolle samenwerking door deze procedures en mechanismen in de weg gestaan.
3. De reden dat het juridisch kader faalt, en de reden waarom er geen sprake is van daadwerkelijke samenwerking, is toe te schrijven aan de aard van de huidige

staatsoverheid, die is geformeerd en wordt gebruikt om de belangen te behartigen van de huidige politieke en economische elites.

4. Hoewel overleg met gemeenschappen in potentie inderdaad een belangrijk participatief mechanisme zou kunnen vormen voor maatschappelijk duurzame land-governance, en hoewel de rol van investeerders bij economische ontwikkeling niet ter discussie staat, blijft de kans dat Mozambique in de komende vijftien jaar duurzame ontwikkeling realiseert, of ten minste substantiële vooruitgang boekt met betrekking daartoe, zeer klein, zo lang openbare instanties geen politieke wil tonen om hun rollen en verantwoordelijkheden te vervullen door normen en procedures te handhaven om illegale handelingen door ambtenaren en particuliere bedrijven die door dergelijke ambtenaren worden gesteund te voorkomen, en zo lang deze actoren niet ter verantwoording worden geroepen.
5. Als de huidige koers met betrekking tot governance niet wordt gewijzigd, zal dat niet alleen gevolgen hebben voor de manier waarop met de rijkdom aan natuurlijke bronnen wordt omgegaan, maar zal dat eveneens bepalend zijn voor de vraag of Mozambique haar ontwikkeltraject kan voortzetten tegen een achtergrond van vrede, stabiliteit en transparantie, wat van essentieel belang is voor de duurzame ontwikkeling van een land.
6. De bereidheid van lokale burgers en gemeenschappen om een constructieve verstandhouding aan te gaan met zowel de overheid als particuliere investeerders is essentieel voor participatieve land-governance en duurzame ontwikkeling. In deze context hebben maatschappelijke organisaties – met name organisaties die zich bezighouden met de behartiging van publieke belangen – in Mozambique een belangrijke rol gespeeld bij het helpen van plattelandsgemeenschappen en boeren (waaronder plattelandsvrouwen) bij het beschermen van hun recht op toegang tot en gebruik van land en natuurlijke bronnen, naast hun recht op economische integratie en het delen van de voordelen, opdat niemand achter blijft.

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V. Education

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Utrecht University Faculty of Geosciences Department of Human Geography and Spatial Planning International Development Studies-Land Academy, Netherlands	PhD Fellow (Human Geography and Spatial Development)	2019
The George Washington University Washington D.C., USA	Certificate in Tourism Destination Management and Marketing, concentration on Institutional and Legal Aspects of Ecotourism	2000
International Correspondence Schools (Harcourt Learning Direct) – USA	Certificate in Small Business Administration.	2000
The American University Washington College of Law Washington D.C. – USA	Master's Degree in Environmental Law	1999
University Eduardo Mondlane, Faculty of Law Maputo – Moçambique	Bachelor of Arts in Law	1995
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VI. Additional Training:

- 1995** Global Course on International Environmental Law. United Nations Environmental Program (UNEP), Nairobi, Kenya.
Training Course on Environmental Impact Assessment. University of Cape Town, South Africa
- 1996** Training-by-attachment at the UNEP Legal Department, concentration on international environmental conventions, with internships at the conventions' secretariats in Geneva. United Nations Environmental Program (UNEP), Nairobi, Kenya.
- 1997** Course on Strategic Governance and Management for Sustainable Development. University of Witwatersrand, Johannesburg, South Africa:
- 1998** Internship, concentration on Multilateral Environmental Agreements and International Financial Institutions and the Environment. Centre for International Environmental Law (CIEL).
- 1999** Training-by-attachment, concentration on the Commission for Sustainable Development. Mozambique's Mission

VII. Languages

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Portuguese	Excellent	Excellent	Excellent
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VIII. Employment Record

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Centro Terra Viva (CTV) Program Director (Land Governance Policy and Legislation Program/Programa sobre Políticas e Legislação de Governança de Terras - PROLEGIS)

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Mozambique National Human Rights Commission
National Commissioner/Environmental and Economic Human Rights and Resettlements

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TINDZILA Land Governance Research & Training Centre
Director and Senior Researcher
Centro Terra Viva (CTV) Legal Advisor
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2002 – 2015

Centro Terra Viva (CTV)
Founder and General Director
Maputo

2000-2002

World Resources Institute (WRI)
Institutions and Governance Program
Project Coordinator – Africa Project
Washington DC

1995-2002

Ministry for Coordination of Environmental Affairs
Head of the Legal Department
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1987-1989

British Embassy
Administrative Assistant/Consular Section
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1983-1986

Ministry of Education
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The interest in the governance of land and other resources in developing countries has intensified over the past two decades in response to the increased pressures registered due to land-based investments and the negative social and environmental impacts often associated to them. Using the Republic of Mozambique as a case study this dissertation analyses this reality, engaging with the political struggles within this country and the consequent disempowerment of the local communities in spite of the progressive 1995 National Land Policy and 1997 Land Law.

