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

Tom Durang and Christopher Tanner

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Tel: +27 21 959 3733
Fax: +27 21 959 3732
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Access to land and other natural resources for local communities in Mozambique: Current examples from Manica Province

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Tom Durang, former Danida Natural Resources Advisor
to the Manica provincial government

Christopher Tanner, Senior Technical Advisor on Land
Policy, United Nations Food and Agriculture Organization
(FAO), currently working with the Mozambican government
Legal and Judicial Training Centre

Programme for Land and Agrarian Studies
School of Government
University of the Western Cape
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List of acronyms and abbreviations

CBNRM	community-based natural resource management
Danida	Danish International Development Agency
DINAGECA	Direcção Nacional de Geographia e Cadastro (national directorate of geography and cadastre)
DNFFB	Direcção Nacional de Florestas e Fauna Bravia (national directorate of forestry and wildlife)
DPADR	Direcção Provincial da Agricultura e Desenvolvimento Rural (provincial directorate of agriculture and rural development)
DUAT	*direito de uso e aproveitamento da terra* (land use and benefit right)
FAO	United Nations Food and Agriculture Organization
GTZ	Deutsche Gesellschaft für Technische Zusammenarbeit
IFLOMA	Indústrias Florestais de Manica
MADER	Ministério da Agricultura e Desenvolvimento Rural (ministry of agriculture and rural development)
MITUR	Ministério do Turísmo (ministry of tourism)
PARPA	Plano de Acção para a Redução de Pobreza Absoluta (action plan for the reduction of absolute poverty)
SPFFB	Serviços Províncias de Floresta e Fauna Bravia (provincial forestry and wildlife service)
SPGC	Serviço Provincial de Geografia e Cadastro (provincial land administration service)
UPMC	SPFFB community management unit

1. Setting the scene

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

A programme to achieve these objectives began after the end of the civil war in 1992. This coincided with the government of Mozambique embarking on a more market-oriented rural development model after a period of socialised agriculture. The government realised that, despite being marginalised, rural communities continue to play a crucial role in the development and land management process. Old beliefs that local communities only produce for subsistence and do not invest and respond to market dynamics proved to be inaccurate.

The end of the war and the new market economy were also stimulating investor interest in apparently unoccupied land, threatening local rights and production systems still recovering from the war. Encouraged by calls from local civil society and international players to improve access to land for the rural poor and to secure their tenure over resources, the government initiated a review of land policy involving a wide range of stakeholders, leading to the approval of a new National Land

Policy in September 1995 (Tanner 2002).The new policy established a clear, rights-based approach to guaranteeing land for the poor, as well as being a strong development instrument designed to promote new investment. These aspects are well summed up in its central mission statement:

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

The basic principles of the National Land Policy are:

- state ownership of land, as laid down in the Constitution
- guaranteed access to land for the population as well as for investors
- guaranteed rights of access to land by women
- promotion of private investment – national and foreign
- the active participation of nationals as partners in private enterprises
- the definition and regulation of basic guidelines for transferring state-allocated land use rights
- the sustainable use of natural resources that guarantees the quality of life for present and future generations.

Most importantly, the new policy recognised explicitly the reality of small farm agriculture and land occupation, in which local or customary land management systems continue to play a key role. It was also apparent that these systems were carrying out an important 'public' service at very low cost for the state, and were the *de facto* land administration for the vast majority of Mozambicans. Customary land law and management therefore had to be incorporated somehow into the new legislation also called for by the policy document (Tanner 2002).

A new Land Law was subsequently approved in 1997. The new law went an important step further in relation to the family sector,[1] by recognising customary rights of access and management as being equivalent to the state-allocated 'land use and benefit right' (or DUAT,[2] to use the Portuguese acronym). The law also confers legal validity upon the various indigenous systems of transferring and inheriting rights, and recognises the role of local communities in the prevention and resolution of conflicts.

The mechanism integrating these systems into the new law is the 'local community', an extensive land-holding and resource management unit reflecting local production and social systems involving a wide range of resources and dynamic patterns of

land use. Through the local community, local people are also given a right, and a duty, to participate in the legalisation (demarcation and registration) of new DUATs allocated to investors. A key element in this context is the requirement that investors have to consult local people and secure their approval before they are able to obtain a new DUAT.

Implementing regulations for the Land Law were approved in 1998, followed by a Technical Annex for delimiting community land rights. A new National Forest and Wildlife Policy was also approved in 1998, followed by a new Forest and Wildlife Law[3] approved by the National Assembly in 1999. The Forest and Wildlife Law uses the same definition of 'local community' as the Land Law, and thus in legal terms the spatial unit in question *should* be the same as that covered by the Land Law DUAT. There are also similar requirements for investors to consult the local community when seeking forestry exploitation concessions. In the Forest and Wildlife Regulations, approved in 2002, a significant step forward was made in the fight against poverty, with the requirement that 20% of public revenues from commercial forest and wildlife ventures are given to local communities to support local development.

Through these innovative pieces of legislation, local leaders and the family sector have become important partners and decision makers in the allocation and use of Mozambique's natural resources (land, forest and wildlife). In this context, the effective and beneficial management of these resources represents a practical and realistic means to help alleviate rural poverty.

Several years after these new laws were approved however, competition between local people and outsiders over land and natural resources is still a high-profile issue. The provinces are under a huge pressure from the ministry of agriculture and rural development (MADER)[4] to promote both national and international private investment in rural areas. Inevitably, local land rights are increasingly threatened by these more powerful interests. A series of measures are therefore being promoted – mostly by civil society – to secure local rights under the Land Law, and to allow local people to participate fully in the new development process.

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

Figure1: Map showing location of Manica Province

1.1 Secure resource tenure and poverty alleviation

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

Private business investment also requires security for project development, both during the period of recovering the investment and during the period of profit. If the land tenure and property rights are insecure, an investment project, regardless of its technical or theoretical long-term profitability, will take out profit with no regard for environmental consequences.

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

Today, the government poverty alleviation programme, the PARPA,[5] also recognises that land tenure security and giving local communities a role in the land allocation process are of

critical importance. And while the new Forestry and Wildlife Law addresses conservation and sustainable resource use objectives, it too aims to involve all sectors of society, including the local communities, in the management and conservation of natural resources. The role of local people is further reinforced in new environmental legislation that promotes local community participation in environmental management.

1.2 Acquiring rights over land and natural resources

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

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

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

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

1.3 The view from field level

The new land law in Mozambique is viewed by groups as diverse as the World Bank and Oxfam as being one of the best on the continent and offering significant opportunities for poverty

alleviation and stability in the rural areas. On the one hand it guarantees customarily-acquired and other local land rights, and on the other it provides for more secure land rights for investors. The expectation is that it will foster confidence and therefore investment. But is this happening in practice?

Investments in the rural areas are an explicit part of the development strategy summed up in the Mozambican land policy. However, complex and inefficient land administration procedures were later identified by government as a serious obstacle to new investment. To simplify and speed up investment, a decision was taken by MADER in 2001 to have all new land requests processed within 90 days, including the time needed for community consultation.

While a very large number of new DUATs have been successfully processed, this decision and the widely varying effectiveness in its implementation have not helped to directly resolve problems at field level.[6]

In Manica Province, the time pressure has certainly meant that local consultations between the investors and local communities seldom exceed half a day of dialogue (Durang 1999b). This is a very short period to discuss all the details of what are often complex proposals for local people, who are being asked to give up their rights for at least the duration of a 50-year lease period. And while the consultation should result in some compensatory benefit for local people, this is very much a secondary objective for the land administration services. These officials wish to secure a 'no objection' decision from the community in order to give the investor his or her new DUAT in less than 90 days.

The reality is that:

- The local communities are poorly prepared to receive the investor (previous knowledge on the investment proposal is often lacking, and awareness of their rights under the new laws is very weak).
- The borders of the concession request are indicated on maps or in conversation but are seldom physically verified (walked) during the consultation.
- Consultations are done only with a limited number of 'community representatives', and it is rarely clear whether these really represent the community in question (it is in any case impossible to consult all the members of the local community in one day, in accordance with the legal concept of co-titularity which determines how the state-allocated DUAT is shared by all community members).
- Most of the agreements that are reached in the

consultations involve one-time and quite small costs to the investor (a grain mill, a local shop) that do not necessarily result in a good *long-term* relationship with the local community.

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

Thus, where the participation of traditional leaders and representatives of the local communities has been promoted in the allocation and use of Mozambique's natural resources (land, forest and wildlife), the outcome of the consultation process is still unsatisfactory (De Wit 2002). Furthermore, since such consultations are considered by the state land administration to be the key *and sufficient* mechanism for protecting land rights,[7] this reality is worrying indeed.

1.4 Local community delimitation

Community land delimitation is a separate process that can be initiated by local communities or a private investor to delimitate and register land over which a local community has a DUAT acquired by customary occupation. The procedures are described in detail in the Technical Annex to the Land Law regulations. These procedures centre around a participatory rural diagnosis in which local people draw upon their own knowledge of their history, land use, and local socio-political organisation to define their community (Mozambique Land Commission 2000; De Wit 2004).

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

- to prove the existence of the DUAT acquired by customary occupation
- to determine where local rights exist, and to establish the outer limits (borders) of those rights.

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

The vast majority of delimitations have to-date been done by

NGOs concerned with protecting local rights as part of longer-term development projects (CTC Consulting 2003). The law requires, however, that technical staff from the provincial land administration services (SPGC)[8] participate in order to guarantee the technical accuracy of the process. District administration officers also participate at key points along the way. Most importantly, the borders identified by the community must also be discussed with and agreed to by neighbouring communities.

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

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

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

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

Finally, the delimitation process is also an excellent *de facto* resource inventory that sets the stage for future development initiatives (Durang 2001). It offers considerable potential for using the community delimitation exercise as a basis for participatory land use planning, which can feed into a development planning process at the local level.

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

- it offers a far more secure form of protecting local rights than the consultation process on its own
- it provides a far stronger basis for promoting local development built around the positive impact of new investment in which local people are involved as stakeholders.

1.5 Sustainable natural resource management initiatives

The sustainable management of natural resources focuses on biodiversity preservation and protection of forest and wildlife. There are currently more than 50 community-based natural resources management (CBNRM) projects in Mozambique. These have been supported by the United Nations Food and Agriculture Organization (FAO) with financial support from the Dutch government, and are implemented in co-ordination with the national or provincial forestry and wildlife departments (DNFFB and SPFFB respectively).[9] A common goal is the setting up of a natural resource management plan for the area in which the communities live, and in which they can actively participate.

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

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

Secondly, the law introduces a distinction between a 'simple licence', and a 'concession'. Both are commercial activities, but

the former does not demand a full resource inventory and plan of implementation, nor does it necessarily require a community consultation. A simple licence is, however, valid for only one year. Needless to say, many commercial interests are using the simple licence to reduce costs and avoid the need to consult local people (which in turn might raise their costs or block their activities altogether).

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

1.6 Sharing resource access and use benefits

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

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

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

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

Increasingly however, all sides – government, investor, and community – are learning how to use the Land Law and other natural resources legislation to promote the kind of participatory model foreseen in the 1995 Land Policy and 1997 Land Law. In Manica Province at least, several meetings have been organised involving all these groups and the NGOs that work mainly with communities, to discuss how to promote the joint use of land and resources by competing interest groups (Durang 1999b). Discussion focuses not just on sharing out the physical area, but also on contracts determining a series of benefits accruing to both sides (such as royalties or a rent paid to local communities in return for ceding a part of their DUAT to the investor) (Durang 2001).

1.7 Partnerships and other forms of shared resource use

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

In these latter areas, the holding of a DUAT empowers local communities to negotiate with potential investors through the consultation process as foreseen in the Land Law. Legal doubts remain over whether such *de facto* rental and other forms of contract are allowed under present constitutional arrangements. Recent reviews of the legal framework do however appear to conclude that such arrangements are possible.[10] DNFFB amongst others are also promoting the idea of effective partnerships in its more recent CBNRM projects, such as the Mahel Game Ranching proposal in northern Maputo Province.

The DNFFB Mahel case identifies four types of possible partnership arrangement in this specific case, where a delimited

community has identified a large area that it is prepared to concede to an investor on some kind of contractual basis. These are as follows:

Option A: A straightforward rental agreement between the local community and the investors.

Option B: A joint venture between the community and the investor.

Option C: The local community contracts a manager to manage the identified resource, receiving a fixed payment for his or her services.

Option D: The conventional (until now) approach of a consultation resulting in the DUAT being ceded more or less permanently to the investor, with no direct economic return to the community (although the community *might* get a tax break or some other as yet undefined benefit in the public sector context).

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

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

2. Experiences in Manica Province

In Manica, a total of 10 community delimitations have been initiated over the last five years. Eight of these have so far been finalised, while in two cases in the Penhalonga region the community certificates have not yet been issued. While this is still a very low number of delimitations, together they represent the beginning of what could emerge as a powerful rural development process. Three case studies are presented here to illustrate the potential that is being blocked by the so-

far uneven implementation of the Land Law and other natural resources legislation.

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

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

A third and quite distinct approach to partnerships involving natural resources use is the case of Coutada 9 in Macossa District. As a *coutada* (official hunting reserve), the area comes under the jurisdiction of the ministry of tourism (MITUR)[11] rather than MADER, but the SPFFB retains an important technical support role. The investors concerned have themselves proposed a contractual settlement with local communities residing in the hunting area, and who to date have been accused of illegal hunting and other activities that impede the successful development of the investor business plan.

2.1 Case A: Penhalonga: An incomplete delimitation exercise

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

The Penhalonga region includes one of the largest plantation forests (eucalyptus and pine) in Mozambique (known popularly as IFLOMA,[12] its name when it functioned as a state enterprise). The plantation itself overlaps large parts of the delimited areas of Chadzuca and Nhakwanikwa communities. When the IFLOMA state company was taken over by a South African company in

1998, the rules for the local population dramatically changed. Agricultural plots were no longer allowed within the plantation borders. And at a certain stage the timber company actually proposed removing all the people from the forestry concession area (10 250ha).

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

The insecurity over land tenure progressively translated into inappropriate land use practices. The timber company decided to cut down trees without implementing reforestation programmes. Bush fires, some caused by the local population, caused much damage in the forest plantation. Current agricultural practices and gold explorations on the steep slopes surrounding (and inside) the mining and plantation concession destroy the environment (native forest degradation, erosion and pollution).

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

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

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

2.2 Case B: Pindanyanga: A complete delimitation exercise

In Pindanyanga, Gondola District, the delimitation exercise started as a CBNRM project (initially supported by GTZ, and

later on by SPFFB with FAO technical support and funding from the Netherlands). The initial focus was not so much the delimitation of community borders, but the natural resource potential for the local community. At the time of the delimitation exercise however, no other investors had an authorised DUAT in the area.

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

Several infrastructure projects were carried out for the local Natural Resource Management Committee (storage areas, a meeting room and so on), and the community were supplied with bicycles for controlling forest use, as well as equipment for forestry maintenance and exploitation. The limits of the community area were measured using participatory techniques and Global Positioning System readings. These were later registered by the SPGC and it was determined that the area was 31 300ha in extent.

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

- firewood and charcoal production (approximately 10 000 bags of charcoal can be produced on a sustainable basis)
- agricultural plots
- timber (a community-owned saw mill is currently in operation)
- wildlife and hunting purposes.

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

2.3 Case C: Coutada 9: A proposed delimitation exercise

Macossa District is in the northern part of Manica Province and is dominated by two large hunting reserves (*coutadas)* which occupy over 70% of the district. Due to the presence of extensive areas of still relatively undisturbed wildlife habitat and low

population densities, the district offers a considerable potential for conservation and wildlife management. A game inventory carried out in Coutada 9 in 2003 indicated a good variety of wildlife, although the game numbers are considered low.

The Coutada 9 area is large (3 763km^2). As an official hunting reserve it comes under the jurisdiction not of MADER but of MITUR.[13] MITUR is empowered by law to issue commercial contracts in the *coutadas* and, in the case of Coutada 9, a Zimbabwe-Mozambique joint venture has been granted the concession to manage the resources and run a sports-hunting safari business.

Coutada management and exploitation contracts are signed at national level between MITUR and the investor. There is no formal requirement to carry out a local consultation, as there is a premise that no communities can – or at least should not be allowed to – live inside a *coutada* and use its resources. The contract instead focuses on issues such as the licences to kill certain animals, quotas set by MITUR, the payment of taxes to the state per animal killed, and agreements about hunting seasons.

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

The provincial government department for agricultural and rural development (DPADR)[14] and MITUR, together with the natural resource management component of a FAO food security project, are now studying the various alternatives to reduce these types of tensions. Last year, a proposal was presented to the various stakeholders *by the safari operator*, focusing on the co-management of natural resources and subsequent sharing of hunting revenues with the local communities.

This proposal represents an important and innovatory way forward, based upon a shared use of the natural resource base in return for a series of agreements about illegal hunting and appropriate land-use practices that will benefit all concerned. The investor concerned has demonstrated a positive and progressive attitude that in itself has opened the way for a new

type of solution to an acute problem found in many parts of Mozambique.

However, the investor and the public sector bodies discussing the potential partnership and its conditions have to answer a crucial question first – who are the communities, and who represents them? Linked to this is the equally crucial question of the legal personality of the community/ies, with whom the investor seeks to sign a binding contract.

During meetings in Macossa in February 2004, involving local community leaders, the private investor, district administration and provincial service staff (tourism, land, forest and wildlife), the possibility of carrying out a community delimitation exercise was presented and discussed. The general conclusion was that delimitation was the best way forward for several reasons:

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

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

3. Comparing Case A and Case B

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

1. While the local community delimitation exercise in Case A

was initiated by a local NGO, the outcome of the Case B delimitation exercise was supported by the SPFFB, which considerably speeded up the exercise.

2. Case B started as a CBNRM project, with an initial focus not so much on recording the community borders, but on the potential for the local community in terms of its access to, and control over, natural resources.
3. At the time of the delimitation exercise in Case B, no other investors had as yet been authorised to exploit resources either through a forest concession or licence, or through a land-use DUAT. In stark contrast, the presence of outside investors is usually given as the main reason for confusion and conflicts in Case A.

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

The type and purpose of the institutional support provided during and after the exercise is also important. All of these factors in turn can influence the way in which a delimitation exercise is used to promote local development. The different mix of factors in each community is shown in Table 1.

Table 1: Comparison of Case A and Case B

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

3.1 Penhalonga

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

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

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

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

This is a pity, as senior executives in the management firm expressed interest[15] in some kind of profit share or other partnership arrangement as one way out of the impasse. They

did not know that this was an option, believing that 'the state is the land owner' and that the apparent lack of real rights of the local people meant there was no point in engaging in discussions with them. The lack of appropriate (developmental and socially aware) legal advice on both sides was clearly a problem.

The perception from the community side is that the public services, when they did get involved, did so on the side of the investor, and that the options discussed still focused on getting local people off the land. It is therefore not surprising that the local communities are still accusing the government of neglecting the requirements for local consultation when IFLOMA was privatised. Similar arguments were raised when the boundaries of the bauxite mine property were changed at the request of the investor concerned.

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

There are several lessons to be learned:

- Different and more imaginative alternative land-use scenarios that could resolve the main problems must be presented by the public sector for *all* the stakeholders (space and a sense of some kind of return from land historically considered to be part of the community resource base).
- New potential buyers for the IFLOMA plantation must see the situation on the ground in detail *before* reaching agreement with both the state and local people (striking a deal on the basis of lines on maps alone is not the way forward).
- Some belated recognition of long-term historical rights lost before Mozambique's independence must be part of the solution, through an imaginative approach to resource and income-sharing (for example, as there are a number of villages with permanent structures, cultivation and grazing of livestock within the forest estate, outreach programmes to encourage local communities to grow woodlots of pine and eucalyptus in partnership with the company should be promoted).
- The public services must be *seen and felt* to serve the interests of both sides and to facilitate a consensual

agreement, not just promote the interests of the major player (in this case, behind the scenes, the state itself).

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

3.2 Pindanyanga

The Pindanyanga exercise, supported as it was by the SPFFB's UPMC, is the most successful and complete community delimitation in Manica Province. Though the entire exercise has been expensive, which makes it difficult to 'apply' to other communities in the region, it contains good elements (tried and tested participatory methods as well as promotion materials) from which other community delimitations may benefit.

One major difference between this case and that of Penhalonga is that no investor was involved prior to the delimitation. This meant the public sector services only had to serve one master – a high-profile donor-funded programme that initially sought to promote sustainable resource use rather than fight the land rights battle. The SPFFB was involved from the outset and understood the situation of the community. It quickly became clear that a delimitation exercise would provide a more secure platform for the proposed activities because:

- it provides a clear idea of the extent of community rights to resources
- it raises local awareness of the potential utility of these rights
- it provides a mechanism for stronger community representation
- it establishes the community as a legal personality.

This exercise has had positive results, with new contracts being signed between the local community and investors wanting to exploit community-managed resources. At this point it is not clear how these contracts will work out, and a worrying aspect is the lack of effective mechanisms for policing adherence. It is not likely that the community will be able to rely on effective and

impartial legal remedies through the courts should things go wrong.

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

4. Coutada 9: A new way forward?

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

- like Penhalonga, the major part of the historical land base of the communities was taken out of their hands by the colonial state long ago (in this case in the 1930s)
- the state, as owner of the *coutada* resource, now wants to see it used for its intended purposes, to generate income for the public purse while also achieving conservation objectives
- the community is constrained by the presence of a new investor who wants them to stop using the resources in a non-sustainable manner that undermines the very foundation of his business plan (referring here to both hunting, and the spread of agriculture at key points inside the *coutada*).

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

There are also several key institutional players involved:

- MITUR, represented at provincial level by a newly created provincial directorate
- within DPADR, the provincial cadastral service (SPGC) and the provincial forest and wildlife service (SPFFB)
- the District Administration
- most recently, FAO, through a new food security project that has identified community access to natural resources as a key element in the food security situation of the local population.

Amongst this group of actors are several with substantial experience of the issues. The provincial services have learned lessons from the cases described above. District administrations

nationally are acquiring new prominence in local district planning through the public administration reform programme. FAO, through its long-term support to the Land Law and the Forest and Wildlife Law, offers an excellent pool of skills and experience, including a field officer with direct personal experience of the other communities discussed here, in earlier FAO/ NGO/ SPFFB programmes.

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

While the situation here is very similar to that in Penhalonga, the many institutional and other factors at work are likely to produce a very different outcome. Not the least of these is an explicit concern on the part of higher-level government structures that community interests should be taken into account in any decision, in accordance with the principles of the PARPA.

However, alongside Coutada 9 is Coutada 13 where, even though the same factors apply, there is currently little prospect of achieving a workable solution because the investor and the community in that situation are in conflict. This suggests that the most important ingredient in the Coutada 9 recipe for success is a *progressive and intelligent investor.*

Instead of simply trying to get the community out and insist on having access to the entire area defined in his contract with MITUR, the Coutada 9 investor has recognised the reality on the ground – considerable community occupation – and has come up with their own proposals for a compromise solution. Coutada 9 has been subdivided into three areas:

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

Attached to each of these zones are specific economic proposals:

- *core area*: the community will receive 25% of the trophy from animals killed by sports hunter-tourists
- *buffer area*: the community will receive 75% of the trophy fees
- *community area*: no obligations on either side.

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

The challenge now facing all those concerned is to determine precisely who the communities are, and how they can legally enter into the kind of contract proposed by the investor. In recent meetings, the proposal to carry out community delimitations in the Coutada 9 area was fully discussed, and ultimately accepted as the best way forwards. If implemented, this will achieve the following:

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

A well-performed delimitation will also provide the moment for establishing the details of the community-investor contract; and will provide the right opportunity for determining how the communities themselves will be organised (in separate contracts with the investor, or collectively agreeing to one contract). Several meetings are planned to facilitate this process, to be organised and hosted by the District Administration. This is a wonderful opportunity to move ahead with the kind of development partnership foreseen in the original Land Law model, yet which has proved so elusive both in Manica and in other cases such as the Mahel project referred to above.

The Macossa case offers a chance to apply lessons learned:

1. Use the Land Law and related legislation in a positive way to try and address historical wrongs, but in a way that does not necessarily undermine the original (often laudable) conservation and/or new economic development objectives.

2. Treat local people as stakeholders with real rights, as people who can be negotiated with and with whom agreements can be reached.
3. Look for agreements that are not simply a cheap 'buy-off' to secure a local 'no objection' mandate to a process that in itself has the seeds for longer term conflict if not handled correctly.
4. Involve all institutional players, but be clear about the roles and contributions of each one.

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

- provides the investors with what they want
- ensures that the community benefits in a substantial and long-term way.

Because the PARPA is a core part of the government's macro-policy, perhaps the most important lesson of Coutada 9 is that it must find the *right kind of investor* who comes with a proposal that will bring real income-enhancing benefits to local people. These benefits must transform the lives of communities and lift them out of poverty.

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

The community of Macossa Coutada 9 is lucky to have such an investor. However, this is more a matter of luck than a conscious strategy on the part of the state institutions involved in securing the contract.

5. Conclusion: An ideal case scenario

The diagram in Appendix A draws on all three cases, especially the situation now evolving in Coutada 9. It is by no means intended to prescribe what should be done elsewhere. Each case is unique, and each case requires a unique solution. The specific solution lies at the centre of the

diagram – the agreed land and natural resources plan – while the range of activities in the *process* outlined could serve as a guide in many other cases.

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

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

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

A process of what is called *sensibilização* (awareness raising) in Mozambique is also a key start-up ingredient. This is a role for NGOs and donor projects, working together with public services where appropriate.

The model offered in Appendix A serves to sum up the discussion above, and to guide the management of future situations where a community and in investor seek to use the same resource in a productive and non-conflictual way. The evidence strongly shows that the way ahead lies in community delimitation, a more thorough and socially aware form of consultation, with land-use discussions built into the process.

Endnotes

1 The term family sector (*sector familiar*) is used in Mozambique to indicate the smallholder sector. It includes community members who depend mainly on agrarian activities to meet livelihood goals.

2 *Direito de uso e aproveitamento da terra.*

3 Law 10/99, de 07 de Julho.

4 Ministério da Agricultura e Desenvolvimento Rural.

5 Plano de Acção para a Redução de Pobreza Absoluta (plan for the reduction of absolute poverty).

[6] A recent estimate is that over 10 000 DUATs have been processed since 1997, compared with the delimitation of just 180 local communities (CTC Consulting 2003)
[7] Direcção Nacional de Geographia e Cadastro (DINAGECA) (national directorate of geography and cadastre), quoted in CTC Consulting 2003.
[8] Serviço Provincial de Geografia e Cadastro.
[9] Direcção Nacional de Florestas e Fauna Bravia and Serviços Províncias de Floresta e Fauna Bravia.
[10] See, for example, CTC Consulting 2003, Garvey 2001 and Tanner 2003. New DINAGECA documents supporting a proposed new National Land Strategy also appear to endorse partnerships as both legally feasible and as an important way of promoting sustainable local development.
[11] Ministério do Turísmo.
[12] Indústrias Florestais de Manica.
[13] Management of national parks, official reserves and other conservation areas was transferred from MADER to MITUR in 2000 by decree 9/2000 of the Council of Ministers.
[14] Direcção Provincial da Agricultura e Desenvolvimento Rural.
[15] During face-to-face interviews.

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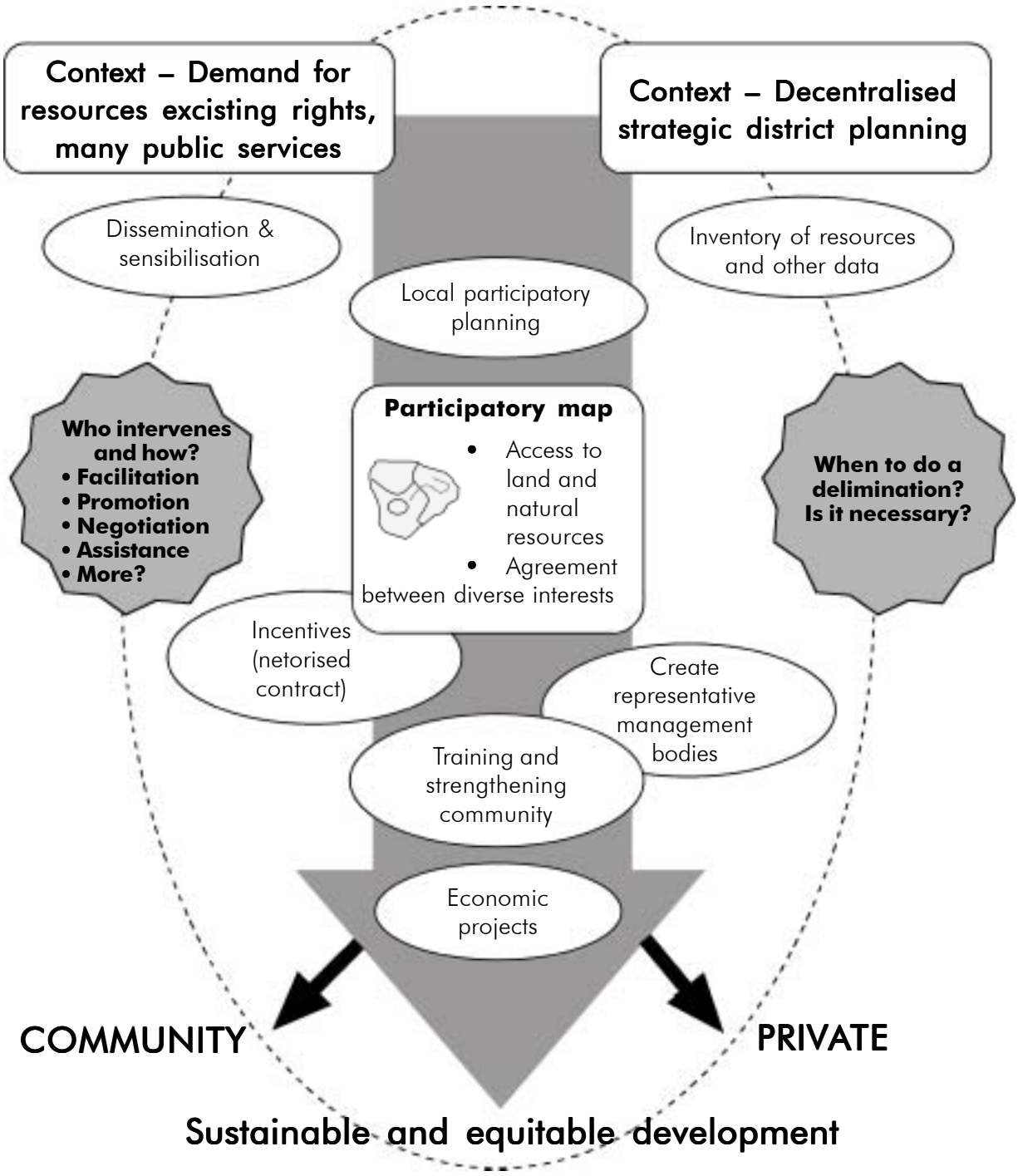
Appendix 1: The participatory planning process



Source: From Tanner 2003