



Text for A Guide on How to Prepare Communities for Investments

CARE-Mozambique

**Analysis and documentation in support of further
development of the women, agriculture and land project**

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Note

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Acknowledgements

The ‘Avante Consulta’ tool in this Guide has been adapted and developed from initial work done by Terra Firma Lda with support from the International Institute for Environment & Development: see Joaquim, E., Norfolk, S. and Macqueen, D. 2005, “Avante consulta! Effective consultation”, Power Tools Series, Terra Firma Lda, Maputo, Mozambique and IIED, London, UK.

The section on Community Management Committees in this Guide borrows from the draft unpublished outline for the manual on these institutions, developed by Eulália Macome and Alda Salomão under the auspices of the Direcção Nacional de Florestas e Fauna Bravia: see Macome, E. & Salomão, A. 2003, “Manual CGC: A instituição que garante a equidade ao nível da comunidade – Volume I (Primeiro Draft), Maputo, Mozambique.

Figure 1: Delimiting community land is adapted from Manual de Delimitação de Terras das Comunidades. Maputo, Comissão Inter-ministerial para a Revisão da Legislação de Terras.

The model statutes in Annex 9 are based on the statutes of the Comité de Gestão de Recursos Naturais de Nhawata, which were kindly provided by Catarina Chidiamassamba.

Introduction

This document serves as a proposal for the issues and tools that could be included in a Guide for preparing community groups for investments. The Guide is to be produced by CARE as part of its proposed programme for the north of the country. Further work to translate the text into Portuguese, to address the layout and structuring of the Guide, and to tailor the contents to particular audiences will be undertaken as part of this programme. The current text has been written mainly for people working at management or senior field staff level; the contents can be adapted for the training and guidance of community mobilisers, paralegals, etc.

The proposal for the Guide covers a number of important issues involved in preparing communities to deal with the advent of external private sector investment in their areas. These investments may be related to commercial agriculture, to the exploitation of existing forest resources or the establishment of new timber plantations, or to the development of public and private infrastructure related to developments in the extractive industry sector.

The proposal for the Guide includes a tool in respect to consultation processes, which are mandatory in the context of the state taking decisions in relation to the award of land and natural resource rights to external investors. The tool consists of a set of steps that aim to empower the communities in these consultations. The tool is designed to be applied in situations where the co-management of natural resources is being encouraged and the poor must compete with other, often stronger, stakeholders to ensure that their rights are recognised. It has been developed in recognition of the fact that the moment of consultation and negotiation is the point at which the community possess the most power to have an impact on decisions about how future development will take place. It is a key moment and therefore occupies a central focus of this proposal.

The tool involves steps that help a community:

- To prepare for the consultation
- To develop a common vision and position for the subsequent negotiations
- To ensure that any agreements made are clearly captured and can be enforced in the future
- To have a role in how any agreements will be monitored.

Other parts of the proposed Guide are intended to impart information regarding the role of community institutions, the formation of legal entities and the establishment of partnerships and the sharing of benefits. A theme that runs through the proposed Guide is a particular concern with ensuring the participation of poorer and more vulnerable groups, including women.

This Guide is structured into 5 sections:

- **Section 1** provides some background to the complexities involved in assisting communities to prepare for external investments and points readers to the relevant sections in the Guide, depending on the area of interest.
- **Section 2** contains a tool for community consultations in respect to concession applications that may have an impact on access to land and natural resources. It is a flexible tool that could be applied in the context of an application for private land use rights, for the rights to exploit forestry resources or in the context of a private or public infrastructure proposal. The tool involves steps that help a community to prepare for the consultation, to develop a common vision and position for the subsequent negotiations,

to ensure that any agreements made are clearly captured and can be enforced in the future and to have a role in how any agreements will be monitored.

- **Section 3** looks at the Community Management Committees (CGCs), as key statutory institutions at local level with the powers to take decisions on behalf of community groups in respect to land and natural resource use. As the mandated recipients of state funds, paid as a benefit to local communities for the commercial use of a range of resources in their areas, these committees are key actors in the context of the channelling of benefits arising from investments and resource exploitation. The section explains the steps in the formation of the CGCs, their roles and responsibilities and provides some guidelines as to how these institutions can be supported.
- **Section 4** deals with the formation of legal entities to represent groups of people and to give them the ‘legal standing’ to sign a contract or to receive benefits from a negotiation. This may be necessary in the context of a partnership agreement that arises from a consultation process, for example. These legal entities have their foundation in private law, rather than being statutory institutions like the CGCs, and therefore have potentially greater powers and standing in respect to other private parties. The section explains the steps and documents that are necessary to form these legal entities.
- **Section 5** looks at partnerships and the sharing of benefits. It covers the choices available and the processes involved in securing community land rights as a first step and looks at the ways in which benefits can accrue to communities. These include an explanation of the mechanisms for the payment of benefits by the state and options for communities to benefit directly from various partnership arrangements with commercial ventures, including the renting of land through contracts of *cessão de exploração*.

The Annexes contain other useful information and some further tools for facilitating processes with community groups.

A list of further reading and references to other manuals and useful papers is also provided.

1 Setting the scene: planning and securing rights

1.1 Local communities and external investment

1.1.1 Strategic territorial planning for investments

External investments (in agriculture, transport, water infrastructure, tourism, conservation, etc.) almost always have the potential to impact upon local community land and resource use in particular areas. Even when these investments are intended to encourage local economic growth, the potential impact on some communities can be negative. The decisions made about where to encourage and implement external investments is supposed to happen through an economic and territorial planning framework that is well-established in law. This framework is quite solid, and the policy and legal framework for land use planning includes the principles of:

- decentralization
- multi-sector and civil society participation on an informed basis
- respect for existing patterns of land use and spatial occupation
- public information dissemination and opportunities for appeal
- the review of decisions
- compensation in the event of asset loss

On the other hand, the implementation of this framework has been poor. The government seems to be hesitant to turn these principles into action. Major developments in Mozambique are happening along well-identified development corridors (such as the Zambezi Valley GPZ, and the Nacala - ProSavana, Beira and Maputo-Witbank corridors) without any strategic territorial planning processes.

1.1.2 Securing rights and planning at local level

Because of the lack of a proactive planning process, it becomes increasingly important for communities to secure their rights to land and natural resources as a means of then ensuring that they are involved in negotiations regarding external investments, whether these are private or public.

Mozambican legislation in relation to securing land and NR rights is actually very good in this regard. For example, the law contains several innovative approaches to securing property rights. These include:

- establishing a single land tenure right, the ‘DUAT’, which applies to both customary and newly requested land occupation and use;
- recognizing DUATs obtained through customary and good faith land occupation (thus formalising customary rights through the operation of the law);
- providing secure rights for investors through a renewable 50-year state leasehold (also a DUAT, but awarded with conditions attached and subject to a rental payment (the annual land ‘tax’);

- requiring applicants for DUATs to consult with local people to determine if the land they want is occupied and, if so, establishing the conditions for the investor to take over the community's DUAT (see below – Section 2);
- formalising the participation of local people in land and natural resources management (as in the consultation process above); and,
- maintaining a flexible approach to approving and spatially defining the DUATs acquired through customary and good faith occupation.

The DUATs obtained through customary and good faith occupation are recognised and protected by law – *they do not have to be registered*. These customary and good faith forms of occupation are still the main ways in which the rural poor get land rights, and they can be proved through oral evidence provided by local community members. A Technical Annex (Ministerial Diploma 29A/2000) to the Rural Land Law Regulations (Decree 66/1998) provides a flexible methodology for identifying and recording these rights, which can be applied to the 'group right' of a local community, or to individual 'good faith' occupants.

The Land Law does not demand the registration of community rights (see further below), but does provide for this should circumstances warrant it: 'When necessary, or at the request of local communities, the areas covered by the right of use and improvement of land acquired by occupation by customary practices, can be identified and entered in the national land registry according to rules set out in a Technical Annex'.

The law also says that local communities must be consulted about any proposed development in their area: 'The process of granting a title for use and improvement of land includes an opinion by the local administrative authorities, preceded by a consultation with the respective communities for the purpose of confirming that the area is free and has no occupants'.

There are therefore **three main ways to protect community DUATs** and the host of individual rights managed by customary laws within the area of the DUAT:

- delimitation (see below, this section)
- demarcation (see below, this section)
- community consultation (see below, Section 2)

1.1.2.1 Land Delimitation

The 'land delimitation' process, defined in the Technical Annex, is a flexible and participatory mechanism through which local communities can, in effect, define themselves and the areas of land over which they claim a right to use and occupy land. This self-definition approach is well suited to a country like Mozambique, where numerous cultural and geographical contexts determine land occupation and use. Delimitation can be applied to traditional units based on clans or chieftainships, extended families or simply a group of neighbours. Delimitation achieves two major legal and practical objectives:

- it proves the existence of the DUAT by occupation, and;
- it establishes the spatial characteristics of the DUAT, including its limits and the presence of public and customary rights-of-way or of any other interests over the land in question. A map of the community DUAT with any other information, such as rights-of-way, is then registered in the Cadastral Atlas and a Certificate of Delimitation is issued in the name of the community.

A fully comprehensive Guide to the Delimitation Process, now in a 3rd Edition, has been produced with assistance from the FAO. Readers are referred to this document for further information. A brief summary of the phases involved is as follows:

Delimitation is simpler than the ‘demarcation’ required for a new land right, and results in a border being recognised around the community. Within it, all individual (family, extended family etc.) land rights are managed according to the customary law and practices of that community.

The Technical Annex provides the legally prescribed methodology for doing delimitation. It is a participatory approach, and when applied in different places and cultural contexts, results in a ‘local community’ that reflects the specific livelihood strategies, ecology and socio-cultural conditions of the community in question. Thus a ‘local community’ in the south might look very different to one in the north, but both are ‘local communities’ in terms of the law.

It follows that it is extremely important to follow the prescribed methodology correctly – if not, the validity of a delimitation, and therefore of the rights it proves and protects, could be called into question.

Article 5 of the Technical Annex identifies each step, described in detail below:

– **Raising Awareness**

Making local people aware of the Land Law and related development issues (*sensibilização*) is an essential first step. It must be done well to ensure that things go smoothly and that a good result is achieved. If done badly or not at all, the Technical Annex methodology and the delimitation could be compromised. It includes events and meetings to tell the community about the Land Law and their rights, development issues, and delimitation. The whole community, including groups who tend to be excluded like poor and vulnerable women, must know what is planned, and have time to think about the need for delimitation without outsiders present. The process may take months, but 3-4 weeks is normally adequate. The community also (s)elects between 3 and 9 members to represent it in land matters and sign delimitation documents. The way this process is conducted and followed up by CBOs and NGOs also largely determines if delimitation will generate benefits beyond securing local land rights.

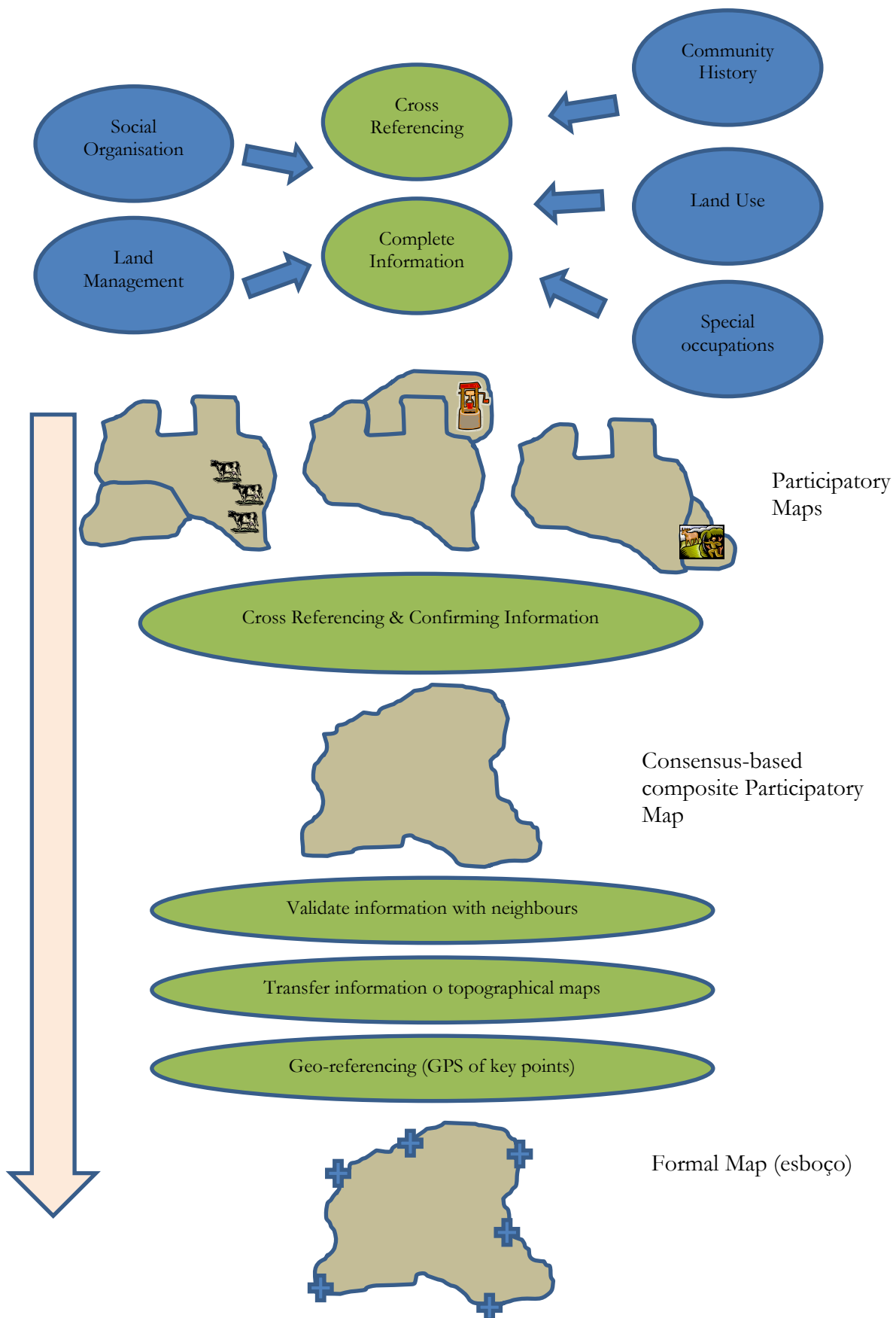
– **Participatory Rural Appraisal (PRA)**

The PRA helps *the community go through a process of self-definition, both as a social and land-rights holding entity, and as a spatial unit*. Information is generated on historical occupation, social organisation, land and water use, and cultural sites (e.g. cemeteries, sacred forests) that prove the existence of the DUAT over the area considered as ‘theirs’ by the community. Participatory maps produced by different interest groups result in a final consensual map of the community and its borders that includes rights of way and other key features. Along the way, the community also vastly improves its awareness of the presence, spatial distribution and value of its land and natural resources.

– **Topographic sketch map (*esboço*) and descriptive memory, including georeferencing**

The consensual map is cross-checked with neighbouring communities. If agreement is reached, this map (*cartograma*) is transferred onto a topographic base-map (scale 1/50,000). Where rivers and roads are given as boundaries, these can often be identified directly on the topographic map and do not need georeferencing. Boundaries not visible on existing maps or aerial photographs must be identified and, where necessary, visited so that GPS coordinates can be taken and transferred to the map. Disagreements are discussed until a consensus is reached – *a delimitation cannot be registered if consensus is not reached*. Boundary lines and key points are recorded on forms given in the Annex.

Figure 1: Delimiting community land



– **Devolution of information**

Information generated during the PRA, topographic sketch map, boundary and point data are presented to the community and its neighbours, in the presence of district officials.

– **Registration in the National Cadastre**

The SPGC registers the delimitation in the National Cadastre, a process called '*lançamento*'. This involves presenting all the forms provided in the Annex, the projection of the topographic map of the delimitation onto the Cadastral Atlas, and the registration of this information as a formal cadastral case (*processo*). The SPGC issues a Certificate containing the registration data, and this is delivered to the local community.

The Annex also indicates the responsibilities of different service providers in the process. Steps 1 to 4 are implemented under the guidance of a facilitating team that has received specific training for this activity. In practice teams are mainly NGO staff who have been involved in PRA activity, but some technical staff from SPGCs and other public departments such as rural extension have also been trained in these techniques. A technician with basic surveying skills participates in the mapping and devolution part. Registration (*lançamento*) is the responsibility of the provincial cadastral services (SPGC).

The Annex also includes forms that must be completed by all participants in the delimitation process (community, neighbouring communities, technical facilitation team, district administration, surveyor, cadastral services) before the community land can be registered. These forms show that meetings took place, and that all aspects of the process were covered. They also show that neighbours were consulted and agree with the outcome.

Different organizations have tried different approaches to secure women's land rights. Some like Forum Mulher have supported individual land titling for women. This has proven lengthy, complex and expensive. However there is recognition among organizations like ORAM, which attempted to secure women's land rights through the formalization of community land rights that this approach does not necessarily protect women from losing their land. As mentioned above, where women, according to local norms, have access to land through their relationships with men, they often lose the land when they lose the husband – through death, or divorce. Despite the recognition of the limitations of community land delimitation processes to secure women's rights by various actors, the two years long research initiative to protect community land rights and resources by the International Development Law Organization (IDLO) concludes that "community land documentation may be a more efficient method of land protection than individual and family titling, and should be prioritized in the short term." The report further argues that the participatory process of drafting community by-laws/constitutions for land and natural resources management, if inclusive and conducted in an open and transparent manner, is an opportunity to improve local governance and effect powerful intra-community change" including for women as "the process provides an opportunity for women and other vulnerable groups to actively challenge discriminatory customary norms and practices and argue for the inclusion of stronger protections for their land and inheritance rights". However the report did warn that "many of the first draft lists of the Mozambican communities' rules for land and natural resources management included rules that undermine women's land rights and directly contravene the Mozambican Constitution. However, due to the lack of intra-community governance procedures in the land delimitation process set out in the Lei de Terras, communities did not discuss how to take concrete action to remedy gender-based injustices or establish intra-community mechanisms to protect women's and other vulnerable groups' land rights. Such findings lead to the conclusion that a process of cataloguing, discussing and amending community rules is central to efforts to protect women's rights during community land documentation activities.

A note on the role of community land use planning

Although it is not a formal part of the delimitation process, a number of delimitations have included assistance to a community in compiling a **local land use plan**, through which they are able to make decisions as a group regarding the best use to make of various land areas and resources. Some of these initiatives have included a particular focus on the access and use rights of vulnerable groups in the community, including women, children-headed households, widows and others.

1.1.2.2 Community Titling and Demarcation

A more precise process, known as demarcation, is used by the cadastral authorities to define the spatial boundaries of parcels of land that are awarded to users as discretionary concessions, or when a community or individual wishes to title their acquired rights rather than just have them certified through delimitation. The demarcation and titling of land permits the holder of the DUAT, under certain conditions, to undertake certain transactions.

Demarcation involves more precise surveying standards, and the placing of cement monuments at specified points around the demarcated border (*'marcos cimentos'*, hence *'demarcação'* or demarcation).

1.1.3 The legal registration of rights

Full registration of DUATs in Mozambique requires both cadastral title registration (defining the spatial extent of the rights), through the National Department of Lands & Forestry (DNTF) in the Ministry of Agriculture, and property registration, through the Real Property Registry (Registo Predial) in the Ministry of Justice. The Real Property Registry essentially guarantees land use rights by making them public, i.e. recognised by the state, and protects land rights holders against claims by third parties. Although this registration is available, it remains voluntary, i.e. it is not compulsory under the regulations. *In the case of DUATs acquired through occupation, the lack of legal registration does not affect the enforceability of the land use right.*

Property registration in the Real Property Registry is still an important element of defining rights, however. Although the DUAT holder cannot own the land (merely the use right), he or she can own any fixed assets on that land, such as houses, buildings, infrastructure, trees or other improvements. No matter how they are acquired, DUATs are recognised by Mozambican law as real rights to a plot of land, urban or rural, and they are transmissible as part of transactions involving the fixed assets upon the land in question. However, for these real rights to be recognised, and thus transactable, they must be previously registered in the Real Property Registry (this applies to the fixed assets, not to the land rights, although these may also be registered).

1.2 Obtaining direct benefits from resource exploitation

A benefit is what is gained or obtained by performing an activity or task. The benefits arising from the conservation and/or use of natural resources can be direct or indirect, and these can come in the form of money, goods (products) and/or services.

Some examples of the potential direct benefits are:

- Monetary: income from commercial activities and the sale of products, cash donations, salaries, 20% of the stumpage fees or conservation fees paid to the state, etc.

- Products: firewood, charcoal, medicinal plants, wood, etc.
- Services: tourism, the protection of soil and water, etc.

A local community can access and enjoy any of the types of benefits defined above. In some cases, the advent of investments may threaten the benefits obtained by community groups, in which case it is important to secure their continued rights to access these. In other cases, the arrival of an investor interested in exploiting resources, including land, may offer a community group the chance to establish other forms of benefits; in these cases, a firm basis and agreement that specifies how this will happen will need to be developed.

1.2.1 Commercial exploitation of resources by community groups

For economic benefits accruing from business activities (e.g. commercial logging or the running of a tourism venture, for example) the community would have to compete on an equal footing with other entities, by obtaining a forest concession or a simple license, or being awarded a management contract for a *coutada* and/or part of a conservation area.

In most cases, a community or a group would need to formalise their existence as a legally recognised entity. **Section 4** of the Guide presents some tools for the formation of legal entities that can represent a community or a group and enable them to apply for a resource exploitation licence in their own right.

1.2.2 Negotiating benefits from 3rd party commercial exploitation of resources

While the level of organisation required in establishing a licensed commercial operation is beyond the capacity of the majority of communities, there are a number of ways in which communities can access benefits in this context.

Firstly, there are the benefits that they can negotiate and obtain through **the statutory consultation process**, during which commercial use and management rights are awarded to investors. These awards may be for land areas, or for the right to exploit forestry or wildlife resources within a particular area.

The consultation process is designed, at the least, to prevent conflicts between communities and others. It is an opportunity for communities and the proponents of investment projects to discuss their respective concerns and interests and to reach an agreement that satisfies both parties. The intention of the policy and the legal framework is that the consultation process results in development processes that are sustainable and that provide benefits for all parties involved; the community, the investor and the state.

The active participation of the community is a crucial element in ensuring this outcome. That is, the community should not be a merely passive recipient of information. Instead, a community should be able to use this opportunity to form an opinion on the proposed investment. It should be able to analyse the potential impacts, and propose changes to the application. It should be able to demand mechanisms that will address or mitigate any negative impacts, or maximise the positive impacts. In the final analysis, a community can, in law, say no to a proposal.

Section 2 of this Guide includes the Avante Consulta tool, which is a methodology for assisting and empowering communities in these consultation processes.

Secondly, the communities can obtain benefits through the allocation of state funds paid to representative bodies created at community level. These funds are allocated from fees, taxes and fines paid to the state by commercial operators and others. By law, a percentage of fees must be

paid to 'local communities'. The representative bodies are statutory (established by law) and have the powers to manage and allocate these state funds. They are known as Community Management Committees (*Comité de Gestão Comunitária* - CGC). **Section 3** of this Guide provides details and explanation of how these CGC bodies are intended to operate.

1.2.3 Establishing partnerships as a means of securing benefits

There are various types and forms of partnerships between companies and communities. The most appropriate form will depend on the nature of the agreement and the motivations that each player has to form a partnership.

Making partnerships with rural communities seems like a nice idea in principle, but in practice it can be very difficult. Rural communities are very heterogeneous and membership rules are fluid and diverse. Local power structures tend to be autocratic, ambiguous as to the reach of different authorities and heavily patriarchal in most of the country. Few rural communities can lay claim to a local institution that represents diverse local interests, especially when faced by outside actors who, by comparison, are united and clear in their objectives, whether from the private sector or the State.

Rural women in particular are often marginalized from control over community (or even household) land, and it is difficult to see how they can be represented or how they can directly benefit, when deals are made with outsiders wanting to access and use local resources.

A simple analysis reveals a range of characteristics that make having the 'community' as a business partner a daunting prospect.

- Illiteracy: according to the 2007 census, between 60% and 72% of the rural population is illiterate. Notwithstanding the Land Campaign and other efforts, an overwhelming part of the rural population is not informed of its rights or the legislation in general.
- Obedience: the colonial and socialist inheritance of obeying and deferring to outsiders and administrations remains strong.
- Weak cohesion: the civil war, with its displacement of huge numbers of rural dwellers, subsequent demographic shifts to towns and the coastal belt, and cultural changes wrought by the experience of exile, mean that community cohesion is very weak in many areas.
- Dependency: the same factors, overlaid with decades of centralised and government and huge inflows of emergency and development aid, have created a culture of dependency on the state and other external agents, limiting the drive for self-help.
- Unclear vision: few communities have a clear vision of the future.

These cultural aspects of the 'community as business partner' are compounded by continuing uncertainties and disagreements over fundamental legal issues, such as whether or not the community has a legal personality at all. This leads to unnecessarily complex approaches to working with local people that reflect the concerns of the outside partners more than the community itself – who is going to receive funds and other benefits, how will the resources be used, who will be accountable if agreements are not honoured? This is why the idea of creating an association or cooperative of some kind is attractive. **Section 4** of the Guide presents some tools for the formation of legal entities that can represent the community and that possess sufficient legal personality to enable them to enter into private contracts with 3rd parties.

A typology of the main kinds of partnership that can be formed between companies and communities is as follows:

- **Joint venture:** here a community would actively manage or participate in a business or commercial venture, together with the private sector and/or the state. It would establish a legal entity that would allow it to contribute to the venture, via some form of capital contribution or another (which could be, for example, land). The structure of the venture would depend on what each party contributes and how these contributions are valued.
- **Leasehold arrangements for land or forest concessions:** there is nothing to prevent a community group from securing the rights to exploit either land or forest resources for commercial purposes in their area and then negotiating the lease of these rights to third parties. A community that has the titled DUAT to an area of land (i.e. that have undertaken the demarcation of land and requested a title, rather than just delimiting land and being awarded a certificate) can, for example, enter into a contract of *cessão de exploração* with an individual or a company that essentially permits the third party to lease this land from them against the payment of a rent. Similarly, a community can request the award of a forest concession and then negotiate with third parties for the exploitation of these resources. In both cases, the state would need to authorise the arrangements, and they have not yet been really tested, but the legal framework already provides the opportunities for communities to negotiate such partnerships.
- **Contract farming or out grower schemes (see section 5.3.6 for further details):** i.e. contracts with a company through which the community provides inputs and/or sells its products to the company. This is very common in forest plantations, where companies provide production inputs (technologies) and local producers in return sell their products to the company that provided the technology. The final product price is deducted from the cost of the technology. In Mozambique, this system is normally used in the production of cotton, tobacco and to a lesser extent, in the production of sugar (see Annex 12 for further details).
- **Social responsibility agreements:** here a company undertakes to contribute to social, economic or physical development of an area through the provision of some form of support or social infrastructure to a local community. These kinds of agreements commonly result from the consultation processes regarding land concessions, but they have not been implemented or monitored very well. It is very important that the commitments to make these kinds of contribution are included in a Memorandum of Understanding.

Section 5 of the Guide deals with the issue of partnerships and the sharing of benefits, and highlights some advantages and pitfalls of the different approaches.

2 The ‘Avante Consulta’ Tool

In Mozambique, local community groups have been recognised as entities in the legislation dealing with rights to land and forest resources. The legislation has also awarded these community groups the right to use and benefit from land and forestry resources, even though the State remains the legal owner of all natural resources.

However, because there is a policy that encourages investment in rural areas, there are procedures that allow for the State to allocate rights to land or to forest resources to third parties from outside the local community. These are often commercial companies or individuals who want to manage and exploit the resources for profit. When a third party requests such rights to land or forestry resources in a particular area, the procedures require the State to first oversee a consultation process between the third party and any community affected by the request.

During this consultation process the communities have the right to object to the application or to set conditions on its approval. In effect the consultation process represents an opportunity for community groups to negotiate the conditions on which natural resources in their area will be managed and exploited.

2.1 What is this tool?

The legislation regarding consultations is still rather vague on how to organise a consultation process, who to include and what should be discussed. The Mozambican Forestry and Wildlife legislation simply states that there should be a ‘meeting’, whilst the Land legislation implies a much more in-depth process. This tool attempts to harmonise the process of community consultations under Mozambican legislation.

The main elements, however, could be applicable in a range of other contexts where there is a need to effectively involve a community group in decisions regarding natural resource use.

The tool concentrates on providing clear guidelines for:

- the content of a consultation process and how it should be organised;
- establishing the responsibilities of each stakeholder before, during and after a consultation;
- establishing enforceable agreements between the local state authorities, third party applicants of use rights and local community groups;
- the monitoring of compliance with the agreements after a consultation process;
- the resolution of potential conflicts in the future.

2.2 Why is this tool necessary?

Although the Mozambican legislation is clear that the consultations are intended to be an empowerment tool for local communities, so that they benefit from the third party exploitation of natural resources, the methodological tools for ensuring this are weak.

The community consultation process is a legal process, and it must be led by the respective district administrative structures. The presence of representatives of the state is required in order to validate the process. This does not mean that only the community members, the state representatives and the investor can participate, however. In fact, the presence and assistance of

NGO staff is crucial and permitted. During the formal consultation meetings convened by the state representatives, they may only be observers, but there are many other opportunities during the overall process for these NGOs to provide direct assistance to communities.

The Mozambican context has an additional element that makes the consultation process an important moment in time: land and forest concessions are generally granted to third parties on leasehold of 50 years. These concessions are then renewable for a further period of 50 years, without any legal requirement for a new consultation process. Some concessions, especially forest concessions, can be very large and affect not only those communities that actually live within their boundaries, but also those from surrounding areas that rely upon the use of natural resources within the concession areas. The opportunity that is offered by the consultation process is therefore an important one for community groups. It may be their only chance to participate in decisions about the use of natural resources in their area for the next 100 years. By approving an application, the community groups are in effect handing over the inherent rights that the law has granted to them. The consultation process is their opportunity to set some of the conditions under which they are prepared to do this.

2.3 The main elements of the tool

There are 4 main phases of a community consultation process:

1. Preparation phase
2. Negotiation phase
3. Decision phase
4. Monitoring phase

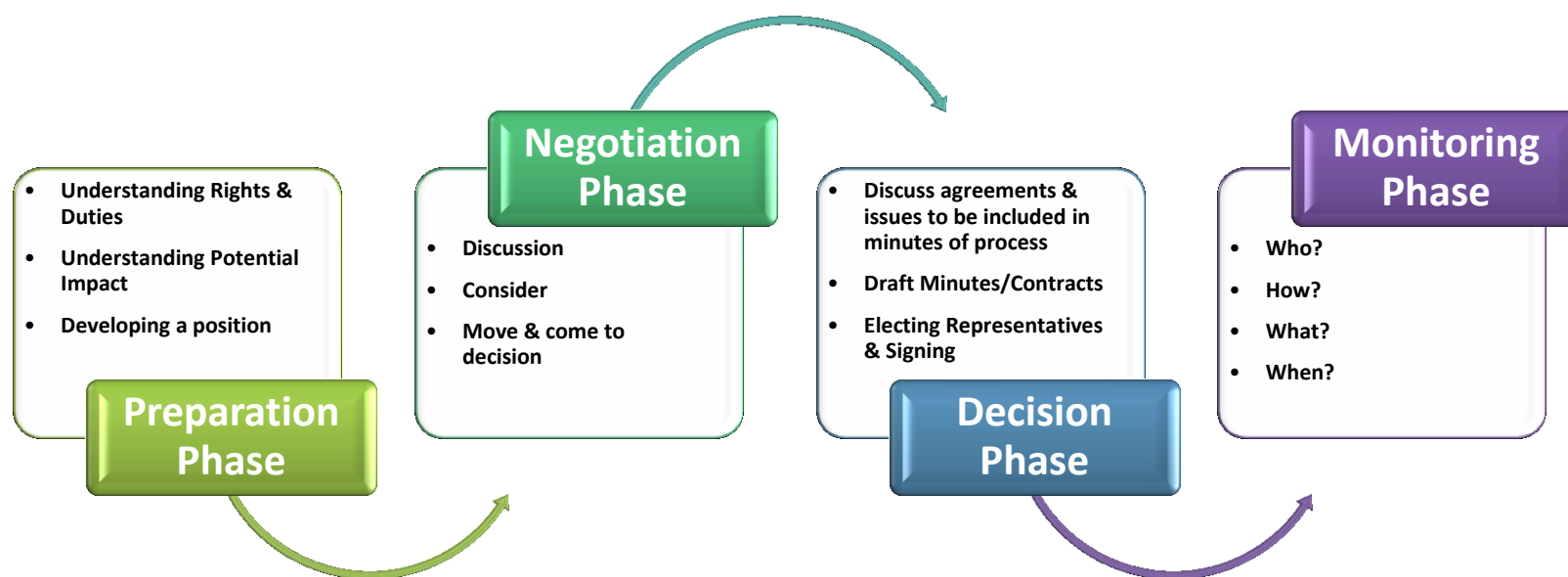
The figure below shows these phases as a diagram, with indications of the main elements contained in each phase.

In following these phases, there are a number of additional considerations that must be taken into account. For example, it is essential that the consultation process fulfils a number of objectives:

1. It must include all the community groups that may be affected by the application; Particular attention needs to be paid to the inclusion of traditionally excluded groups, including poor women, the elderly and others;
2. It must be based upon a common understanding, or consensus, amongst all of the interest groups in the affected communities;
3. It should result in real and lasting benefits to the affected communities;
4. It should minimise the possibility of future conflicts over access to natural resources;
5. It should result in agreements that can be monitored and are enforceable by both the communities and the applicant.

Note: This tool provides a very thorough process and will obviously not be appropriate in all cases above. However, one should bear in mind irrespective of the size of the application (especially considering land applications) that inherent rights are permanently cancelled by the granting of a concession. Therefore, the elements described in this tool can still be followed, but perhaps on a more informal basis.

The 4 different phases of a consultation process



Preparation Phase

2.4 The Preparation Phase

Outputs:

- A participatory map illustrating the rights and usage in terms of the law, to be used during the discussions with the rights' applicant/investor
- A matrix of potential positive and negative impacts on different interest groups of the community
- A matrix regarding potential areas of benefit and cooperation
- A diagram indicating possible linkages between the community, the applicant and the state
- In some cases, it may be considered necessary to assist the community to undertake either the delimitation or demarcation of their land in this phase, in which case the Certificate or Title to the DUAT will be an output

This is the most important phase of a community consultation process and it is therefore essential that all members of the community are included. This means that it should include:

- The community living within the area earmarked by the rights' applicant
- The different groups of people using communal land, water, forestry and wildlife resources within the area earmarked by the rights' applicant, who may in fact be from neighbouring communities
- Individual community members who have acquired rights within the area earmarked by the rights' applicant, for example simple licence holders or people with individual land holdings
- Community structures and any other organisations or groups within the community (including legal, social or traditional entities)

A facilitator should also ensure that any person claiming to represent a particular group does in fact, have the mandate to do so.

This phase has **three** main elements, described below.

2.4.1 Understanding rights and duties

Here the community establishes the rights and duties it has in terms of existing legislation.

The community therefore underlines its present resource use as well as that of others, such as simple licence holders in terms of the Forestry and Wildlife Law.

This can best be done through a **participatory mapping exercise**, first with the various interest groups within a particular community and then triangulated, with community participation, so that a single final map is produced that can be used in the Negotiation Phase.

The map should capture at least the following elements:

- Boundaries of community land
- Roads and major footpaths
- Rivers, streams, lakes and other sources of water
- Important landmarks and areas of cultural significance
- Resource use (whether seasonal or not) by the community itself, as well as by third parties – these could be:
 - Forestry and wildlife resources, including honey, wild fruits & other food collection, medicinal plants, hunting, charcoal production, firewood
 - Land uses, including cropping, grazing, fruit trees, cemeteries, fallow land, housing, areas for expansion

See the map in **Annex 1** for an example.

One of the best ways to undertake participatory planning is to use satellite imagery, if it is available. This imagery can be printed on large maps; community members will be able to very quickly orient themselves and recognise major features from the satellite pictures. They can then add additional features to the images, showing where the major areas of resource use occur, etc. Different groups can show different use areas, and it is important to ensure that all the interest groups are included.

The maps of imagery are best printed on waterproof canvas, which makes them very durable. Once the community has compiled their map, it is very easy to geo-reference the features and land uses which they have added, just by making a quick copy onto paper or by noting down coordinates. This means that the canvas map can be left with the community for the time being, where it can serve as a very useful tool for them to base their discussions and decision-making.

The Manual on Delimitations contains some very useful further details on how to conduct participatory mapping processes.

The mapping process described here can be very useful for helping people to understand their rights and duties, but it could also be conducted as part of the formal delimitation process, which would add further protection to their rights to access the resources within the areas which they identify.

2.4.2 Understanding the potential impact on communities if a concession is granted

The community, through a series of discussions, has the opportunity to consider exactly what the impact of a concession might be. This ought to include impact on its resource use as well as impacts on livelihood strategies now and in the future. Of course, in order to do so, the community must be given access to detailed information about the request, which the local authorities should provide. This is not normally the case, so the community may have to insist that they are provided this information in writing and given time to study it.

A useful method that a community can use to try and unpack what these impacts might be is to compile a few matrices regarding what people do and what they think any impact might be.

It may be necessary to call upon additional technical and/or business literacy and analytical skills to assess the potential impacts of a concession. This could require additional resources to be provided by an NGO that is assisting the community, and time should be requested to allow the community to access these.

See the matrix in **Annex 2** for an example looking at the potential impacts of a forest concession.

2.4.3 Developing a position

Once a community has been able to map out its rights and identifies the potential impact of the concession, it will be able to develop a position, which it can use when entering into the negotiation phase with the rights' applicant.

By discussing how negative impacts can be changed, the community is given the opportunity to develop a position regarding the application. For example, if improved access is seen as a negative impact, because of the potential for greater poaching of wild animals by outsiders, a means to mitigate this could be through the community requesting that the applicant establishes security checkpoints and employ community guards.

However, one must ensure that communities try to be as realistic as possible and that a simple 'wish list' is not drafted in this process.

It is also essential that roles and responsibilities in the consultation process are clarified and discussed (See **Annex 5: Roles & Responsibilities**).

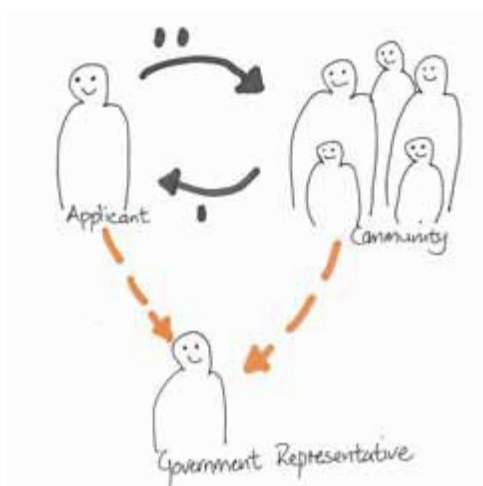
For the community to be completely prepared for the negotiation phase, it must understand what benefits it could obtain from a concession within its area. If it is a forest concession, for example, the community must be informed of the elements that could benefit them, and that ought to be included in forest management plans, such as:

- Employment opportunities
- Training and capacity building
- Local community partnerships and benefits
- Non-timber forestry products and their management
- Social impacts,
- Environmental and biodiversity impacts, etc.

This can be used in preparing for issues to be negotiated during the following phase.

See the matrix in **Annex 3** for an example of how to capture the potential issues for negotiation in respect to employment opportunities.

A diagram similar to the one below can then be drawn with the community to give them an idea as to how to proceed during the negotiation phase. It must clearly indicate the lines of communication. The diagram below is regarding employment opportunities. The applicant communicates with the community regarding the people he will be employing and what skills are required. The community then informs him, or sends him possible candidates. The dots indicate the timeframe (one dot = one week, for example). The red lines indicate who is approached in the event of a problem arising. For instance, the applicant has not adhered to the agreement, for example has not employed the number of people promised, or the community has not sent any suitable candidates. It must be noted that it might not always be necessary for the government representative to be involved.



Historically communities have been ready to cede lands simply for the promise of employment, as well as social infrastructures. This is insufficient in many respects and any party assisting a community in creating a position should encourage the consideration of benefits in addition to these. Social infrastructures are in fact the responsibility of government.

2.4.4 Guidelines for facilitation

It is also vital that the facilitator prepares thoroughly for this phase. The following are some guidelines:

- Understand the rights and duties that communities have in terms of any applicable legislation. See **Annex 6** for examples of rights and duties in legislation from Mozambique.
- Understand the nature of the application.
- Different applications will require a different type of preparation depending on the nature and size of the application, and the obvious costs or benefits to be achieved. It will not be necessary, for example, to spend days of preparation and consultation for a land application of just a few hectares.
- Understand what the requirements are for each type of application - for example, a forest concession application will require a formal Management Plan. It is important that the facilitator is aware of the components of these management plans.
- Know the boundaries of the application – are they well defined or not?
- Identify the community and what their previous experience is.
- Understand the demographics of the community – are there mostly young people, mostly women, what livelihood strategies do they use?
- What third party rights exist in the area?
- Who is the applicant and what is his/her experience and/or reputation?
- What resources do the government representatives have? Are there any in the district? Will they have had the time to explain rights and duties to the community? What is their relationship with communities - is it good or bad? What is their relationship with the investor?

- Understand the objectives of each exercise and how it is to be conducted as well as each output
- Understand the ‘economic’ potential and value of the area, the land and its resources;
- It is important to ensure that communities understand the various phases of negotiations. Negotiation skills training with role-plays would be essential

Negotiation Phase

2.5 The Negotiation Phase

Outputs:

- A matrix of issues negotiated
- An outline of proposed benefits for the community and how they will be achieved
- An outline of proposed activities to mitigate potential negative impacts;
- An outline of the expectations of the community
- An outline of the expectations of the applicant
- Diagram depicting lines of communication
- Diagram depicting steps of dispute resolution

This is the phase where all the parties come together and start discussing what they want and how they aim to achieve it. It is important that each party that is present during this phase has the authority to represent whomever he/she claims to represent.

The community, including most vulnerable groups and women, should therefore have already decided who would represent them at this meeting and what mandate these representatives have. The same applies to the rights' applicant and the government representatives.

This process has to include the following decisions:-

- Clear roles and responsibilities of each of the community participants
- Who will speak on behalf of the community?
- What will that person's mandate be?
- Who will sign any documents such as the *acta*/minutes of the meeting on behalf of the community?
- Who will have to ensure that all the required documents are taken to the consultation meetings?

The main elements of this phase are described below.

2.5.1 Discussion

The applicant should explain the following:

- What type of application is being made? Allowing for questions of clarification regarding the application.
- Why that particular area is chosen?

- How it proposes to achieve its aims?
- What benefits are foreseen for the community?
- What benefits are being offered to the community? It is essential that, if different benefits are being offered to various categories of communities, these differences are clarified and certain.
- What potential negative socio-economic and environmental impacts are anticipated? How is the applicant planning to mitigate those?
- What community rights might be affected by the approval of the concession? For example: grazing land, hunting rights, right of way to water sources, etc. The applicant should use a map to indicate the proposed boundaries of the concession area and to illustrate which activities are planned and where they will take place. Any areas where the communities' rights could be affected should be highlighted and plans of the applicant to compensate communities for any potential loss of these rights need to be explained as well.

The community representatives should then be given the opportunity to:

- Ask questions or clarification regarding the proposed concession and its respective development plans.
- Ask questions regarding any proposed benefits and potential negative impacts, etc.
- The community then explains its use rights within the proposed concession area, using the map drawn during the preparation phase.
- The applicant should be given the opportunity to ask questions regarding the map for clarification.
- The community then explains the issues on the matrix that it has prepared regarding the potential impact of the concession.
- Both parties can then discuss how best to mitigate any negative impacts.

It is important that both parties be given the opportunity to 'breakaway' and have private discussions amongst themselves. The period for the breakaway should be determined by the community representatives that are present, as they have to ensure that whatever they agree to at this point is also agreed to by the people they represent. It also provides the space for people to ensure that they have understood what the application is about, what is at stake and what benefits they might gain from it, or not.

The applicant might also need time to discuss certain issues with those he is representing so his requests for time should also be considered. It is essential that neither party feels pressured into a time period that they do not feel comfortable with, especially if they think that the period to discuss this is too short.

This breakaway must be used to also take time to consider all the proposals put forward by the applicant. Although the Forestry and Wildlife legislation is clear that the entire process of consultation is a single meeting, it is our opinion that the meeting be broken at this point. The Land legislation has now been amended to ensure that AT LEAST two meetings are held. There is no reason at all why a community should not insist on taking even more time and having a number of meetings to take these important decisions. They may be deciding on the future of land and resource access for the next 50 years, so there should be no rush in this process. It should be remembered, and a community should be clearly informed, that they are under no obligation to make any decisions until they are ready to do so. People obviously need to have

time to think through all the offers and ensure that there are no misunderstandings later. If for instance, employment is being offered, the community has to ensure that it has the following information:-

- What skills are required?
- Do people in the community have those skills? If not will the applicant provide training? When, how?
- How many people will be employed? How will the people be chosen? Are wages going to be sufficient to compensate for loss of traditional livelihood forms (e.g. for farmers losing land)

The list above is just a guideline of things to consider.

2.5.2 Consider

The community is given the opportunity to consider the proposals submitted by the applicant. It is essential that the community ask itself:

- Who?
- When?
- How or What?

...regarding each of the proposals made by the applicant. See the matrix in **Annex 3** for an example of how to capture and discuss the potential issues for negotiation.

However, the most important question should be whether this will improve their lives and those of their descendants.

The matrix regarding potential areas of benefit and cooperation must be updated or revised here by the community so that it can be used in the discussions needed in the next phase. The community must understand that they do not have to agree to anything that they do not feel will bring them any benefits or rewards. The legislation is clear in that they can make the decision to approve or not an application. If the community is not in favour of the application they must state so clearly and provide reasons for their decision. These can be captured in an *acta* (see below).

2.5.3 Move and come to a decision

The parties once again get together for discussions.

If the community agrees in principle to approve the application, the following issues need to be discussed:

- Discuss the potential areas of benefit and cooperation (those identified by the community in the matrix from the preparation phase and those that may have been proposed by the applicant) and try and reach agreement on the issues raised.
- The applicant is given the opportunity to raise questions or any other issue indicated in the matrix. The applicant can also include other areas of cooperation or benefits.
- All the parties jointly discuss lines of communication. During this discussion, a diagram can be produced that describes the agreed lines of communication for future reference.

- All parties can discuss how disputes will be resolved. This ought to include lines of communication; timeframes for resolving disputes and, if disputes are not resolved within the timeframes, what further steps each of the parties can take to reach resolution of the conflict. A diagram can be produced so that all parties know what to do and who to speak to when something happens that could lead to a conflict - this can be based on the diagram developed by the community during the preparation phase.
- How the agreements can be monitored and who will monitor them. The monitoring timeframes must be included here. If the applicant does not fulfil his/her obligations the concession can be cancelled by the state and it is essential that all the parties are aware of this. The community in this case also needs to be informed that it will have the right to petition the District Administrator to request that the concession be cancelled. If that does not have a satisfactory outcome, the community can then petition the Governor of the province.

The facilitator prepares the minutes of the meetings.

If the community disagrees in principle with the application:

- The reasons for not approving should be captured
- The applicant can be given the opportunity to improve the offer or try to convince the community to change its mind. If this does occur, it will be important to repeat the steps in the consideration phase

The facilitator prepares the minutes of the meetings including the reasons for non-approval.

The parties sign the minutes and in this case the process is concluded here.

One additional element that has been shown to be very useful in community consultations is recording the event on video. The video needs to show the crowd (so it can be shown who was present), the investors, government representatives and leaders, and opening statements. The signing of any agreements also needs to be shown and the signed document filmed so that it is readable on the video, with signatures clearly visible. Closing statements by all parties also need to be recorded. An NGO that is facilitating the process can do this. Good investors do it too. A copy of the video should be put on disc and given to all present.

2.5.4 Guidelines for facilitation

There are three basic steps to any negotiation, and it might be useful for a facilitator to run through these with a community before they begin this phase. The first is preparing for the negotiation; the second is going through the negotiation and finally reaching settlement.

Preparing for the negotiation

This can be seen as the most important, as most negotiations depend on how much preparation has been done beforehand. In preparing for a negotiation you must:

- Be sure of all the facts
- Understand all the powers at play and identify who your allies are
- Decide what is the bottom-line – what is not negotiable, how much is the community willing to give in. If you are representing a group make sure that your bottom-line is the same as that of the group's.
- Then think about how the other side feels – what is really important for them, what is their bottom-line? Is that acceptable to the community?

- What are the things that are not too important to the community
- What are the things that the community think might not be too important to the other side
- Think about various solutions that would make the community and the applicant happy, what would be a win-win situation?
- Familiarise yourself thoroughly with aspects of the relevant law and have a copy with you during the consultation for reference.

The negotiation itself

It is important that there is a good relationship between yourself and the people you are negotiating with; therefore always remember to:

- Be friendly
- Listen carefully – makes notes if needed
- Never be abusive or threatening and never shout. Instead, remain calm and respectful and use relevant legislation to explain your rights and position. Stand firmly on the law. It is useful to have photocopies of the community consultation clauses on hand to give to the investors and GoM reps. This makes it hard for them to try to intimidate the community, and in fact, it is a help to them as many District officials generally do not know the law. The SPGC people usually do, but they are outranked by District Administrators and thus will remain silent.
- Brainstorm various possible solutions or options to resolve the problem
- Do not look for only one answer, but rather try and be creative about possible solutions
- Don't play all your cards the first time, particularly if there is insufficient information available from the applicant on key aspects of the investment
- Be alert for signs that the investor might compromise and consider fairly any compromises offered. Note that this might take “breakout”.

The elements that characterise a good negotiation process¹ are:

- Mutual respect between the parties
- Fairness and transparency
- Long-term commitments for maximising the returns from negotiations
- A balanced sharing of risks, although given the unequal powers of investors and communities, this should principally involve the use of protective mechanisms for communities²
- Safeguards for local livelihoods
- Periodic review of the terms of the agreement included in contractual form

¹ Based on Mayers, J. & Vermeulen, S. (2002)

² Such as breakaways, multi-day consultations, the video recording of the consultations, the use of land law and reference to it during proceedings, binding contracts signed in addition to *autos da consulta comunitaria*, and support from NGO entities.

“Moving” and coming to an agreement

For a negotiation to end in an agreement, one party usually shows that it is ready to “move” or compromise. Sometimes it can be an advantage to make the first move, in offering a possible solution which must always include some ‘giving in’ and some ‘taking’. In this way the parties leave the negotiating table feeling that everyone has ‘won’ something.

Establishing partnerships and groups

During the negotiations, it may be decided that the best way forward is to form a formal partnership, which might also imply establishing a recognised legal entity to represent the group. There are many challenges involved here - the best way to understand these challenges is to look at the issues primarily from the perspective of the *establishment of group rights*. The challenges are significant:

- The first key challenge relates to the identification of the group itself. Here, the issue is whether to encourage the formation of partnerships that involve all of the community members within a defined geographic area, or merely a subset of members of the community that are interested in actively participating. Sometimes a partnership arrangement may have a better chance of success if participation is defined more narrowly, through a group that has actively ‘opted in’ to the arrangement. It may be difficult to get a full agreement with all the members of a community and the transaction costs implicit in sustaining the partnership may be very high. There are pros and cons to this approach, as well as implications in terms of the available tools to be used.
- But if partnerships are to be established with a smaller ‘subset’ of a community, the land available to them as a group will need to be defined and negotiated with the broader community, as will the basis on which they will be permitted to ‘claim’ this land. The challenges here will be how to define if there is a need for, and the mechanisms to implement, any wider benefit-sharing from the partnership amongst members of the broader community that are not directly involved.
- Equity arguments would seem to suggest that, at least where community land that was for communal use is involved, such a need will exist and the mechanisms for benefit-sharing will need to be designed. Associations, for example, frequently represent a minority of better-organised and wealthier farmers in a community (CLUSA 2002) and demarcating association land can cut off poorer and more vulnerable members of the community, including many women, from good-quality land that they were previously able to use, for example riverine or ‘machongo’ land, without any compensation (Knight et al., 2012; Vijfhuizen, 2001) This can increase conflicts within the community, as well as potentially increasing poverty.

Whilst it is legally possible for a group within a broader community to define itself also as a ‘local community’ as defined in the Land Law, and thus undertake a delimitation of the land, there will still be a requirement for the boundaries to be clearly established in consultation with the rest of the community members. Given that the legal implication of a delimitation process is a permanent ceding of the use right to the group, great care should be taken if this option is used. There are strong arguments for this option only to be followed in the event that the land in question was already, in terms of the local customary norms and practises, recognised as legitimately being the land of the particular members of the group in question. That is, great caution ought to be exercised where this option involves land that has in the past been regarded as being for communal use or as yet unallocated. Not to do so would run the risk of supporting a ‘land grab’ within the community and prejudicing the livelihoods of poorer and more vulnerable groups.

Decision Phase

2.6 The Decision Phase

Outputs:

- A list of agreements reached
- Minutes of the process
- A map which should reflect where the community and where the applicant will use various resources

This is a phase where the agreements discussed during the negotiation phase are thrashed out and the exact details of all the agreements are finalised. It is essential that during this phase expectations are not raised and that all parties involved consider each proposal as objectively as possible.

The main elements of this phase are described below.

2.6.1 The finalisation of the agreements

When finalising any agreements it is important that people understand what the agreement entails, who does it involve, who does it exclude, who does it affect and how.

We suggest that the parties draw a table with the various actions etc. See the table in **Annex 4** for an example of agreements that might be reached in terms of employment opportunities.

2.6.2 The preparation of the minutes/contracts

The legal framework stipulates that the results of a consultation process shall be captured in an *acta* (the minutes produced and signed by the district administration as a formal record of the results). This document is mostly for the state to use in further processing the application for the concession. The drafting of the minutes is vital for the monitoring of the agreements reached. It is therefore very important that each party understands his/her role and what the other parties expectations are regarding that role. The minutes should also reflect exactly what was agreed and therefore be drafted in a way that is simple and easily understood with as few ambiguities as possible.

However, the production of these minutes (*acta*) does not prevent the parties from entering into a more formal agreement between them, summarising what each party has agreed to. This extra step is highly recommended in all cases. The best way to formalise and implement the aspects agreed upon and recorded in the *acta* is to include them in a Memorandum of Understanding (MoU) between the community representatives, which may be a CGC (see section 3), and the proponent of the project. The MoU should include, at the very least:

- Rights and obligations of the parties
- Actions that have been agreed to by both parties

- Timing for implementation of the actions
- Ways to resolve any conflicts that may arise

Some form of legal support (which will need to be planned and budgeted for) will almost certainly be necessary in order to establish a formally binding contract, but some of the key elements of any contract that is to be negotiated are as follows:

- Identification of the parties and/or their representatives
- Objectives of the contract and its duration
- Rights and responsibilities of the parties
- The value of the contract (whether this is contract for work, a service or a donation)
- Causes for termination of the contract
- Penalties for non-compliance
- Mechanisms for the resolution of conflicts
- Mechanisms for ensuring that any agreements reached are binding in the event that the concession is transferred in the future to another party
- Rules for accountability and Monitoring and Evaluation specifying information that both parties, but particularly the investor, must make available, at what times, etc.

This list is not intended as a guide for the preparation of a contract, but merely to draw attention to the minimum elements that any contract should have. Contracts need lawyers and this is a budget line item that must be considered.

2.6.3 The signing of the minutes

The signing of the minutes is simply a formal and final activity that represents the goodwill of all the parties. It also fundamentally concludes the community consultations and negotiations. All parties will then all have a document that clearly reflects not only what happened during the consultation process but also the agreements reached. A formal reading of and signing of the minutes should be videotaped, interspersed with shots of the crowd.

Monitoring Phase

2.7 The Monitoring Phase

Outputs:

- An annual progress chart indicating activities; achievements, date it was reviewed; who did the review and other comments
- A list identifying the people who have the ultimate responsibility of ensuring that agreements reached are adhered to
- Minutes of meetings with communities regarding status of agreements
- Tangible benefits directly related to the agreements entered into

The monitoring phase does not strictly fall directly within a community consultation process, but it becomes the most important if communities are to use the process as an empowerment tool.

The elements of this phase are described below.

2.7.1 What will be monitored?

It is important that all parties are aware of what is being monitored. The best way of establishing that there is no confusion is to ensure that all agreements are clearly recorded in the minutes of the consultation process.

In relation to land applications all the agreements reached during the negotiation should be monitored.

In relation to forest concessions, the management plans provide additional guidance as to what needs to be monitored. The matrixes produced provide good guidelines that can then be “ticked off” as the development proceeds.

2.7.2 Who is going to do the monitoring?

The State must do the monitoring to ensure that the applicant is abiding by the development plans it submitted, considering that it was on that basis that the application was approved.

Nonetheless, it does not detract from the fact that the people who are directly affected by the concession must be involved; each party should have an obligation to report to the other on a regular basis on information identified in the acta or MOU. This means that parallel monitoring must be in place to ensure that all agreements reached are adhered to.³

³ The company Kenmare, for example, set up a joint monitoring committee that meets regularly. This is not a bad idea if properly supported on the community side.

2.7.3 How will it be monitored?

The parties will have to agree to this during the consultation process. Possibly, the best solution is to decide to have meetings on a regular basis to discuss developments. Therefore, if it is a land application, and there has been a delay in the applicant receiving the provisional right of use and benefit of land, and therefore no construction has begun, this can be explained to the community without the community having to think that this person has simply disappeared.

2.7.4 When will it be monitored?

It is important that realistic timeframes be set for monitoring progress. A suggestion could be that the development plans (be it a land application or a forest concession) be organised in phases and that a meeting be held between all the parties at the end of each phase. This will give people the opportunity to discuss what happened in the previous phase but also what will happen in the next phase. An additional idea is to exchange telephone numbers and set up regular calls to discuss how things are going in relation to what was planned. It is important to have at least monthly contact.

When discussing plans for the next phase it is important that the matrix (see **Annex 4**) be updated so that they can be used at the end of the phase to check if all the agreements were achieved.

2.7.5 Guidelines for facilitation

This phase can vary considerably, depending upon the type of application (land or forestry) and the nature of the agreement:

Land concessions

In terms of the Land Law once an application is approved a provisional right of use and benefit is granted to the applicant. If the applicant is a foreigner, the applicant will have two years to fulfil the development plans. However, if the applicant is a national (either a person or a company), it will have five years to fulfil the development plans that form part of the application. This clearly means that all agreements reached have to bear in mind the short timeframes involved. Furthermore, due to the relative short term within which development plans have to be fulfilled this means that monitoring of agreements is also short term.

If the community insists on a copy of the investment plan that goes to the GoM, then there is a fixed document against which progress can be monitored.

Forestry concessions

Because they require short, medium and long-term management plans, these are easier to enter into long-term agreements that can be monitored regularly. In the mandated outline of the contents of Forestry Management Plans it is suggested that short-term management plans should include:

- Evaluation of forestry activities carried out during the past 12 months such as inventories, blocks exploited, species, production, etc.
- Infrastructure developed, roads built or repaired, etc.
- The number of employees (full time and part time basis) as well as a clear indication as to which of these are drawn from the local communities, as well as possible new employees.
- Summary of community meetings, achievements, future plans, etc.

- Planned future community consultations and meetings
- Description of the aims of these meetings
- Description of partnerships or joint activities planned
- Diagrams of planned improved or new access roads
- Forest inventory
- Production areas
- Other activities

Medium term management plans that generally refer to a period of approximately five years should include the following:

- An evaluation of the previous 5 years
- Primary and secondary roads to be built within the next 5 years (if necessary)
- Forest inventory and health
- Detailed map of production area
- Silviculture activities
- Mitigation of social and environmental impacts
- Monitoring and evaluation activities that have been undertaken and those that will be done in the future

3 Community Management Committees

3.1 What is a Community Management Committee (CGC)?

A Community Management Committee (*Comité de Gestão Comunitária* - CGC) is a body composed solely of members of the community, which works within the physical boundaries defined by that community. Its task is to defend the rights of the community regarding the use and conservation of natural resources, and enforce its obligations in respect of such resources. It is a quasi-statutory body established in terms of Article XX of the Forestry & Wildlife Regulations.

Among the functions of the CGC are the responsibility of organizing the community to meet the challenges posed by community development and contribute to poverty alleviation, as well as other activities related to the conservation, use and management of natural resources as well as contacts with people or institutions outside the community.

The CGC should be a democratic institution, open to all members of the community, and representative of the diverse interests in the area of the community.

3.2 The formation of a CGC

According to Article 2 of the decree 93/2005, which deals with the channelling of the 20% forest revenues to community groups, it is the responsibility of the licensing entity to promote the creation of the CGCs and the registration of its members.⁴

However, the formation of the CGC can also be undertaken by the community and its leaders. An NGO or any other organisation working with communities can initiate and facilitate the process, but it is always a good idea to establish a memorandum of understanding between the organization and the licensing institution beforehand (see **Annex 7**).

In order to facilitate recognition by the authorities of the GCC, it is essential that the district administration is aware of the process of creating the CGC and that it is registered with the SDAE office, or with other entities designated by the district administration.

The CGC may be created during the process of a consultation for the award of a use right concession (either land or forestry) to a third party, or could be contemplated when there is a need to discuss and manage natural resource use by the community members themselves.

In cases where there is already a committee or committees for different resources (e.g. a land committee established as part of a delimitation process, or a committee controlling the management of fisheries, for example) it might be best to unite these community institutions so that there is a single committee which will then be responsible for coordinating all activities relating to all resources in the area (i.e. land, water, forests, wildlife, fisheries, mines, etc.) Note that Fisheries Committees (CCP's) have special regulations and competencies, defined in the *Regulamento da Pesca Marítima* and there has been some resistance in the past to uniting them with other special purpose committees.

⁴ It is also the responsibility of the Provincial Services of Forestry and Wildlife (SPFFB) to carry out an exhaustive survey of the actual number of villages, the licensees, and the revenue values that communities have the right to receive.

3.2.1 Representation

The members of the CGC must all be of legal age (i.e. 18 years or older). The selection of candidates should be done in such a way that there is no discrimination based on sex, race or religion, and the election of members of the CGC be done in a democratic manner where the interests of ALL community members (men and women, including poor and vulnerable women, particularly those in Female Headed Households) are considered in the decision-making process. The necessity and importance of engaging women in the activities of CGC and all decisions of the community is paramount: the perception, knowledge and experience in relation to the management of natural resources often differ by gender.

The president, secretary and treasurer for the CGC should ideally be people with some education (that is, who can read, write and do arithmetic); they may be drawn from the ranks of teachers, nurses, etc. It is important that the people in these positions are respected and trusted by the community, and that they in turn respect the needs of the community members.

One of the basic principles of community development is that more power should not be given to the already powerful. Thus any leader (*regulo*, religious leader, traditional leader, etc.) should not be on the committee. Rather, they should be asked to serve in an advisory (*conselheiro*) role. Many leaders understand that not all the jobs should be the responsibility of one person, and further will understand when advised that is important to develop leadership capacities of younger community members and women. This is a palatable and non-threatening way to present democratic ideas in a traditionally hierarchical society.

3.2.2 Electing the members

For the election of the members of the CGC the village chief or the District Administration should convene a meeting with all members of your community to start the process. It is important that the date, time and place of the meeting is given well in advance to allow the participation of all community members. Deliberate efforts to reach out and inform traditionally excluded groups such as female headed households, etc. must be planned.

Before the choice of committee is made, the leaders should be in agreement with the concepts outlined in 3.2.1 above. If time is needed here, take it. Then, leaders and influential people and the facilitating agency can create frame conditions for what sort of nominees they want (integrity, honesty, concern for the common good, etc.) and even what kind of representation they want (how many women, youth, female headed households, disabled, woodcutters, fishermen, etc. etc.). In this way they start being co-opted to act as advisors, not members, the equivalent of a “founder’s committee”.

When these frame conditions are established, then committee selection can proceed. The first step of course is to divulge the frame conditions and gain wide agreement, making changes if necessary (this may be a learning experience for traditional leaders, so they should be prepared to flex a bit based on the wishes of their constituency). This may seem convoluted but when people have little experience with participatory governance, a lot of teaching and modelling needs to be an inherent part of the process. Otherwise the whole effort may be pro-forma and/or result in elite capture. This is done at a community meeting.

The community then nominates members. Balloting must be secret or people will not vote according to their hearts, but rather based on who might be looking at them. One way is to use stones and holes. People are given stones according to the number of members, and pass one by one behind a house and drop stones into the appropriate holes, suitably marked according to the candidates. “Observers” are necessary for this to work.

A show of hands or clapping generally results in elite capture. Once again this takes time but it does result in an exercise in democracy.

There are several ways to make the choice of members of the CGC. The following are the two most common forms:

- Where community leaders and influential people in the area make a list with the names of people they think may be members of the GCC, based on the frame conditions established. After the list has been compiled, it is presented to the participants of the meeting to vote. Voting means that the community chooses the people who will be part of the CGC in order to represent their interests. The voting process should meet the following steps, which are much like the voting for MPs:
 - Two lists with the names and function that each member will perform are published
 - Ballots, which can be small sheets of paper, are distributed so that the voter can indicate the number of the list that they prefer
 - A ballot box is made available (this can be a cardboard box) and each person posts their ballot with the indication of their chosen list
 - The ballots are counted, and the results announced.
- Where delegated community leaders choose the candidates in their own meeting and present them to the entire community for their approval. Here, the approval may be made by clapping or a show of hands in the air.

Whichever method is used, there should be a discussion with the community about the importance of including women on the CGC, as an interest group with particular needs and concerns in regard to natural resource use. This might be achieved by setting a quota; that is, ensuring that 50%, for example, of the members are women.

It is important to choose alternate members, i.e. members who can replace people in case of need (illness or unavailability, for example). This is important because a quorum (over two-thirds of the potential voters) is also needed at any meeting of the CGC.

The GCC becomes the entity of the community which will deal with the state authorities, with entrepreneurs/investors, and with NGOs and other institutions; it will defend the interests of the community in respect to natural resource use and management in their area. In this respect, it is also important for the CGCs, as a community forum, to establish a strong link with the *Conselhos Consultivos*, which are the statutory bodies established by the District Administration to ensure that the general population of an area (district, administrative post and locality) is consulted and involved in local planning processes. The community-level CGC should ensure that their voice is transmitted in some way to this local body (see Annex 11 for a diagram of how the CGC relates to other institutions).

3.2.3 The duration of the CGC mandate

The community should decide how long the GCC members are elected for, but it is important that the CGC has time to organise, stabilise, gain work experience and show results. Therefore, the mandate of the elected members should have a reasonable validity: a three year period would seem to be appropriate. In this case, elections should be held every third year. There should be a rule about the maximum number of consecutive terms a member may serve.

The substitution of a member of the CGC can and should take place in the event of death, illness or a prolonged absence. Members may also be dismissed in the event:

- more than three consecutive absences at meetings of the CGC, without justification
- any abuse of power
- any involvement in corruption or illegal activities
- any conviction in court for a crime

After confirmation of the resignation, dismissal or unavailability of a member, the president of the CGC shall convene a meeting of the GCC to effect a substitution, by vote, which should be communicated to the broader community.

3.2.4 Procedure for registration and recognition of the CGC

The registration of a CGC is the act through which the existence, legitimacy and mandate of the CGC are attested to by the community, through their representatives, before local public authorities, such as the District Administration. For this, it is important that the community produces a document that records the formation of the CGC. **Annex 8** provides a model for the minutes of a meeting held to constitute a CGC, which can be presented to the authorities to assist with the registration.

This should also be accompanied by a document that states the basic roles, responsibilities and procedures of the GCC, as well as any other rules and principles that the community feels that the GCC should follow. This document, which we can call the "Statutes of the CGC" (see **Annex 9**), should also be submitted to the District Administration.

After registration at district level, the GCC may later, if necessary, decide (along with the community) to further formalise its existence through the registration of an association, established under the applicable legislation (see **Section 4** of this Guide for further details). For the purposes of the implementation of legislation on forests and wildlife, what matters is that the community has a body that represents it, that this body has a mandate and clear procedures, and is recognised and respected by the community and by third parties.

3.3 Functions of the CGC

Annex 9 to this Guide presents a simple model version for statutes of a CGC, which may serve as a basis for drafting the statutes of a specific CGC. The most important issues to be included in the statutes are:

- Identification and location of the community, identifying the elected members of the CGC
- Identifying the process that was and will be used for committee selection
- Responsibilities and obligations of the CGC, and the term of office of the GCC
- Procedures for conducting the activities of the GCC, including reporting and accountability to the community
- Mechanisms for conflict resolution

The list below contains the possible responsibility areas of the CGC:

- To direct and control the delimitation process, participatory mapping and zoning, the leasing of land and access to other natural resources in accordance with the priorities of the community

- To direct the process of identifying priorities and interests of community development, the preparation of business plans and corresponding fundraising
- To manage and report on the financial resources channelled to and/or produced by the community through the payment of taxes by third parties or the implementation of a partnership or business plan
- To lead the process of negotiating with partners, based on interests and priorities that have been collectively identified
- To create and maintain an information system to ensure transparency in the management of land and natural resources
- To participate in meetings of the District Co-Management Committee (COGEP) and defend the interests of the community at these meetings (see Annex 11)

3.3.1 Functions of the office bearers of the CGC

The President of a CGC is responsible for:

- Convening and chairing the meetings of the GCC (replaced by the vice president in his/her absence or incapacity)
- Convening meetings with the broader community when it is deemed necessary, to discuss a particular subject (e.g. the application of funds paid to the community)
- Reporting on the activities undertaken by the CGC to the local administrative structures and the community at large
- Representing the CGC at meetings of the COGEP
- Initiating appropriate relationships with cooperating partners (private sector, NGOs, state)

The Secretary of the CGC must be able to read and write in order to produce the CGC reports and the minutes of meetings. Activities of the Secretary include:

- Supporting the President in guiding the work and prepare the minutes and reports of meetings
- Directing and ensuring the internal administration of the CGC and implementation of activities approved by the community
- Creating and maintaining a transparent information system

The Treasurer is the person who will handle the monies of the CGC and therefore must be honest and sufficiently educated to handle and control the money responsibly. The duties of the Treasurer are as follows

- Controlling the use of funds from the community
- Preparing accountability from the CGC on the management of funds and producing financial reports;
- Ensuring accountability to the community and other institutions
- Making payments

3.3.2 Operational norms of the CGCs

The CGC must meet regularly, but can also meet more often whenever deemed necessary. For the realisation of meetings and mandated decision-making, more than half the members must be present.

The Committee's decisions are taken by vote. At each meeting, the Secretary shall prepare a report which shall contain the following information: the date of the meeting, members of the CGC present, decisions, activities and responsibility to implement the approved activities.

3.3.3 Claiming revenues in the name of the CGC

The whole issue of the channelling of the 20% forest revenues is dealt with below in Section 5.2. See Annex 10 also for examples of letters that can be used to request payment of the 20% of the forest revenues to the CGC.

4 The formation of independent legal entities

Although local communities and local people have use and benefit rights to land, awarded to them by the law, when it comes to making agreements about how these rights can be shared and protected, the need arises to identify these rights more accurately, and to identify and formalise them in the name of the holders. If the holder of a right is a single person, this is achieved just by having an identity document; the right can then be recorded in the name of the person, and that person could enter into a contract with someone else about sharing the land or the resources in some way. But when it comes to a group, the issue is slightly more complicated, and the group will need to establish a legal identity for itself before it can formalise the right, or enter into agreements in respect to the land or resources. Essentially, the group needs to become a ‘person’ in terms of the law. The members of the group have to establish themselves as an autonomous entity and to acquire what is known as ‘legal personality’.

The manner in which two or more parties may associate with one another, to form and be recognised as an autonomous entity such as a company, co-operative or other form of association is defined by law. It is by operation of law that such an entity obtains **legal personality**, which is an essential characteristic for the holding of rights such as rights in land, licences, property ownership. There are several manuals and brochures on the requirements and procedures for the establishment of companies, cooperatives and associations.⁵ This section provides a brief overview of each.

4.1 Associations

4.1.1 Definitions

Associations are part of a category of entities denominated *collective persons*:

“A collective person is... a group of individual persons... dedicated to a common purpose which is attributed a legal personality or capacity of its own, distinct from that of the persons... of which it is composed.”⁶

Unlike corporate persons, collective persons do not enjoy limited liability unless this is specified in the articles of the entity.

In order to open a bank account in its own name, sign contracts in its name, etc., an association must have legal personality. This is acquired through a completion of certain administrative procedures, followed by the approval of a Minister or the Governor of the Province in which the organization is located.

Associations are generally defined as **non-profit making**:

“The non-profit-making designation does not preclude the enjoyment of economic advantages or benefits accruing to members as a result of joint activities or membership in itself.”

“Cooperatives are usually characterized as non-profit-making in the sense that any economic or financial benefits obtained accrue directly to the members and not to the cooperative as such.” (ibid)

⁵ KPMG, Price Waterhouse Coopers and Ernst & Young all have different brochures and information regarding the procedures and requirements for setting up and operating a business. ORAM and other NGOs assist with the organisation and registration of co-operatives and associations.

⁶ See Garvey J.A. “Forms of Association in Mozambique: A Comparative Discussion and Analysis of Legal Characteristics and Requirements”, p2

Overview of Law of Associations (Law 8/91 of 18 July)

Article 76 of the Mozambican Constitution establishes the fundamental right of citizens to freedom of association.

The Law of Associations is established to determine how this right can be exercised.

The requirements in terms of the Law to establish associations:-

1. Can be constituted freely by citizens who are 18 years or older and which enjoy all civil rights (citizens who are under the age of 18 years are guaranteed the right of freedom of association in the constitution of youth organisations provided that the ‘management’ of such a structure is composed of members who are older than 18 years).
2. The association has to be constituted by at least 10 founding members;
3. The statutes (constitution) of the association have to comply with the general law of the country; can also affiliate freely with international organisations or bodies.
4. Have to prove that there are the necessary means for the functioning of the association;
5. Specific recognizance (by despacho) of an association has to be done by the government or its representative in the provinces. In terms of the Decree 21/91 of 3 October this power is delegated to the Minister of Justice for associations that are not for profit. (Article 1). When an association is to be established that will only operate in a particular province then this power is delegated to the Provincial Governor. (Article 2)

Once recognizance has been granted (within a period of 45 days) it shall be published in the Government Gazette. In terms of Article 5 number 3, if refused it has to be done by written notice with reasons. The Administrative Tribunal can be approached for a review of the decision if unsatisfactory. The ‘management’ of the association has to proceed with the registration of the association either at the Civil or Commercial Registry.

All alterations made to the statutes have to be published and done by notarial deed and have to be first verified by the entity that does the official recognizance.

4.1.2 The registration process

An association must consist of at least 10 people, over 18 years of age and in enjoyment of their full civil rights. A Constitutive Assembly should be held to formally agree to the creation of the association, and to approve the statutes of the association.

The statutes must include:

- the name and location of the headquarters;
- the purpose (objectives) and duration;
- areas of member activity;
- territorial scope;
- power and areas of authority of executive bodies;
- admission, rights, duties and expulsion of members; and
- dissolution of the association.

The association also needs proof of the existence of the necessary financial means to fulfil its objectives (this may be included in the statutes as a plan for financing - e.g. through annual/monthly subscription fees).

The proposed name of the association should be submitted to the Commercial Registry (*Conservatória do Registo Comercial*), who will issue a *Certidão Negativa do Nome* affirming that there is no other association with this name.

Ten or more founding members should make one notarized and one non-notarized photocopies of their (updated, if necessary) identity cards (B.I.). Note here that many rural women, in particular, do not have identity documents and may need assistance in order to acquire these. A list of these founding members should be written and the signatures notarized. A letter on legal paper (25 lines) requesting recognition as an association should be written, and sent to:

- the Governor of the Province, if the activities of the association are restricted to one province; or
- the Ministry of Justice, if the activities of the association take place in more than one province.

The *Certidão Negativa do Nome*, a copy of the statutes of the association, notarized photocopies of the identity cards, and the notarized list of signatures should be attached to this letter.

Each founding member should also submit an *Atestado de Registo Criminal* from the Civil Identification Archives in Maputo.

However, this legal requirement may be informally waived by some provincial governors. The attestation is valid for only 90 days and, therefore, generally becomes invalid prior to the completion of the legalization process. The above documents should all be submitted either at the Governor's Office or at the Commercial Registry in the capital of the province in which the association headquarters is located (this varies according to the province).

If the documents are submitted at the Commercial Registry, the Registrar has 30 days to confirm the validity of the association Statutes, which will then have each page stamped, and will be passed directly (or via the applicants) to the Governor's Office. When so authorized by the Provincial Governor, *valores postais* of approximately 300 MT should be paid at the Post Office, and the receipt returned to the Governor's Office.

Recognition of the association should be given in writing within 45 days. If recognition is refused, the reasons for refusal must be stated in writing. Non-notarized photocopies of the identity cards of the founding members, the letter of recognition of the association, the *Certidão Negativa do Nome*, and a copy of the Statutes should be filed at the *Escritura Pública* in the Notary's Office. A fee of 600 – 1,000 MT must then be paid (the value depends upon the total assets of the association).

If the documents were submitted directly to the Governor's Office, rather than the Commercial registry, one member must then defend the Statutes of the association. If the Statutes are in order, the founding members then sign the deed of the Law of Association, and a value [not specified] is paid per signatory.

The Governor's Office is then responsible for publishing the letter of recognition and the statutes of the association in the *Boletim da República*.

4.1.3 Agricultural associations

The state has simplified the procedures for the formation of local agricultural producers associations, and decentralised the authorisations for such, through Decree 2/2006. This permits

the legalisation of associations at district or administrative post level (previously required from provincial level), and has reduced the costs of doing so.

Some further advantages of this model is that formal identity cards are not required, if the founding members can obtain a written confirmation of being a resident from the *Chefe do Posto Administrativo*. By all accounts, this model is proving to be a cheap and easy way of establishing an association.

The associations have legal personality and can acquire DUAT rights in their name. Associations can benefit from a reduction in the annual land taxes payable against DUATs awarded by the State; alternatively, associations may also be able to register and delimit the DUATs acquired over land that its members have been occupying.

4.2 Cooperatives

A new Cooperative Law (*Lei Geral das Cooperativas*) was published as Law 23/2009 in September 2009, and entered into force in March 2010.

The new law provides the legal framework for a new generation of farmers' organisations, but applies to all types of cooperative enterprises (Article 1). The law is based on a notion of cooperatives *as both social and economic entities*; in the sense that they are simultaneously social associations and businesses, constituted by a group of people who pursue economic, social and educational objectives through an economic enterprise.

The following provides an overview of the main elements of the new framework for cooperatives in Mozambique:

- Cooperatives are autonomous and independent, based on the voluntary association of the members, and under their democratic control. The members are obliged to contribute to a basic capital stock and in terms of goods and/or services towards an economic activity for mutual profit.
- “Cooperative acts”, that is, operations or transactions between the cooperative and its members, are not considered as “market transactions”, and are therefore not taxable (Article 6). The cooperatives can, on the other hand, also enter into operations with third parties (for example buying products for marketing) as a complementary activity, but these transactions are to be considered “market transactions”. They must be kept in separate accounts (Article 5), and are in principle taxable.
- At the same time, the cooperatives can (Article 9), require that their members only realise transactions with the cooperative in the area that constitute the objective of the cooperative (for example marketing of produced grains and legumes in a farmers' sales cooperative).
- Cooperatives can both acquire property (including land) and raise loans. They can also join other business entities in partnerships to carry out economic activities as an association, consortium or joint venture (Article 9).

4.2.1 The establishment process

A cooperative is established by means of an enterprise contract (Article 10). Article 13 in the Law specifies what such a contract must contain. Cooperatives do not, in contrast to

associations, need previous authorisation from the Government be established.⁷ The following are the key elements involved in establishment of a cooperative:

- A cooperative needs an initial capital stock (capital social), with an initial minimum capital amount to be decided in the statutes of each cooperative (Article 15). Based on this, each cooperative member needs to subscribe to a minimum capital entry, and receives the equivalent capital bonds (*títulos de capital*).
- The cooperative's statutes can, however, also open up for capital entries proportional to the economic activities of each cooperative member (Article 18). This capital can be raised in cash, but also in the form of assets, rights or services (up to 50% can be non-cash). The flexible capital requirements are aiming to facilitate the formation of cooperatives in rural areas where access to capital in cash may be very limited (cf. Article 20).
- The members' capital bonds, which together are represented in the capital stock of the cooperative, have a nominal value decided in the cooperative's statutes. Each cooperative has a Social Fund (*Fundo Social*) which is constituted by the (initial) capital stock, in addition to e.g. earned interests on loans, retained surpluses, profits from operations with third parties (cf. Article 5) added over time.
- Admission to a first tier cooperative (*cooperativa de primeiro grau*) is open for all persons, singular or collective, who develop and/or are qualified to develop the activities pursued by the cooperative (this also applies to collective members). All members must further meet the legal requirement of the Law and the conditions specified in the statutes of the cooperative (Article 29).

So essentially the cooperatives are established through an enterprise contract that may be entered into by means of a written document signed by at least the minimum number of members required for the establishment of a cooperative, with signatures recognized by a competent authority, and it must be entered into by public deed.

The enterprise contract must contain:

- the identification of the members and of those granted the power to act as their representatives;
- the name of the cooperative;
- the objective and the branch of activity it belongs to, or is integrated in, in case the activity covers more than one branch;
- the social headquarters;
- the date on which the enterprise contract has been signed;
- its duration in case it is not for an indeterminate period of time;
- the initial capital of the cooperative, indicating the minimum capital to be subscribed by each cooperative member and the value of the capital bonds whenever these are issued, plus the way and term of their realization;
- the conditions of admission, suspension or exclusion and dismissal of the cooperative members;

⁷ A producers' cooperative (a first tier cooperative) must as a minimum have five members, while there is no upper limit regarding membership. Second-tier cooperatives are constituted with first-tier cooperatives as members; and they must as a minimum have two members (Article 11).

- the rights and obligations of the members;
- the sanctions and the norms of their application;
- the duration of the mandate of the social organs;
- the norms of convocation and functioning of the general assembly;
- the norms of functioning of the direction and the supervisory board;
- the social organs of the cooperative and their respective composition;
- the rules concerning the distribution of surpluses, the creation of reserves and the restitution of entrance-money whenever this takes place;
- the way to alter the statutes;
- the process of dissolution, liquidation, sharing and destination of the cooperative's assets, in any one of these cases.

4.2.2 Benefits for members

- The general assembly of the cooperative (*Assembleia Geral*) can decide to pay interests on the capital bonds when there are surpluses on the business operations. The surpluses of the operations of the cooperative may be distributed among the members, but only after compensation for losses from previous operations has been paid, and after the cooperative's own reserves have been re-established (Article 79).
- The capital bonds (*títulos de capital*) of a member are in principle transmittable, but only after the issue has been discussed by the General Assembly. The capital bonds can only be transmitted to a cooperative member, or to a person fulfilling the requirements to become a member, and soliciting his/her admission to the cooperative (Article 22).

4.2.3 Management issues

- The *Directiva* manages the cooperative. It must be composed of a minimum of 2/3 cooperative members (Article 57). In a cooperative with more than 30 members, the *Directiva* must have at least three members: one Chairman (*Presidente*) and two ordinary members (*vogais*). If the cooperative has less than 30 members, the elected *Directiva* consists of, as a minimum, one Chairman (and his/her appointed deputy). The *Directiva* can, with the aim of securing a professional and effective management, contract managers with special technical or commercial competence and delegate to them management powers, with the exception of those areas that according to the Law are reserved for the democratically elected social organs.
- The role of the Supervisory Board (*Conselho Fiscal*) is to regularly supervise, control and monitor the management of the cooperative (Article 62). If the cooperative has more than 30 members, the Supervisory Board must consist of (at least) three members.
- Article 82 of the Cooperative Law provides for the transformation of existing producers associations (*associações de produtores*) into modern cooperatives if they comply with the requirements established in the law. On the date of such a transformation, the accounts of the association have to be closed, and the assets and properties of the association are then transferred into the capital stock of the new cooperative. Article 82 of the new Cooperative Law is thus clearly intended to facilitate the transformation of e.g. farmers associations into modern cooperatives.

Table 1: Features of legal entities

Form of legal entity	Features & main legal steps
Associations	<p>Legally recognised by all parties</p> <p>Can enter into contracts</p> <p>Must be non-profit</p> <p>Steps:</p> <ul style="list-style-type: none"> – Develop statute of the association; – Present the required documents to the Conservatoria dos Registos Notariais such as, negative certificate, criminal certificate and photocopy of the IDs for the 10 founding members – Submit a formal request for recognition (Requerimento) to the governor – Publish a registered version of the statutes in the Boletim da Republica. – After the publication the management board should make a definite registration of the association at the public notary or commercial section.
Agricultural associations	<p>Legally recognised by all parties</p> <p>Can enter into contracts</p> <p>Must be non-profit</p> <p>Steps:</p> <ul style="list-style-type: none"> – Develop statutes of the association – Present the required documents (BIs or proof of residence issued by district/administrative Post to the District or Administrative Post authorities – Agricultural associations obtain legal personality by recognition by the administrative authorities, who are then obliged to publish the statutes in the Boletim da Republica, at their cost.
Cooperatives	<p>Legally recognised by all parties</p> <p>Can enter into contracts</p> <p>Can be profit-making</p> <p>Can acquire property and other rights that ensure the development of their activities</p> <p>Can use assets and services by other cooperatives, in a spirit of mutual assistance</p> <p>Can raise loans and undertake other financial operations</p> <p>Can join other entities for the development of economic activities, through partnership contracts, consortiums and other ways.</p>

Form of legal entity	Features & main legal steps
	<p>Steps:</p> <ul style="list-style-type: none"> – Establish initial capital stock (capital social) – Each cooperative member needs to subscribe to a minimum capital entry, and receives the equivalent capital bonds (<i>títulos de capital</i>) – Establish the enterprise contract through public deed – Register at Office for the Registry of Legal Entities – Coops obtain legal personality by registering their establishment (while they produce effects for third parties after the publication of their Statutes in the Bulletin of the Republic)
CGC	<p>Legally recognised by state only</p> <p>Cannot enter into contracts with 3rd parties</p> <p>Steps:</p> <ul style="list-style-type: none"> – Develop a document that records the formation of the CGC and hold a meeting to attest this – Develop a document that states the basic roles, responsibilities and procedures of the GCC – Registration at district level

5 Partnerships and the sharing of benefits

5.1 Introduction

There is no specific list of legal or financial requirements for the establishment of a partnership in the broad sense of two parties coming together with shared interests to undertake jointly a business venture. Private parties wishing to enter into a joint project or undertaking will often set out their objectives and respective rights and obligations in a contract document to provide definition, clarity and to avoid disputes. This procedure is not governed by statute, although the Mozambican Civil and Commercial Codes have provisions that set out general principles governing contracts and can provide a useful complementary or supplementary reference since under the Mozambican civil law system, a written instrument is not a requirement and the rules and principles governing relationships as set out in the Codes apply, notwithstanding the lack of such an instrument or the omission of a particular provision.

This section of the Guide looks at the different forms of partnership and mechanisms for the sharing of benefits.

5.2 Benefits from the payment of fees and fines to the state

5.2.1 The legal basis for the channelling of benefits from fees and fines paid to the state

The Forestry & Wildlife Law provides a legal basis for the payment of some benefits to local communities as result of the commercial exploitation of any forest resource or fauna in their area. As we have noted, under the law, 20% of all annual fees arising from the issuance of timber-cutting quotas to commercial operators must be returned to the community living in the area where the exploitation has been licenced.⁸

The return of 20% applies to amounts from the proceeds of the payment of the following fees:

- The annual fee paid for a forest concession (*taxa anual de concessão florestal*);
- The annual fee paid for a hunting concession (*taxa anual de cessão de exploração das coutadas*);
- The fee paid for the killing of a game animal (*taxa de abate de fauna bravia*);
- The quota fee paid for the exploitation of forest products (*taxa de corte de recursos florestais*);
- The entrance fees to National Parks and Reserves (*taxa de acesso nos Parques e Reservas Nacionais*);
- The annual fees paid for tourism concession (*taxas de exploração de zonas de eco-turismo*);

⁸ Community members who have participated in denouncing any offense under Law 12/2002 also have a right to receive a percentage of the fine due; rules for payment of a percentage of this amount to the individual concerned are contained in specific legislation. For purposes of this Guide, we will deal only with the 20% of the stumpage fees paid to the state.

5.2.2 Mechanisms for receiving the funds

The payment of these amounts is made to the CGC of a particular community (see Section 3 above).

The CGC must open a bank account and provide the account details to the licensing authority. This may be the Provincial Services of Forestry and Wildlife (SPFFB), the District Administration, the Provincial Directorate of Tourism (hunting zones and eco-tourism licenses) or the administration of the national Parks and Reserves.

The CGC can open the account in any branch of any of the commercial banks. For the purpose of opening the account, the subscribing members must present valid identification documents (which can be a BI, passport or voting card) and provide a signature. The CGC must present proof of the registration from the local government or licensing authority as part of the process of opening the account.

The licensing entity should then make a transfer of the benefit payments once every three months.

Movements and management of this account must follow the same rules laid down for the operation of government accounts. That is, the account of the CGC must be operated through at least three signatories drawn from the committee members. This means that a cheque can only be drawn against the account if there are three signatures.

No bank branch?

- the CGC may request in writing to the licensor the payment of goods or services to others, against their invoices or other supporting document
- Article 38, para (m) LOLE - the district administration may be the 'host' of the funds of the community

5.2.3 The administration and use of the funds

Since these are state funds, the accounting of expenditure by the CGCs must be compatible with the system defined by the Ministry of Planning and Finance. The treasurer of a CGC is therefore obliged to use statutory formats to record incoming and outgoing cash and to report on these on a quarterly basis to the licensor.

The community may also have other financial resources, received from partners or funds obtained from the sale of any product or service. To avoid confusion in the process of accountability, it is recommended that the account for the 20% is established and used only for that purpose, and that the CGC should open a separate account for funds from other sources. The accounting system can be the same, if donors do not impose other formats.

5.2.4 Allocation and sharing of the funds

There are a number of different situations in which the 20% of tax revenues may need to be apportioned – these are described below.

Community area which encompasses one or more companies

In sparsely populated areas, the community area may accommodate the operation of more than one company. This represents the simplest case of shared benefits, illustrated in Figure 2 below. In this case, a single community receives 20% of the total fees paid by the two companies.

Figure 2: A community with more than one commercial forestry operator



Figure 3 shows a slightly more complicated example, where the community receives benefits from two distinct licensing entities, in this case the SPFFB and the DPT. Here the CGC can still in theory maintain a single account for the amounts received from both sources and submit two copies of the accounting forms, one for each licensing entity. But where the licensing authorities use different financial systems, a CGC may be forced to operate two separate bank accounts.

Figure 3: A community with a commercial forestry operator and a safari company



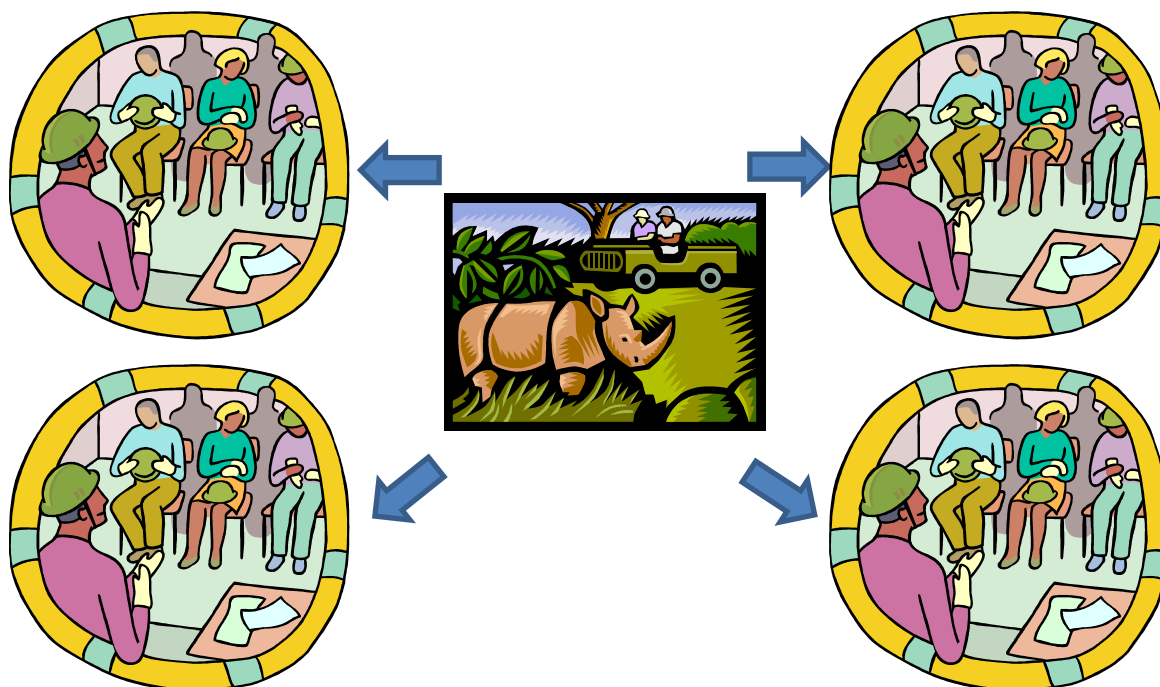
A company in an area of several communities

This case is more common in areas that are more densely populated, where communities have defined themselves at a lower level of the traditional hierarchy (at the level of a *sapanda*, for example, rather than for an entire *regulado*)⁹ or where the 20% is arising from the payment of fees in respect to a very large area (for example, the National Parks or some forest and hunting concessions).

⁹ *Sapanda* is the local term in some areas for 2nd tier traditional leaders. The term may be different according to the region. A *regulado* refers to the area over which a *regulo*, the 1st tier traditional leader, has jurisdiction.

In these situations, the sharing of benefits has a number of implications and possible mechanisms. Figure 4 illustrates the situation.

Figure 4: A safari company operating in the areas of a number of different communities



In this case the 20% of the amount paid by the company can either benefit all communities involved equally, or be apportioned on a proportional basis. There are different approaches to this; in the Gorongosa Park, and with some forest concessions, the payments are equally divided. In others there is an apportionment according to the relative area of each group. The value of delimitation processes, to establish relative use/benefit rights, in this context is obvious. It also highlights the usefulness of GIS systems and clear maps.

Where the concessions are potentially short-term, there must be a CGC in each community and an account for each community. In this case, the sharing arrangements must be established by each CGC involved, based on community consultations. In the case of concession areas in which the company will remain for a long period, or in respect to the National Parks and Reserves, there are two further options:

- Rotation of benefits: a rotation of benefits is agreed upon according to an annual or quarterly schedule and the licensing entity pays to each CGC in turn;
- Creation of a single CGC: in this case the different communities decide to form a single unit by creating a single CGC with members elected by each community. It is this CGC that will be registered as a committee representing the interests of the different communities and the money will go into a single account. It will be up to the CGC to set the rules for the use of funds, according to principles of equality and transparency that enable all the communities involved to benefit from and monitor the payments.

5.3 Benefits from private contracts and agreements between communities and investors

5.3.1 A potential approach to securing land rights in the context of a partnership

Notwithstanding the challenges highlighted above, this section proposes a potential approach to securing group land rights that permits the establishment of partnership arrangements based on the use of that land by private sector entities. It is untested and would need to be piloted and documented. Lessons learned from attempting this approach could be fed into the ProParcerias process, with a direct impact on policy development and lesson learning.

The approach assumes a number of pre-conditions, which would obviously have to be established as part of the facilitation process:

- A community is in agreement that their land ought to be delimited with a view to negotiating the rental of a part of that land to an outside investor, through a partnership arrangement.
- The community is able to identify the area of land that they are willing to cede on a temporary basis in return for receiving a rental payment of some form, which payment would accrue to the community as a whole.
- The community are in agreement that, because the area of land will be used for commercial purposes, there is an obligation to pay the annual land taxes to the state in respect to that piece of land. The community further agree that the payment of these taxes is their responsibility, since the use rights to that land are legally recognised by the state as belonging to the community.
- There is an investor willing to access land through a partnership arrangement with the community, or a subset of members of the community, that is in the nature of a rental agreement for a fixed period of time. At the lapse of that agreement, the investor would need to understand that the land use rights over that land, and any infrastructure on it, would revert to the community as a whole.
- The investor is willing to establish some form of legally-recognised joint venture that guarantees a minimum quota-holding by the community members.

If these conditions are met, then the steps involved in this potential approach would be as follows:

- The community as a whole undertakes the delimitation of their land, which would be certified through the issuance of a document recognised and signed by the SPGC office of the relevant province.
- The delimitation process would need to involve the identification of the area which the community are willing to cede to the investing entity. The identification of this area would need to be sufficiently well-documented (a *planta* and *memoria descriptiva*) to permit its inclusion in a subsequent contract that would be witnessed and notarised (*escritura publica*). This means that the process for identifying this piece of land would need to approximate the technical specifications of the demarcation process rather than those of the delimitation process.
- The joint venture between the investor and those members of the community that wish to participate would need to be legally established. This will be the investing entity that

manages the commercial operation on the land and would therefore need to have an appropriate legal form to enable it to apply for all future necessary licensing, etc.

- A contract for *cessão de exploração* over the particular area of land would need to be entered into between the investing entity and the community as a whole. Article 15 of the Land Law Regulations specifically allow for a local community to issue a contract of *cessão de exploração* as long as all the members of the community consent to the arrangement. A mechanism to ensure and document this consent will need to be established. This may require the establishment of a legally-recognised association (but not merely a CGC) that represents the interests of all members of the community.
- The Land Law Regulations, in article 15, also stipulate that the contract of *cessão de exploração* must satisfy two conditions:
 - it must be submitted for prior approval by the entity that originally recognised the underlying land right, which in this case would be the SPGC office that issued the certificate of delimitation
 - it must be celebrated through a public deed
- The contract of *cessão de exploração* must also contain a clause that ensures that the community accepts the obligation to pay the annual land tax to the state in respect to the land in question. This amount can be offset by the amount paid as a rental by the investing entity to the community.
- Once the contract of *cessão de exploração* has been authorised and executed, the investing entity would be able to take up the use rights to the land. Any activities on the land would need to be expressly permitted by the contract of *cessão de exploração*. In addition, there may be a number of licences (e.g. a construction license) that would need to be applied for in the name of the community (as the holder of the underlying land use rights) rather than in the name of the investing entity – if this is indeed the case, the investing entity can assist the community to complete this process.

5.3.2 Business models

A business model is the way by which a business creates and captures value within a market network of producers, suppliers and consumers. It refers to what a company does and how it makes money from doing it. The basic elements of an inclusive and sustainable agricultural business model are:

- It refers to a way to do business where poorer segments of society have a direct benefit, typically smallholders, but also agricultural workers (possibly landless labourers);
- Businesses working with small-scale producers mainly focus on securing supply and reducing costs;
- Engagement with smallholders can be completely led by commercial drivers or triggered by corporate social responsibility or ‘shared value’ concepts. Also, more negative drivers like avoiding conflict with local communities, or fear of negative consumer response, can be behind such business behaviour;
- Nowadays, inclusive business models are positioned in a value chain context – the way the flow from production to consumption is organized influences whether certain business models can work or not.

Who is to be included need to be specified in order to sustain the claim that an investment is inclusive(i.e. smallholders, women, landless labourers, small enterprises, youth, disabled people, the urban poor, etc.). In inclusive investments the position of those directly benefitting from an investment needs to be reviewed from four main angles:¹⁰

- Ownership: who controls the business and key assets related to the enterprise?
- Voice: who takes what decisions and how?
- Risk: who carries what risk?
- Return: how are costs and benefits shared among stakeholders?

5.3.3 Value Chain Approach

Nowadays, a value chain approach to agricultural development is very common. In looking at this approach, there are some important things to bear in mind:

- There should be a focus on opportunities available in domestic markets, rather than export: the bulk of agricultural production in developing countries is for domestic use, while food demand is on the rise and international food markets are becoming increasingly volatile;
- Experience in Mozambique has shown that small holder production can double and incomes increase by 50% to 100% merely through ensuring secure market access and addressing a few key technological issues, such as improved seed and better post-harvest handling ;
- Indirect effects are important, not only increased sales from smallholders: consider also the creation of employment for unskilled workers and the increased availability of lower costs, better food for poor consumers, etc.;
- Pay attention to post-harvest losses: post-harvest losses are estimated to be between 15% to 50% in developing countries, especially burdening poor consumers who lack food preservation and safe storage;
- On-farm natural resources conservation can enable and benefit from smallholder participation: increased output required to meet growing food demand can only be sustained with increased labour, energy, land and water productivity.

5.3.4 Contracts of “Cessão de exploração”

The *cessão de exploração* is essentially the time-limited assignment of a use; it can be best thought of as a sub-lease of a property as a legal unit, i.e. a transaction whereby the owner of the establishment/property gives to others (temporarily) and for consideration, the enjoyment and use of the property.

The possibility of entering into a *cessão de exploração* contract is explicitly mentioned in the Land Law. It allows for the holder of a titled DUAT over a particular piece of land to celebrate a sub-lease of all or part of that land with a third party. It is a sub-lease in the case of Mozambique because the owner of the land is the state and the main lease is between the DUAT holder and the state.

¹⁰ IIED (2012) Farms and funds: investment funds in the global land rush

The only restriction that applies to the *cessão de exploração* contracts is that they need to be authorised by the state before they can come into effect. If it is a delimited community that wishes to sub-let some of its land, the authorisation can come from the Provincial Geography & Cadastral Services. There is no legal recourse if the permission is refused; the community would have to petition the political authorities for a resolution to this problem.

5.3.5 Purchase of shares by community entities in commercial ventures

A community group could, instead of renting land, decide that it wanted to take a risk and opt to buy shares in the commercial venture that intends to use the land. In the land development business internationally, usually the land holder gets a 10% non-dilutable share. There are also clauses in the shareholders' agreement about percentages that can be paid for managers and director's fees, sitting fees, etc. to avoid legal fiddling of the books. And then there must be 'tag along' and 'come along' clauses to ensure that the selling terms for the minority and majority shareholders are the same, and that the minority shareholder does not get stuck in a partnership that he/she does not desire.

Often a mixed approach is best, because communities have difficulty understanding that investments can take years to start paying dividends. Many times profit is only realised when the company is sold.

One of the great flaws evident in most consultations is that communities give rights to land which have little value when undeveloped, but high value after development (lands are not bought and sold but infrastructures can be). Investors get islands for 5,000 USD and, after 2 million dollars of investment over 5 years, sell for 8,000,000 USD (actual case from Cabo Delgado- Quilalea). The idea here is to capture some of that value for communities. Often, however, this value is only realised at the moment of sale, so a percentage shareholding plus some annual fee that the investor can pay for. This is good for the investor because these can be performance linked and elicit the behaviour he wants as well. For example, for a tourism project the deal might look like:

10% undilutable shareholding

Cooperation contract: communities agree to not beg, control influx of population in the immediate area, voluntarily zone the beach for relaxation (swimming and sunbathing) and work (fishing and boatbuilding) areas, no timber cutting or noise or environmental damage within 1 km of project (etc., depends on what the investor wants) in return for payment of a fee of 3% of gross billing. Penalties can be applied per incident by a joint committee to ensure good relations.

As there are a lot of different kinds of investments it really takes businessmen and lawyers to sort out each case, In the case above for example, 3% of what? A big hotel may receive most of its payments overseas. In this case, the community will need to know the rack rate and number of bed nights sold, add the activity and restaurant fees, and do the math. This may be difficult. In this case it may be easier to apply a head fee, or a straight fee for services indexed to salary inflation of the investor's company. Fees for services have the advantage of starting immediately and not waiting until tourists actually arrive or mining begins.

Now, the reason that the community need the business plan (or at least the investment plan) is so that they and their advisors can suggest the best mix of benefits, the easiest to monitor and control. But there ought to be a mix of shareholding and fees as described above.

5.3.6 The establishment of out-grower schemes

The system of contract farming, commonly referred to as an outgrower scheme, normally involves a range of activities undertaken by a private agribusiness processing or marketing

company in order to secure access to smallholder produce. The company provides services to farmers and in return receives access to some or all of the farmers' produce.

Out-grower schemes typically involve the provision of inputs (seed, chemicals, fertilizer) on credit, often with extension advice, but may also include a range of other services, such as ploughing, crop spraying, provision of packaging materials, and transport of the produce. Costs are recouped when the produce is sold. Most importantly, the schemes provide smallholder farmers with an assured market for their produce.

The most common inclusive business is the outgrower scheme or contract farming. From the perspective of commercial farmers, the business case in favour and against procuring from small-scale producers is as follows:

In favour:

- Smallholders have some comparative advantages (premium quality, access to land)
- Secures supply in volatile markets, spreading portfolio geographically, reducing risk of undersupply, as well as localised pest and disease problems
- Creates new businesses and clients for other products and services
- Makes new technologies available (efficient low scale processing equipment, information technologies for coordination and lower cost)
- Capacity to ramp up or ramp down production without incurring fixed costs (contract farming)
- Less staff and labourers to manage
- Provides access to donor assistance
- Responds to corporate responsibility, gaining goodwill from community

Against:

- Costs and risks in organizing supply from dispersed producers: varying quantity, quality, and consistency;
- Risks of unsafe production (misuse of chemicals, traceability, compliance with standards)
- Risks of disloyalty and in fulfilment of commitments by farmers (side-selling);
- Long negotiation time and consequent costs

It is useful to understand this perspective when helping a community engage in a contract farming model of some kind.

There are five different types of contract farming:

5.3.6.1 The Centralized Model

The most common form of contract farming is the centralized model, whereby the contracting company provides support to the production of the crop by smallholder farmers, purchases the crop from the farmers, and then processes, packages and markets the product, thereby tightly controlling its quality.

The promoter may work with tens of thousands of smallholder farmers. The centralized scheme is generally associated with crops such as tobacco, cotton, paprika, sugar cane and banana and with tree crops such as coffee, tea, cocoa and rubber.

The level of involvement of the contracting company in production may vary from just the provision of the correct type of seed, to provision of land preparation, seedlings, agrochemicals and even harvesting services.

In Africa, the contracting out of crops to farmers under centralized structures is common, and is usually referred to as 'outgrower' schemes. As an example, in Zambia the multinational corporation Dunavant contracts approximately 200,000 smallholder farmers, whereas the smaller private company Cheetah Ltd. contracts between 20,000 and 30,000 smallholder farmers annually in Zambia, Malawi and Mozambique.

The centralized outgrower schemes can again be divided into three distinct models:

- The processor employs its own field staff, mobilizing and managing the outgrower smallholder farmers;
- The processor uses local agents or other intermediaries, which work on the basis of a commission, and are the link to the outgrowers; or
- The processor is linked to cooperative societies or associations, which manage the individual member outgrowers.

5.3.6.2 The Nucleus Estate Model

Nucleus estates are a variation of the centralized model. In this case, the promoter also owns and manages an estate plantation, which is usually close to the processing plant. The estate is often fairly large to provide some guarantee of throughput (or volume of product sufficient to keep the plant running economically) for the plant. A common approach is for the contracting companies to commence a pilot estate and then after some time introduce to farmers (sometimes called 'satellite' growers) the technology and management techniques of the particular crop.

The nucleus estate model is mainly used for tree crops. Contrary to the centralized model where tens of thousands of farmers may be involved, the number of farmers linked to the nucleus estate model is usually much smaller. Depending on the particular crop, the focus may be more on emergent or semi-commercial farmers rather than on smallholder farmers.

In Mozambique, Lurio Green Resources are adopting this model in Mecuburi District.

5.3.6.3 The Multipartite Model

The multipartite model usually involves government statutory bodies and private companies jointly participating with farmers. Multipartite contract farming may have separate organizations responsible for credit provision, production, and management, processing and marketing.

5.3.6.4 The Informal Model

This model applies to individual entrepreneurs or small companies that normally make simple, informal production contracts with farmers on a seasonal basis, particularly for crops such as fresh vegetables, watermelons and tropical fruits. Crops usually require only a minimal amount of processing or packaging for resale to the retail trade or local markets. Material inputs, if any at all, are often restricted to the provision of seeds and basic fertilizers, with technical advice limited to grading and quality control matters. Financial investment is usually minimal. This model is the most transient and speculative of all contract-farming models, with a risk of default by both the promoter and the farmer.

In Mozambique, CLUSA have had some experience with this model through their work with farmers producing soya beans in Ruace and the linking of these farmers to chicken producers in Nampula, who purchase the beans as feed.

5.3.6.5 The Intermediary Model

Throughout Southeast Asia the formal subcontracting of crops to intermediaries is a common practice. Food processing companies and fresh vegetable entrepreneurs purchase crops from individual ‘collectors’ or from farmer committees, who have their own informal arrangements with farmers.

The use of intermediaries must always be approached with caution because of the danger of contracting companies losing control over production and prices paid to farmers by middlemen. Also, the technical policies and management inputs of the contracting companies can become diluted and production data distorted. In short, subcontracting disconnects the direct link between the contracting company and the farmer. This can result in lower income for the farmer, poorer quality standards and irregular production.

5.3.7 Alternative and complementary models

5.3.7.1 Ingrower and incubating schemes

The concept of ingrowers is as follows:

A commercial farmer with at least 100 hectare farm has the following infrastructures and facilities:

- (i) Training room;
- (ii) Mechanization, agricultural inputs, nursery, access to water/irrigation;
- (iii) Management and agronomic advice;
- (iv) Energy from the grid, storage (silos, cool rooms, packing house, processing plant;
- (v) Secure access to the market;
- (vi) Access to credit.

The commercial farmer produces a small quantity of the products for demonstration purposes, eventually multiplying seed using all the technologies and inputs available. Farmers produce on their own land under contract, whereas the commercial farmer brings in all available technology.

In an ingrower scheme the commercial farmer can overcome the disadvantages of an out-grower scheme, while the ingrowers can have more benefits (a “win-win” situation).

The ingrowing/incubating scheme is a variation, where internships facilities are created for young technicians from medium and high schools; here they can practice technologies that are not available in the schools and not affordable to students. By the end of one or two years the student has three options for his future:

- (i) to become an agricultural entrepreneur running his own farm, buying and installing basic facilities and technologies, and with more experience and own capital expand his farm;
- (ii) join a large commercial enterprise as qualified staff; or

- (iii) to become a private extension worker, providing advice and inputs (seeds, veterinary products, etc.) to smallholders and other emergent farmers.

5.3.7.2 AgriHubs

This is a cluster concept bringing together in a particular area, such as a district, all the players necessary for fully integrated value chains (input suppliers, advisory, commercial, emergent and small producers, processing, warehousing, logistics, research, etc.) sharing knowledge, experiences, infra-structures etc.

The concept is being implemented in Nampula Province (lead by UCODIN a provincial government agency in charge of integrated development (*Unidade Coordenação do Desenvolvimento Integrado de Nampula*), through an initiative called “*Maqui Centros*”, for grain production in Monapo and being prepared for vegetables in a different district. AGRIFUTURO is promoting a similar approach in Nampula province, working together with UCODIN and commercial companies.

5.3.7.3 The BAGC Model “3 Tier irrigated Farm Block”

A combination of commercial, emergent (> 5 ha each), and small farmers (0.5-1ha each) producing food crops and horticulture are sharing a natural resource (water), infra-structure (irrigation, energy, roads) and facilities (processing, logistics). Larger sizes of the smallholders plots are required in case of rice production.

Involvement of catalyst funds

IFAD is developing a project (PROSUL) that promotes innovative inclusive partnerships in the Maputo and Limpopo Corridors engaging commercial, emergent and small farmers. The project, yet in a formulation phase, will use outgrowing schemes and IFAD’s fund as seed capital to start-up commercial companies crucial to have fully integrated value chains. The project will hire value chain private organization facilitators at an outsourcing base.

5.3.7.4 PROIRRI

This programme uses an innovative approach where private organizations are contracted to promote and facilitate outgrowing schemes for rice, horticulture and others crops. Irrigation Service Providers (ISP), one for rice and another for vegetables will be contracted to facilitate (under an outsourcing base) all the activities necessary to make sure that fully integrated and sustainable value chains are in place. It is based on a clear business orientation and participation of commercial farmers and processing and logistic companies.

Annexes

Annex 1: Participatory map

Annex 2: Matrix for analysing potential impacts

Annex 3: Matrix for capturing potential issues for negotiation

Annex 4: Matrix for capturing agreements

Annex 5: Roles & Responsibilities

Annex 6: Rights & Duties

Annex 7: Memorandum of Understanding between NGO and licensing authority regarding the formation of CGCs

Annex 8: Minutes of the constitution of a CGC

Annex 9: Model Statutes for a CGC

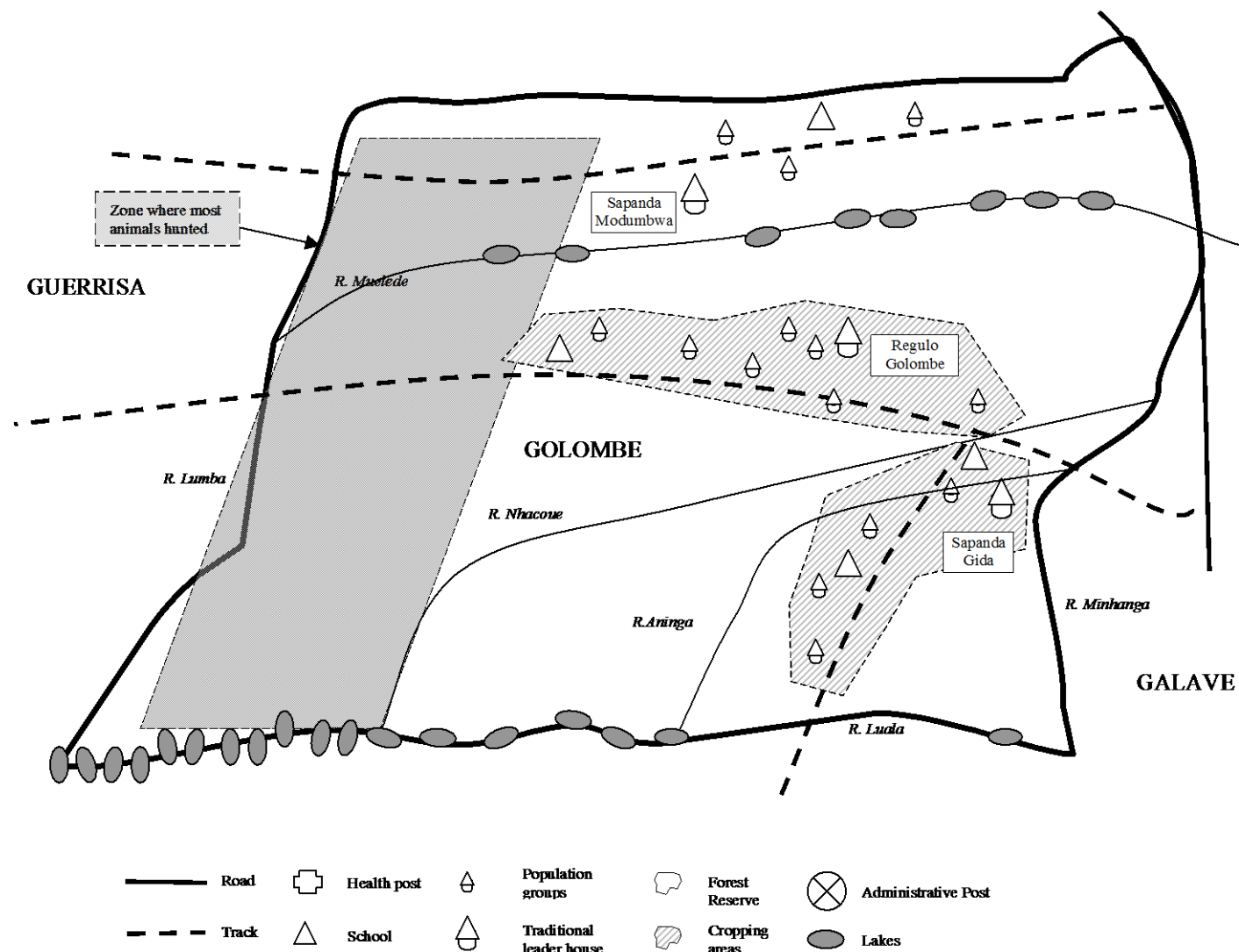
Annex 10: Model letters to request payment to a CGC

Annex 11: How the CGCs relate to other institutions

Annex 12: Some examples of contract farming in Mozambique in 2012

Annex 1: Participatory map

This is an example drawn by a community in Zambézia province, Mozambique.



Annex 2: Matrix for analysing potential impacts

This particular example looks at the potential impacts of a forest concession, but can obviously be adapted to analyse other kinds of proposals.

Impact	Rainy season			Dry season		
	Men	Women	Both	Men	Women	Both
Improved access into the area			😊			😊
Entry of strangers	😞	😊				😞
Use of heavy machinery			😞			😞
Employment opportunities	😊	😊		😊	😊	
Safety issues			😞			😞
Reduction of resource use			😞			😞
Reduction of land use			😞			😞
Access to markets			😊			😊

Key:

Positive 😊	Negative 😞	Uncertain 😐
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Annex 3: Matrix for capturing potential issues for negotiation

This particular example is in respect employment opportunities and the improvement of road access, but can adapted to other contexts.

Issue negotiated	Who?	When?	How or What?
Employment of labour	Applicant	Within x months of concession awarded	List of employment offered and number of people to be employed
Improving road access	Applicant & community. Applicant provides machinery and community provides labour	Within x months of concession awarded	Which access roads?

Annex 4: Matrix for capturing agreements

This is an example for agreements reached regarding employment opportunities, but can obviously be adapted for other kinds of agreements.

Agreement	Start date	Who chooses?	Training needed?	Training when?	Type of employment (FT/PT)?
Employ 3 community guides					
Machine operators to be employed					
Road builders					
Administrative staff					
Cleaning staff					
Technical staff					

Annex 5: Roles & Responsibilities

STAKEHOLDER	DURING CONSULTATION		AFTER CONSULTATION	
	Role	Responsibility	Role	Responsibility
Private investor	Applicant for resource user rights within an area traditionally exploited by local communities Commercial enterprise	Present plans for operation and activities to be undertaken and areas to be affected Define realistic socio-economic impacts based on capacity to implement	Source of assistance for implementation of agreed inputs Investor and developer - guarantor of provision of agreed benefits	Inclusion of consultation outcomes into MP short, medium and long term strategies Collaboration in M&E of social impacts. Establish and maintain effective community links Actively encourage cooperation with the community in planning and implementing benefits
Government	Facilitator / Mediator Provider of public services and planning Guarantor of legal compliance and protects legal rights and duties of all parties involved	Prepares and leads the consultation process Coordinates local socio-economic plans and wider government development plans Prepares the Minutes (Acta) of consultation process	Law enforcement M&E agency	Evaluate MP in light of proposed mechanisms for implementation and M&E of commitments made
Community	Traditional resource user Stakeholder whose consent determines the allocation of user rights to third parties Development target group	Identify traditional practices linked to resource use Identify areas of cultural and historical importance Determine main expectations and concerns in relation to impact of private investment Identify and prioritise needs	Stakeholder in the implementation process On the ground monitors	Commit to co-participate in addressing these needs and mobilize locally available resources Participate in M&E
NGOs(if present)	TA / Capacity building Facilitator / Mediator	To work with all parties involved in the process	Monitoring and assistance	Capacity building

Annex 6: Rights & Duties

Article	Duty	Article	Right
Forestry and Wildlife Law No 10/99 of 7 July			
		10	To have area that is of cultural use and historical value to be declared as a protection zone and to be delimited. See also article 7 of Regulations to the Forestry & Wildlife Law
		13	The right to use forest and wildlife resources in protection zones in accordance with the traditional norms and practices.
		17	The right to be consulted and to negotiate use and access rights before the issue of a forest concession.
		18	Protection of all third party rights and local community rights to access and use of natural resources, for own consumption, in a Forestry exploitation area for commercial, industrial or energy.
		21	Hunting by simple licence, for own consumption in multi-use forests and in the areas of use and historical cultural value areas.
		25	Right to hunt animals when defending people and their belongings, against actual or imminent attacks by wild animals if their capture or frightening away is not possible.
		31	The right of participation in Local management of natural resources councils.
		35	Local communities who are resident in a forest concession area have the right to a percentage of the fees from forestry and wildlife exploitation area. See also article 102 of Regulations to the Forestry & Wildlife Law
		37	The right to be part of the forestry resources policing.
		38	Community policing agents have the right to stop people at forestry and wildlife control posts.
		39	The right to a percentage of fines to be issued for transgressions to benefit the various intervenient parties in the process of policing and controlling of wildlife and forestry resources See also article 112 of Regulations to the Forestry & Wildlife Law
Regulations to the Forestry and Wildlife Law Decree No 12/02 of 6 June			
8	Access to resources Even if for own consumption should not prejudice the norms of protection and conservation	2	The right of consultation in proposals to create national parks and reserves

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Article	Duty	Article	Right
17	Licensing period To be done between 2 January to 15 February each year	5	Use rights of third party rights to be taken into account when determining the area of a buffer zone.
24	Cannot use precious woods classified as 1 st , 2 nd and third class, as well as species classified as rare, protected, or with a historical or socio-cultural value for charcoal and firewood unless the logs are deformed or cut incorrectly and cannot be used industrially	6	Right to participation in Management plan of protection zones
27(2)	When degradation has been caused by deforestation, fire or any other voluntary act, the person who has caused the damage is obliged to effect the recuperation of the degraded area in the terms and conditions to be defined in a specific regulation, independently of other civil or criminal proceedings which could arise.	15	Local communities can at any time exploit forestry resources for own consumption and are exempt from paying a fee for same. But these resources can only be carried within the administrative post in which the local community is resident.
27(3)	In protection areas, it is not permitted to transform the degraded area into another use area. This area should be recuperated to its previous condition.	16	Right to exploitation of natural resources for commercial, industrial and energy reasons by simple licence.
29(2)	He is for which ever reason has caused the decline of wildlife is obliged to effect the repopulation of the affected species, in the terms and conditions to be defined by a specific regulation, independently of any other sanctions that can take place	18	Right to be consulted before simple licence issued to third party.
37(2)	All citizens, and in particular the local management of resources councils, as well as licence holders shall collaborate in the necessary vigilance for the protection of forestry and wildlife resources and informing the closest authorities of any infringements	21	The licence for the exploitation of forestry resources in areas where the occupants have the right of use and benefit require consent of the titleholder, and partnerships can be established in the exploitation of these resources under terms which are to be agreed to by the parties
43(c)	Personal liability lies with the forestry and wildlife agent, accredited official and community agent which does not take the measures foreseen in the present law, its regulations as well as any other legal obligation he may have in collaborating in the exercising of vigilance and has not done so	26	Communities have the right to refuse to provide a favourable opinion in the application for the forest concession.
45	the hunter has to assume complete	27	Right to be informed of forest concession

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Article	Duty	Article	Right
	responsibility for any damage caused to third parties as well as any damaged caused by his assistants, companions, dogs, instruments and means of hunting used		applications and to complain regarding a forest concession application in the areas.
46(2)	cannot hunt during the period 1 October to 31 March	28	To participate in the formulation of the forestry concession contract
49	Special duties of hunters	35	Right to be consulted regarding forest concession and simple licence applications.
	hunt only the animals indicated in the licence	36	The right to be notified of the consultation 15 days prior to the meeting taking place.
	use instruments and means permitted in accordance with the licence issued	42	Right to request that the forest exploitation right is revoked when the rights' holder does not observe the terms and conditions established
	not abandon any injured animals unless they have escaped to a protection zone, buffer zone, coutada or game farm	52	Right to receive the meat of animals, when possible, that are hunted in the area by hunting guides 52(1) rights of hunting guides are:-
	not to destroy nests of birds, reptiles or eggs	62	Community hunting areas are considered as:- hunting in areas of historical cultural value; hunting in areas of multiple use hunting in official coutadas hunting in productive forests
	cannot create a line of more than 6 hunters	63	Community hunter has the right to hunt to but has to be recognised as such.
	cannot transport animals which have been cut up in such a way that it is difficult for policing agents to recognise the species or gender of the animal	64	Community hunters have the right to be issued with a Model E Licence for hunting small game for own consumption and are exempt of paying fees.
	cannot transact in animal remains whether they are green or dried, except in legal exceptions	72	The remains of animals that are hunted and killed whilst protecting people or goods, when considered safe for consumption shall be distributed for free to local communities, after a portion is removed for the people involved in the hunt.
	use all means to not abandon injured animals especially those species that are considered dangerous	95	Right to participate in the management of forestry and wildlife resources. COGEP
63	Community hunters shall observe all the duties that are foreseen in article 49 and especially ensure the protection of the communities against attacks to people and goods by wild animals	97	COGEPs have the right to propose the cancellation or the revocation of a particular project when it is verified that it does not fit in with the real provisions of rural development or sustainable use of forestry or wildlife resources
68(1)	the requirements for killing an animal in defence of people or goods are as follows:	98	COGEPs have the right, when requested, to represent the interests of its members viz local communities, private sector, associations and

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Article	Duty	Article	Right
	an actual or an imminent attack the impossibility of chasing animals away		organisations to the State towards the interest of these in the management, conservation, exploitation and in obtaining benefits resultant there from
		102	Right to financial benefits for local communities established at 20% of the fees from forestry and wildlife exploitation area
		108	Right to involvement in the controlling process ascertained
68(2)	an actual attack is considered where one or more animals are following or attacking people or goods and an imminent attack means where one or more animals is moving towards or entering a property or home with strong indications that they could attack people or goods which exist there	112	50% of the amounts raised from each fine shall go to the Forestry & wildlife officials, and community agents who participated in the process as well as local communities or any citizen which had denounced the infraction.
68(3)	impossibility of chasing animals away shall refer to dangerous animals or if not dangerous animals those that are not moving after use of normal chasing away techniques		
68(4)	goods and human life are crops, domestic animals, homes, vehicles and other specific goods of economic or social value		
Environmental Law No 20/97 of 1 October			
23	Any person which verifies violations to this law or any other environmental legislation, or which reasonably presumes such violations are imminent has the duty to report same to the police or any other administrative agents who are closer to the fact.	13	Right to participate in the management of environmental protection areas.
		21	Right to access of justice:- any citizen who believes that his rights, in terms of this law have violated any person who as a consequence of a violation of the provisions of the environmental legislation, suffers any personal offences or damage to property, including the loss of crops or profits can judicially process the causer of the damages or the offence and demand repairs or reparation.
		22	Those that believe that their rights to an ecologically balanced environment are violated can request the immediate suspension of the offending activity

Water Law No 16/91 of 3 August			
22	Cannot alter the quality of the water or its natural flow.		

Annex 7: Memorandum of Understanding between NGO and licensing authority regarding the formation of CGCs

Memorando de Entendimento entre a Direcção Provincial da Agricultura de [Província] e [nome de organização]

Contexto e justificação

Em 1999 quando foi aprovada a Lei de Florestas e Fauna Bravia (Lei 10/ 99) ficou assente e fundamental o envolvimento das comunidades locais residentes nas áreas de extração dos recursos florestais e faunísticos, contanto que estas participem no controlo, maneo e protecção destes recursos naturais;

É assim que nos termos do artigo 35 da referida lei, previu-se que determinada percentagem dos valores resultantes da exploração destes recursos deveria beneficiar as comunidades locais.

Assim, o Regulamento da Lei de Florestas e Fauna Bravia (Decreto 12/ 2002), fixou no seu artigo 102, em vinte por cento (20%) a percentagem dos valores destinados ao benefício das comunidades locais, resultantes das taxas de acesso, exploração e utilização destes recursos, nos termos já preconizados na lei.

A agilização na implementação da Lei de Florestas e Fauna Bravia e seu Regulamento, no que concerne a canalização dos benéficos derivados da exploração para as comunidades, resultou na aprovação em 2005 do Diploma Ministerial 93/05 que fixa os mecanismos de canalização e de utilização dos valores assim consignados.

No entanto, nota-se em quase todo o país a falta de experiências na implementação no terreno do referido Diploma uma vez aprovado em Março de 2005. Os esforços com vista à implementação do Diploma ao nível do país no geral e da província em particular têm chamado a atenção ao envolvimento de todos os sectores da sociedade (instituições do governo, ONG's, instituições de ensino e pesquisa, etc.) com vista a tornar realidade o preceituado nos instrumentos legais aprovados pelos órgãos do Estado.

[nome de organização] é uma organização **[descrição de organização]**

É nesse âmbito, que a Direcção Provincial da Agricultura de **[Província]** e **[nome de organização]** procuram juntar esforços através do presente Memorando de entendimento com vista a tornar realidade o preceituado no Diploma 93/05 e demais legislação aplicável em Moçambique sobre o acesso e utilização dos recursos florestais e faunísticos pelas comunidades.

Assim, as partes comprometem-se a trabalhar lado a lado nos seguintes aspectos:

1. Direcção Provincial da Agricultura – Serviços Provinciais de Florestas e Fauna Bravia
 - Fornecer toda informação referente à identificação das comunidades beneficiárias, os montantes em dinheiro consignados para cada comunidade no âmbito do Diploma incluindo a lista dos operadores florestais para cada época de actividade florestal no (s) Distrito (s) de interesse do/da **[nome de organização]**;

- Manter informada as autoridades locais sobre todas actividades a serem realizadas no âmbito do presente Memorando de Trabalho incluindo facilitar os encontros com outras instituições do governo e ONG's, em caso de necessidade;
- Promover, ou em parceria com outras instituições, o estabelecimento dos Comités de Gestão referidos no Diploma ao nível das comunidades beneficiárias;
- Promover, ou em parceria com outras instituições, o treinamento dos Comités de Gestão incluindo fazer o acompanhamento das actividades realizadas no âmbito da implementação do Diploma 93/05 ou outras actividades na área de manejo comunitário dos recursos florestais e faunísticos.

2. **[nome de organização]**

- Junto às autoridades locais e comunidades divulgar o conteúdo do Diploma 93/5 e discutir as modalidades práticas da sua implementação segundo o contexto local;
- Estudar os mecanismos de flexibilização do Registo das Comunidades beneficiárias junto às administrações locais (Postos Administrativos ou Distrito);
- Junto aos Conselhos de Gestão estabelecidos no âmbito do Diploma 93/05, identificar áreas e necessidades de treinamento com vista ao aproveitamento integral das receitas decorrentes do Diploma;
- Avaliar o impacto da implementação do Diploma 93/05 nas comunidades beneficiárias com especial destaque para (i) as mudanças do nível de vida verificadas nos agregados de família, (ii) mudança de atitude em relação a conservação e utilização dos recursos, (iii) desenvolvimento geral da comunidade – infraestruturas sócio –económicas realizadas, (iv) outros..

O presente Memorando de Entendimento entra em vigor após ser assinado entre ambas partes.

Annex 8: Minutes of the constitution of a CGC

Acta de Constituição de Comité de Gestão no âmbito do Diploma Ministerial 93/2005 (Modelo dos SPFFB Nampula)

Aos [data] teve lugar uma reunião para a constituição do Comité de Gestão de [nome de CGC/comunidade], localizado no Distrito de [nome do distrito], Posto Administrativo de [nome do PA], Localidade de [nome da localidade] em virtude de ter havido no seu território exploração dos recursos florestais durante o ano de [ano].

A reunião foi dirigida pelo Sr (a) [nome] e contou com o envolvimento de técnicos de [nome das instituições] e a participação de [numero] membros da comunidade (discriminar por sexo) de um total de [total] que compõe a comunidade.

Os membros da comunidade que participaram na reunião, pronunciaram-se nos seguintes termos sobre os fundos a serem canalizados para a sua comunidade no âmbito do Diploma 93/2005:

1. Senhor (a) [nome], proferiu o seguinte:

.....
.....
.....

2. Senhor (a) [nome], proferiu o seguinte:

.....
.....
.....

3. Senhor (a) [nome] proferiu o seguinte:

.....
.....
.....

Por fim foi referido que:

.....
.....
.....

No fim do encontro, foi elaborada a presente acta da constituição do Comité de Gestão que foi lida em Português e traduzida em Língua Emakuwa. Depois se convidou os representantes da comunidade a assinar a acta, que vai também ser assinada pelos técnicos que facilitaram o processo da constituição do Comité de Gestão.

1. Assinatura dos facilitadores do processo:

NOME FUNÇÃO/INSTITUIÇÃO

_____	_____
_____	_____
_____	_____
_____	_____

2. Assinatura dos representantes dos membros da comunidade (autoridade local):

NOME FUNÇÃO/CARGO

_____	_____
_____	_____
_____	_____
_____	_____

Visto:

O DIRECTOR DISTRITAL DA AGRICULTURA

.....

Annex 9: Model Statutes for a CGC

CAPÍTULO I DA DENOMINAÇÃO, NATUREZA, DURAÇÃO E FINS

ARTIGO PRIMEIRO (DENOMINAÇÃO)

Comité de Gestão de Recursos Naturais de XXXXX, é baseado na Comunidade de XXXXX, Localidade XXXXX, Distrito de XXXXX, Província de XXXXX, abreviadamente CGRN-XXXXX.

ARTIGO SEGUNDO (NATUREZA)

O Comité de Gestão de Recursos Naturais de XXXXX é uma pessoa coletiva de direito privado sem fins lucrativos, de carácter social dotada de personalidade jurídica e autonomia financeira, patrimonial e administrativa, interessado na gestão sustentável dos recursos naturais.

ARTIGO TERCEIRO (DURAÇÃO)

O Comité de Gestão de Recursos Naturais de XXXXX constitui-se por tempo indeterminado podendo ser dissolvido por deliberação da comunidade de XXXXX nas circunstâncias em que sua existência possa ser julgada irrelevante.

ARTIGO QUARTO (FINS)

O Comité de Gestão de Recursos Naturais de XXXXX tem como missão fundamental assegurar que os direitos das comunidades rurais sobre os recursos naturais sejam respeitados e cumpridos e que se transformem em benefícios económicos e sociais, destacando-se, entre vários objectivos, os seguintes:

- a) Desenvolver mecanismos que permitam o protagonismo da comunidade nas suas relações de parceria com o sector público e privado;
- b) Promover o diálogo entre as comunidades, sectores público e privado visando o desenvolvimento sustentável local;
- c) Promover a igualdade de género na divulgação e aplicação da legislação sobre os recursos naturais;
- d) Desenvolver acções que visam a promoção do uso sustentável dos recursos naturais e o desenvolvimento local;
- e) Elaborar memorandos de entendimento e/ou acordos de parcerias com entidades públicas e privadas no âmbito das actividades de desenvolvimento comunitário, sócio-económico e culturais.

CAPÍTULO II

MEMBROS DO COMITÉ DE GESTÃO DE RECURSOS NATURAIS DE XXXXX

ARTIGO QUINTO **(MEMBROS)**

1. São membros do Comité de Gestão de Recursos Naturais de XXXXX todos os residentes da Comunidade de XXXXX;
2. Podem excepcionalmente ser admitidos como membros, as pessoas colectiva de direito privado e público que aceitem os presentes Estatutos e tenham como fim exclusivo apoiar a elevação da qualidade e capacidade dos membros e da Comunidade ou facilitar o exercício das suas actividades e a prossecução dos seus fins e objectivos estatutários;
3. As pessoas singulares empresariais ou sociedades poderão cooperar com o Comité mediante acordos de parceria a serem celebrados entre as partes;
4. Direitos, deveres e filiação dos membros serão objecto de um regulamento interno a ser elaborado pelo Conselho de Direcção e aprovado pela Assembleia Geral.

CAPÍTULO III

DOS ORGÃOS, SUA COMPOSIÇÃO, FUNCIONAMENTO E COMPETÊNCIAS

SECÇÃO I **DISPOSIÇÕES GERAIS**

ARTIGO SEXTO **(ORGÃOS)**

Os órgãos do Comité de Gestão de Recursos Naturais de XXXXX, são:

- a) A Assembleia Geral
- b) O Conselho de Direcção
- c) Comissão de Gestão Social
- d) O Conselho Fiscal

SECÇÃO II **DA ASSEMBLEIA GERAL**

ARTIGO SÉTIMO **(COMPOSIÇÃO)**

A Assembleia Geral é o órgão máximo do comité constituído por todos os membros do Comité de Gestão de Recursos Naturais da Comunidade de XXXXX e seus representantes.

ARTIGO OITAVO **(COMPETÊNCIAS DA ASSEMBLEIA GERAL)**

Compete à Assembleia Geral:

- a) Eleger ou prorrogar o mandato dos membros da Comissão de Gestão Social;

- b) Deliberar sobre as alterações aos Estatutos e Regulamento interno;
- c) Eleger e destituir os membros titulares da Comissão de Gestão Social e do Conselho Fiscal bem como os respectivos presidentes ou representantes;
- d) Aprovar a celebração de parcerias com entidades públicas e privados;
- e) Autorizar a assinatura de acordos de parcerias;
- f) Apreciar os termos de cooperação com entidades singulares, empresariais ou sociedades;
- g) Autorizar projectos de expansão da actividade;
- h) Apreciar e aprovar os relatórios de actividades e de contas submetidos pela Comissão de Gestão Social e Conselho Fiscal respectivamente;
- i) Deliberar sobre questões relacionadas com a representação, organização, reestruturação, cisão e dissolução do comité, incluindo o destino do património.

ARTIGO NONO (MESA DA ASSEMBLEIA GERAL)

1. A Assembleia será dirigida rotativamente por uma mesa composta por um Presidente, Vice-Presidente e um Secretário eleitos em cada Assembleia Geral.
2. Compete ao Presidente da Mesa da Assembleia Geral:
 - a. Conferir posse aos titulares dos órgãos sociais;
 - b. Abrir e encerrar os trabalhos das sessões da Assembleia Geral;
 - c. Dirigir os trabalhos das sessões;
 - d. Conceder a palavra aos membros do Comité, observando sempre a ordem em que a mesma lhe tenha sido solicitada;
 - e. Interromper e retirar a palavra ao membro que dela fizer uso indevido e abusivo, depois de previamente advertido.
3. Compete ao Vice-Presidente:
 - a. Coadjuvar o Presidente na direcção dos trabalhos das sessões da Assembleia Geral;
 - b. Substituir o Presidente da Mesa nas ausências e impedimentos;
4. Compete ao Secretário:
 - a. Tomar nota de tudo quanto fôr abordado durante as sessões da Assembleia Geral e elaborar as respectivas actas;
 - b. Receber e expedir toda a correspondência da Assembleia Geral.

ÚNICO: É responsabilidade da Mesa assegurar a documentação e distribuição das actas das sessões.

ARTIGO DÉCIMO (REUNIÕES DA ASSEMBLEIA GERAL)

A Assembleia Geral reúne-se ordinariamente uma vez por ano e extraordinariamente a requerimento do Comissão de Gestão Social, do Conselho Fiscal ou de pelo menos 1/3 dos membros efectivos do Comité.

ARTIGO DÉCIMO PRIMEIRO
(CONVOCATÓRIA)

1. A Assembleia Geral é convocada pelo Presidente do Comité de Gestão de Recursos Naturais, ouvida da Comissão de Gestão Social por meio de cartas com avisos de recepção enviadas aos membros, donde conste a ordem de trabalhos, com pelo menos trinta dias de antecedência em relação à data designada para a sua realização;
2. As sessões extraordinárias da Assembleia Geral serão convocadas com uma antecedência de quinze dias;
3. A Convocatória poderá igualmente ser fixada em locais de maior concentração da população dentro da zona de jurisdição da comunidade.

ARTIGO DÉCIMO SEGUNDO
(QUÓRUM E MAIORIA REQUERIDA)

1. A aprovação das deliberações pelos órgãos sociais requer a presença ou representação devidamente credenciada da maioria simples dos membros;
2. A deliberação sobre alteração dos Estatutos e a dissolução do Comité de Gestão de Recursos Naturais exige o voto favorável de pelo menos 2/3 do número de todos os membros presentes, depois de ouvida a fundamentação pelos representantes das instituições do Governo ligadas a esta matéria.

ARTIGO DÉCIMO TERCEIRO
(MANDATO)

O mandato dos titulares dos órgãos do Comité será de 2 (dois) anos e, não poderá exceder dois mandatos consecutivos.

ARTIGO DÉCIMO QUARTO
(ACTAS DE REUNIÕES)

Cada órgão do comité terá um livro de actas das reuniões que será devidamente numerado e rubricado.

SECÇÃO III
DO CONSELHO DE DIRECÇÃO

ARTIGO DÉCIMO QUINTO
(COMPOSIÇÃO)

1. O Conselho de Direcção do Comité de Gestão de Recursos Naturais de **XXXXXX** é o órgão directivo e executivo do comité que vela pela organização e funcionamento do comité;
2. O Conselho de Direcção do Comité de Gestão de Recursos Naturais de **XXXXXX** é composto por seguintes membros:
 - a. Presidente
 - b. Vice-Presidente

- c. Secretário
- d. Tesoureiro

ARTIGO DÉCIMO SEXTO (ATRIBUIÇÕES DO PRESIDENTE)

Compete ao Presidente do Comité de Gestão de Recursos Naturais, no exercício das suas funções:

- a) Representar simbolicamente a mais alto nível o comité;
- b) Dirigir as actividades do Conselho de Direcção;
- c) Respeitar e fazer respeitar os dispositivos legais do comité;
- d) Assinar protocolos e contas bancárias do comité;
- e) Negociar fundos para os programas do comité;
- f) Propor a estratégia geral de implementação dos objectivos e fins do comité;
- g) Propôr o destino social dos fundos líquidos perante a Assembleia Geral;
- h) Apresentar o relatório de prestação de contas na Assembleia Geral do comité;
- i) Aplicar sanções aos membros infractores dos Estatutos e Regulamento Interno do comité.

ARTIGO DÉCIMO SÉTIMO (ATRIBUIÇÕES DO VICE-PRESIDENTE)

Compete ao Vice-Presidente no exercício das suas funções:

- a) Apoiar as actividades do Presidente do Comité;
- b) Representar em caso de ausência ou por designação o Presidente do Comité.
- c) Representar o Comité de Gestão de Recursos Naturais XXXXX na Comissão de Gestão Social para a gestão do Acampamento comunitário.

ARTIGO DECIMO OITAVO (ATRIBUIÇÕES DO SECRETÁRIO)

Compete ao Secretário, no exercício das suas funções:

- a) Apoiar as actividades do Presidente do Comité;
- b) Elaborar relatórios e outras informações de prestação de contas;
- c) Coordenar todas as actividades internas do Comité;
- d) Fazer a actualização e registo de membros;
- e) Secretariar os encontros do Conselho de Direcção;
- f) Assinar conta bancária do Comité com outros membros;
- g) Elaborar relatórios mensais e apoiar o Presidente na elaboração do relatório anual.

ARTIGO DÉCIMO NONO
(ATRIBUIÇÕES DO TESOUREIRO)

Compete ao Tesoureiro do Comité, o seguinte:

- a) Administrar e gerir os meios financeiros e materiais e recursos humanos do comité;
- b) Garantir o uso e aplicação racional dos meios financeiros e patrimoniais do comité;
- c) Promover acções de sustentabilidade do comité através de programas de angariação de fundos;
- d) Receber jóias, quotas e outras contribuições dos membros e outros parceiros;
- e) Abrir contas bancárias para o comité;
- f) Depositar e fazer levantamento de dinheiro no banco e efectuar pagamentos;
- g) Elaborar relatórios financeiros mensais e anuais;
- h) Organizar o elenco de contas do comité (fluxo de caixa);
- i) Controlar o fluxo financeiro, contabilidade e movimento bancário;
- j) Ficar com o cofre e as chaves do comité;
- k) Representar o Comité de Gestão XXXXX na Comissão de Gestão Social para a gestão do Acampamento comunitário.

SECÇÃO IV
DA COMISSÃO DE GESTÃO SOCIAL

ARTIGO VIGÉSIMO
(COMPOSIÇÃO)

1. Transitoriamente, os titulares da Comissão de Gestão Social são:
 - a. Um Gestor do Acampamento Comunitário ou seu representante;
 - b. Dois membros do Comité de Gestão de Recursos Naturais;
 - c. Um representante do Governo do Distrito de XXXXX;
 - d. Um representante FAO.
2. Um representante do Comité de Gestão de Recursos Naturais na Comissão de Gestão Social é obrigatório que seja o Presidente ou Vice-Presidente.

ARTIGO VIGÉSIMO PRIMEIRO
(COMPETÊNCIAS)

A Comissão de Gestão Social é o órgão para a gestão do Acampamento Comunitário ou quaisquer outras instâncias turísticas do Comité de Gestão com competências de exercer, as seguintes funções:

- a) Gerir os assuntos correntes do Acampamento Comunitário;
- b) Seleccionar candidaturas e recrutar o pessoal executor das instâncias turísticas comunitárias, controlar o seu desempenho e assiduidade;
- c) Executar as deliberações da Assembleia Geral;

- d) Realizar novos investimentos, ampliações e beneficiações em coordenação com os gestores das instâncias turísticas comunitárias;
- e) Implementar acordos de parceiras;
- f) Realizar a publicidade dos projectos e dos pacotes de serviços oferecidos pelas instâncias turísticas sob gestão do comité;
- g) Representar o comité em juízo e fora dele em casos ligados à gestão do Acampamento Comunitário;
- h) Estar presente em todas as reuniões convocadas pelo Conselho de Direcção do comité.

SECÇÃO V DO CONSELHO FISCAL

ARTIGO VIGÉSIMO SEGUNDO (COMPOSIÇÃO)

1. O Conselho Fiscal é o órgão de fiscalização dos actos de gestão do Conselho de Direcção e da Comissão de Gestão Social.
2. Os membros integrantes ao Conselho de Direcção e da Comissão de Gestão Social não podem fazer parte do Conselho Fiscal.

ARTIGO VIGÉSIMO TERCEIRO (COMPETÊNCIAS)

1. Compete ao Conselho Fiscal:
 - a. Fiscalizar as actividades dos gestores das instâncias turísticas comunitárias;
 - b. Endossar o relatório de contas e de actividades da Comissão de Gestão Social a ser apresentado a Assembleia Geral;
 - c. Aprovar os balancetes de contas mensais;
 - d. Exercer a fiscalização das contas da Comissão de Gestão Social;
 - e. Conferir os documentos das despesas e a legalidade dos pagamentos efectuados pela Comissão de Gestão Social;
 - f. Emitir parecer sobre a operação financeira e sobre o balanço financeiro anual, à solicitação dos restantes órgãos;
 - g. Exercer quaisquer outras actividades de fiscalização que lhe sejam confiadas pela Assembleia Geral;
 - h. Verificar o cumprimento dos estatutos, regulamento interno e demais legislação;
 - i. Controlar regularmente a conservação do Património do Comité de Gestão de Recursos Naturais;
 - j. Garantir que os membros do Conselho de Direcção agem como representantes da comunidade;
 - k. Apoiar o Conselho de Direcção na resolução dos problemas e gestão das actividades planificadas.
2. O Conselho Fiscal é composto por:

- a. Um Presidente
- b. Um Secretário
- c. Um Vogal

ARTIGO VIGÉSIMO QUARTO (CONVOCAÇÃO E FUNCIONAMENTO)

Conselho Fiscal reúne-se ordinariamente de três em três meses, é convocado pelo respectivo Presidente e só pode deliberar na presença da maioria dos seus membros.

CAPÍTULO IV

ARTIGO VIGÉSIMO QUINTO (DO PATRIMÓNIO)

1. O Acampamento comunitário faz parte integrante do património da comunidade cuja gestão será, numa primeira fase, mediante o lançamento do concurso público para a sua exploração;
2. A percentagem a favor consignada à comunidade deverá ser mediante uma negociação;
3. Um acordo deve ser elaborado neste sentido, devendo ser assinado pelos representantes da Comissão de Gestão social;
4. Um inventário dos bens será elaborado pela XXXXX em XXXXX e posteriormente entregue ao Conselho de Direcção testemunhado pelo Conselho Fiscal e Comissão de Gestão Social do Acampamento Comunitário.

ARTIGO VIGÉSIMO SEXTO (FUNDOS)

1. Constituem Fundos do comité:
 - a. O produto das joias e quotas e demais contribuições dos membros;
 - b. O rendimento de bens próprios;
 - c. O produto de doações, herança, legados e donativos;
 - d. Outras receitas.
2. O valor das joias e de quotas será definido no Regulamento Interno do Comité de Gestão de Recursos Naturais sob proposta do Conselho de Direcção e deliberação na respectiva Assembleia Geral.

CAPÍTULO V DAS DISPOSIÇÕES FINAIS

ARTIGO VIGÉSIMO SÉTIMO (Ano Económico)

Ano económico começa 01 de Janeiro e termina em 31 de Dezembro de cada ano.

ARTIGO VIGÉSIMO OITAVO
(CASOS OMISSOS)

Em tudo o que fôr omissos nestes Estatutos aplicar-se-á a regulamentação interna do comité e a legislação vigente em Moçambique sobre a matéria.

Annex 10: Model letters to request payment to a CGC

Letter informing authorities regarding bank account:

EX.MO SENHOR:

Chefe dos SPFFB de [nome da província]

Assunto: Solicitação de Registo do Comité de Gestão para efeitos de acesso aos 20% das receitas florestais e faunísticas

O Comité de Gestão de **[nome de comité]**, localizado no Distrito de **[nome do distrito]**, Posto Administrativo de **[nome do PA]**, Localidade de **[nome da localidade]**, segundo o artigo 5 n.º 2 e 3 do Decreto Ministerial 93/2005, serve-se da presente para comunicar a V. Excia que procedeu ao seu registo na Administração distrital de **[nome do distrito]**, Posto Administrativo de **[nome do PA]** no dia **[data]**, assim como a abertura da conta bancária comunitária com as seguintes especificações:

- Nome e Localização do Banco:
- Número da Conta:
- Assinatura da Conta:
 - 1º assinante:
 - 2º assinante:
 - 3º assinante:

(Indicar nome, Idade, Local de Residência, Tipo e número de Identificação, Cargo no Comité).

A conta foi aberta com o nome: **[nome da conta]**

O Comité de Gestão

[data]

CC:

DPA, Administração Distrital, Posto Administrativo

Anexo:

- Declaração que confirme o registo feito na Administração Distrital ou Posto Administrativo;
- Relatório de Formação do Comité;
- Mapa de identificação dos membros do comité (Nome, idades, numero e tipo de documento e respectiva cargo no comité e assinaturas);
- Cópia do talão de depósito do Banco confirmativo de abertura da conta e No.

Letter requesting authorities to make payment:

EX.MO SENHOR:

Chefe dos SPFFB de [nome da província]

Assunto: Solicitação dos fundos de 20% do ano [ano] em termos do Diploma 93/2005

O Comité de Gestão da Comunidade de **[nome de comité]**, localizado no Distrito de **[nome do distrito]**, Posto Administrativo de **[nome do PA]**, serve-se da presente para pedir V.Excia que transfira os fundos dos 20% do ano **[ano]**

O comité foi registado nos Serviços Distritais de Actividades Económicas, no Distrito de **[nome do distrito]** no dia **[data]**

A nossa conta bancária comunitária tem as seguintes especificações:

- Nome e Localização do Banco:
- Número da Conta:
- Assinatura da Conta:
 - 1º assinante:
 - 2º assinante:
 - 3º assinante:

(Indicar nome, Idade, Local de Residência, Tipo e número de Identificação, Cargo no Comité).

A conta foi aberta com o nome: **[nome da conta]**

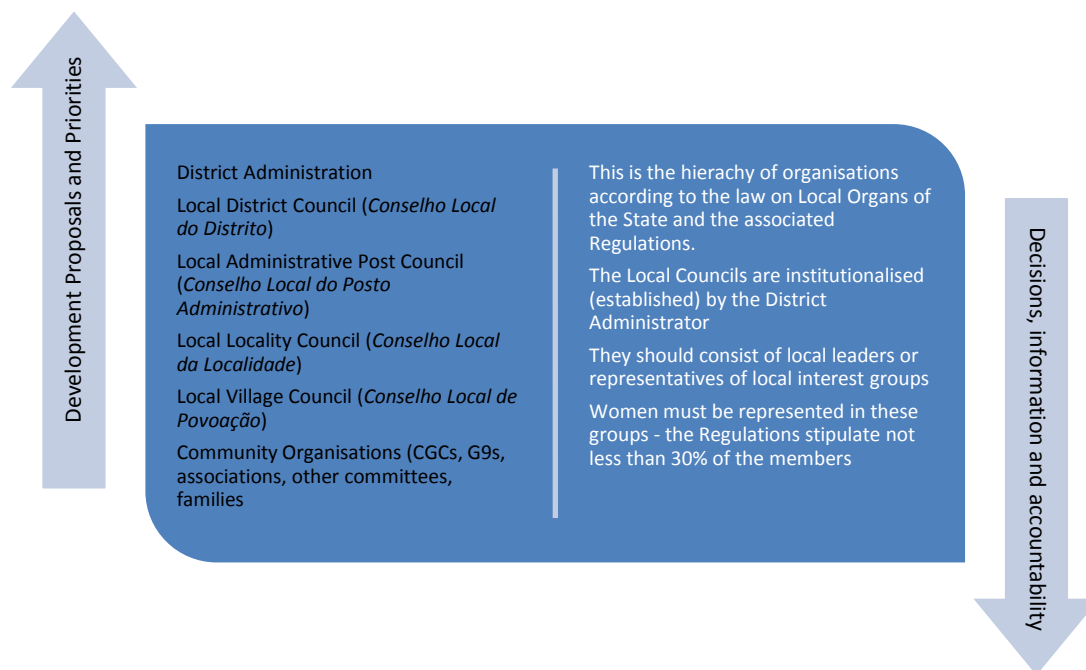
No ano **[ano]**, na nossa zona estava explorar a empresa **[nome da empresa]**

Essa tinha uma licença de **[volume]** m3 e pagou uma taxa com um valor de **[valor]** MT. Deste modo, nós calculámos o valor da comunidade com **[valor]** MT.

O Comité de Gestão

Presidente Secretário/a Vogal/Tesoureiro/a

Annex 11: How the CGCs relate to other institutions



Annex 12: Some examples of contract farming in Mozambique in 2012

Cotton

About 10 cotton processing firms use outgrowing schemes in concession areas to secure the raw material (this model was adopted after independence and during the civil war), enrolling about 300,000 smallholders (less than 10% are emergent entrepreneurs). Smallholders receive inputs, some technical advice and are ensured of selling their product. Recently the model has been improved by introducing crop diversification (soya, corn, others) and improving extensions services, so as to compete with other crops. The international company OLAM obtained a certificate of BCI (Better Cotton Initiative) and is planning to spread its experience to other companies. In the Zambezi Valley there are two companies operating with this model, i.e. “China Africa” based in Dondo (Sofala) and OLAM based in Morrumbala (Zambézia). Tobacco

One firm is processing tobacco in Tete (MLT), and buying from smallholders in outgrower schemes (around 120,000 out growers and a few commercial companies). MLT has been introducing crop diversification (soya, corn, others), developing models that partner with commercial banks (e.g. BOM), and input suppliers.

Vegetables

A recent experience, in Gondola District (Manica Province), promoted by “MozFoods”, with an increasing scheme (around 300 out growers), producing green peppers and green beans to export markets. In Marracuene (Maputo Province) “PPEM” is producing bell peppers for export markets (NANDO’s and TOBASCO), with 100 out growers in a pilot phase (partnering with a local microfinance institution, government extension services, input suppliers and iDE (an international NGO). In Inhambane Province “Mozambique Organics” is producing bell peppers and vegetables for Maputo supermarkets and South Africa, with about 100 out growers and with technical support of Technoserve.

Sugar Cane

In the last 10 years sugar cane processing started partnering with emergent local farmers and local and South African commercial farmers, because of land limitations, and the need to have access to more sugar cane., There have been excellent results for both parties. The companies (e.g. Mafambisse and Xinavane Factories) invest in land preparation and infrastructure, provide or facilitate credit for inputs, provide technical assistance and buy the sugar cane from the producer.

Mango

A commercial farm in Dombe District (Manica Province) owned by a South African-based company, with production in both countries and access to markets and technologies (varieties, etc.) has been providing inputs and training to local emergent farmers and has bought their produce. This inclusive model is working very well, but local emergent farmers are constrained by the lack of access to credit to install irrigation systems. In addition, production is affected by the fruit fly.

Cassava

The company CLEANSTAR in Dondo District (Sofala) is processing cassava into ethanol for domestic use (cooking and heating) and is promoting an “agroforestry outgrowing model” (1

hectare of cassava, native trees, pigeon and cow peas, soya bean) in an area with poor soils. Nurseries are being installed, research is conducted on appropriate cassava varieties, partnerships with local banks and input suppliers are being developed. The business is fully integrated in the value chain from inputs supply and production (outgrowing) via processing to consumers (i.e. bottle gas and stove factories in Maputo, and shops to sell final products such as gas bottles and stoves to consumers). The beer factory CDM is securing the market for cassava on an off-take contract basis, and quantities and prices are set prior to the crop season. Cassava is used to produce the IMPALA beer brand in Nampula Province and Barrue District (Manica Province). Another partnership is in place in Maputo Province, where CDM and PPEM are partnering to implement a pilot outgrower scheme of 200 hectares of cassava by small holders, where iDE will provide technical support.

Multi-cropping

ECA is a private company supported by BAGC, which is managing outgrower schemes in Barrue District (around 1,000 out growers, in a pilot phase 2011-12), producing cassava (partnership with CDM), beans, corn and wants to produce barley and vegetables. The company looks for secure markets with local and export companies, facilitates access to inputs, advisory services, etc. Poultry

In Maputo province several companies, such as UGC (Cooperative), HIGEST and others tried outgrowing schemes to produce broilers with small farmers over several years. In general the inclusive models have not proven to work well, and firms are downsizing this model. Several justifications can be identified, such as side selling, problems with access to and quality of inputs, low prices, etc.

Rice

Several experiences in outgrower rice schemes over the last two decades were not successful, particularly in Chockwe and Xai-Xai districts in Gaza Province. Factors that played a role were “side selling”, i.e. farmers, who received seeds and other inputs sold part of their produce to others, so the suppliers were losing money, problems with access to water, seeds quality, lack of man power or mechanization for harvesting resulting in low profitability. Recently the MIA company is engaged in several partnerships, but decided to downsize its support, providing only good seeds and technical assistance on credit under contract farming, securing quantity and price before the crop season. This is working reasonable well, albeit for a smaller group of farmers.

Additional Reading & Resources

Legislation

Land Law 19/1997 of 1 October

Land Law Regulations Decree 66/98 of 8 December

Technical Annex to the Land Law Regulations Ministerial Diploma 29-A/2000 of 17 March

Forestry and Wildlife Law 10/99 of 7 July

Forestry and Wildlife Law Regulations Decree 12/2002 of 6 June

Manuals/Guides

Comissão Inter-Ministerial para a revisão da legislação de terras (FAO 2000): Manual de delimitação de terras das comunidades.

DNFFB (2001) Guião para apresentação do inventário e plano de manejo para concessões florestais. DNFFB, Maputo. S.p.

Joaquim, E., Norfolk, S. and Macqueen, D. 2005, “Avante consulta! Effective consultation”, Power Tools Series, Terra Firma Lda, Maputo, Mozambique and IIED, London, UK.

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Macome E e Salmão A, MCRN (2003): Manual CGC: A instituição que garante a equidade ao nível da comunidade – Volume I (Primeiro Draft), Maputo

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MICOA (2001) Directiva para estudo de impacto ambiental de actividades florestais. MICOA, Maputo. 15 p

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Department of Wildlife and National Park (1998): CBNRM Practitioners Guide, Ministry of Commerce and Industry, Gaborone, Botswana.

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Foloma, M. (1998) “Tchuma Tchato: Experiências e perspectivas” in “Comunidade e Maneio dos Recursos Naturais, Memórias da 1ª Conferência” edited by DNFFB, FAO, IUCN. Maputo.

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- Nhantumbo, I.; Macqueen, D. (2003) “Direitos das comunidades: Realidade ou retórica”, DNFFB- MADER, Maputo.
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