



It's not a question of doing or not doing it  
- it's a question of how to do it

## Study on Community Land Rights in Niassa Province, Mozambique

Gunilla Åkesson  
André Calengo  
Christopher Tanner



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IN NIASSA PROVINCE, MOZAMBIQUE**

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André Calengo  
Christopher Tanner**

**October 2008**



## PREFACE

This report is based on information collected within the context of the study concerning Community Land Rights in Niassa Province in Mozambique, with special attention paid to the programme implemented by the Malonda Foundation. This programme is supported and financed by the Swedish Government and aims to promote private investment in the province while seeking, during the course of the process, to ensure equitable and beneficial social impact as an explicit objective, in particular for the local population.

The study was commissioned by Sida (Swedish International Development Cooperation Agency) and the Swedish Embassy in Mozambique, as a contribution to the preparation of continued Swedish support to private sector development in Niassa Province. Provincial and local work was carried out during the period April 29<sup>th</sup> to May 22<sup>nd</sup> 2008.

The team consisted of Gunilla Åkesson, team leader, from Sida Helpdesk for Environmental Assessment, Sweden, and André Calengo, legal consultant, Mozambique. Christopher Tanner, FAO's advisor in Mozambique and specialist in the Mozambique Land Law participated as a technical advisor. During the field work the team was accompanied by staff from the Malonda Programme: Célia Enusse and Francisco Pangaya, both from the Community Work Unit, Alexandre Chomar, Communications Officer and Belindo Manhiça, official from the Environment Programme.

We would like to thank everyone who gave their assistance as well as the national, provincial and district technicians for their support during the course of this work. We would also like to thank the people in the districts, localities and villages who shared their experience and visions for the future with us.

The Portuguese version of this report was presented in October 2008, and the report was translated to English by Solange Jonsson in 2009. An additional introduction has been introduced to the English version of the report.



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# **SUMMARY**

## **Background**

The main aim of this study was to assess, within the context of the Malonda Programme in Niassa Province, the implementation of community consultations and negotiations as well as the delimitation and demarcation of community land. These activities had been carried out within the context of requests from several investors concerning the Right to Use and Exploit Land (Portuguese acronym DUAT, Direito de Uso e Aproveitamento de Terra), in order to create extensive commercial forest plantations in Niassa. The Malonda Programme enjoyed – and still enjoys – strong support from the Swedish Government that, in addition to its own funding and the subsequent economic growth, seeks to ensure that there is active participation from the local population in this dynamic development process.

The assumption is that the Rights to Use and Exploit Land (DUATs) acquired by the population under the Land Law (Lei 19/97) underpin a negotiation process that will result in i) a fair division of the territory necessary for investment between communities and business interests; ii) a series of concrete benefits that may reduce poverty and open up a new sustainable and equitable socio-economic development path for everyone.

There are also recommendations, based on the conclusions drawn from this study, to improve the programme and to ensure that these targets are achieved in an efficient manner.

The study was carried out in April, May and June 2008 and involved a series of interviews with key actors in the province and at central level, as well as three weeks' field work in local communities. Other business interests were also contacted and areas outside the direct scope of the Malonda Programme were visited for comparative purposes, including the Chipanje Chetu area in the Sanga District and the community tourism project, Mandla Wilderness in Lago District.

## **Context**

The document begins with a brief history of Malonda Programme, which was designed to encourage private investment and to promote a dynamic economy in the province, focusing on the linkages between new investors (in the commercial area) and small producers. When several forest investors showed great interest in identifying large areas of land on which to start plantations, attention was drawn to the issue of how to promote this process and at the same time maintain a respectful, significant social and environmental impact.

For this reason, the Malonda Programme began as a facilitator of this process in 2005 and took over the old DUATs in the unsuccessful Mozagrius Programme's areas, as well as the DUATs on huge new areas. (Altogether it is a question of some hundreds of thousands of hectares that the different investors wish to plant.) This acquisition of DUATs was aimed at simplifying access to land for investors who were going to enter into partnership with Malonda to fulfil their plans. The process was preceded by a local community sensitisation phase aimed at the delimitation of areas covered by DUATs acquired through occupation. The aim was to, based on recognition of local DUATs, go ahead to a negotiation and partnership phase between investors and local communities, anticipating a series of mutual gains – mainly access to land for investors and the retention of sufficient land for community use, in addition to the communities' part of the economic and social benefits from the investments.

The study also looks into the Land Law itself as the legal framework for the whole programme. Items and key principles are emphasised which should have guided the implementation of the programme, including:

- the Constitutional basis of the DUATs acquired under the Land Law;
- the nature of the DUAT as a private and strong right, which is not easily taken away from its holder;
- the necessity of the provincial government and of other actors to respect these rights when they make their plans or any decisions to grant new rights;
- the mechanisms made available by the Law and its regulations to i) approve and ii) define the limits of local DUATs (the process of *delimitation*); and to ensure that these rights are recognised and taken into account in the investment process (the *community consultations* mechanism that results in partnership between the investor and the original rights holders, the local communities).

In this context we stress the two different and complementing roles of local communities and the internal structures of social and economic management:

- as subjects of the DUATs, in turn granting more individualised DUATs to their hundreds and even thousands of members, following the norms and customary practices of the region (Article 12 of Law 19/97);
- as actors in land administration (Article 24 of Law 19/97), participating through consultations to grant new DUATs to entities that are from outside the communities, including to investors;

Issues of the 'local community', as defined in Article 1, no. 1 of Law 19/97, were also stressed, namely:

- a group of families and individuals with an organisation and social cohesion of their own;
- who share ‘common interests’ and aim at safeguarding their productive, housing and socio-cultural resources;
- that comprises the space or territory they *occupy*, in principle beneath the territorial constituency of the locality;
- this occupation is understood in respect of its use for production purposes (based on an understanding of the local production systems) and of its other social purposes (including *areas of expansion* for future use, areas of cultural importance etc.)

It is noted in this context that the Law does not mention or award traditional leaders any explicit roles as they are regarded more as a way of customary public management, while the DUAT is something private, an actual right belonging to the communities and their members, subject to the principle of being *co-holders* which demands democratic and universal participation of its members in the processes of resource management, highlighted in their decisions when considering the arrival of investors for their land.

## **Findings**

The study found a complicated situation that was sometimes very tense within the communities, mostly in the areas that are now being planted by investors, but also in the context of the larger ‘space’ that is required in the long run but which is, for the time being, not under active processing by these investors.

It was found that while preparing and building the delimitation teams, account was taken of rules stipulated in the Technical Annex of the Land Law Regulations concerning production systems, historical occupation, social organisation etc. All the participating members and technicians were included in the creation of the brigades formed to carry out the field work.

However, the study found a situation where i) some of the communities delimited are very large (more than hundred thousand of hectares) and ii) delimitations that in practice do not respect key issues contained in the definition of local community in the Law, iii) delimitations were, in fact, made according to ‘political-religious-local’ entities (*Regedorias*) and not local communities according to the Law 19/97.

A trend towards working with traditional leaders only and at the highest level instead of favouring grassroots leaders and those more linked to the different villages and families resulted in the marginalisation of the population which is becoming increasingly afraid of the impact of the plantations on their access to the land they need to maintain their extensive production systems.

Due to a series of circumstances and pressures, activities were mixed together that should have been carried out separately, and in the right order, namely the process of previous delimitation to establish where local rights lie, followed by the application of the compulsory mechanism required by the Law, the community consultation. Actually, the aim of the delimitations has changed and they are no longer implemented to prove and delimitate existing DUATs before consultations, but to identify the areas that are to be granted to investors (which should be the focus of the consultation *once the communities have been delimited and once the communities are organised and capable of becoming involved in the negotiations concerning their land*).

The accumulated result of this series of mistakes and erroneous application of the legislation, including the incorrect use of Decree 15/2000 by ignoring the private context of the DUATs and their different holders, created an explosive situation in some places and widespread concern in the entire region affected by the Malonda Programme and outside businesses. All this in spite of the good intentions and the considerable efforts made by the technicians and the people responsible for the programme.

It is obvious that, for the majority of the population affected in the countryside:

- they know nothing about the proposed investment programme and its social targets (including the implementation of a Local Development Fund, FDC) which is expected to guarantee concrete benefits for the population;
- they were not consulted in the proper sense of the term as provided for in the Law, nor do they participate in a conscious manner in decisions about their land, based on a clear understanding of what the investors want;
- they now feel extremely threatened and harmed by the first actions taken by the investors, who in some areas are actually surrounding the villages and dramatically restricting the population's access to the land they need to be able to maintain their crop rotation/fallow land system and other central features of their traditional production;
- the relationship between communities and investors is unbalanced in all aspects because communities are weak in relation to investors.

## **Conclusions**

The study found that:

- In spite of the good intentions declared in the objectives of the programme and the efforts to implement them according to the principles in the Land Law, the process has seen a series of mistakes which, if not corrected in a timely manner, may jeopardise all the strategic aims of the programme, including the target of promoting private investment on a sustainable basis in harmony with local communities and so sharing the economic, environmental and social benefits with them;

- a series of misinterpretations of the concept ‘local community’ has resulted in large communities being ‘delimited’ and without a proper process of full participation by all the co-holders;
- the consultations were neither conducted in a manner that enabled the involvement and knowledge of most community members as far as the effects of investor operations were concerned, in particular on the day-to-day operation levels of the ‘local communities’, and in this context we highlight the failure to explain and inform the population about:
  - the realities of a plantation economy (and its actual impact on access to land);
  - the (express) intention of the programme to initiate mitigation and adaptation measures that may compensate local residents for their reduced access to land (agricultural projects with new techniques, diversification, new employment in the regional economy, etc.).
- the lack of direction and progress in the implementation of the Community Development Fund, something that consultants Madureira and Tanner found to be essential *from the outset and an integral part* of the programme, was a strategic mistake with great implications for the current level of tension and fear about the future by the populated affected;
- some leaders clearly followed their own agenda without obeying the democratic and participatory principles inherent in the legislation and in local rules of social behaviour;
- the technicians involved were not well prepared (nor properly instructed by their seniors) in order to conduct a consultation process aimed not only at guaranteeing sufficient ‘community areas’ for local production but also a series of *agreements and contracts* between the population and investors that may generate concrete economic, environmental and social benefits as a result of active, economic participation in the investment itself and in its connected projects.

In spite of all this, the main conclusion is that the initial vision of Malonda as a private investment process which, taking into account local rights and guided by principles of equity, sustainability and participation, can reduce poverty and vitalise the local and provincial economy *is still valid*.

*So, the question is not whether to abandon this vision, but rather how to adjust its implementation and to introduce new elements in order to guarantee its proper completion.*

## Recommendations

- that technicians involved in the programme be given additional training in the application of the Land Law (and other laws concerning natural resources) as rural development tools, anticipating an active partnership between local holders of DUATs on one hand and investors on the other;
- that the structures in the provincial and local governments understand their role as *facilitators and mediators* in the processes triggered by the investments;
- that delimitations are *completed*, respecting the limits that existed *before granting new DUATs*, with Certificates properly issued and transferred to the communities;
- that the consultation process be repeated with the aim of:
  - involving all community members as *co-holders*, with a leadership legitimately identified and representative in the terms of the relevant land legislation;
  - ensuring that the needs of women and men, including those in the most vulnerable socio-economic groups, are respected during this process;
  - explaining the reality of the investment;
  - agreeing definitely on the use of land in relationship to the areas that have not yet been planted;
  - guaranteeing offsetting and/or compensation measures for peasants whose fields and crops have been affected;
  - explaining and guaranteeing the availability – based on financial contributions by investors – of mitigation and adaptation measures that may counteract the negative effects of investments, and of activities to stimulate positive development (vocational training for young people in new skills, rural extension projects, agricultural marketing, access to improved and adapted technologies and to production means and inputs, wells etc. etc.)
  - adapting activities to the different conditions in each area, to the needs expressed by peasants, to the existing knowledge among peasants and considering the division of tasks between women and men.
  - stimulating effective participation of local communities in land issues in order to improve management of natural resources, maintain biodiversity and create a sustainable environment.

- once agreement is reached over the areas to be ceded to the investors and what the conditions are, the Certificates of Delimitation must be legally adjusted with Addendums (*averbada*) indicating the new limits once the areas to be ceded to the investors are taken away from the original
- the Malonda DUATs should also be similarly adjusted with appropriate legal attachments, indicating changes in their limits that result from the new consultation process outlined above (new areas ceded by the communities, areas that have been returned to the communities);
- that the FDC funds be created and implemented *as soon as possible and with the total participation of the communities, become **theirs** and are properly set up from a legal viewpoint with administrative and financial autonomy;*
- that surveys of, and research on, households in Niassa province be intensified.

## INTRODUCTION

Mozambique is well known amongst land tenure specialists for its 1997 Land Law, which legally formalises customary land rights and gives them full legal equivalence to the State-allocated Land Use and Benefit Right (or DUAT, to use the Portuguese acronym). The Land Law in fact gives practical substance to the higher level Constitutional guarantee that all Mozambicans have a right to access and use land; and that rights acquired through the occupation of land are protected and must be taken into account when the State is allocating new rights.

Since the law was passed in 1997, enabling regulations have been approved, including a Technical Annex for Delimiting Community Land Rights. Customarily acquired rights do not have to be registered by law, but when necessary, communities should be able to prove these rights and determine where their boundaries are. The technique of delimitation was devised to answer this need.

The participatory rural diagnosis that underlies the Technical Annex allows communities to use their traditional knowledge and their social and political organisation to prove their occupation. Even after the upheavals of a long civil war and the abandonment of rural areas in the 1980s, most individuals and communities are still well aware of their historical origins, and can show a visitor the border with their neighbours, often pointing out an old tree or large rock that has served as a marker for generations. This is backed up by field techniques to analyse the production system of a given community, which might extend over very large areas and include a wide range of resources – river bank land, upland dry areas, forests, communal grazing, and areas that are in fallow. A line is then drawn around all the ‘occupied’ resources, including those that are not currently in use but form part of the resource base that is used by the community over time.

The delimitation process should be facilitated by a team trained in participatory techniques and in using an analysis of production systems, social organisation and historical evidence to build up a map of the community held DUAT. This map is then recorded on official cadastral maps, and a Certificate of Delimitation is issued. This relatively low cost methodology can give added officially recorded protection to the thousands of smaller DUATs that exist within a community and are managed – with full legal endorsement by the Land Law – by local customary or community structures.

Since the Technical Annex was approved in late 2000, some 258 communities have been delimited covering an area of over 9 million hectares. On the surface this sounds impressive, but in reality the process has been driven largely by NGOs funded by bilateral assistance; government has dedicated few resources to identifying and recording the rights of local communities. This reflects a still common view in some quarters that communities do not really acquire DUATs through occupation, and that community issues are best handled by NGOs. Certain interests also have argued against

delimitation which, when well implemented, does empower local people and make access to land more expensive for elite groups and investors. The result is that the official cadastral database mainly holds information on private sector DUATs, with very few customarily acquired DUATs recorded. Moreover, recent data from government and major NGOs working on land issues in fact show a dramatic fall off in the number of communities being delimited, largely due to a change in the Regulations which is imposing additional conditions for a delimitation to be approved; and subjecting most community processes to Council of Ministers approval.

The legality of this regulatory change is contested by many observers, but to date it remains in place and the reality is that community delimitation in Mozambique now requires communities to present a land use plan or project for the often very large areas they claim as ‘theirs’ under the terms of the 1997 Land Law and the Constitution. Under these circumstances it is doubly important that those projects that seek to work with community rights, recognising them and then using them in some way to lever new forms of development, must succeed. If not, political forces that promote a more restrictive vision of ‘occupation’ - basically, the land under cultivation around a village, leaving most other areas ‘free’ for investment – will argue that delimitation does not work, and that it is time to end the bold experiment of the 1997 law.

### **Niassa Province**

Niassa Province is in the northwest of Mozambique bordering Tanzania, and with Lake Niassa on its western side. To the east is the province of Cabo Delgado, which extends to the Indian Ocean. Niassa is sparsely populated and has been relatively isolated from the rest of the country. It has abundant forest resources and agricultural potential along its rivers, and rainfall is relatively plentiful. It is now also gaining a profile as an adventure and eco-tourism destination. The province thus has huge potential for largescale investment in a range of agricultural and non-agricultural activities. The apparently almost empty landscape is however occupied by many communities who, while spread out over hundreds of kilometres, use the vast resource base through an integrated system of shifting agriculture and more intensive exploitation of river basin areas. Investing in these areas is therefore not so easy as it might seem.

The 1997 Land Law provides a clear framework for recognising these local rights, acquired by occupation according to customary norms and practices. Note again that these rights are legally fully equivalent to the State allocated DUAT. The existence of local rights does not however exclude investors – the law provides mechanisms that allow new investors to approach communities and negotiate over access to and use of their unused or underused land.

Many investors do not accept local rights as DUATs however. They start their request for land by being told by officials that ‘land belongs to the State’ and do not understand why they have to deal with local people. Most serious investors do however recognise local rights and land use patterns, and are concerned to work with local people and bring them into the investment process as more than just labourers. Their main concern of

course is to implement their project, but the law clearly indicates that recognising local rights is the point of departure if a land application is to produce a workable solution for both sides. Local rights give people a stake in local development. Working with investors and not against them, they can diversify and raise their incomes, while marginal or underused resources are brought into production.

Well known initiatives such as the Chipanje Chetu project in northern Niassa, and the Mandla Wilderness Project on Lake Niassa, work with the Land Law to develop community based eco-tourism and safari hunting ventures in partnership with private sector interests. These projects have had some success, and provide hopeful models for the future. But the reluctance on the part of strong interest groups to accept the reality of extensive local DUATs is constantly threatening to undermine these achievements. The Chipanje Chetu project in particular is now facing a difficult period, including the virtual annulling of earlier delimitation and certification procedures, and an attempt to usurp community rights in order to establish ‘reserves’ for private eco-tourism ventures. Along the way the nature and ‘content’ of local rights is called into question, the cohesion of local communities comes under pressure, and local people lose their confidence in a law that once seemed to promise so much.

These kinds of episodes are symptomatic of a larger rush for land and natural resources from forestry and eco-tourism projects that is being further stimulated by the new biofuel industry. In Mozambique, the government is visibly concerned to find land for these new investors, and has recently passed new guidelines for those seeking ‘large areas’<sup>1</sup>. These guidelines include clauses however that require investors to show how community rights have been dealt with, and include in the proposal the details of the agreements reached with local people. While the recent amendment to the Land Law Regulations<sup>2</sup> appear designed to restrict and limit the DUAT acquired by customary occupation, this new clause seems to open the way for investors to seek access to community land and do deals with local communities in return for using ‘their’ land.

This idea of making agreements only makes sense however if community rights exist over the land the investors want – if local rights are *not* present, then there is little basis for discussing the terms for local people giving up these rights. The concept of occupation and the community definition in the Land Law do however result in local rights being legally recognised over very large areas in a place like Niassa where extensive production systems can cover hundreds of square kilometres. To ensure local participation and prepare communities to engage with incoming investors (and the State that is backing them), it is important to pre-emptively identify and delimit locally held DUATs, *before* new projects are initiated. This creates a clear platform for developing sound agreements based upon the recognition of local rights. Everyone know where local rights exist, and the delimitation process makes local people aware of their rights

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<sup>1</sup> Resolution 20/2008.

<sup>2</sup> Article 35, which deals with the process of getting a new land title (in the case of investors), or a title document proving an existing DUAT (in the case of communities). The government has questionably extended the requirements for getting a title document to cover the delimitation process, thus effectively bringing delimitations to a halt as mentioned above.

and how to use them in a negotiating context. Such agreements will then include practical terms and conditions applicable to both sides which allow the investor to gain access to local land, and generate real benefits for the community (as rights holder of existing DUATs).

If such agreements can be shown to work, it would pave the way for an exciting new development model that has always been promised by the 1997 Land Law but never quite realised. Investors get their land, while communities have a say in how the investment is carried out and gain real resources which they can invest in their own development – in the land they have left, in new income generating activities, in their children, in social infrastructure. Poverty alleviation and social development are achieved by giving communities access to the capital value of their main asset – their land – and using it to create stronger and more diverse livelihoods for future generations. And the process is far more sustainable than depending upon endless external assistance projects by NGOs and others.

### **The Malonda Programme**

The idea of promoting the negotiated access of investors to vast areas of land over which there are recognised local DUATs was the underlying philosophy of another landmark programme in Niassa. The Malonda Programme has been an important programme for Swedish development assistance in Mozambique for several years, seeking to stimulate the provincial economy through a mix of private sector incentives and community initiatives that link small farmers to local and regional markets and foster a new entrepreneurial dynamic in the provincial economy.

The arrival of large multinational forestry firms looking for land in Niassa also underlined the huge potential of attracting investors to areas in central Niassa that are sparsely populated and suitable for commercial plantations. But as pointed out above, investing in these apparently ‘empty’ areas is not straightforward, as most of them are covered by DUATs acquired by customary occupation.

The Malonda Programme has been involved in the process to secure this very large scale investment – hundreds of thousands of hectares – while working with local communities with acquired rights over the areas in question. The provincial government indicated that much of this land was effectively unpopulated and could be allocated to forestry. The investors however had learned lessons elsewhere about the folly of overlooking local rights and struggling to invest in the face of often aggressive local opposition. Malonda arranged for them to meet land specialists and others who confirmed that the land they wanted was occupied – albeit sparsely - and that to ensure a secure and conflict free investment base, they would have to work with the communities and negotiate access to their land rights.

The laudable objective throughout this process – and one which is still a principal concern for Sida – has been to promote investment that will drive economic growth, create jobs, and thus alleviate the crushing poverty of the rural communities. The

Treating of communities as stakeholders because they have rights over the land assets in question was the key starting point. Carrying out effective consultations would then establish agreements between communities and investors over the nature and implementation of the plantation development.

This report presents the findings of a rapid rural appraisal exercise carried out in mid-2008 to check on the progress of this Malonda-backed initiative. The research looked at many aspects of the community land rights process, going right back to the start of the delimitation exercises, and then moving forwards to examine and understand the dynamics and the outcomes of the subsequent community-investor consultations. The findings unfortunately indicate serious levels of community dissatisfaction and potentially explosive conflict, in areas where the initial clearances and planting of new plantation seedlings has restricted local land access and put at risk local livelihoods strategies. Hence, Malonda has run into problems, and it is the intention of this report to help those implementing the programme to sort out its problems and take it forwards to achieve its original and still worthwhile objectives. Thus, as the report says “it is not a question of doing or not doing it – it is a question of how to do it”.

The report identifies a number of key questions. The first key issue is the fact that the delimitation methodology resulted in the *de facto* delimiting of traditional political-religious units (*Regedorias*) rather than ‘local communities’. Some of these units are very large indeed, and their very size then complicated attempts to make the subsequent development socially inclusive at the level of the villages directly affected by the plantation.

A second and related issue is the failure of the local land administration to issue Certificates of Delimitation and complete the delimitation process. This has had a similar impact to Chipanje Chetu, undermining local confidence in the law and failing to create a clear playing field where local rights are both recognised and recorded *before* negotiations over land access take place.

A third question also related to the size of the ‘local communities’ is the difficulty conducting a truly inclusive consultation process that involves more than just local leaders and chiefs. Agreements reached between leadership and investor were not clearly explained to all villages in the ‘local community’ delimited at a much higher level of social and political organisation. The principle of co-title that applies to the internal management of the collectively held community DUAT in fact demands that all community members take part in and agree to the proposals negotiated with the investor. The result was several villages alarmed about encroaching plantation areas, and claiming to have no knowledge of agreements reached over the distribution of land between community interests and the investors.

A fourth issue is related to the conditions package. It is explicit in the 1997 Land Law and Regulations that local people can and will give up some of their land in exchange for certain conditions being met by the investor. The purpose here is to guarantee some form of return from the investment process, which will provide resources for investing

in, for example, improved and more productive agriculture on the land still left in community hands. Investors get their land, communities get resources to make smaller areas more productive (for example, becoming less dependent upon long term crop rotation cycles that require land now ceded to the investor).

The Malonda Programme seems to have failed to put in place the critical compensation package – the investor endowed Community Development Fund – which would then provide resources for investment in wells, social projects, and whatever the communities needed to improve their lives and compensate for the loss of their land. The agreements reached between local communities and investors have to be respected however – they are contracts like any other commercial agreement. Failure to keep promises undermines confidence and causes conflict. What is also clear however is that, in common with other consultation agreements up and down the country, the ‘agreement’ is in fact no more than a set of general principles, there is not enough detail about what exactly local people will get, and what they in turn are expected to do for the investor, and the agreements are not adequately written up and notarised or formalised. They are legal documents, and should be treated as such.

## **Comments**

The present study has called into question key elements of the 1997 Land Law process, namely the implementation process of delimitation, and the question of who represents the communities. The difficulties identified are real, but it has to be stressed however that they in *no way justify rejecting the underlying principles of the law and changing it*. The challenge is to make sure, that future delimitations and consultations are done in accordance with the law and in line with its inherently democratic and decentralising objectives.

It is also important to note that there are success stories in other parts of the country, albeit involving much smaller areas. The most notable is the Covane Community Lodge in Massingir District, Gaza Province, which only last month concluded a long contract negotiating process with a private investor who will develop a new lodge on community land and pay the community an increasing share of profits over the coming twenty years. Other tourism based enterprises such as the Rio Save Safari safari hunting operation in Macossa, Manica Province, have also developed practical and workable agreements with local people. Real resources are being paid into the local community bank account. These success stories are important because they underline the need to pursue and persist with a model that recognises local rights, treats local rights holders with dignity, and recognises their consequent right to as stakeholders to sit at the table where major development decisions are taken.

## **I. THE STUDY**

The main objective of the study is to assess the implementation of community consultations and negotiations in the processes of delimitation and demarcation of community land, that have been carried out within the context of requests from several investors concerning the Right to Use and Exploit Land (Portuguese acronym DUAT, *Direito de Uso e Aproveitamento de Terra*), in order to create extensive commercial forest plantations in Niassa. The study shows how these processes were understood by the different groups in the local population and to which extent they correspond to the needs and expectations of the population (the ToR are enclosed as an Annex).

These issues were investigated not only concerning the activities in the Malonda Foundation, but also the activities of a few other operators in Niassa Province, such as the companies Chikweti (created by the Swedish Church) and Forests of Niassa (created by Rift Valley, an international company).

Other projects involving the local communities, the Chipanje Chetu Project in the Sanga District and Manda Wilderness in Lago District, were also visited for the purpose of learning from their experience. Both projects work with community natural resource management through management committees and offer some comparative perspectives used in our analysis of the social and community aspects in the Malonda Programme operational area.

Most of the information presented here was collected at the community level in the districts of Lichinga, Muembe, Sanga, Lago and Majune.

Information was also collected at the provincial level together with representatives and technicians from the Malonda Foundation Programme, from the companies Malonda Tree Farm, New Forests and Chikweti, from the Provincial Services for Geography and Cadastre (*Serviços Provinciais de Geografia e Cadastro*, SPGC), from the Forestry and Wild Life Services (*Floresta e Fauna Bravia*, SPFFB) and from the Rural Extension Service (*Extensão Rural*, SPER), from the Provincial Directorate of Tourism plus representatives of the Civil Society Support Programme (*Programa de Apoio à Sociedade Civil*, PASC) and provincial NGOs. A number of administrators, permanent secretaries, economic advisers, heads of administrations and administrative areas in the districts visited were consulted, as well as representatives from the community authorities and other influential people in the communities.

In addition to these contacts the team talked to specialists and others involved in the various phases of programme implementation who are no longer in the province or who work at the central level in Maputo. A desk study was also carried out concerning the preparation and initial implementation of the forest investment programme promoted by the Malonda Foundation.

In terms of methodology, individual and group interviews were undertaken, and meetings and discussions held, with community authorities, workers and residents,

women and men, in the villages visited. There were open meetings with the local population in the presence of members and leaders of both genders. There was a high level of interest in these meetings which, in some cases, led to a large participation.

## **Report structure**

The information presented in this report is concentrated on views expressed by the different stakeholders and actors directly involved in the processes, with greater emphasis on the views expressed by the stakeholders affected at the community level who in this context are the members and the leaders of the villages.

Before entering this discussion, the report presents some important contextual aspects. Included in this section are a brief history of the Malonda Programme and Foundation, the legal framework of the local communities' right to land and a summary vision of the intentions and philosophies that guided the preparation and implementation of the programme led by the Malonda Foundation.

Then an analysis of the process implementation is presented, paying special attention to the question of local rights to the land and the different impacts of the several delimitations and consultations carried out over the last years. The system of local production, i.e. the kind of agriculture practised by the peasant farmers, is a central feature not only when describing delimitation but also when analysing the impact of any subsequent process, and consequently it is also a part of this discussion.

In this same section the different views of the female and male peasants directly affected by the programme and the forest investment projects are described. In order to complete this framework the views of the officials and other people who participate in the implementation of the programme are also reported.

It is noted that in the opinion of the authors the nature of Malonda as an institution and as the facilitating entity is an important aspect in the result analysis of the processes concerning the land which are the main focus of this report. However, in some places in the text Malonda is discussed not only as a facilitator, but also as an important influencing factor. Similarly, the Community Development Fund is explicitly addressed in the report, as the execution of this instrument was part of the original vision of the entire process that covers delimitations, community consultations, socio-economic actions to mitigate the impact of, and to make the best of the opportunities created by, the forest investment.

Both final parts of the report concentrate on some considerations, conclusions and recommendations resulting from the observations and analyses carried out.

## II. CONTEXT

### **The Malonda Foundation**

Malonda<sup>3</sup> is a programme to support the private sector in Niassa Province and represents one of the components of Sida's provincial support to Niassa, (formerly called PROANI). This support was initiated in 1997 within the context of the Mozambique-Sweden cooperation and seeks to fit within the development policy and strategy of the province and the country.

Cooperation with Niassa Province is decentralised and has four main components: support to the public sector, support to the private sector, support to civil society and support to infrastructure. One of its essential aspects is the holistic approach to development problems and the potential of the province, ensuring the synchronisation of these components so that the synergy effects among them are properly developed and used.

Its main target is the reduction of absolute poverty in the province, but through a strategy that includes private investment centred on the process of sustainable economic and human development. The vision is to encourage and collaborate with economic, social and public forces to develop the province in a dynamic and sustainable manner, thereby contributing to the improvement of living conditions for the population. In this way, it is expected that this investment can bring concrete benefits to the poor, as a direct result of its commercial success, also facilitated by the programme.

This target will be attained by making the resources conducive to socio-economic growth available and by building capacities in the different sectors so that these can later play their role in a democratic society.

Although the focus of this study is the implementation and the consequences of the delimitation process in forest areas, it is important to differentiate between the issues concerning the programme as such: (i) its objectives, activities and expected results; (ii) the nature of the institution that accommodates and implements the programme - the Foundation; and (iii) the strategy adopted when achieving the objectives of the programme, more precisely concerning the control of the land which is one of the focuses of this study.

Some words should also be said about the Community Development Fund (Fundo de Desenvolvimento Comunitário, FDC) which is considered to be a primary factor in the social impact of the private investment projects on the communities.

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<sup>3</sup> "Malonda" means "business" in Yao, the most common language of the region of Niassa Province capital, Lichinga.

### ***(i) The Malonda Programme***

The private sector support to Niassa Province is channelled through the Malonda Programme, which is implemented by the Malonda Foundation (FM). This programme focuses on the areas of agriculture, forestry and tourism. While the objective is to strengthen the private sector and create new employment opportunities, the philosophy behind it is to ensure that this support is used in a socially and environmentally sustainable manner that assures the improvement of the living conditions for the people of Niassa.

One of the specific objectives of the programme is to promote business activities as well as non-profit activities within the productive sector. Within this context, an important component is directed mainly at small-scale producers, having initially started with the promotion of “entrepreneurs” and other small and medium scale enterprisers’ initiatives. Through joint-venture contracts with the Foundation, local traders who engage in agricultural marketing have access to risk capital and technical advice and training in business management. The objective is to provide a safer business environment which in turn can facilitate an expanded business process between businesspeople supported by the programme and the family sector. In a complementary manner, in order to increase household income, the programme is promoting and experimenting with a micro-credit system.

However, in the last few years the programme has concentrated more and more on its attempts to stimulate and attract large-scale investments, mainly in the forestry sector. It must be emphasised one more time even within this context of large investments, the need to be aware of social impact and the necessity of the poorest populations’ participation in the development process. It is basically for this reason that Sida became involved in the programme and continues to support it.

### ***(ii) The Malonda Foundation***

During the first few years, the private sector support was administered by a Committee consisting of members designated by the Government of Mozambique and Sida. The Malonda Foundation was created in 2006 to implement the “Malonda Programme” which still receives financing from Sida and the Government of Mozambique to carry out its activities. This new autonomous entity is led exclusively by national representatives.

In addition to its business dimension, the new Foundation identified four other strategic intervention areas that are considered to be necessary, on the one hand to be able to implement and continue to provide support to business initiatives and on the other hand to protect and improve the living conditions of the poorest:

- the inclusion of gender, environment and HIV/AIDS issues
- community development
- the provision of financial services
- the provision of legal and business services

### ***(iii) Strategies***

The Malonda Foundation concentrates on the strategy of promoting partnerships through its participation in consortiums or joint-venture contracts with the private sector, however extended to medium and large scale business activities involving national as well as foreign companies. It is in this area of its programme that partnerships with forestry companies can be found, which have been researched in this report in terms of their social and economic impact on community level.

In the case of large investments in the forestry and tourism areas, the Malonda Foundation has previously been provided with the Right to Use and Exploit Land (Portuguese acronym DUAT, Direito de Uso e Aproveitamento de Terra) through a process that in principle must go through the delimitation, consultation and negotiation with the communities where the land they want lies and the later acquisition of DUATs and holdings.

It is based on these DUATs that Malonda participates, to date, in partnerships with private, foreign enterprises and commercial and business activities under development.

However, the non-profit activities of the Malonda Foundation continue, though concentrated mainly on the Ombudsman services which include launching actions against corruption, the dissemination of information on businesses and investments and the provision of legal services for companies and investors.

### ***(iv) The Community Development Fund***

The Malonda Programme states that initiatives concerning large scale investments in reforestation and tourism should be able to generate significant funds for the benefit of local communities. Such funds may have different sources, both as anticipated amounts as part of the initial investment earmarked for compensation for the families affected according to the Land Law, and as companies' budget forecasts in their annual results as part of their social responsibility. These funds would later be used to benefit the local communities affected by reforestation and tourism projects collectively.

It is important to considerate how this dimension is implemented and in particular, how it gels with the remaining dimensions, as it is one of the key mechanisms aimed at ensuring and improving the living conditions of the local population.

## **The legal framework of the right to use and exploit land**

### **The state's right to land ownership**

In the current constitutional order, the state places certain goods such as land, forests and wild life, minerals etc. under its control essentially for distributive purposes so that there is some balance and equity when the different social groups access these goods. This goal is achieved by recognising and granting these groups more or less sound and stable rights which are considered to be rights of usufruct.

It is thereby understood that the state's right to land and other natural resources seeks essentially to see to it that citizens gain access to the same goods. This process can be made directly by introducing legal mechanisms such as the DUAT or indirectly through the administrative licence mechanism, of which grant contracts are a part.

### **The constitutional basis of the citizens' right to "use and exploit land"**

Today in Mozambique the legal mechanisms mentioned above are primarily defined in the Constitution of the Republic of Mozambique itself, that guarantees the "right to use and exploit land" (DUAT) to all Mozambicans (Art. 109, no. 3) and recognizes and protects the land rights acquired through **occupation** (Art.111 of the Constitution). The Constitution also provides that Parliament "determines the conditions for using and exploiting land" (Art. 110, no. 1).

These conditions in turn are stipulated in the Land Law of 1997 (Lei no. 17/97, of October 1), based on the National Land Policy of 1995 (PNT). This political-legal framework was prepared with the technical support of FAO and other partners and with the wide and democratic participation of many sectors of civil society and other interest groups. As a result, the policy and the Land Law of 1997 itself still enjoy great support within the Mozambican society and still provide the macro framework for managing land and other natural resources in Mozambique<sup>4</sup>.

In addition to this socio-political legitimacy, concepts developed in the Land Law such as Local Community and Consultations or Hearing to Local Community by Investors and the state by local communities, are also included in most of the other natural resources laws approved after 1997.

### **The Nature of the DUAT**

The constitutional right to acquire a DUAT through occupation is granted in a concrete manner in Article 12 of the Land Law which recognises the customary occupation by

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<sup>4</sup> See Calengo, Monteiro e Tanner (2007); Tanner (2002)

the local communities and by Mozambican individuals as a way to acquire a DUAT. The DUAT can also be acquired **through a formal request** to the administrative authorities of the Government which grant a new DUAT on behalf of the state (the only method open to foreigners and international/national companies).

The DUAT is legally the same whatever the method used. A DUAT that is acquired formally, together with a DUAT title, is no stronger than a DUAT acquired through customary norms and practices or through good faith, even though in the latter case the DUAT is not registered or there are no documents to prove it.

Both the DUAT through occupation and the DUAT granted by the state are legally a private right that cannot be easily revoked. It also enjoys the general guarantees that are applied to private property according to Article 82 of the Constitution.

The state may only revoke a DUAT in the public interest (e.g. to implement public infrastructure), but in that case the state is obliged to pay fair compensation (Constitution, Article 82, number 2 and Land Law, Article 18). The DUAT can also be revoked if its holder does not exploit the land properly or according to the approved project or disrespects environmental rules or other norms.

#### *Women's rights*

The customary systems also include ways of exploiting and using land and natural resources, emphasising the situation of women who typically have no decision-making powers and do not own the land they work. However, as it is granted by the local system, this “customary DUAT” of women is legally equivalent to any DUAT and this way women enjoy a strong guarantee of their rights within the formal or “extra-community” context.

Similarly, women's rights enjoy an even more concrete guarantee in Article 12 under whose conditions the need to respect superior constitutional principles will always prevail over the application of customary norms and practices.

#### **The DUAT and private investment**

In Mozambique private investment is considered by government to be the cornerstone of its development policy and essential to alleviate poverty. Private investment in land and other natural resources, based on the DUAT, is in turn the fundamental aspect of the National Land Policy (PNT) along with safeguarding the rights of peasant farmers:

*“To safeguard the rights of the Mozambican people to land and natural resources, as well as to promote the investment and the sustainable and equitable use of these resources”.*

The underlying objective for the architects of the PNT and the subsequent Land Law was to offer a legal framework that *promotes* investment and provides investors with the necessary security of tenure. It is true that the DUAT, by definition, is not a right on the same level as private property, however by its content it is an equal, actual private right surrounded by strong legal guarantees, that is renewable up to a total period of 100 years which is enough to ensure a good return on capital invested.

Within this context, the DUAT is a right which tends to be perpetual or *quasi*-perpetual. One of the measures that consolidate this legal framework is direct access granted to foreign investors to land and other natural resources. They may turn directly to the state to request land without passing through national intermediates, unless it gives them some special benefits where they can choose partnership with a national individual or with a local community.

### **The local community**

The Land Law recognizes and legitimates the important role the local population play in the process of granting new rights and in processes of land and natural resources management through the “local community” mechanism.

The local community, together with its own chiefs and other key persons, plays two different and complementing roles:

- (i) As subject of the right (DUAT): recognising and granting rights to the members of the community “following customary norms and practices”, which are consequently legally recognised as DUATs granted by the state. In the various different cultural systems, the rights that families have for many generations amount to a kind of historical tenure and are a type of private property (patrimonial right). The use of local resources is dynamic and managed by local systems moving through rotations to retain the fertility of the soil. Common areas include forests, pastures, crop areas and land not being used and kept for future generations.
- (ii) As an actor in land administration (Art. 24 of Land Law): the community uses its own structures, practices and norms to manage conflicts at local level, among its members and among neighbouring communities. Also participation by the district authorities through consultations in the process of granting land by the state.

Seen from the outside, the local community then becomes the repository of knowledge about “who occupies what”, as well as the administrating entity of these complex patterns of local land use.

## How can a local community be identified?

There may be several different answers as there are several forms of local communities organisation and representation in the country. If this is in dispute, however, there is in the Land Law the minimum structure of something to be considered a local community entity:

- A group of families and individuals. This group consists of people who constitute a certain “grouping”, i.e. it involves a certain organisation and thereby possesses an institutional feature in the sense that it is something lasting and stable.
- Interest: to safeguard or guarantee the property and the use of land or other natural resources or simply of historical/cultural places.
- Territory: the area occupied by the community is at the locality level or below.

In fact, the identification and definition of a community is based on the combination of the three features mentioned above.

One social entity that has an area larger than that of the locality will not be considered a local community for the purposes of the Land Law.

If the local community represents a smaller or a larger number of people (families and individuals) or if it has a smaller or a larger extension of occupied land, 2.000 ha, 5.000 ha, 10.000 ha, 200.000 ha, 500.000 ha or more, this does not stop it from being considered a local community. The territory of the community can enclose parts from one or more adjacent localities, but cannot enclose two or more whole localities. In the latter case it becomes a group of local communities that can somehow associate or organise themselves to promote and defend common interests.

The concept of local community is again stated in the Law on Local State Organs (LOLE), Law 1º. 8/2003, of 19th May, but this law extends the concept of community to the province level. Within the context of the Land Law, local community extends to the locality level. But the objectives of these two laws are different: a *participation* mechanism in the first case, a mechanism to *enjoy rights* in the second case.

So, not everything that constitutes a population located in a territory should be considered to be a local community for the purposes of the Land Law and this should not be confused with the objectives and mechanisms stated in the LOLE.

### *Community representation*

Another issue concerns the organisation and actual representation of the local community, as well as the customary norms and practices that it uses. Such aspects can and should vary from place to place in the country, in the same province or district, but this does not deprive the community of its “legal identity”.

The Land Law says that the question of who represents the community and how the community acts within the context of enjoying its DUAT would be the object of a specific law (Article 30). Such legislation has not yet been approved.

However still there is no legal vacuum. The Land Law Regulation also states that in the consultation process the communities have to have a group of three and a maximum of nine people as their witnesses at the signature of the community consultation meeting minutes (article 27, no. 2). On the other hand, the Law on Local State Organs (LOLE) Regulation speaks of community committees and community development funds (arts. 113 & 114). The important thing, however, is to note that there is never a reference to the “traditional leaders” or any other customary structure as the legal unquestionable representative of the community when applying the Land Law and managing its DUATs.

Local Committees and Citizens’ Groups, women and men, are privileged legal ways to represent the local community along with other actors and community leadership (Art. 105, LOLE Regulation).

#### *The delimitation of community land*

First of all it must be mentioned that delimitation and community consultation (to be discussed below) are two different processes.

Delimitation is initially referred to in Article 24 of the Land Law, where it says that local communities participate “in the identification and definition of the limits of the land area they occupy”. Within this context it is an instrumental process that a) proves the existence of a DUAT acquired through occupation and b) establishes the limits of this DUAT. It means, as a rule, that delimitation is a process that occurs *a posteriori* to the existence of a DUAT and has, by definition, to identify the limits of a certain area occupied by a local community or a national individual and to make them visible through entering the limits of this area in the Cadastral Atlas.

Delimitation is associated to the process of formal recognition by the state of rights acquired or as a means to prevent potential conflicts in a certain local community, either among members of the community or with a neighbouring community or an investor, or because of a future or present state project whose expansion or implementation brings some conflict concerning land (Article 7 of Technical Annex to Land Law Regulation, approved by the Ministerial Diploma No. 29-A/2000, of 17th March).

As a technical process, delimitation is in contrast to demarcation which is carried out after provisory authorisation of a formal request to the state. Therefore, it also occurs after the existence of the DUAT, although in an embryonic or more or less precarious stage which culminates with the placing out of milestones, whereas for demarcation it is enough to identify and register (in a Descriptive Memory in the cadastral process) landmarks that may even be natural features of the region.

Following this provision in the Land Law, no. 3 of Article 9 of Land Law Regulation clarifies that when necessary or at the request of the local communities, “*the areas with the right to use and exploit land acquired through occupation according to customary norms and practices can be identified and entered in the National Land Cadastre (CNT) according to the requirements to be defined in a Technical Annex.*”

This provision unveils one of the main delimitation problems: the intention to delimitate community territories based on a certain interpretation of the Land Law which in turn is based on some unknown legal provision.

It appears, unless otherwise interpreted, that the “object” of delimitation is the land which is currently occupied by the community according to the definition of local community in the Land Law (Article 1, number 1), including the projection of its future needs.

The legal criterion that is suggested here is to make the period of time coincide with the period of time that the investor may, according to the law, remain with the community according to the DUAT that has been granted by the state. This period of time may be up to 50 years or more than 50 years i.e. 100 years (Article 17, no. 1 of Land Law). Consequently the land needed by the community for a minimum period of 100 years should be delimited taking into account indications of the local “household land income”. So 100 times the number of families that are included in the community plus times what each household needs in terms of land per year, plus the areas of common use for other non-agricultural purposes.

In terms of development goals, delimitation aims at ensuring the survival of the community and its members. However, following the line of thought of the National Land Policy itself, that is promoting investment, any person interested in the delimited land (in particular investors) can gain access to this land and use it, though this person should “negotiate” with the community. This negotiation will occur in a special environment and at a separate time, namely within the *consultation*, given that the objective of the delimitation is to facilitate the consultation process.

However, because of its own technical nature, the delimitation process serves to raise the community’s level of awareness of the importance of its land and natural resources and allows the community to assess its present and future needs. At the same time, it allows it to know how many people and families comprise the community and develops its own negotiation process through the identification of its leaders and spokespeople, putting the community in a position to demand more benefits or participation in the future initiatives or economic project from the investor or the state.

### *Procedures*

Chapter II, articles 5 to 12, Technical Annex of Land Law Regulation details delimitation procedures, in particular delimitation of areas occupied by the local communities, including the indication of phases of the delimitation (information and

dissemination, participatory diagnosis, map and its record, devolution and entering into the CNT).

Of these procedures the need to promote a participatory process is stressed, in particular the need to involve women and young people and other socio-economic sectors and groups. Similarly, the question of representativity through the compulsory participation of neighbours (neighbouring communities and other occupants of adjacent land), in particular in the process of confirming the map and its record and devolution. On the other hand, the requirements to be observed regarding the delimitation teams (technical and professional qualifications) are indicated.

The question of local community representation is guaranteed by demanding the signature of a minimum of three and a maximum of nine people, chosen by public meeting, to confirm the legality of the relevant process documents. Consequently, the presence of community or traditional leaders only is not enough to fulfil the condition that the community must be well represented.

#### *Contents and legal delimitation method*

From the legal point of view, article 13, numbers 2 & 3, of the Technical Annex state that delimitation must have the following minimum contents:

- The production of a map of for the delimited area in the National Land Cadastre (CNT)
- The registration in the CNT book of data referring to the map, that is, of the coordinates of the land, of the references in respective legal processes, of the identification of the lot through its number, of the dimension of the area and its location (Province, District, Administrative Post and Locality)
- Indication of neighbouring occupants and/or neighbouring communities, as well as indication of the date when the register was made
- The start up of a process of its own to maintain it in the cadastral system

As far as its implementation and materialisation are concerned, no. 4 in article 13 of the same Technical Annex clarifies that delimitation of community land takes the form of a *Delimitation Certificate*, which “is transferred to the local community”.

Therefore, without a “Delimitation Certificate” that states the contents mentioned above, from a legal point of view there is no delimitation process. Or, in other words, delimitation without the document mentioned above that is in the hands of the community has no legal effect whatsoever. In addition, the community cannot even proceed to the land register in the Ministry of Justice as it is entitled to (article 14 of Land Law and 20 of Land Law Regulation) without it.

## **Community consultation: contents, process and legal implications**

Community consultation is superior to, or has more legal force than, delimitation in the sense that it is a material and substantive feature of the allocation process of a DUAT. Without the consultation there is no legally valid allocation of a new DUAT to a private applicant.

Article 13, no. 3 of Land Law states that the state (public administration) in the process of authorising a DUAT to any individual or collective entity<sup>5</sup> should first consult the local communities “for the purpose of confirming that the area is free and has no occupants”. It is noted within this context that if there is an occupant then there is already a DUAT acquired under Article 12, paragraph (a). This process is reflected in Article 24 that establishes the duty of the local communities to participate in land and natural resource management, explaining among other things, “the allocation of new DUATs requested by private persons and other people from outside the community”. This process is called “community consultation”.

### *Contents*

From a legal point of view, to consult is to listen to, to ask for an opinion or a statement from a person or an external entity before the decision-maker can draw up his/her administrative act. Hence, the consultation is part of the decision-making process of allocating a new DUAT by the state through its executive agents.

According to the law, the entity consulted is the local community. We have also established its meaning – these are the people who will be directly affected, in a positive or negative manner, by the decision i.e. the title holders (and co-title holders) of the DUATs acquired through occupation in the area concerned.

So it is about receiving the “statement from the local communities”. Article 27 of Land Law Regulation, no. 3, states that this statement is integrated into the “opinion” of the District Administrator.

When examining these legal provisions the following content concerning the consultations or statement from the community can be discerned:

- The community has to say if the requested area is free and has no occupants. Even if it is assumed that the requested area is free, the community still has to confirm it.
- Even if the area is occupied and has one holder or holders, the community should state its opinion on the possibility of establishing a partnership with the applicant.

Consequently, during the consultation process the community may say:

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<sup>5</sup> Company, NGO, Public Institutions, etc (national or foreign)

- “no” – the area in question is not available, is not free for occupation.
- “yes” – the area is available because it has no occupants under the law.
- “yes” – the area has occupants but it is possible to negotiate a partnership.

Concerning the concept of occupation it is important to remember that the law uses two concepts:

- “free” land
- land “with an occupant”

Evidently “free land” means that there are currently no activities being carried out there. However apart from the fact that the land is not being exploited for farming or cattle ranching or for any other purposes, it should be taken into account whether the land is occupied in the sense of Article 1, no. 1 of the Land Law, which also includes other means of “use and exploitation” in addition to actual land cultivation.

However, from the point of view of many agents, state executives and other actors from outside the communities, “free land” means that there are no fields. This assumption can create serious conflicts if, in fact, the land is intended for something else or if for any reason – such as the local fallow land rotation system – the land is kept for future generations but is not under cultivation for the time being.

That is to say, “land with an occupant” or occupied land also means that even when the land does not have fields or other forms of exploitation on it, the community or some of its members have plans for its immediate or future use, that is, the title holders of these areas exist and plan to implement some activities in this areas at some time.

Consequently most of the land requested by an applicant already has “occupants” according to the law and there are already DUATs acquired through occupation in these areas. In this case, most of the consultations aim at *negotiating the conditions for a future partnership between the community and the new applicant*.

As a result of the consultation, the statement of the community is reduced to “minutes” or to a written document (contents and minimum format can be found in a template available from the local cadastral services). As the name shows, this is a model document or a “type of minutes” that means that its contents can be increased through the inclusion of other data and, to an even larger extent, through the inclusion of annexes.

### *Process*

For the new applicant, the process of acquiring DUATs, i.e. the allocation of DUATs, is a complex process and has different phases, although the MINAG has introduced simplified mechanisms:

- Identification of the area (including maps of soil and precipitation).
- Discussions with the communities (with their representatives, members and specific groups that are included in them).
- The different administrative and land surveying stages in the field depending on the positive result of the consultation.

It is also noted that for the purpose of internal management of the collective DUAT of the community, Article 10, no. 2 of the Land Law and Article 12 of the Land Law Regulation state that the communities are ruled according to the principle of being *co-holders*, implemented according to the principles of co-ownership stated in Article 1403 and following articles of the Civil Code.

In this case it is essential to understand that one single, rapid consultation with the leaders of a community only is not legally adequate – everyone is a co-title holder and should therefore, in one way or another, participate in the decision making concerning their DUAT at the community level within which there are hundreds and even thousands of other DUATs acquired and managed by community structures and laws.

All this means several trips and contacts in the field made by the applicant who is usually accompanied by relevant state officials (from the province or the district or the administrative post). However, it is important to separate all these contacts and meetings from the *legal moment* of the consultation, which is the moment when everyone finally sits down to write down and sign what has been agreed.

Although the preparatory meetings of the consultation may take place for several days, the meeting or the consultation process itself can have two or three sessions, i.e. take place during two or three consecutive days or spread over a week, a month or a year. Without holding several meetings, actually in several different places in a community especially when the community is large, it is impossible to respect the requirements of consulting co-title holders and also those stated in Article 1403 and following articles of the Civil Code.

Anyhow, the final document is signed at the last meeting which proofs the “community consultation” for all legal purposes. The result of this meeting will be assessed according to the people present compared to the total number of inhabitants:

- The largest possible number of community members should participate to “grant legitimacy” to the process.
- Everyone who is likely to be affected (field owners) should be heard and should discuss, case by case, the situation of their fields. This gives sustainability to the community consultation.

However it is important to mention that *within the community* at a level lower than the collective DUAT there is the right to the field, i.e. the more individualized DUAT that falls on a peasant’s parcel of land and which is also a private, individual right that can never be subject to the will of the majority. Consequently, anyone from the community can take to court or question in any other State instance the validity of the investor’s DUAT which is only based on the statement of the majority of the community.

One frequent question during such consultations in Mozambique is that the communities do not understand the meaning of aspects connected to the consultation, with emphasis on the issue of extension of the areas requested by the investor. Sometimes, they agree to granting thousands of hectares, which is an abstract concept, especially when associated with information on a project they know little about. The reality in many of these cases is that the concept of being co-title holders has not been sufficiently applied and, in fact, the majority of the community members *do not even know about the consultation, not to speak of the details of the proposed project.*

The agreements made with leadership groups, who in turn cannot know or are not aware of the need to make internal consultations, jeopardise the activities of the community which are based on the use of expanded local resources and give the impression of having large areas of free land.

#### *Legal implications of community consultations*

The legal implications of community consultations can be assessed in two stages.

No. 3 of Article 27 of Land Law Regulation states that in case “other rights fall on the requested land, the opinion of the District Administrator will include the terms by which he/she will rule the partnership between the holders of the DUAT acquired through occupation and the applicant will be governed”. That is, if the community says that the requested area “is not free and has occupants”, the Administrator has only two possible actions:

- To have the request sent back or filed.
- To promote a partnership between the parties becoming the Administrator personally and actively involved in the negotiations between the parties and taking into account the district development plans and strategy.

The request for land from the state is decided by the Governor of the Province, by the Minister or by the Council of Ministers or even by the President of the Municipal Council or by the District Administrator depending on the size of the area or whether it is (or not) located in an urban area (Articles 22 & 23 of the Land Law). Each decision abides by certain requirements or legal formalities according to Article 13 of the Land Law and Articles 24 to 28 of its Regulations. The consultations and their minutes are included in these formalities. The lack of a consultation or a mismanaged consultation (not properly carried out) can annul the decision to authorise the DUAT, i.e. the provisional or final title is not in compliance with the Law which may lead to its annulment and invalidation by the administrative court or by the authority that made the decision. This may occur through a petition made by any member of the community.

### **Authorisation process of DUAT acquired from the state**

In addition to the requirement of the community consultations and from the opinion of the District Administrator the DUAT acquired from the State also abides by other requirements:

- **Exploitation Plan:** referred to in Article 19 of the Land Law and in No. 2 of Article 24 of its Regulations. The Exploitation Plan has two purposes: to allow the relevant entities to supervise the different economic activities (agriculture, construction, housing, tourism, etc), as well as environmental activities and to provide technical opinions as far as the merit, viability and feasibility of the project are concerned. Later, the non-performance of this Exploitation Plan may mean the annulment of the DUAT according to paragraph a) of No.18 of the Land Law.
- **Decision level:** articles 22 to 24 of Land Law define the several authorisation competences of the DUAT depending on the size of the required area. The principle is that the bigger the size of the area, the greater the need to make the more qualified authority intervene, aiming at more consideration and protection of the rights of the parties, as well as of the interests of the state with a view to its sector plans, given that the land issue cuts across these. The objective of causing more institutions and more qualified levels to intervene is also aimed at giving the decision more legal guarantees because it benefits from more information and different approaches and interests are involved in the process.

### **Negotiations and partnership - local communities and investors**

There are two circumstances in which the negotiations between the local community and the investor is compulsory: 1) when a delimited community area is required by the investor or 2) when a community area that is not delimited but occupied is required by the investor.

As a result of these negotiations the community can simply give away their rights while receiving some benefits from the investor. However it may go further by achieving more significant gains:

- The investor transfers funds for projects developed by the community or community members may initiate alternative sustainability activities based on the transferred land.
- Jointly implement, with the investor, a project through a company in which the community participates or which is totally owned by the community but is handed over to the private company for management purposes.
- A combination of the business model with a set of services or small community enterprises or community members promoted and assisted by the private company (e.g. purchase by the private company of goods and services from the community).
- Temporary or final transfer (conveyance, lease agreement, etc.) of an undertaking that was implemented by the community under the condition that it receives a monthly or annual payment or even a one-off payment.

In this matter, the legal framework around the land and its natural resources should be complemented with information available on the organisation and representation of the local communities stated by legislation concerning “organisation and running of the local state organs, stated above and in a more concrete fashion about “community committees” and community development funds”, stated in Articles 113 & 114, respectively, of the Law on Local State Organs (LOLE) Regulations, approved by Decree no. 11/2005, of 10<sup>th</sup> June. These provisions grant the community mechanisms for it to represent itself in the partnership, as well as to be able to manage the funds it may receive from an investor<sup>6</sup>.

## **The vision behind the Malonda Programme**

From the outset, the programme supported by the Swedish cooperation had two objectives that were understood by its sponsors as being complementary:

- to promote private investment in the Province in such a way that
- it would bring tangible social benefits for the local population, alleviating poverty and promoting a sustainable and equitable socio-economic development process.

Within this context, when commercial interests of regional and multinational size appeared in the forest plantation area, the “Avante Niassa” (PROANI) Programme and later on the Malonda Foundation, both supported by Sida, sought to take the role of

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<sup>6</sup> See also the Joint Dispatch of State Administration and Planning and Finance Ministers of 12<sup>th</sup> October which approves the “Guide to community participation and consultation in district planning”.

facilitators in the investment process. One explicit goal of this support, underlined as being essential from the Swedish point of view, was to ensure that this new investment would bring concrete benefits to the population and promote its members' overall development and wellbeing.

Apparently initial contacts between the various companies and the provincial government indicated the existence of large areas suitable for this kind of activity. In addition to land availability, they were informed that in these areas population density is very low and that there would be no problem in allocating the necessary areas for plantations of vast dimensions (hundreds of thousands of hectares).

Fortunately these same companies knew very well from experience in other countries in the region that there are always communities and people, even in the areas less occupied. In face of this reality they remembered that it is essential to pay attention to the need to work with these communities if the investment process is to proceed without problems and conflicts.

However the provincial government's stance appeared to assume that the land belongs to the state. However, the meaning of this principle is discussed above especially as far as its legal-constitutional context is concerned. At that level it is noted that, although there are DUATs in the hands of the local communities that were acquired through occupation and recognised by force of the Land Law of 1997, there are clear differences of opinion concerning the real nature of these rights and their implications for an investment process promoted and favoured by the government. And quite often "national interests" and "the national development imperative" are quoted.

It is underlined in this context that the initial position of the Malonda Programme used the Land Law as its basis and understood that the DUAT is a strong right which should be recognised and taken fully into account by investors in their plans.

The initial group of investors also expressed themselves in favour of this approach and, as a result, a delimitation process of local communities resident in the areas required by investors was prepared. From the outset this process included the involvement of the Malonda Foundation and Sida and aimed at ensuring respect for local rights. Once these local DUATs were delimited and published, the aim was to use these rights as a strong factor in the subsequent negotiations (*consultations*) between local communities and investors. Within this initial context several aspects should be stressed:

- Good intentions and the existing wish to ensure that local rights would not be ignored but integrated as a central feature in the investment plan
- The fact that the proposed large-scale investment would – inevitably – transform not only the landscape of the province but also the basis of the local agricultural production system, which has as its central aspect a long cycle of fallow land and the extensive use of vast land areas.

- The understanding by some people connected to the process that, if this large-scale investment were to happen, it would be essential to immediately introduce economic and social strategies that could compensate the population for the loss of their land and hence their means of livelihood – causing a deep transformation in their living patterns and habits, way of life etc.

*It is essential within this context to understand the importance of recognising the extensive and already existing DUATs of the local communities as something real that belong to “them”, not easily taken away by quoting the expression “State property”. In a concrete manner, if a community gives away part of their DUAT to the investor, there must be compensation according to the Land Law but also active participation by the local people in the definition and implementation of a process that depends, primarily, on access to their resources – their land.*

It was on this basis that a process was prepared, with the support of consultants and specialists in the area of the Land Law, of the delimitation and functional integration between these socio-legal features and a coherent and equitable rural development strategy. This process had two main stages<sup>7</sup>:

1. Sensitising the local population to the proposed investment plans, their implications and the subsequent need to delimitate their DUATs acquired under the Land Law;
2. Once the proposal was accepted by the local population, carrying out a delimitation process in the areas requested by investors, in order to:
  - Prove the locally-acquired DUATs.
  - Establish their limits.
  - Make local communities aware of their rights.
  - Create structures that are more representative of the local population (not necessarily the traditional leaders only).
  - Create a better understanding among the population of the potential for different purposes for their land other than those intended so far and never before thought or imagined.
  - Establish with whom investors should negotiate (*consult*), i.e. determine how many communities there are in the relevant areas and who represents them.
3. *Once local communities have been delimited* (including registering their limits in the Cadastre and the issuance of certificates according to the Technical Annex of the Land Law), *initiate a community consultation process*, in order to:
  - Determine which areas can be allocated to investors.
  - Establish the conditions for communities to release their DUAT for these areas to investors.

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<sup>7</sup> Based on a conversation between Chris Tanner and Consultant Sevy Madureira, who was responsible for training and monitoring the land delimitation teams of the Malonda Programme.

4. With the communities' full agreement as far as releasing their areas to investors is concerned, the investors launch *their* formal request to the state to grant a new DUAT to these areas in their name.

5. Once the new DUAT has been granted to the investor, begin their investment activities as well as also starting up the social and economic activities programme with the local communities which would compensate for the inevitable changes. This programme would offer them alternatives in terms of life strategies in a context where they could no longer use all their land and therefore cannot retain their previous, extensive production system.

In addition to this process there was the necessity within the environmental context, with emphasis on the legal obligation, to carry out an Environmental Impact Assessment which also requires a public consultation process. However, the consultation set out in the Environment Law *cannot be compared to the consultation set out in the Land Law – these are different processes with different objectives as well as different target groups*. Even so, assuming that many local leaders participate in these events, the “environmental consultation” serves to reinforce the message that there will be a major local transformation through the investment and that it is essential to consider mitigation measures and other plans to minimize negative impact.

This report describes how this vision was implemented in practice, unfortunately with several gaps and errors along the way, which are now resulting in serious complaints and disastrous impact on the local population affected by forest investment projects. It appears that there are two alternative “visions” whose respective feasibility should guide the discussion:

a) Promoting large-scale investment where community “participation” integrates the need to guarantee them land which is minimally necessary to preserve their way of living, still based on extensive and rural subsistence farming or

b) Promoting large-scale investment that is aware of inevitable social and economic transformation, promoting community participation and where involved seeking alternatives and new paths, *assuming that with time local communities will change from the current system to a new and more productive system*.

### **III. ANALYSIS OF THE PROCESS**

In this chapter the implementation of the process that resulted from the allocation of DUATs to reforestation projects, and the situation at the current initial plantation phase, is analysed. This process includes the following stages:

- Delimitations of the local communities.
- Community consultations.
- Negotiations and land demarcations (as a part of investors' co-holding of new DUATs).
- Implementation and the impact of the programme's institutional pattern.

The Malonda Programme has always been clearly aware of the importance of involving the communities in the preparation of the process for investors to gain the right to use and exploit land for their projects. There was an attempt to implement the process according to the stipulations and the obligation stated in the Land Law to involve the communities; however the results of field work revealed clear gaps in process implementation.

The result of these several gaps is a current situation where the local population is worried about their future access to land. Other problems were also identified, however the problem of limited land access as stated by the peasant families in the villages that were visited is of greatest importance and severity.

There seems to be no clear vision of how to implement a more participatory and evolutionary method in which investments can be made that, in turn, promote a technological and economic transformation of the peasant farmers' production system. Those responsible for the district and local structures, as well as the members of the villages in the districts covered, show interest in the reforestation, farming and ecotourism projects and have expectations that these projects will bring benefits to their communities. At the same time, they express fear and uncertainty as to whether the projects will benefit or harm their communities. They appreciate the creation of employment opportunities but they also feel insecure because they cannot foresee the future results of this project expansion into their communities.

In several villages covered by reforestation projects, the local population has begun to complain about the limited access to land within a reasonable distance of the population clusters. Many village members and leaders who were interviewed also stated worries about not knowing the limits of the areas allocated to investors and those intended for the local communities. Overall, nobody knows about the Community Fund or about the existence of other practical benefits that may alleviate these worries.

In addition to these strategic aspects, field work also identified some problems with the implementation of key mechanisms included in the Land Law aimed at avoiding conflicts and guaranteeing the active participation of the communities affected by the

projects. Here there are have some doubts on the part of technicians and those responsible for Malonda concerning the application of the concept “local community” and the procedures in the Technical Annex. There was a valuable, but insufficient, attempt to carry out genuinely participatory consultations that would involve all community members; and there was some confusion as to the application of the Land Law and Decree 15/2000 as far as representing the communities is concerned.

When attempting to improve the process, the most important element is to identify methods that can help solve this primary problem which has to do with limited access to land within the context of a still important, and central, production system and the local population’s survival strategy, as well as the lack of a coherent vision of all actors – communities, Government, investors, Malonda – on how to substitute a new form of life for a form of life which, within the context of vast forest plantation, has no way of surviving in the long run.

The worries of the local population can be alleviated by revising the present and the expected future location of land occupation by forest projects, considering two aspects in the short and long term: a) the need for land as concerns the rotation system practised by family sector peasant farmers; and b) the need to advance *urgently* with alleviation measures for social and economic impact, including alternative income sources among other things.

## **The Delimitation of Community DUATs**

### **The concept and subsequent community size**

The first step in the “Malonda Process”, anticipating the arrival of new investors in the area, was the delimitation of land occupied by communities. When preparing and implementing the delimitation in 2004/2005, the Rapid Participatory Diagnosis (DRP) method was used. This methodology is legally prescribed in the Technical Annex to the Land Law Regulations and requires, for its own technical nature, the highest possible participation of all community members.

The DRP of the Technical Annex has several features, including a participatory mapping process, which incorporate participatory techniques. It is important to stress that there is no mention in the Annex (nor in the Law or in the Regulations) of the concepts of chieftaincies or *Regedorias*<sup>8</sup>. Hence, it is not the aim of the DRP to identify and delimitate the traditional entities of territorial management, i.e. the *Regedorias*.

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<sup>8</sup> Chieftaincy in Mozambique is built on a hierarchy organized with a chief for the lineage territory, subordinated chiefs for the various sub-lineages in the same territory and chiefs at the family level. Independently of what the different chiefs are called in different languages, the hierarchy is mainly divided into these three levels. Besides this hierarchy there also exist other responsibilities given to dedicated persons, such as for land issues, social issues, conflict resolutions and local justice. At his side, the Traditional Chief always has a Council of Elders, both men and women. In the north of Mozambique, the hierarchy includes female traditional leaders, but in other regions the female representation is more like a parallel structure to the chieftaincy, with its responsibility concentrated around ceremonial and social tasks.

In principle, all community members should participate in several meetings and discussions promoted by the technical team.

### **The process implemented in the field**

From the information collected we can conclude that the DRP and the delimitation carried out in the study area integrated several of these features. The comments of the consultant hired to advise the process indicate that the methodology of the Technical Annex was followed, at least when the field teams were trained.

However, it is important to understand the implications of this DRP when we think about the size of a “community”. Within the agro-ecological context of Niassa Province, production systems are extensive and incorporate long cycles of fallow land and the different use of various types of resources throughout the year. At a minimum, according to Cunliffe<sup>9</sup>, who was referred to in the Niassa Provincial Strategic Plan 2017, each family needs 30 hectares for their part of the fields in their integrated system<sup>10</sup>. Consequently in a community of 500 families 15,000 hectares are “occupied” according

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Over the years, the society has changed and so has also the traditional authority. In the north and along the coast of Mozambique, the traditional authority has been influenced to a great extent by Islam, resulting in close links between the traditional and religious leaders. In many cases they occupy both the role of traditional and religious leader. For this reason, in the regions influenced by Islam in Niassa, many of the superior traditional leaders are named *Sultão*. During the colonial time, many of the traditional chiefs collaborated with the colonial administration, voluntarily or under duress, and were transformed into assistants to this administration with the generic designation *Régulos* or *Regedores*, responsible for an administrative territory called *Regedoria*.

In the transformation of traditional chiefs to *Régulos*, the process ended up with two categories of *Régulos*. There were *régulos* who at the same time were Traditional Chiefs, and others who by the colonial power were promoted to *Régulos*, but with no legitimate connection to the traditional authority. The latter had no legitimacy among the community, but rested on the colonial administration’s legality. Those *Régulos* who maintained their legitimacy from the community, were legitimate even if they situated themselves between the two poles of legitimacy and of oppression. In some cases they managed to balance between the two poles, in other cases not. Hence, the Traditional Chief is conceptually not the same as a *Régulo*. The Traditional Chief is a community leader, while the *Régulo* was created by the colonial administration. The Traditional Chief is legitimate. The *Régulo* was legal.

The society is in constant transition and also the local traditional authorities are influenced by changes in the society. In the Decree 18/2000 the local chieftaincy is designated *Estruturas Comunitárias*, Community Leadership, and it includes not only the traditional authorities and their collaborators, but also the modern local authorities, such as representatives for the administrative system introduced after Independence, religious leaders and others considered important leaders by the community. In many cases, a teacher, a nurse or a midwife belong to this group. The Decree is an attempt to create a new local chieftaincy, by integrating traditional and contemporary local authorities, adapted to the changes gone through by the society.

<sup>9</sup> Intermon Oxfam, 2004, Support to Niassa provincial processes to develop community focused natural resource management. Mozambique

<sup>10</sup> "Cunliffe refers the field research carried out in Marrupa and estimates that the minimum crop/farming area necessary for the livelihood of one family is 12 hectares, assuming that 2 farmed hectares are used for 8 years and lay fallow for 40 years. At the end of the 8-year cycle, the initial area is again farmed. In addition, he assumes that only 40% of the total area are farmed. Therefore, the total area necessary for the livelihood of one family would be 30 hectares ( $12 \times 100/40 = 30$  ha). He concludes that if there are no technological changes that increase the income per hectare, there will in a not too distant future emerge conflicts because of the use of land in Niassa

to the Land Law, *without taking forests, pasture etc, that are part of the integrated system into account*. That is, in fact the area per family is much bigger and includes other resources, water springs, cultural areas and expansion areas according to the Land Law (this type of analysis resulted in the definition of the community in the current law). It is then reasonable to assume for the community analysed here that by law a DUAT acquired through occupation may incorporate 40-50,000 hectares.

If the “common interests” based on bonds between villages – marriage, kinship, mutual help, etc. – are analysed it becomes immediately obvious that a certain local community can have a total area that covers several villages with some hundreds of families. The delimited DUAT may then expand even more.

However one of the gaps observed, which is decisive when analysing the causes of current problems, has to do with another aspect of the concept of community and of how this was applied in the process. It is evident that the question of social organisation and management was understood in the broader sense of the traditional structure of political and religious leadership and without paying attention to two critical aspects: the idea of “common interests” and the concept of being co-holders.

Hence, the DRP clearly resulted in the delimitation of “communities” which in fact correspond to a *Regedoria*. It is noted that this is a widespread trend observed in many delimitations in the country and, in our opinion, a trend that should be broadly discussed and corrected.

In general, a *Regedoria* covers a large population scattered through several villages, resulting in a very extensive “community”. However, it is essential to understand that the *Regedoria* in this context is not a private entity but has characteristics much more resembling a public management entity, *within which there are several or even hundreds of private DUATs (and other rights)*. It is exactly this dimension of the traditional structure that gave rise to a restriction in the definition of local community that includes a group of people *living in a territorial constituency at the locality level or lower*. In other words, a public entity is never delimited, a private one is.

In the traditional structure of the region investigated and in the history of the communities that live there, it is clear that the *Régulo* does not respond to the *public* or *private* interests of all “sub-communities” that exist in his domain. Without wanting to start a detailed analysis of the history of occupation of the region, there are many smaller communities around certain villages where there are *Sub-Régulos* and other local chiefs who do not accept the *Régulo's* decisive power over their resources in the immediate sense of “common interests” and private and semi-individualised rights. Sometimes the *Régulo* who led the process was from the Yao ethnic group while the community that was delimited belonged to the Makua ethnic group as was observed in a community in Majune (the District Administrator complained about this negligence to the consultants when they visited the district).

Due to these delimitation aspects – its analysis of an extensive production and occupation system and the attention paid to the meaning of traditional leadership up to the highest level –several delimited local communities ended up with huge territorial areas.

Table 1 shows data from reports from Participatory Diagnosis carried out in 2004 and 2005. The table shows that delimited communities encompass huge areas, each covering several villages.

Apparently the DRPs were conducted in the village where the *Régulo* lives. Then there was participation by representatives of community structures, mainly traditional leaders from other villages in each *Regedoria*.

Table 1: The communities (*Regedorias*) covered by the DRPs and delimitations in 2004 and 2005, Niassa

Community/ <i>Regedoria</i>	District	Total area ha	Population / residents	Villages
Ntamila	Muembe	598 263	35 849	32
Chiuaula	Lichinga	332 156	46 965	33
Chipango	Sanga and Lichinga	36 822	14 177	13
Bagarila	Sanga	12 011	9 796	9
Licole	Sanga	37 870	17 808	16
Kalange	Sanga	26 227	5 564	10
Matola	Majune	480 974	18 536	29
Revia	Majune	459 202	2 024	9
		1 983 525		

Ntamila and Revia communities stand out because more people participated in the process than in the other communities, considering the number of people who participated from Chiuanjota and Riate villages where the *Régulos* Ntamila and Revia live.

Obviously these areas are very widespread and do not allow easy or regular communication between all villages and all community members who live there. Naturally people will identify themselves more with the lower levels and with a delimited local community based either on the production system or on the closest traditional leadership system. The fact is that in a farming community that practise manual farming there is great interdependence between the location of land, the housing pattern and the social organisation of the population. This is also reflected in the traditional rules that define the use and control of the land. At least in Niassa “land management” – the allocation and daily administration of acquired rights through customary occupation – lies with the traditional leaders who are closest to the population and who is not the *Régulo*.

In this case it is possible to say that it would have been better to delimitate the lands in relation to the local use of natural resources, stressing the concept of common interests and taking account of the more basic structures to manage these resources than in relationship to the territory – domain – of the top traditional chief. The latter is not the

“local community” stated in the law but something more similar to a district or a locality in terms of local cultures.

It implies that, in this case, the delimitation of a number of “local communities” which are much smaller than those delimited at the time, although being of lesser size they would have had common borders and there would be no “free space” (not occupied) among them<sup>11</sup>.

In fact what is at stake is not necessarily the size of the community – which possibly can extend quite far based on the productive systems in the area – but the *representation* of the communities and *the actual participation* of all community members affected by the investments proposed by the Malonda Programme.

However, if a delimitation process had been conducted without falling into the trend of working primarily with the “leaders”, it is very well possible that there would have been a much greater involvement of all community members, following the Land Law principles of being co-holders and avoiding the complaints and protests heard during the team’s field work.

Another consequence of the excessive size of the delimited “communities” and of the poor communication between “top leaders” and more local leaders is the lack of knowledge among most community members about the requested projects right up to the moment they arrive in the village.

In its sensitisation phase, the participatory delimitation process should also have informed the communities about the projects and its meaning. The interviews show that in many villages this information never reached the local population, though they are part of the delimited community, the *Regedoria*.

Most of the information stayed in the hands of the *Régulo* and his direct subordinates. Not all chiefs have an effective communication system with their population and they do not always carry out consultations with the members of their communities before making decisions. So, the population did not get any information and did not participate in consultations.

In principle, the application of the methodology in the Technical Annex should ensure a minimally reasonable participation level – and so of representativity – on the part of the entire population in a certain community. It is also noted in the definition above that the focus is the occupation and use of several natural resources by “a group of families and individuals”, that is to say by people and families directly connected to the use and exploitation of a certain space or territory. Meanwhile, with vast delimited

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<sup>11</sup> It is noted in the video “Nossa Terra” (Our Land) that comes with Delimitation Manual prepared by the then Committee to Revise the Land Legislation (Land Committee) that a similar mistake was made and only by the end of the process was it recognised that there were *two communities* in a delimited area according to the Technical Annex. The team decided to carry out the process one more time, with more meetings, until a more correct result was achieved.

“communities” the question of representativity becomes very complex and leads to insuperable communication problems.

The team noted this aspect as one of the main causes of the problems observed. As a result of the huge physical, political and social distance among the local chieftancy of the “community”, the stages to follow – consultations, negotiations, new DUATs, etc – have been carried out in an inadvisable manner and with very limited community representativity.

That is to say, we can assume that if a delimitation process had been carried out that would result in smaller communities, not merely reflecting the structure of the *Regedoria*, the subsequent consultation process and agreements between the population and investors could have been more efficient and less problematic.

However, as the consultant who supported the delimitation in its initial phase pointed out, all pertinent features – based on the definition of local community – were incorporated into the training of staff members. What is clear within this context is that in spite of *technically* including these features, other factors resulted in the subsequent focus placed on the leaders – on the *Régulo* – as the partner and not on the “community” per se.

### **Mapping resources and local planning**

We have already discussed how the DRP used in the delimitation should have included the use and occupation of natural resources by the communities. The diagnosis should also be carried out with different groups in the community (women, men, young people etc), because each group uses and prioritises different natural resources. There is also the identification of the rules for the management of these resources and of those responsible for ensuring that the rules are followed.

Obviously, when properly carried out, these discussions offer a good opportunity to think about the future use of the space occupied by the community. To discuss this issue is not part of the formal process shown in the Technical Annex, but delimitation can also be used to map the several areas of the community in relation to the use and importance of each natural resource. This way the areas that the community needs can be identified to give continuity to activities that are important for the livelihood of the families. This type of mapping can also help the community plan the best way to use and manage their land and other natural resources and to identify the areas that can be allocated to investors without jeopardising food security and local income.

The district government of Majune is a good example of this. Here, district strategic planning is based on an analysis of the use of natural resources. This district has received many land requests from investors who are looking for major concessions. With the aim of ensuring that communities have access to land now and in the future, the district government prepared a strategic plan together with local representatives and councils that serves to defend the space the population needs for different purposes. The

plan considers the distances that have to be respected when the investor occupies areas in order for the community to have access to the land where it is going to farm, gather firewood and construction material, medicinal plants and other nature products, hunting and fishing etc. Investors must reserve and respect these spaces.

Here is noted the application of an alternative understanding of the concept occupation. This concept is more attuned to the needs of the local population in terms of their current way of life. Although perhaps more effective in terms of ensuring spaces for the population's agricultural production, no spaces are included that, even if not in use, are part of the community historical property (proved in a properly carried out DRP delimitation process), and that in the perspective of some technicians and some state leaders today may be perceived as empty, free spaces to be allocated to investors.

It is a question of perspective but which has important implications when the time for consultations comes: if the intention of the consultations is merely to guarantee the subsistence of the community, the assisted approach in Majune is an option. However if the intention is to promote some other partnership or to use the investment to manage new resources for the communities, which come from negotiations on the use of their vast but not used land, then this more restricted idea of the delimitation process is not adequate.

### **The delimitation process and the division of space**

The delimitation of land carried out in 2004/5 did not aim at stating the limits and extension on the ground of the areas to be allocated to investors and those to be occupied by the communities. The main purpose was to prove the existence of DUATs acquired through customary occupation and to identify the limits of these DUATs and to allow Malonda to establish a relevant map of the land for its future business projects.

According to the technicians involved, however, the aim of the delimitations was to make it possible for the communities to negotiate with more security and with a certificate in their hands. In addition they were used to transmit other messages about the post-investment situation, thereby mixing the delimitation process with central aspects of the consultation process.

For instance, it was explained to the population that they should preserve the native forests from where they get different natural resources. It was also explained that the companies are not allowed to cut trees to get land for plantation and that they cannot forbid the population to use the resources of the forest or area allocated to the investor.

So, the delimitations resulted in maps of the areas that belong to the communities, however these maps do not show which areas that were to be allocated to investors in a later phase of the consultation and which areas that were to stay with the local communities to guarantee their survival. Actually, the delimitations were not ascribed the weight they could have been in the negotiation process about partnership between local communities and investors (either the Malonda Foundation or another investor

who arrived later). However, in the process that was initially anticipated, two different phases were foreseen: delimitation first and then consultations after that, etc.

Surely the delimitations would have meant more to the local communities had they been finalised by the issuance of the certificate. This event would have created the necessary basis, and the sense of continuity between phases, for more efficient consultations where the allocation of community land on terms agreed between the community side and the investor would be discussed (see discussion below). This way, there would have been a meeting point within the land allocation process itself that is the community consultation processes and subsequent demarcations.

A major mistake in the entire process was the fact that the certificates were never issued and therefore the legal basis for subsequent discussions was never explicitly established.

Apparently technicians from SPGC (Provincial Services for Geography and Cadastre) suggested at the time that it was not possible to issue certificates because the areas were too large. Obviously:

- They are large which proves the mistake incurred in the delimitations based on *Regedorias*.
- However it may be necessary for them to be large considering the implications of the analysis of the production systems and of the common interests that connect villages and localities.

In this case the delimitation teams should have been advised to carry out the process once again, perhaps resulting in a larger number of smaller local communities. To simply refuse to enter the delimitation onto the maps and issue the certificates, which according to the law is the duty of the SPGC, is something very questionable under the public utilities management system that requires any “negative decision” to be justified or risk being null and void.

## **The Consultations**

The process implemented by the Malonda Project through land delimitation activities using the Rapid Participatory Diagnosis (DRP) method did not help to prepare the communities very much. The fundamental problem was that the initial recommendations for the process were not followed.

The step following the delimitation process is the community consultation about the terms of land allocation to investors. The community consultation has to be implemented at the village level and with village involvement. It is not enough to carry out the consultations based on the concept of the *Regedoria*. Another important point is that the delimitation and the community consultations on the right to use and exploit land should not be carried out at the same time.

It may be necessary to be more careful with the definition and the meaning of community consultations. According to the Law and to the land allocation process, community consultations do not mean only communicating with the communities but also negotiating the rights to use and to control land. This distinction was not clear while preparing the forest projects in Niassa Province and consequently the community consultations process was weakened.

On the one hand, contacts established with the communities at the time of the delimitations do not correspond to the intention to carry out community consultations. On the other hand, even if trying to look upon the contacts established with the communities at the time of the delimitations as true consultations, community representativity was not fulfilled as it was limited to Régulos and the people around them.

These were the people who were basically consulted and who decided on the launching of the projects on the communities' land. The decisions they made did not always correspond to the interests of the population of the villages affected, which have today resulted in local concerns about the limits of the farm plots, the expansion areas and future access to land. These are concerns that are the cause of the disagreement and tension in some of the areas covered by the plantations.

This is found, for instance, in the following villages: Cavago and Miala in Sanga District (Malonda); Nzizi in Muembe District (Malonda); Mapaco and Mussa in Lichinga District (Malonda and Forests of Niassa); Mecucue and Mbandece in Lago District (Chikweti); Colongo in Lichinga District (Chikweti); Luambala in Majune District (Monte Mosal, ecotourism activity, Malonda).

One positive example can be found in Chiconono village in Muembe District. This is the area where the Malonda New Forests company is going to implement its plantations. There the community has allocated land at a distance of 8km from the village, where the community does not have fields and in an area the community does not plan to use for future farming. When the community negotiated with the investor and the government authorities, it was able to defend the need to keep the areas close to the village for farming purposes and to give only the land farthest way from the village for forestry purposes.

### **Other companies' procedures**

At the beginning of the forest investment planning, the two companies Forests of Niassa and Chikweti worked in partnership with the Malonda Programme. Nowadays two more companies have also started up partnership with Malonda. These are Tree Farm and New Forests. Forests of Niassa still has its partnership with Malonda.

Meanwhile, due to different opinions as how to continue the process, the collaboration between the Malonda Foundation and the Chikweti Company has been cancelled and both continue to work separately. One small part of the areas planted by Chikweti

continues to lie in an area covered by the participatory diagnosis and the delimitation processes carried out within the Malonda Programme in 2004. In these areas, the preparation of the communities covered by the Chikweti plantations is partially equal to that of the Malonda Foundation.

Meanwhile, in the other areas where Chikweti came in to plant later, the preparatory contacts with the communities were different and carried out over a limited period. This is partly explained by the situation that emerged after the interrupted collaboration with the Malonda Foundation, which forced Chikweti to request land in other areas outside the control of Malonda. In these new areas, Chikweti did not conduct a delimitation process or participatory diagnosis as was done in other communities and there were no consultations to negotiate with the communities. The company contacted the local leaders directly, mainly the *Régulo* or the *Queen*, with whom they talked and requested land. Afterwards the traditional chief communicated/announced this matter to his/her subordinates for them to inform the population. In the next step, representatives from the company contacted the *Régulo*, or his subordinated chief the Nduna, to show the land area that the company wanted to occupy. In some cases, the local leaders organised a meeting with the population to discuss the request for land and in other cases they only passed on the information which did not reach all those affected. In some cases parts of, or the entire, population refused to give the land to Chikweti, whereas in other they accepted because they wanted to be employed. But the *Régulos* ended up deciding in favour of the company. In the region of Mbadece one of these *Régulos* who acted in such a unilateral manner (allocating land that the community did not want to give up) ended up being ousted from power by the population.

Later, company representatives arrived to inform that they were going to start working and that they need workers. They told the local people about the process of recruiting workers and asked people to start to sign up. It could be said that information meetings were held with the population, but no consultations were carried out.

In Lago District there were villages who refused to give up their land to Chikweti. In one of the villages the argument used was that the employment offered to them was not interesting because they earned more from their tobacco crops.

The leaders in another village did not want the company to move in because they had heard about the negative experiences the population in Majune District had faced in the past few years due to the presence of foreign companies. They did not want to face the same kind of problems as the peasants in Majune.

In a village in the same district, after the population had complained about how land was wrongly occupied by Chikweti, representatives of this community succeeded in negotiating with the company for the community to receive compensation. The consensus reached in the negotiations between the company and the community was that the company had to build a small bridge to facilitate access to an area where the population agreed to begin farming new fields, instead of using the area occupied by Chikweti. The community also requested that the company build a Mosque and a health

centre in exchange for them agreeing to the land occupation by the company, however this request has not yet been implemented, although the community say that they are going to continue to try to convince the company to comply.

## **Agreements**

Another issue is that the consultations should result in an agreement between the community and the investor. This issue is clearly emphasised in the Land Law Regulations, Article 24: “If other rights already pertain to the requested land (which in the Malonda case existed and were proved by delimitation) the view of the District Administrator will include the terms on how to rule the partnership between the holders of the DUAT acquired through occupation (i.e. the delimited communities) and the applicant”.

Consequently, the consultation minutes, which are the basis of the Administrator’s view, may serve as an agreement if they are detailed and written according to the regulations and include agreed benefits.

Even though this part is decisive to investors in the land allocation process, the contacts that were established with the communities from the time of the delimitations until the demarcations *did not include negotiations of benefits, rights or partnerships and did not lead to an agreement between the parties involved*. In the view of the authors, this is one of the most important mistakes in the process and it represents a true rupture of the process established in the vision on which the Malonda Programme rests.

The representatives for the Malonda Foundation and the technicians who participated in the delimitations explained that there were three main aspects that prevented an agreement at the time they carried out contacts with the communities. First, they had tried to implement the delimitations and the consultations at the same time, without considering all the components that should be part of a consultation. Second, at the time of the delimitations there was no likely investor in the province. Third, the PROANI and Malonda Programmes deliberately avoided negotiating and talking about the benefits and rights of the communities because at the time there was “no guidance” from the Malonda management concerning this matter.

As a result there was no vision or strategy prepared to organise benefits and there was no structure put in place for the Community Development Fund.

This shows that none of the parties involved was sufficiently prepared to conduct the process properly. The impact that this fact had in the current situation is critical, as the agreements negotiated with the investors could have assured the community members that, in exchange for the land they were going to lose, they would win much more from compensation, for example in the shape of the Fund and other activities to generate income, with the intensification of farming through improved technology and other options. The need to assure some immediate benefit to offset the land lost and to explain to the communities that they would still win more significantly with the arrival of forest

investments was a condition that the consultant responsible for the delimitations showed to be essential. According to her “it is unfortunate that today, several years after the process started, not even the Fund has been set up to begin alleviating the worries of the local population”<sup>12</sup>.

### **Decree 15/2000**

An issue that should be noted is that civil servants – whether they work for the state or for Malonda – clearly tend to treat the consultations with a *Régulo* or other traditional leader as a community consultation. Similarly, delimitation – i.e. the concept of local community – is understood as something connected to the *Regedoria*, which ends up as the delimited entity without taking key issues such as being co-holder, individual rights and other issues into account.

As we have already shown in a previous discussion, the result of this approach is complete lack of knowledge in villages and localities about the process agreed between government structures and traditional leaders. The worst thing in this context is that the people who are most affected by the plantations at the local level – the families and individuals referred to in the definition of Local Community in the Land Law – do not participate in the discussions about the areas to be allocated to investors, nor do they participate in discussions about the terms by which the partnership between the investor and the communities will be ruled.

One of the reasons that explain this is the automatic application of Decree 15/2000. This decree formally recognises the figure of a “community authority” which may include the *Régulos* and other superior chiefs in the political-religious order of Mozambican ethnic communities. Among other things, the Decree states that “these are areas of discussion between the local state organs and the community authorities...the use and exploitation of the land” (Article 4, paragraph (d)). In the opinion of several government officials, this decree responds to Article 30 of the Land Law that states that “As far as the rights to use and exploit land are concerned, the representation mechanisms...of the local communities are stated by law”.

It was made very clear in the several discussions during the field research that, in fact, this is the stance of most civil servants as concerns the consultation process, and that the subsequent lack of involvement of most of the population directly affected by the plantations is another serious mistake in the implementation of the programme.

There are several arguments against the idea that Decree 15/2000 solves the question of representation, with emphasis on the obligation to apply the principle of being co-holder as stated in the Land Law and its Regulations, as the guiding principle in the internal management of the DUATs of local communities. Even if it was accepted that Decree 15/2000 solves the issue of community representation definitively, the principle of being co-holder per se requires that these representatives are forced – *by law* – to

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<sup>12</sup> Sevy Madureira, in written comments sent to the consultants (June 2008).

consult all members of their communities and that any decision made about the allocation of the DUAT or community land, totally or partially, must have the approval and the agreement of all its co-holders. Obviously, this aspect was not taken into account by the technicians who were responsible for the consultations who followed senior guidance as far as the application of Decree 15/2000 is concerned.

On the other hand, it is doubtful that the matters referred to in Article 30 of the Land Law, “are stated by law”, that the term law is interpreted in its broader sense into which the Decree or its regulations would also fit. The authors feel that the situation is different when stating “according to the law” in the broadest sense of the word law. And then, “articulation mechanisms” are different from representation mechanisms and in the absence of the law (because the law has not yet been approved); the rules of the Civil Code should apply. As a matter of fact, as referred in the Land Law itself and in this case Articles 1407 and 985 of the Civil Code that state that “all co-owners have equal power to administrate” the object, which in this case is the land they occupy, because they are all equal according to the law (by reference of Article 1403, number 2 of the Civil Code).

### **The initial mapping of land for the investors’ new DUATs**

The step after the consultations is the initial demarcation (map) of the area that the community agrees to allocate to the investor and which is going to result in the investor’s DUAT (Right to Use and Exploit Land) or in a contract between the community and the investor which regulates the conditions under which the investor may use a certain area allocated by the community.

In many of the villages there were leaders, as well as other community members, who explained that the identification and measurement of the land area for the investor did not follow the rules established, neither during the preparation nor during the implementation.

In Mapaco in Lichinga District, the community had reserved an area to guarantee their future access to land. The decision made by the community was not respected and the area was identified and entered into the demarcation draft to the benefit of Forests of Niassa without the presence of community representatives. Now the peasants of this community say that they have nowhere to go to start new fields except to another area that borders on Muembe District around two hours away. The community had already agreed to give up another area near the village to the Malonda Foundation. This is in an area which the community consider less suitable for farming. However the land, which is presently occupied by Forests of Niassa, lies in the area which the families had planned to start farming again after letting the land lay fallow for some years.

In Cavago, in Sanga District, there is a conflict between the local leaders about the way the land was allocated to the reforestation projects. Several people in this community

who were interviewed do not agree with the map. They said that the Malonda Tree Farm company is planting in the fallow fields and that families no longer have access to land at a reasonable distance from the village. Also there are plantations near the neighbouring villages of Cavago, Iringa and Antigos Combatentes. In this planting area there are some farming fields and there are also some banana trees and other fruit trees that belong to the local population. The district authorities and the company said that an area of expansion had been reserved for the villages in this area, but neither the company nor the District Directorate for Economic Activities, or even the community, are sure about the existence of such an area and where it is located.

In Mecucue, in Lago District, a *Régulo* told his experience with representatives of Chikweti while signing an agreement and participating in the placing out of the first milestone of the demarcation of a land area with no previous preparation. The *Régulo* said that he was urged to sign a document but he has no idea what kind of document he signed. According to him, the representatives of the company had the exact information about the area to be occupied without having carried out any comprehensive consultations with the community. He told the consultants that “he feels he’s been cheated by Chikweti”.

In Mbandece, the local leaders said that Chikweti does not respect the agreed limits. The local population accepted the presence of the company only to plant in areas where the population does not plan to farm or to farm again because these are non-farming areas, called *Maondo*.

According to the company Chikweti, this type of problems are mainly because the maps are not correct, as sometimes the maps the company gets from the National Directorate (DINAGECA) or from the Provincial Geography and Cadastre Services (SPGC) do not correspond to reality or do not coincide with the limits indicated in the requests. But when asked about this, both the technicians and the Head of SPGC explained that the problem does not lie with the technical aspects of the maps. The problem has more to do with the fact that the maps prepared by the SPGC are not respected by Chikweti.

## **Farming fields in the planting areas**

Everywhere where the plantations are under implementation there are some farming fields and in some places there are also banana trees and fruit trees e.g. mango trees. According to the peasants, they were offered some form of compensation to leave these fields, but no written agreement was registered and so far this promise has not been kept, neither by Malonda nor by the other companies. Recently, Malonda Tree Farm made a mapping of the Cavago Area, Sanga District where the company is currently planting and identified 38 farmed fields there. The company’s aim is to support the owners of these fields in starting new fields in other places. The places for the new fields that will replace the other fields have to be identified by the owners of the fields. Meanwhile, these fields have not been identified and there have not yet been any negotiations with each one of the peasant farmers affected. One of the cases has resulted

in an actual conflict between the company and the owner of the field which has not yet been solved.

It is important that this type of mapping is properly carried out, as well as the negotiations with the farmers affected, but these should have been carried out before the tree planting started. The emergence of problems related to the fields that lie within the areas to be planted is mainly explained by the fact that the process has neither been properly prepared nor prepared in due time.

In the plantation areas of Forests of Niassa, peasants complained about the company not respecting them. Some peasants were informed that they would be given employment if they gave up their fields, but this promise has not always been kept. Other peasants were informed that they could continue to farm their fields within the planting area and that the limits of their fields would be respected leaving at least 20 metres between the field and the tree plantations. But, according to the peasants, this agreement was not respected. They said that the company would plant trees even *inside* the fields. Other complained of their crops being affected in a negative way by the chemicals the companies use when planting new species.

## **Unbalanced relationship**

Another gap in the process has to do with the communities' lack of adequate preparation for the process. With emphasis on its sensitisation phase, the delimitation process did not aim at preparing the local communities towards future investments that could happen in their areas. It is a fact that, at the time of the delimitations, there was talk about investments likely to happen in the future. Nevertheless, it is important to understand that the objective of this initial preparation *was not to launch the subdivision of land nor to take over some of the consultation work*, but to secure the agreement of the communities to accept and take over the process (and the need) to carry out delimitations.

Obviously, the delimitation – which was never finalised and formally entered into the Cadastre – allowed the Malonda Programme to know more about the potential of the land and of main actors with whom they would negotiate later.

Within this context, as part of the consultation, there was a lack of an in-depth, serious process of preparing the communities. A preparation process in which the arrival of the investors, the implications for the local way of living, the implications for local production, and more matters of crucial importance that could have facilitated a more effective consultation and process, could have been explained without the negative results observed during field research.

Guaranteeing a more adequate preparation may be regarded as one of the most important roles of the Government, and the Malonda Foundation as the facilitating agent. The reality is that the relationship between the communities and the investors is,

in all aspects, unbalanced because the communities' position is weaker. The interaction between the lack of community preparation and this unbalanced relationship makes the position of the communities even weaker.

The study entitled *National Governance and Local Chieftaincy, A Multi-level Power Assessment of Mozambique from Niassa's perspective*<sup>13</sup>, carried out in 2006 in Niassa Province, draws attention to the vulnerability of the communities in these negotiations on the rights to use and exploit land and, also, to the importance of involving communities more and reinforcing their capacity to defend their rights and needs. According to the findings in this study about the stance of the local community:

"The delimitation process was not a question of having secured land titles for each family farming a certain area, but registration of which area belongs to each community. The main reason for organizing the delimitation of land has been the need to identify which areas could be used by interested investors, such as the two companies interested in large-scale forestry plantation.

In this situation, it is not easy for the local communities to be aware of the consequences of such big investments or to act to defend their future needs. This is not only because the local communities lack information or knowledge about the commercial activities, or because they cannot predict what the future will bring, but mainly because they are in a very vulnerable situation. Most communities have accumulated needs which they have not had any chance to satisfy, as they have been suffering from extreme poverty for many years.

People in absolute poverty do not have the strength to defend their long-term needs or interests. They are bound in the first place to find solutions to their immediate needs... the communities' position is in no respect comparable to the investors'. The relationship between the two parties is in all aspects unbalanced. When large investments are coming in, the communities have great expectations that they will bring in new employment opportunities, and that is what is most important for them in the present situation. Everyone in the concerned communities relies upon small scale farming, but they are all also dependent on cash incomes to improve their living conditions. Farming generates cash income when it is possible to produce and sell agriculture surplus, but farming families always try to diversify their income sources. One way to do this is to let at least one member of the family look for a paid job. Incomes from a paid job do not only solve immediate problems, but also make it possible to invest in and improve the family farming. Thus, when negotiating with the investors, the perspective of getting a job carries great weight.

This is true not only for the common farmers, but also for the leaders representing the communities in the negotiations. ...

In such situations, it is not easy for the communities to give priority to issues that belong to the future, such as needs for land, access to hunting and fishing, changes in production methods, population growth, or changes in living patterns and changes in climate.

In Majune district the farmers have already suffered from problems due to the delimitation of land to be used by commercial investors. Local farmers lost their access to wet lands close to the river. Small scale farmers practising manual agriculture without access to inputs or irrigation are heavily dependent on diversifying their agriculture, and one way of diversifying is to have access to different types of land. Normally they have both dry land and wet land to have the possibility to grow crops both in the rainy and the dry season.

The preparation process does not only involve the land delimitation. To achieve most benefit out of the investment, not only for the companies but also for the communities, the local communities and the districts must also be informed about and participate in the following preparation steps. This position has been defended by the Malonda Programme. ”

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<sup>13</sup> Åkesson & Nilsson, 2006

## **The role of Malonda**

Another gap which is also connected to the position and the negotiating capacity of the communities is the lack of clarity regarding the role of Malonda. The negotiating capacity of the local communities was weakened because they did not know how to interpret, or were not aware of, the role or the nature of Malonda. This created uncertainty on the side of the communities because they are then not sure whether Malonda represents the Government, the investor or if it is only a facilitator. In the communities, reference is quite often made to Malonda as if it were the Government, however the population did not receive the answers nor the support they expected from Malonda.

The lack of clarification regarding the status of Malonda confused the communities as far as problems connected with the rights acquired to land and other natural resources were concerned.

When the communities included in the field study presented their problems they also explained that they did not know where to turn with their concerns. They tried to talk with the representatives of the companies and of Malonda, but very often the answer was that they should contact the Government because it is the Government that makes the decisions about the right to use and exploit land. When they contacted the local and district government representatives, the answer was very often that they could not do anything because the problems result from decisions made at senior levels. The local population, including their leaders, felt abandoned without any support for them to be able to solve their problems.

On no occasion has either the communities or the district governments questioned the pertinence and relevance of the Malonda Programme. The promotion of private investment in Niassa, in particular in agriculture and tourism, is on the agenda both in the vision of the local communities and the programmes and strategies of the local and central Government. The partnership between the private sector and the local communities in sustainable and equitable exploitation of land and other natural resources is equally an objective stated in the Land Law and in the programmes and strategies of the Government.

As demonstrated, the problems observed in the implementation of the Malonda Programme have more to do with the process followed to attain these so legitimate and relevant objectives. However, in the opinion of the authors, they also are a result of the current legal status of Malonda and the way it works under its institutional hat. These questions are not part of this study's objectives, and should be approached separately in another context, taking into account the relevance of the discussion for a future plan to correct and improve the socio-economic impact of the delimitations, and the private investment process already underway.

## **Employment - benefit**

It is noted that the forestry projects have so far been perceived by the communities as being very positive because they really represent something very much needed: employment.

However, regarding employment as the main benefit for the communities, some questions may be asked about the “security of having a job” given that these are seasonal jobs. The wages paid also fall short of the actual needs of a family. Calculations made by the trade unions in Mozambique show that the minimum wage corresponds only to about one third of what a family of five needs to cover their basic expenses. These calculations do not include transportation, electricity, education, health service and clothing costs.

### **The wages and the workers**

In 2008, the minimum wage for workers in agroforestry is 1 315 MT. The Malonda Foundation pays a little more, currently 60 MT a day, which corresponds to 1 560 MT per working month which is 6 days a week, from Monday to Saturday. The previous year they earned 50 MT a day, however in 2008 they received a salary raise of 10 MT. During this study in the Mussa area, Malonda had 203 workers of whom 75 (37%) were women. Of the total number of workers, 22 had a permanent job with an individual contract, whereas the remainder (about 88%) were seasonal workers with a collective contract under the Provincial Directorate of Labour. Malonda Tree Farm had 250 workers, of which 130 (52%) were seasonal and 120 permanent. All seasonal workers are men whereas in the group of permanent workers 37 are women. Consequently, the women’s group accounts for 15% of the total group of workers, but 31% of the group with permanent jobs.

The Chikweti Company hires individually and pays slightly better than the other companies. In Chikweti, those who have a three month contract earn 1 710 MT a month, those who have a 1-year contract earn 2 032 MT and those who have a permanent contract earn 2 182 MT. Of Chikweti’s workers, 689 (about 52%) have permanent jobs and 642 temporary jobs.

The three companies make efforts to hire women and in their nurseries the women’s group accounts for 37%, 36% and 70%, respectively. There is a tendency for the traditional division of work to also be reflected in the recruitment of workers to the forestry companies. When recruitment is made in order to get workers for the tasks of felling trees and clearing the ground, they take mainly men, whereas planting and sowing, transplanting and looking after the plants in the nursery, they also take women.

## **Employment and families' livelihoods**

Employment is an immediate benefit and due to prevailing poverty, we understand that people perceive employment as something very important. Expectations are high as far as the benefit of having work is concerned, so high that people agree to give up their fields in exchange for employment, however not all of them get the promised job or are not employed until some months later. And then they may have no field and no job. They have to look for new land where they can start a new field, however according to the people affected it is no longer possible to find a plot of land near the village.

The local government representatives are also concerned about the risks farmers run when trying to access land. Another concern is the population's expectation regarding employment opportunities and benefits. Some people in the population think that employment will guarantee their livelihood. However local and district officials do not believe that the wages offered will be able to replace farming production in the families' livelihood. They are concerned because, on the one hand, they have no solution to the land issues faced by the population and on the other hand, they are afraid that in the future there may be food security problems if the population is not able to continue their farming activities in a satisfactory fashion. Neither do they want to see the population leave their villages in order to live in distant areas where the government can hardly provide them with adequate public services. The opinion of these local representatives is that companies should stimulate workers' agricultural production and the development of the local agricultural production. Companies should help with improved seeds and support the workers, as well as the population in general, to improve their current farming methods.

It is important to remember that a seasonal, temporary job for minimum wage is not sufficient in monetary terms to support a family. It complements agricultural production, where the employee has to continue to work in the fields to avoid poverty for the family. However this also requires the family to have access to labour and good quality land. Actually it would be better if they could continue with their agricultural production in improved conditions in fields closer to their house in order to increase the family's quality of life.

If the family has no access to extra labour, it becomes difficult to maintain agricultural production at the same level as before the paid job and working full time. One of the people we interviewed works in the Mussa Nursery and he told us that he and his wife are only able to produce enough food to fill one barn, whereas before they were able to fill two barns. His wife is not able to keep the production going on her own and he cannot work in the field as much as he used to. The wage he is paid has to be used to compensate for the decline in production from the field. Consequently, in his opinion, his family's situation has not improved in spite of him having a paid job.

The Queen in the area of Maniamba in Lago District explained that she is paying special attention to the situation of single mothers working in the plantations. In her opinion these women are in a difficult situation. "The small change they are paid is not enough

and the children are worse off. The mothers have no time to go to the fields and the money they are paid is not enough to compensate for not having a field". For the Queen this situation is worrying and frustrating because she has always taken the position that the poorest should be the first to have access to employment opportunities created by the forestry companies.

A group of young single mothers living in the area of Mussa said that they would like to work in the plantations, even though they are aware that they would not be able to combine a paid job with the work in the fields. However, they presented a new strategy to guarantee food for their families. In their opinion, it is the youngest who should have jobs and earn money, whereas the older generation should guarantee food production. But they said that this meant that families had to have access to two sources of labour (from each generation).

### **Social differentiation**

Another solution presented by the workers at the Mussa and Chiconono plantations is to hire people according to the "ganho-ganho" system which means to hire day labourers temporarily to work in the fields. It is a system frequently used in the countryside by families who live in more a stable situation than others. Those who work ganho-ganho earn very little and are often paid in food instead of money. Those who can recruit people for the ganho-ganho are often members of families who work in the local structures. These families generally represent a significant number of workers in forestry projects. Of the group of 40 workers at the Mussa plantations with whom we talked, 17 (43%) were members of families from the local structures and leadership.

We also found a similar situation in the other villages we visited. This situation can be mainly explained by the fact that recruitment is conducted by the traditional leaders. Even though there are still some exceptions, as in the case of the Queen of Maniamba in Lago District who maintains that the neediest should have right to employment, most often these leaders favour members of their own families. Other people can also get jobs, but sometimes the leader requires payment for the person to be accepted into the recruitment register.

The domination of these local structures within the group of workers could indicate a risk for an increase of social differentiation within the communities. Firstly, because it is the group who live in a more stable situation who manage to benefit from the job opportunities. Secondly, because this group has better access to labour and can benefit more as it is easier to complement its agricultural production with a paid job. Thirdly, because it is probably easier for them to defend the right to occupy and keep land close to the village. Some of them are even responsible for the distribution and control of the land. It is the other community members who are allocated plots of land in more distant areas, at the same time that they do not have access to employment opportunities.

In order to counteract the negative trends of the recruitment system in place, the Malonda Tree Farm Company has introduced a parallel system that allows people also to register directly in the company without having to do it through the local leaders.

### **Salaries**

People we interviewed who work in the Malonda in the Mussa area plantations told us that they had succeeded in improving their family situation thanks to their salary and that they even bought bicycles. However, at the same time they said that they managed that through credit in the shops of local informal traders. Of the 30 workers interviewed, 24 (80%) said that they have credit in the shop and (47%) that they have a debt amounting to more than 500 MT. Nine of the thirteen women were single mothers and all of them belong to the group who has debts in the shop. Similar situations were observed in the Mbande Area, Lago District. Apparently workers have debts in shop, to the company and to private individuals.

The traders are eager to give credit to the workers. However this is not always to their advantage. In one of the meetings in the village of Mussa there were 16 informal traders who said that they all had bad debts with workers. The amount of claims of each trader varied between 5 000 and 20 000 MT. The trader agrees to give credit as soon as a person can prove that they have a job. However not all debtors can repay their debt and others cannot even keep their jobs. Sometimes indebted workers are forced to give their bank debit card to their bank accounts to the creditor trader as a guarantee of payment of the debt. The traders are immediately informed of the arrival of salary and can go to the bank to get their money.

### **Young people**

Wages are considered to be very low. Some people said that when they realised that their wages were not worth it, they left the job to work in farming only. Those who appreciate their jobs, even though they only earn the minimum wage, are young men and boys who do not want to work in farming but who continue to benefit from their parents' agricultural production. Parents do everything they can for their children to get a job, because they are concerned about the large number of unemployed young people. The high level of unemployment is a general problem. A young person's chances of getting a job are very limited both for those who had no chance of education and for those who have attended school. Young men with some academic education are not especially interested in working on the family farm. Parents find it hard to make them "lift a hoe". But parents are also worried because some young people become involved in illegal activities. One of the results reported in the villages that have benefited from the presence of the forestry company jobs is that crime rates decreased in the village.

In one of the villages in Lago District young people, in an attempt to influence the access to job opportunities, have even chosen to ignore the land demarcations carried out and have cleared and planted areas not intended for forestry plantations. This was done with the objective of increasing the area to be planted and in this way guaranteeing

continued employment. The company ignored this. However, the initiative was not well regarded by the other community members, especially by people from the older generation who were aware of the need of long term access to land for farming purposes. These young people acted following more short term thinking. A conflict emerged in the community between the generations, which in a way reflects the probable changes that society will face in the future. However, in order to avoid such conflicts becoming devastating, it will be necessary to meet the needs of young people and the need to guarantee the livelihood of local families, and to do all this simultaneously.

### **Communities' uncertainty regarding land available**

The quest for new land for the projects continues to expand rapidly. No community knows or feels safe regarding how far the forestry companies would go regarding the land still occupied by the communities. Let it be noted that so far, land occupations have occurred either on fallow land very close to the fields or on land near the villages and roads.

The areas allocated to investors are large. Meanwhile, as can be seen from the table below, the areas *planted* so far account for a very small part of the areas intended for plantations.

Table 2: Planted areas and areas to be planted, May 2008

Area	Planted area	Operator	Area to be planted in the province
Mussa, Lichinga District	About 500 ha	Malonda	170 000 ha
Cavago, Sanga District	About 800 ha	Malonda Tree Farm	
Chiconono, Muembe District	About 100 ha	Malonda New Forests	
Mapaco, Lichinga District	About xxx ha	Forests of Niassa	About 210 000 ha
Lichinga, Lago, Mandimba, Ngaoma Districts	About 6 000 ha	Chikweti	About 100 000 ha

In spite of the plantations being small, the population is already beginning to be afraid of losing their land or of not having any land to farm in the future. The communities feel that they are surrounded, encircled really, by tree plantations.

The fact is that there is a lot of land in Niassa Province, but many areas appear to be unoccupied only when a more restricted vision of the concept "occupation" is applied. Yet, as discussed above, it is likely that these areas are occupied under Article 1, No. 1 of the Land Law. The problem is that the population, being poor and having no access to credit and other type of support, has no chance to use all these areas of land, even though they are arable. Many legally occupied areas are also intended for new fields in the future. The distance between the houses and the fields is very important when a

farmer makes a decision to start new fields. If they have to start new fields far away from their houses, the family also moves to be able to live close to the field.

In all the communities covered by reforestation, farmers practise extensive farming, integrated into a system that also uses other natural resources throughout the year. As discussed above, this fact means that each peasant family may need access to at least 30 hectares, and probably much more if pasture and the use of forests and the areas of expansion stated in the Land Law are included. They have to keep their access to this land if they are to be able to maintain soil fertility in the long term, assuming that they do not have access to fertilisers and other technical inputs that can assure the same (or better) production in fairly small-scale areas.

Farmers do operate some systems for soil fertility improvement such as the incorporation of vegetable waste into the soil, even though these systems are not enough to maintain soil fertility. Consequently, after some years of farming, the field has to be laid fallow for the soil to recover while the farmer starts a new field elsewhere. Later on, he/she can again farm the field left fallow and in this manner it is not always necessary to fell trees and clear new plots of virgin land.

The risk now is that companies plant on land where peasants previously felled trees and which are now laid fallow. The options in terms of new areas are limited and peasants have either to seek plots of land farther away or reduce the period of time they allow the land to lay fallow which will gradually reduce the fertility of the soil.

Impact on productivity and income will become evident over time. Actually it will begin the moment the fertility of the soil decreases and communities are forced to practise their type of farming with less and less resources. Without alternatives that would increase soil fertility by artificial means, or without other sources of income, local society will be in crisis.

On the one hand, communities were not sufficiently consulted or involved in discussions about the local population's needs for land, which land to allocate or the best way to allocate land to investors. On the other hand, when the community was involved at a wider level, the community's views were not always respected either. Sometimes the community itself never reached a consensus about which land area to allocate. The *Régulo* did it himself or jointly with the investor.

This type of situation can be found in places such as Cavago, Iringa, Miala, Nzizi, Mussa, Mapaco, Colongo, Mecucue, Mbandece and Luambala in Sanga, Muembe, Lichinga, Lago and Majune Districts. In these places, the communities asked why the companies must plant so close to the villages and why the companies cannot go farther and leave the land close to the villages to the population.

The workers at Malonda's plantations and nursery are equally concerned about the limited access to land. "There are few plots of land for the population because there are companies planting everywhere near our villages". They mention the villages of

Mapako, Mussa, OUA and Naicuanga. “We want our fields close to the village so that the children can go to school. If they have to walk long distances, then they cannot attend school and there are no schools in these places. We want our children to be able to go to school”.

With this level of uncertainty the communities feel that they are not in a position to defend their need for land. Within this context there are communities that have begun to think about the importance of having the land certificate that proves their occupation in order to be able to defend their rights more successfully.

## IV. COMMENTS AND CONSIDERATIONS

### **The basis of the problem: the Development Vision**

In the opinion of the authors the problems noted have nothing to do with gaps in legislation, but with the lack of attention paid to the *principles of the law and the Constitution of the Republic*. Within the context, this is not a question of doing or not doing a delimitation programme and large scale investment, but of revising and correcting the processes implemented so far, emphasising the correct use of the legislation in force in favour of “equitable and sustainable development”.

In order to understand this point better, however, it is essential to recognise the existence of two development “visions” from several actors in Mozambique<sup>14</sup>, and understand the vision behind the implementation in practice of the several mechanisms – delimitation, consultations, etc – made available by law to guarantee local rights and promote partnerships between communities and investors.

The first vision comes from recognising the acquired DUATs and foresees a negotiation process between the current holder – the community – and the investor, mediated and facilitated by state agents (local government). It implies agreements and contracts that stipulate “the terms by which the partnership between the applicant and the holder will be ruled” (quoting again Article 27 of the Land Law Regulations, based on Article 13, No. 3 of the Land Law itself).

In this vision farmers are actors in the development process; they are not merely an “element” to be taken into account during the investment process. The objective is not only to ensure that they have enough land to keep their lives and farming underway, but also to *ensure that they can move upwards out of poverty and change as individuals*. It implies a number of actions from the state (that is, from government) which, along with the investment process, offer the farmer the necessary resources and programmes for this transformation to materialise in practice. Here the FDC (Community Development Fund), for example, could be one instrument as well as agricultural extension programmes, vocational training programmes for young people (so they can become mechanics and access new jobs created by investment). There is also the connection between this process – development – with the local and provincial planning process, anticipating resources invested in small towns and villages to absorb the population dislocated by investment, looking for new lives and jobs outside farming<sup>15</sup>.

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<sup>14</sup> See the work carried out by consultants Calengo, Monteiro e Tanner for the Embassy of the Netherlands “*Mozambique: Land and Natural Resources Policy Assessment*”, Embassy of the Kingdom of the Netherlands, Maputo, September, 2007.

<sup>15</sup> See the evaluation of the land issue carried out by the British consultant company CTC for DfID in 2003, stating the implementation of the current ITC Programme, Community Land Initiative. And more recently the report Graham, B. & Calengo, A.J., *A Strategic Analysis to Reinforce the Iniciativa para Terras Comunitárias [Community Land Use Fund]*, DfID, Maputo, August, 2008.

On the other hand, local investment is framed in a bottom-up perspective even when it is about large investments previously designed from above. They should fit into local reality and not ignore it. In other words, such projects should develop in the context of equity and just objectives.

The second vision is based on the principle that the land belongs to the state, in the sense that the government is the main actor of development. In this vision the DUATs are not understood as definite and complete but as rights to the land granted by state, while the state is not using it. From the moment the state identifies an alternative use for this land, the holders *must* leave, irrespectively of whether they receive fair compensation or are guaranteed alternative means of livelihood.

In this vision no active partnerships are anticipated between the communities and the investors, and poverty is solved mostly by the fact that new holders create new job opportunities, that is the investors who are now allocated new DUATs on the areas previously occupied by locals.

However anyway in this vision there should also be a connection – even stronger – between the investment process and the local and territorial planning processes, ensuring a structural evolution in small towns and towns that will accommodate the population dislocated by investment. What distinguishes this process from the first vision is that the poor who are relocated, those who do not stay on their plot of land with their traditional fields, do not gain anything more from the investment process, neither in terms of income (profit sharing of the investors' profit) nor in terms of payment (compensation) which would be enough to start a new life somewhere else or to invest in new farming techniques.

All indications are that, in the case of the Malonda Programme, it is this second vision that has fed the implementation of all activities, addressing the land issue more in relation to the need to find areas for the investors and leaving something over for the farmers, instead of seeking an interactive and synergetic process between the two main partners in this story – the farmer with his/her DUAT and the investor who wants to use the land covered by the same DUAT.

## **The alternative path**

In any attempts to improve this process, the most important factor is to identify methods that can help solve this primary problem to do with the limited access to land within the context of a production system still important and centred on the local population's survival strategy. The other central problem is the lack of a coherent vision from all actors – communities, government, investors, Malonda – of how to replace one form of life with another which, within the context of large forestry plantations, offers the farmers means and alternatives to be able to survive in the long run.

It is necessary to take the concerns of the local population into account, revising the current and anticipated future location of land occupation by forestry projects, considering two short and long term aspects: a) the need for land in relation to the crop rotation system practised by farmers in the family sector and b) the need to proceed *urgently* with mitigation measures concerning social and economic impact, including alternative income sources.

What the authors followed up during the study leads them to believe that the processes connected to the use of land are processes that are sensitive and difficult to conduct as the results are decisive for the livelihood of the farmer families. In the case of Malonda it would have helped if more regular follow-up had been carried out.

One of the authors' reflections is that the process lacked attention and space for consultations with the local population. Consultations were carried out, but these were limited mainly to traditional leaders. Although the programme attempted and was successful in involving the leaders, the process suffered from lack of involvement of the communities.

Another comment is that, for the future, the process also lacks contributions aimed at reinforcing the position of the local community and its capacity to negotiate. Quite often, the community's capacity to represent and defend itself is poor. Consequently, the task of the Malonda Programme and the provincial government entities should be to strengthen this capacity in order to benefit equitable and sustainable development.

## **Participation and representativity**

The limited involvement of the communities was largely caused by the interaction of two processes: the application of the Technical Annex in such a way that it resulted in very large communities and the tendency to assume that all post-delimitation work can be carried out mainly with the "leaders" as representatives of their communities.

In this there was an incorrect application of the Technical Annex as concerns the concept of community applied during the process. The principle of "influence areas of traditional leaders" was followed and not the concept of "group of people or families around the interests of land", that is the population stated in Article 1 of the Land Law and directly affected by the different land requests from investors connected to Malonda (and other neighbouring projects).

So the representativity of the communities was limited to *Régulos*, and the people around them. These were basically the people who were consulted. As a result, today it is possible to note dissatisfaction, concerns and a tendency to conflict among the population of these local communities.

However, in addition to the fact that the consultations were limited to individuals within the traditional authorities, even the involvement of the different strata and chief hierarchies has been very poor. This can be seen in the cases where only *Régulos* were contacted at the time of the handing over and demarcation of the areas intended for the investors. The other traditional authorities subordinate to the *Régulo*, who according to traditional rules and the Land Law are responsible for the land issues in the villages, were quite often not involved.

Another important factor is that the *Régulo*, many times did not base their decision on consultations with their communities nor did they inform their respective community about which areas were allocated or about the limits of these areas.

It is noted in this report the observation that the Land Law does not contain any reference to traditional leaders of any kind or level. When it mentions representation, it requires the communities' need to elect their representatives, which the NGOs call G-9, as the law states that "3 to 9 people" should be appointed to represent the community. This process is compulsory within the context of delimitation and consultation and is one of the aspects that can lead to a well-conducted delimitation achieving direct and positive results: a more representative community organisation with a minimum capacity to negotiate, based on knowledge about its rights.

Once again, to conduct the entire process merely based on contacts with the leaders is a fundamental mistake that explains many of the problems observed today.

### **The role of traditional leaders in the process**

If, nevertheless, it is still necessary to include traditional leaders it is important to note several important aspects:

Firstly, according to traditional rules, within Niassa's cultural context it is not the *Régulo* (named *Régulo*, *Sultão* or *Queen*) who is normally responsible for issues concerning the use and exploitation of land in the villages. Still, they should participate in the process, given their importance in the traditional and spiritual-religious order, blessing any process launched by external forces. Still as senior leaders they should also be well informed about what happens in their community. However, this does not mean that they should be given a fundamental role to play as far as matters connected to the implementation of the Land Law are concerned.

In fact, the responsibility for the use, exploitation and distribution of land belongs to other levels of community leadership. That is, there should be people at local levels much lower than the *Regedoria* who should be involved and consulted. And according to the principle of co-holding, these lowest levels should also consult all their local community members, which is to say the population of the villages in question.

Secondly, it cannot be denied that there are also power conflicts between traditional leaders that sometimes lead them to act against the common interest and against the

interests of the local population. There were examples described in which the *Régulo* even made decisions to allocate land areas located in a territory not under their domain or jurisdiction, as was the case of Miala. Or that they allocated land where they have no decision-making powers, as in the cases of Nzizi, Cavago, Mapaco and Colongo. And this was undertaken against the will of the legitimate chief in the area in question. Situations like these created dissatisfaction, instability and insecurity not only among the leaders but also among the communities affected. In order to avoid such situations, it is necessary to extend knowledge about how the communities that will be affected function internally and to seek advice on how to proceed before acting.

The third aspect concerns the legitimacy of the local leader. Not all traditional authorities carry out their tasks according to the rules traditionally stipulated or according to the interests of the majority of the population; consequently they do not enjoy the confidence of the local population or cannot collaborate well with their communities. Traditional leaders have to be accepted as legitimate leaders by their communities in order to be able to carry out their tasks as senior leaders. If they do not behave well, the community may lose confidence in them, however this is an evaluation and a decision-making process that is time consuming. It is necessary to be observant of these facts and work together with the leaders who are considered legitimate by the population.

### **Groups involved**

As a result of this, mainly the social groups in a better position in society were involved in the process connected to the rights to land. As the involvement of the population as a whole was very limited, whether one or another socio-economic group enjoyed special treatment or benefits cannot be determined, with the exception of the group of traditional leaders. Women's participation was also limited, unless it was the participation of female leaders, as in the case of the Queen or another local female leader. For instance, the local female leaders of the OMM (Organisation of Mozambican Women) enjoy certain status and power in the communities.

Another difference concerns the gender or the socio-economic group a person belongs to. This is noticeable in the behaviour of the individual in conflicts or in the manner the person defends him/herself, and how they raise their case in front of the authorities or the company. In some of the areas affected by the tree plantation there are some farmed fields. The farmers who face this situation in the plantations of the Malonda Foundation, or of the companies in partnership with Malonda, were promised support to start new fields. However, this has not yet been implemented, though it is still planned. Other companies, such as Forests of Niassa and Chikweti, do not promise the same type of support. Meanwhile, in all cases, it is the farmers who have to take the initiative, act and present their cases in an attempt to find the best solution.

Those who find it easier to act individually are those who have a more stable and secure life and who are confident enough to raise their voice. These are the people who contact

the district authorities, protest or contact Malonda, or the other companies, directly to discuss their case. The other farmers, women as well as men, act in a more collective fashion but only at village level. They complain to local leaders and each one would like their case to be solved however these matters are not forwarded individually to the upper levels. The Head of the Administrative Post or the District Administrator usually receive information about the problem, but more generally, without knowing each person affected.

## **The concept of community**

According to the staff that works with community activities in the Malonda Programme, a new concept of community is already being introduced into their work. Now the community is no longer perceived as Ntamila, i.e. as the *Regedoria*, and the new way of working will more be based on the concept of the community of the village.

The observation concerning the concept of community was also made in the *Analysis of Natural Resource Management of the Concession Area of Mosale and Adjoining Communities*, conducted by Pedro Castigo and Rosário Lichade Fopenze in 2007. According to them, the communities of the *Regedorias* are very large and instead the basis of work should be each village. As a result, the work in the future may follow parameters that guarantee more representativity of local communities in the different processes that concern the use and exploitation of land and management of other natural resources.

There is no reference in the Land Law to the traditional leadership systems as the only criterion for the identification of the Local Community.

In fact, delimitation may result in the promotion of “*new leaders*”, the G-9 of people elected by the community to represent it in the context of the Land Law. As a result of a well-implemented process, the community must become stronger and better organised in order to begin negotiations with investors. It is also essential that the community receives the certificate of its land and that their land is registered. In the processes observed in Niassa, the concept “Community of the *Régulo*” continues, however, to be based on the limited application of the provisions of Decree 15/2000 and the assumption that a consultation with the community authorities is acceptable as community consultations according to the Land Law. Which it is not!

Meanwhile, the farmers’ concerns which have to do with the limited access to land remain. This problem has to be solved before any activity related to plantations can continue. Afterwards, with improved working methods the way forward will be more correct and will prevent the emergence of problems and conflicts similar to those that have been detected so far in the communities affected by the plantations.

## **Limited access to land – the primary problem**

A problem bigger than the case of the fields inside the plantation areas is the insecurity farmers feel regarding their future access to land and other natural resources. The number of farmed fields inside the plantations is small and there are solutions to this problem. The farmers' biggest concern is when the plantations occur in areas where they have their fallow land, when they do not know the limits of the areas to be occupied by the companies or when they feel they have no access to areas of expansion to arable land available close by, or in areas a reasonable distance from their villages.

The procedures followed appear rather questionable because this is going to affect all those whose livelihood depends on small-scale, manual farming in the family sector and those who work with direct exploitation of other natural resources.

One of the future solutions could be to improve methods practised in family sector farming, for instance, introducing conservation farming which is already planned by Malonda. The Provincial Rural Extension Services have already started a programme of this kind, training extension officers and technicians and introducing small fields to demonstrate conservation farming in all districts of the province. The problem with these services is the scarcity of financial resources. The plan is to hire another 25 extension officers, however the province still does not have any financing guaranteed for this purpose.

In future, this system will allow farmers to farm fixed fields, without needing to lay the land fallow for many years or to search for new plots of land. However this is long term and many years will pass before it can be practised by most farmers and before it will begin to show results that can offset the losses farmers will face due to their limited access to land. These are long term activities that, together with compensation and mitigation activities, have to be introduced and to begin generating results preferably before farmers are too seriously affected by limitation of access to land. If this does not occur in advance of this situation then at least these activities must be carried out simultaneously.

The population feels insecure because they cannot see any alternative to the rotation system they practise. This is why they should be guaranteed access to land over the coming years.

### **Planting in fallow fields**

There is planting in fallow fields in Mapaco Village in Mussa where Malonda and Forests of Niassa are active. Forests of Niassa is planting in an area that the population had left as a reserve for future fields (Lichinga District). The same situation has occurred in Cavago Village where Malonda Tree Farm (Sanga District) is active. Also in Mecucue Village in Lago District where Chikweti is active, trees were planted in fallow fields. In Nzizi Village (Muembe District) an area was demarcated for future plantation but this is an area where the population has fallow fields.

## **Planting in areas where there are farmed fields**

Even though planting is generally not carried out in farmed fields, in some cases it is carried out very close to the border of the field as in the case of Mapaco (Forests of Niassa). In this area, farmers have also complained about the use of chemical products for the treatment of tree plants that had a negative impact on the crops growing in their fields.

In Cavago, where Malonda Tree Farm is active and also in other places where Malonda is present, farmers can continue to grow in the fields inside the planted area until they feel the need to leave and are promised support to plough new fields in places indicated by themselves. Meanwhile, farmers themselves must fell the trees on the new plot of land where they would like to start farming. And before the tractor can come in and plough the land, the land has to be cleared of tree stumps. Generally, clearing the land of tree stumps takes farmers years to complete. First they burn the stumps and leave them to become compost before removing them. In this case, another solution, instead of ploughing, could be to use ripping as a way of preparing the land for new fields.

This combination of forestry production and agricultural production is questionable as far as planting eucalyptus and pine trees is concerned. Agro-farming is usually done with forest plants that can improve soil fertility, e.g. Sessebanha.

## **Planting near the houses and near the roads**

Many communities feel completely surrounded and that their access to land is limited. In Chiconono Village, the community insisted on the importance of not planting trees near the village. Malonda New Forest was allocated land 8 km away from the village.

When the field lies at a distance of more than 10 km from the house, it is more difficult to use the labour available in the family in a rational way as it will result in less time to work. These concerns may make many farmers begin to consider abandoning their villages in order to live closer to the fields. This way of thinking already occurs among the farmers when they are observing the arrival of forestry companies inside or near their fields.

It is important not to forget the need to facilitate the life of the population so that they can continue to have access to roads, schools, health centres, drinking water, shops, etc.

## **Farmers' strategies: *farming and a paid job***

It is quite common that a farming family have a strategy to plan for one of the family members to get a paid job, irrespective of whether it is a permanent or a temporary job, as a way to complement agricultural production, and accumulate capital to invest in order to improve the family situation. In this case, the quest for a paid job is not aimed at replacing the family agricultural production. It serves only as a complement.

Farming families that have extra labour at their disposal, who can be spared for a paid job outside the family production unit, are in a safer situation. This is because they can take advantages of combining family agricultural production and a paid job in order to support themselves more successfully. Meanwhile, this strategy requires that agricultural production continues to work in the same way and under the same conditions as before or even that improved methods or technologies are introduced into family production and in their use of natural resources. Consequently, it is important that families who obtain a paid job in the forestry projects or families who are affected in other ways by the projects, do not suffer negative changes regarding their access to land and that they are guaranteed benefits that can offset potential negative changes to their way of life. Otherwise, the family's livelihood will not improve and poverty may increase.

## **Current and future employment opportunities**

Many employment opportunities are seasonal and temporary. According to established goals, recruitment should be carried out locally, that is to say in the communities affected by the plantations. This means that the majority of the workers will not have permanent jobs. Each community should benefit from the created job opportunities. This is similar to the recruitment system of workers for the rehabilitation of district roads. In this, workers are recruited by the areas the road passes through, in order for the local population to benefit from the opportunity to earn money. After the work is concluded, some of the workers obtain a permanent job working on road maintenance. Similar jobs to these will also be created in forestry production, for instance weeding the planted area and taking care of plants; however this is a limited number of positions only, although the work in the nurseries will continue to create opportunities. The Malonda Foundation also intends to start and distribute small nurseries throughout the villages so that jobs can be closer to the local population.

Socially it is beneficial to recruit workers who live close to their workplaces so they can continue to live at home with their families instead of being forced to live in camps, which quite often brings social problems. Local recruitment also makes it easier for women to integrate into the employment sphere as it will make it easier for them to organise childcare for their working hours.

Meanwhile, most of the forestry plantations will probably be located in distant areas with only small population clusters, which will force companies to build camps for their workers. This in turn will require that the companies create adequate sanitary conditions and health services in these camps.

In future, it is expected that access to jobs will be through forest conservation and exploitation, saw mills and factories. However these have to work based on advanced technology in order to be able to compete on the international market and consequently not that many jobs will be created.

## Approach

The need to be realistic and assess the activities that are reasonable or feasible is part of this process. However, the most important factor is that this is done together with the primary stakeholders in the activity that is to be introduced, facilitated or stimulated. It is vital that everyone participates and takes responsibility. The opportunity to be able to participate and contribute, to be heard and respected, leads to more willingness and interest in participating, taking responsibility and contributing what is possible. Involving the community in order to listen, to value, to respect and to follow the advice of local people and to ask their opinions and suggestions is decisive to this work.

It is necessary to get to know the community better in order to be able to obtain a sounder base before beginning to try to stimulate local initiatives. It is not necessary to do research but it is essential to know what guides people's lives and what is important to them. And the people have to be regarded as counterparts who can contribute in a qualitative manner to development. It is necessary to value the knowledge and experience of the communities and to identify ways to invite people to contribute so that the activities to be introduced work well.

Knowledge on human relationships in the local environment and the different social, cultural and economic conditions is fundamental to the work of involving the community. It is also important to consider that there are different interests and goals in the community. Perhaps there are interests that do not coincide with community participation in reforestation, farming and tourism projects. If so, then the reason for such divergence must be discovered in order to deepen understanding. Work must be adapted so that there is agreement between the goals of the proposed activities and the goals of the local community.

However, changing the goals of the new activities is not always suitable as obstacles may have their origin in forces contrary to the interests of the majority of the local population. Even when an activity that is about to start meets the locally expressed needs, the community does not always understand that activity as being advantageous or beneficial. The reasons behind this are often concerned with the implementation method of the activity in question. In this case, in order to avoid such a situation it is necessary to seek advice and to adapt the method of implementation to the conditions and manner of local organisation.

It is important that efforts to involve the community follow well-prepared plans, avoiding *ad hoc* solutions. Before initiating the activity it is necessary to gain a deep understanding of the communities, identifying the particularities of each one. Then, activities must be adapted to the conditions identified and methods that apply to the community in question. One very important aspect is that the work initiated with the community has to be concluded and cannot cease halfway through. In addition, promises made to the community must be kept.

One important lesson from efforts made to involve the community is that the approach “we learn from you and you learn from us” represents a great help in all aspects involving human relations. This approach helps to increase not only understanding and knowledge but also capacity to respect knowledge acquired through using this local knowledge.

## **Planned and initiated community activities**

Over the years, the Malonda Programme has carried out activities together with communities. In 2007, Malonda created a unit that works specifically with community activities. This unit has already identified the need to improve the contacts and work with communities and villages.

Different activities have already been carried out and others have recently been initiated or planned in the villages of the districts covered by Malonda activities, for example:

- information to the communities;
- joint activities with students in primary schools: - planting trees in four schools, distribution of kits of school material in some schools, preparation of literature and a drawing contest on the theme environment in ten schools;
- support in the form of equipment and musical instruments to 20 cultural groups;
- one theatre play about uncontrolled forest fires; work to stimulate gender equality; literacy courses for the workers (implemented by a NGO); HIV/AIDS programme, 12 supervisors trained (implemented by a NGO)
- training of eight volunteers by the Red Cross;
- creation of natural resource management committees in three places and five in the process of being created;
- creation of six community forests, each of one hectare;
- carrying out a socio-economic and natural resource community management study of the Mosale concession area in Majune District.

## **Community Development Fund**

The creation of a Community Fund (FC), or of several funds, based on investor contributions was anticipated in connection with the implementation of the Malonda Reforestation Project. These were calculated at 5% of the value invested by each investor (in the case of the international company Arcadia, an initial payment of around USD 250 000 was mentioned). A process of annual payments, or topping up, was also planned as this was considered to be a way of active community sharing in the profits and in the gross income from company activities throughout project duration<sup>16</sup>.

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<sup>16</sup> Notes and reports by Christopher Tanner, who participated in the initial discussions on this fund.

The management of the fund was going to be delegated to an NGO specialised in the community development field, supervised by a committee consisting of members of the local community, investors and local government.

At the time, the Fund was perceived as some form of compensation for the loss of the land allocated to investors, based not only on the value of the lost crops (the most common compensation form in the country), but also on the recognition of the value of the projected income for a period of 100 years (based on the DUAT term, renewed once according to the law).

As a form of compensation, the Fund's goal was also to compensate for the loss of fields in other ways, namely provision of technical support and the necessary means to *transform local farming, now limited to smaller areas*, training in new non-farming skills for the youth of the community and provision of immediate benefits such as water wells, health centres, etc. that could bring immediate and tangible benefits to the communities affected by the projects.

The *transforming* mission of the Fund should not be exaggerated, however it is part of the larger vision proposed by the consultants at the time. This vision was of a process where, on the one hand communities were going to allocate large areas to investors, and on the other they would receive compensation that could change their way of life and prepare them to participate in the new agrarian economy based on the new projects.

*It is obvious in this analysis that the Community Fund was a crucial feature in the entire process aimed at mitigating impact and avoiding the types of conflict that are so visible today.*

The fieldwork found, however, that the idea of community funds has not yet been put in place. This is a crucial aspect in the current situation of deep tension and concerns among the communities when facing the impact of the investments that are now being carried out. So far no impact mitigation measures have been carried out, not to speak of programmes to build the capacity of community members, to prepare them to initiate new activities or to practise new, more intensive and productive, farming methods. However, the communities are facing a true "siege" of their fields without understanding that there can be economic and social alternatives, planned to be *part of the integrated process of the investment programme*.

Anyway, there is now a proposal for the creation of the Community Development Fund (FDC) prepared by the Malonda Foundation and it appears to be very much connected to the District Advisory Councils and may be running very much in the same manner as the so called "7 Billion Meticaïs" or "Local Initiatives Fund" that the central government put in place in the districts and which is administrated by district administrators. It is a proposal that is apparently still to be discussed in the communities and with the community authorities, local government and investors.

In fact, the document presents the general context and a guide to the creation of FDCs in the communities and describes the following FDC components:

- the goals of the FDC: to develop local socio-economic infrastructures, to promote income generation initiatives/projects at the local level and to assure food and nutrition security for the families covered by Malonda activities;
- the source of the FDC: a percentage of each Malonda Foundation partner's investment value to be paid annually;
- beneficiaries: the communities covered by Malonda Foundation projects that submit collective or individual proposals;
- FDC management: the FDC will be managed by the beneficiary communities themselves who will also identify the activities to be funded;
- the main actors and their role in the management of the FDC: including the Malonda Foundation, investors, district governments, community leaders and advisory councils, community committees and management councils, NGOs and communities;
- the Local Community Committee and the District Management Council;
- FDC management: will be carried out at district level;
- the FDC transfer model to the communities;
- communities' access mechanisms to funds.

The FDC proposal is well designed, showing depth, and offers a good basis for discussion. However, it is essential to bear in mind that the Fund must be understood as something belonging to *the communities*, because it will be created with resources that are provided by the investors who will occupy and use their lands.

Consequently, the FDC looks like compensation. It is implicit in this vision that it is the communities that must play the major role in the preparation of priorities and implementation, with support in the areas of capacity and management as something already stated in the Fund's programme<sup>17</sup>.

### **Identification of community needs**

In October 2007, the Malonda Programme mapped and identified the needs of the communities included in the villages of Malulu, Miala, Chiconono, Mapaco, Naicuanga, Mussa and Revia. The needs indicated by the communities were, in priority order, the following: mills, water wells, shops, rehabilitation and construction of schools, farming activity (seeds and inputs), sports activities (equipment), reforestation (planting of trees for fruit and shade), animal husbandry (goats), fisheries, zinc plates for roofing and forming associations.

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<sup>17</sup> Even though the Fund is not an objective of this report, given its importance as an integral feature in the "delimitation – consultation – investment" programme, some more detailed comments are offered in annex 1.

## Community activities by other investors

Malonda Tree Farm began operations in the province in 2007 and has already initiated some community activities, including adult literacy, and has an officer responsible for community participation. The creation of a local trade union unit is planned with the aim of organising the company workers. The company will have an agrarian technician/an agronomist, who has already been recruited and who will perform rural extension services to the communities affected by the company.

Malonda New Forest began operations in the province in the beginning of 2008 and has not yet started up any community activities. According to a spokesperson from the company, there is a plan to carry out a *baseline* study before the company starts to prepare its community activities. Then it will hire someone to be responsible for community involvement. As a first step, the company is considering funding the completion of the already started construction of a school in Ligololo, Muembe District.

The study conducted in 2007, *Analysis of the natural resource management in the concession area of Mosale*, presents recommendations for the design of an implementation strategy of community natural resource management and local development, the creation of a community management forum, setting-up of a system to monitor and combat environmental problems and the implementation of an environmental training plan to benefit the communities involved. These activities have been partially initiated.

Chikweti has started some development programmes through community activities in partnership with the Anglican Church Diocese of Niassa with support from different funds that the company is able to mobilise. It has 600 participants in its literacy courses. In 2007, the Church initiated a rural extension programme in all communities where Chikweti is working. Rural extension concentrates its activities on stimulating an increase of horticultural production, the use of green manure and small-animal breeding. According to Church representative, jobs remunerated at the minimum wage level do not pay enough to live on and people still need to continue with farming activities. However, he also said that one of the obstacles families face is the lack of labour, as manual farming requires a lot of work.

A proposal presented by the Anglican Church Bishop is that forest companies could assist workers and other members of communities affected in the purchase of fertiliser at subsidised prices. This way, farmers would have a greater chance to improve and increase income from their agricultural production. The provision of fertiliser could be done through the forest companies association, which has apparently already started to import fertiliser for use in the plantations. Since companies import in large quantities for the plantations, they could sell at low prices to farmers.

Another proposal is that these same companies assist farmers to get better prices for their farming surplus. This could be done through the creation of storage conditions for farmers' products so they do not have to sell their products immediately after the

harvest for fear that they might get destroyed and are able to wait until demand has grown. It is well-known that farmers cannot store their products for a long period of time due to poor storage conditions.

### **Solving the primary problem**

The Malonda Programme, as well as the other private actors, have taken several community initiatives. These initiatives will help communities to benefit from private sector investments in forestry, farming and tourism projects. However, even if all these initiatives were carried out, they cannot solve the primary problem which is the local population's concern about limited access to land. It is not possible to solve this problem through information or social community activities. First it is necessary to ensure access to land, taking into consideration the distance to the fields and the quality of the soil.

### **Transparent information on plantation projects**

In addition to the imbalance in the relationship between the community and the investors quoted in the previously mention study about "Power..."<sup>18</sup>, there is also a lack of communication and collaboration between the parties involved in the land issue process (the private sector, the government and the communities). Quoting this study once more, we can see that the participation level at the district and senior levels is very poor:

"...[the parts involved in the large investments] the private investors and Malonda, and on the other hand the State bodies, are running at a different pace and often not in collaboration with each other. It is as if two different processes are running, while there should be only one including both the issues: preparing the communities and the district, and the issuing of licences. The private investors, in this case represented by Malonda and the state bodies, are working in completely different ways. While Malonda is more flexible and has a person contacting directly with the communities, the state bodies are more centralised and do not establish direct contact with the local levels. None of them is involving the government at district level... It is the state representatives that are responsible for involving and communicating with the district government and the district administrator, but according to these entities they are marginalized in the process. When the communities ask for information about the investments, the administrator has no answer to give. The preparatory contacts established with the communities by the private investors and Malonda always create expectations. How to handle these expectations is a delicate issue, especially as it may take years before permission is granted to initiate the planned activities.

In the ongoing decentralisation process the district government is thought to be the main driver of change in the district development process, but to be able to take on this role the district government must be involved in the elaboration of plans and the decisions to be taken regarding the use of the district resources. There is a lack of communication and collaboration between the state entities at different societal levels, but also between the parts involved in the land issue process, i.e. the private sector, the government and the communities. The state bodies have difficulties in adapting their working methods to the flexibility required both by the private sector and the communities. Probably this problem could be handled more smoothly if the district government was allowed to act as a link between the two...

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<sup>18</sup> Åkesson & Nilsson, 2006

In practice, the preparation of private investments at district level often requires the involvement of administrative representatives. However, as long as the involvement of the district level is not formalised or legalized, the preparation tends to be carried out using parallel and not legal forms. As the process of granting permission is slow and many investors are eager to start as soon as possible, they are not always ready to wait with their activities until they have got permission. This has happened, for example, in Majune district, where two wild-life and safari companies have initiated their activities without legal authorisation. They contacted the local community leaders directly and started to recruit local labour. Everyone locally was happy about this, as they benefited from the initiated activities, but they did not know anything about the future implications of the activities. Later on, both companies were asked to interrupt their activities until they got proper authorization. One of them then left without paying the workers contracted locally.

Another case discovered was a company trying to ignore the established rules for land registration. According to the Land Law, areas above 10 000 hectares may not be registered for commercial use without the permission of the Council of Ministers. As a way to get permission for an area of 110 000 hectares without asking for approval from the central level, the application was divided up into various lots and presented to the provincial level. This proceeding was discovered and stopped by the district.

Large-scale investments should be evaluated not only from an economic, but also from a social point of view, and both the communities and the district level need to be involved in this evaluation. However, according to local sources, to be able to foresee what the large-scale investments will bring and how they will affect local living conditions, the local government and the communities need to be assisted in doing such evaluations. Local representatives would also like the ongoing preparations for large-scale investments to be preceded by cultural and sociological studies, considering local living patterns, production systems and use of local resources.

It is more difficult for local communities and farmer families to participate and influence in relation to large-scale projects than small and medium projects. In big projects, neither the members of the community, or their leaders, have the possibility or capacity to participate in an active way. When small scale activities are initiated the situation is different. These allow closer participation of different actors in the society, such as local traders, entrepreneurs and other groups of the population. In these cases, local involvement is not only present by benefits from employment opportunities, but also through involvement in implementation and management of the initiated activities. This involvement in general creates more local synergetic effects for development than large-scale initiatives carried out by big companies.”

A few economic activities involving, and which may benefit, local actors more directly have also been planned, and are partly ongoing. These include activities such as the creation of small nurseries and small-scale forestry production at a community or individual level.

The Malonda Foundation has partly responded in a positive manner to district requests. For instance, in 2007 the Monte Mosal Project in Majune District conducted a socio-economic study on natural resource management<sup>19</sup> in order to be able to respond better to local community needs. In May 2008, the Malonda Programme began some information and collaboration work with District Advisory Councils to ensure that districts, as well as communities, receive more information on the activities of forestry companies.

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<sup>19</sup> *Castigo & Fopenze, 2007*

## **Malonda – to serve as a model**

The Malonda Foundation has already established criteria such as FSC and CSR to be applied in the projects under its responsibility and the Environment Management Plan based on the Environmental Impact Study is being prepared. The Malonda Foundation should create the capacity to ensure that established criteria and objectives are applied, followed and achieved. This observation applies not only to its own investments, but also to provincial entities and authorities so they can guide other investors interested in starting up similar activities.

This way, the programme carried out by the Malonda Foundation should serve as a model and assist Niassa Province and investors to find and follow improved methods and working models in the forestry plantation field.

Malonda not only has a community work unit, but also a legal advice unit and these two can help prepare good methods and models for this type of activity.

Within this context it is also important to clarify the idea of customary right to land. The population regards the government with some distrust: as the central agency that can decide on the use and exploitation of land irrespective of the community's opinion, even though they know that the Law defends their customary rights to land.

## **V. RECOMMENDATIONS**

In this final chapter some important key issues are discussed, issues that affect the local communities that lie in the areas to be planted for forestry projects. One really important issue is how to correct the mistakes of the past and move the project onto a better path so that it will be able to achieve its objectives.

### **How to correct and improve the Project**

#### **Overall issues**

So far only small areas have been planted and few villages affected. Yet, communities have begun to feel unsafe and raise issues and concerns regarding their fear of future limited access to land. This shows that the process is not running properly, or in a satisfactory manner. However since plantations are only in their initial stage, there is still a chance to correct shortcomings and improve methods to be applied in future activities.

Within the context of the Swedish support to private sector development in Niassa Province, the Malonda Programme plays an important role in starting up the process according to established objectives. Malonda's inputs could also help government entities guide other investors, who have already started or who will start work in the province, in order for these to also identify better ways for the implementation of their reforestation projects.

Overall, in order to facilitate improved operation of the large investments anticipated in Niassa Province, and with the aim of preventing and avoiding problems for reforestation projects in the future, the following are recommended:

- A.** Preparation and implementation of allocation processes of the right to use and exploit land to comply with requirements stated in the Land Law and its Regulations and that community participation as stipulated in the Law is extended.
- B.** An increase of wages paid to workers in reforestation projects.
- C.** An intensification of surveys and research concerning households in Niassa Province.
- D.** Performance of delimitations as an initial step.

## **Mapping and consultations**

A temporary stop on the authorisation of occupation processes for new areas of land for forestry projects is proposed until a more consistent process of mapping needs and community rights has been implemented and other issues raised here have been dealt with.

Additionally a renegotiation process should be conducted, or community consultations repeated, with the communities affected by the projects (in principle in all reforestation projects).

These processes must be preceded by information to the communities concerned. The information to be disseminated must explain the project objectives, the rights of the communities and the implications of future forestry activities.

The staff of the Malonda Programme has already noted that the communities did not possess the information or the knowledge necessary about programme activities. However, on May 19<sup>th</sup> 2008, information sessions on the Malonda Programme and its activities began with the District Advisory Councils scattered through the four districts affected by Malonda Foundation projects. This informative work is expected to continue to also cover Administrative Posts, Localities and even villages.

For the new information and consultation processes to be fruitful it is necessary to revise the concept of community and to extend it further than merely the leaders, involving the community around the land requested, that is to say the population directly affected.

In order to avoid an increase in dissatisfaction levels, village concerns and the tendency to conflict among the local communities, it will be necessary to repeat or to carry out new community consultations in the villages already affected by the plantations, using the concept of the community with the largest portion of local population representativity. There should also be consultations using greater local population representativity in the villages to be affected by plantations in the future, before plantations are expanded to the planned areas.

This type of consultation should result in a written agreement between the community and the investor. This agreement must result in real benefits for the community and determine the rights and duties of both parties.

In the cases where demarcations have been made and land have been allocated to investors in a manner that does not correspond to the wishes of the community there is, according to information from the Malonda Foundation, the possibility of returning certain areas and giving them back to the relevant local community.

The issue of compensation for the fields that lie inside the plantations must also be solved in a satisfactory manner for the farmers, before going any further with the

plantations. This is as important to the farmer as it is to the investor. Continued farming inside the plantation is not advisable. Firstly because the growing trees will prevent good crop development and secondly because the use of fire as a land management tool will jeopardise the forest plantations.

Unsolved conflicts, if the conflict is caused by limited access to land or lack of compensation for fields occupied by companies, may result in frustration which in turn may lead farmers to act in a less desirable manner. There have already been cases when the local population pulled up new species in forestry plantations in order to express their dissatisfaction. There have also been cases of forest fires where it is suspected that the fire was set as a form of protest.

The processes concerning access and the right to land are difficult and delicate to conduct because the results are decisive for the livelihoods of the farming families. In the case of Malonda, more regular follow up of these processes could have helped. Consequently it is recommended that future activities involving such processes are followed up and assessed continuously. This is to allow activities to adapt, without further ado, to the reactions and needs expressed by the local population.

Even if the Régulo, other leaders or even the population itself, have agreed to give a certain area of land at a given moment, this agreement is not valid if the community in question changes its mind later on. In such a situation it is not enough to refer to what has been agreed, it is necessary to revise the situation and renegotiate with the community.

If, while the work is going on, it becomes obvious that the objectives of the local population do not coincide with those of the reforestation programme, it is necessary to identify the reason for this divergence. Then an attempt must be made to adapt the programme in such a way that there is agreement between its objectives and those of the population and thus guarantee harmonious development in the benefit of all the parties involved.

### **Information**

While it is true that a lack of internal communication in the communities and also preparation of, and information to, the communities has been poor from Malonda's side, it is also a fact that this is being corrected through information programmes initiated more recently. However it is necessary to be careful not to confuse information with consultations. There is a need for more information and transparency, but it is also necessary to carry out consultations that will bring a deeper involvement from the communities.

Apply the approach "we learn from you and you learn from us" which can help to a better understanding of the community and its motives in this consultation process.

## **The community as an ally**

It is important to perceive the communities as the allies of development investment and to work together with them. It is the needs of the local population that should guide activities, considering the conditions under which the population lives. It is the prevailing conditions that largely define the opportunities the population have to influence their livelihoods.

It is important that the work to involve the community follows well-prepared plans, avoiding *ad hoc* solutions. Before initiating each activity it is necessary to gain a deeper understanding of the communities, identifying the particularities of each one. Consequently, it is necessary to adapt the work to the conditions identified and to apply methods relevant to each community. One very important aspect is that the work initiated with the community has to be concluded and cannot stop halfway. In addition, any promises made to the community must be kept.

While preparing the community work, it could be useful for the Malonda Foundation, as well as for other companies operating in Niassa Province, to make the most of the experiences that the PASC Programme has gained in its collaboration with civil society, NGOs and local communities.

## **Simultaneity**

As already discussed when the Environmental Impact Study for the reforestation project in Niassa Province was carried out in 2007, it is very important to initiate community activities simultaneously with the other reforestation project activities. These could generate better, more beneficial results if they were initiated before or at the beginning of the plantation and forestry exploitation activities. They include activities arising from the Community Development Fund, community forestry plantations, support to stimulate small-scale forestry production at family sector producer level, improvements in farming production, produce marketing and some other activities to be identified.

It is necessary to create a “win-win” situation where both parties, the communities and the companies, benefit and at the same time to avoid imbalance as regards disadvantages. This is also important in order to create more responsibility for the environment. People in the local communities need to feel they own, if not the entire project, at least part of it and of some of the results of the project, as well as the local environment that provides their livelihoods.

Another reason for communities benefiting is the EIA’s conclusion, which cannot be ignored, because it means a lot to the project's possibility to achieving its goals:

“There’s a particular need to encourage the local population’s participation in the project and perhaps even to revise the proposed development model. The self-growth approach should be considered where the local population is assisted to participate in the development of the plantations and in this way identifies itself with the goals of the

project. Protecting the plants against fires in an environment where the surrounding local communities perceive fire as a useful and benign land management tool is likely to be an extreme challenge, especially if only Malonda owns plantations”.

When using and allocating resources arising from the Community Development Fund, as well as from the other activities, it is important to guarantee that this is carried out in a balanced manner and benefits are distributed equally among the different geographical areas affected by the project. In addition, it is necessary to partially benefit neighbouring villages so as not to create differences that cannot be controlled between and inside the communities.

### **The Community Development Fund (FDC)**

The different projects initiated in the villages in districts affected by Malonda activities must continue to pay special attention to the activities identified and prioritised by the communities themselves. Another important aspect is to implement and initiate the Community Development Fund to mitigate the impact of private investment, transforming local farming (see next section) and offering communities new paths, new growth and new income opportunities. See Annex 2 for details of this recommendation.

### **Improve farming and guarantee future access to land**

If the planned development vision for Niassa Province is to include large investments in the forestry area, the population cannot keep the current system of large fallow land cycles and extensive use of the land resource. This observation implies the transformation of local farming methods through agricultural extension projects, projects such as those promoted by FAO in other regions to train farmers (both those currently active and pupils in schools) in new techniques (Farmer Field Schools and Junior Farmer Field Schools). Special attention should also be paid to making inputs, credits for production etc. available.

However, it is equally essential to guarantee future access to land for farmers in the areas necessary to maintain this new method, once farming has been transformed and the method disseminated through the region. In this case, the delimitation processes – and even their subsequent *granting of ownership* (in the sense of obtaining the title of the DUAT already acquired through occupation and delimited) – continue to be crucial elements in order to guarantee the livelihoods of the population and its participation in the new agrarian economy. At the same time the communities should be provided with support to develop their plans to use the natural resources, something that can be integrated into the delimitation process following experience already tested in other provinces. If this is successful, the process will in turn be able to feed the preparation of district strategic plans that include the areas confirmed as those of belonging to the communities, so that they can continue to benefit from the guarantees and protection offered by different laws, including the new Territorial Order Law (Lei do Ordenamento Territorial).

Many of the new agricultural activities can be promoted with the support of a dynamic FDC oriented towards local priorities. As a starting point, proposals for future rural extension activities should be based on farmers' own knowledge and experience. It is also important to try to adapt extension activities to the different conditions in each area and to the needs expressed by farmers, as well as to integrating new methods into farmers' existing knowledge. The division of tasks between women and men may also have consequences for extension work. For instance, the dissemination method as well as the message content, may have to be adapted to the group with which they are going to work, a group of women or a group of men or a mixed group.

Farmers can already manage some of the methods aimed at keeping and improving soil fertility, but these methods become ineffective in a situation where their access to land, as well as the traditional fallow land and crop rotation systems, is restricted and changed by the new private investment. Similarly, local systems aimed at combating crop pests and diseases are becoming less and less satisfactory. It is necessary to strengthen the positive and still-relevant aspects of local practices, while new farming and preserving systems are introduced, such as agro-silviculture planting new species of leucaena, the use of compost and a better crop rotation system. Access to improved seeds and improvement of storage systems are other aspects needing attention.

Combining reforestation activities with those to combat erosion and improve soil fertility is important and should be linked to activities aimed at stopping uncontrolled fires. Reforestation can also be combined with the provision of fruit trees, forage and plants to improve the soil. For this purpose, seeds or plants may be provided for farmers to assist them to prepare nurseries, stimulating reforestation at an individual, family or association level.

Finally, it is noted that there are strong synergies between this vision of the investment process and the rest of the Malonda Programme, integrating new, more profitable farming with the produce marketing in the family sector in Niassa Province.

### **Final comment: continuous follow up**

The processes connected to the access and the right to land are processes that are sensitive and hard to conduct because results are decisive to the livelihoods of the farming families. They involve an economic and social transformation process, sometimes with unexpected results, both positive and negative. One recommendation is the absolute necessity of regular, systematic follow up of these processes in order to assess their impact and to introduce changes and improvements along the way. The essential point is not to create something rigid and unchangeable in terms of objectives, rules etc. but to create a flexible and human process, within a clear-cut strategic outline, supported by all parties involved – communities, private sector, local, provincial and central government.

If the new structure is able to meet the real needs of the population, to articulate the several and very different interests involved in this major transformation project and to show that it can be adapted to a complex and, by nature, dynamic and constantly changing process, the Malonda programme can still achieve the primary goals that, initially, guided its original design.

## **ANNEX 1. THE COMMUNITY DEVELOPMENT FUND (FDC)**

Before discussing the future of the FDC, it is important to stress the need to distinguish between the Fund as the financial compensation paid by investors to individual families who lose their crops, their houses and/or their fields, and the much greater amount that is intended to support the Community Development Fund (FDC).

As we know, the first type of financial compensation must, by law, be paid at a given moment (when the investor enters the land to occupy it and it is already occupied by community members). The second type is demanded during the implementation process, but also according to a timetable established between all parties.

This section focuses on the FDC itself which, as indicated in the report, should have been set up at the outset of the process, and *now must be speedily implemented*.

Another assumption is that if the Malonda Foundation continues to operate under the same institutional conditions, it cannot take over the general management or mentorship of the community. This means that it cannot manage the FDC, which must be re-thought:

- the fund must be set up as an autonomous private entity (foundation) for collective purposes;
- it must be provided with a legal status;
- the Status of Public Utility Entity must be requested;
- it will be set up by the communities under the regulation of the Law on Local State Organs, LOLE (Article 114)<sup>20</sup>;
- the communities that are members of the FDC are those whose areas were delimited at the outset of the process and which fall within the areas; subsequently allocated to investors;
- it will open up a space for other entities to participate in the Fund's administration (private sector, NGOs and Malonda);
- an advisory role would be allocated to Malonda and/or a NGO according to the choice of scenario above.

In addition to initial payments to start up the FDC, investors must also agree to make annual contributions to the Fund. These payments are perceived as a form of active participation by the communities in the income of the companies that are now going to occupy and use their land.

As this new institutional organisation begins, the different activities initiated in the villages of the districts affected by Malonda activities must continue to pay special attention to activities identified and prioritised by the communities themselves.

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<sup>20</sup> Approved by Decree nr 11/2005, of 10 June.

The FDC proposal serves very well to achieve the objective of benefiting communities through investments in reforestation projects. In the discussion and preparation of the final version of the Fund structure, it is important to consider the following aspects:

The concept of community to be applied in the Fund's structure to achieve the best local representativity.

The part of MF's current proposal that deals with follow up, monitoring and evaluation of the FDC should be better prepared and more directly connected to the mechanisms for community to be able to access funds. And it may also, probably, be necessary to create ways to strengthen community capacity to prepare proposals, prioritise and follow up the implementation of their projects.

The sources of FDCs should be defined in more detail. The proposal indicates a percentage of each Malonda Foundation partner's investment value to be paid annually. The idea previously launched was that it should be 5%. The current proposal leaves this open; it is an issue to be discussed later.

Another previously submitted proposal is that each investor would earmark a fixed amount for the community fund at the outset of the investment.

Another method is to apply a system where the company pays less to the fund in the first few years while the financial outcomes of their investment is smaller and then pays more after some years when the company begins to exploit the plantation on a larger scale, i.e. a progressive contribution system.

Another way of guaranteeing funding for FDCs is to earmark revenues deriving from the Malonda Foundation's shares in the Fund companies. Malonda's share could be administrated in the companies on behalf of the communities, as if the community were the holder of the shares.

According to several sources connected to activities in reforestation projects, the companies are willing to contribute to community activities and the community fund. Companies with experience from other similar projects know the importance and the need to collaborate and share benefits with the communities affected.

### **Representativity**

The objective of the FDC proposal is to achieve good representativity in the Local Committee through the enhanced representation of local communities.

In any institutional model adopted for the FDC for the purpose of representativity it could be possible to apply a system based on a model developed while building councils at the village level within the context of building local advisory councils according to the LOLE.

In this model, the representatives of the local council below are elected based on the population distributed by the following groups: local leaders, adult women, young women, adult men and young men and where each group has its quota. Distribution is based on the awareness that the population finds it difficult to raise their voices in the presence of leaders, women in the presence of men and young people, women as well as men in the presence of elders. It is expected that if this quota model is applied there will be more local population representativity in these local community planning bodies. The same model could also very well serve to create Local Community Committees in the communities affected by the programmes of the Malonda Foundation.

### **FDC objectives**

As has already been indicated, the Fund must state an explicitly transforming mission, in the sense that it offers the communities alternative means necessary to compensate them for the loss of their land when their land is planted by forestry projects.

This does not mean that the land issue ceases to be a concern – each village needs its expansion area, not only in the sense that it can grow but also to be able to maintain its crop rotation system (village *catchment* area).

Yet, everyone recognises that the arrival of the forest plantation economy – something apparently desired by the population – implies a deep social and even cultural transformation in the region. The FDC has an extremely important role in the management of this process, in preparing young people to take on new jobs (not only simple jobs as labourers but also employment in new sectors etc.) and in the transformation of the local population's livelihood strategy.

For this reason, it does not appear advisable to let the business dimension and the FDC coexist within the same institution.

### **Improve farming and guarantee future access to land**

This process implies as a first priority of transforming local farming, which in future cannot continue to apply the current system of large fallow land cycles and extensive use of the land resource.

It is essential to organise agricultural extension projects, projects such as those promoted by FAO in other regions in order to train farmers (active farmers and pupils in schools) in new techniques (Farmer Field Schools and Junior Farmer Field Schools) and to pay serious attention to making inputs, credits for production etc. available.

Based on these contributions, the FDC will also be able to fund projects prepared by the communities themselves.

The basis of preparing proposals for future rural extension activities should be based on farmers' own knowledge and experience.

It is also important to try to adapt extension activities to the different conditions in each area and to the needs expressed by farmers, as well as to integrate the new methods in farmers' existing knowledge. The division of tasks between women and men may also have consequences for extension work. For example, dissemination methods and message content may have to be adapted to the group with whom they are going to work, a group of women or of men or a mixed group.

Farmers can already manage some of the methods aimed at maintaining and improving soil fertility, however these methods are not effective enough. It is necessary to introduce systems of preserving produce, agro-silviculture (planting new species of leucaena) use of compost and an improved crop rotation scheme.

Local attempts to combat pests and crop diseases are not satisfactory. There are local methods that need to be reinforced and/or complemented with more effective methods. Access to improved seeds and improvement of storage systems are other aspects that need more attention.

Combining reforestation activities with those aimed at combating erosion and improving soil fertility is vital and should be linked to activities aimed at combating uncontrolled burns. Reforestation can also be combined with the provision of fruit trees, forage and plants that improve the soil. For this purpose only, seeds or plants to assist farmers to prepare nurseries and stimulate reforestation in an individual, family or association fashion may be provided.

Companies with reforestation projects should encourage and support their workers to continue to improve their own agricultural production.

Agricultural marketing in Niassa Province must be further stimulated.

The proposal presented by the Bishop of the Anglican Church that forest companies could assist workers and other members of communities affected by purchasing fertiliser at subsidised prices should also be considered by the Malonda Foundation. It would help farmers to improve their crops and increase income from their agricultural production. The provision of fertiliser could be carried out through the forest companies' association, which has already started to import fertiliser for use in the plantations. Since companies import in large quantities for the plantations, they could sell at low prices to farmers.

Another proposal that deserves consideration is that forest companies assist farmers to obtain better prices for their farming surplus. This could be done through the creation of storage conditions for farmers' products so they do not have to sell their products immediately after the harvest for fear that they might get destroyed and are able to wait until demand has grown. It is well-known that farmers cannot store their products for a long period of time due to poor storage conditions, which means that the losses during storage are great.

Supporting communities in delimitating their land and receiving a delimitation certificate.

Supporting communities in developing their plans to use natural resources, to stimulate districts to prepare strategic plans that consider the space necessary for communities to guarantee access to natural resources for their livelihoods.

### **Employment opportunities**

The FDC has a great responsibility to *prepare the communities, with emphasis on young people*, to participate in the new agrarian economy created by large companies.

Vocational training programmes are essential, in all the skills required by the forest plantation economy itself, as well as the service sector that must follow the development process.

At the same time, the FDC, as the body with the mandate for the social and human development of the local population, should guarantee that jobs are well paid, stable and with acceptable working conditions.

## **ANNEX 2: TERMS OF REFERENCE FOR A STUDY ON COMMUNITY LAND RIGHTS IN NIASSA**

### **Background**

Sida has initiated preparation to assess continued support to the private sector development programme (PSD) – Malonda Programme - in the Niassa province in northern Mozambique.

As explained in the strategy for Malonda, the objective of the programme is to be a driving force for private sector development in Niassa province with the intention of significantly accelerating the process of poverty alleviation.

One of the components in the PSD programme concentrates on stimulating investments in large scale projects/activities in forestry, agriculture and wildlife tourism by providing financial as well as legal and business support services. Planned investments require large areas of land, as some of the investors intend to implement projects of plantation and forestry conservation on 100 000 to 200 000 ha. According to information from the Malonda Foundation, the province has huge areas suitable for new forestry plantations, about 2.4 million hectares. In Mozambique land belongs to the state. The land use right “Direito de Uso e Aproveitamento de Terra” (DUAT) is regulated by the Land Law. DUAT for the use of land for commercial purposes could be achieved by authorisation of an application presented to the State as established in the land legislation, and this is applicable also for foreign natural and legal persons.

The Land Law is recognising the traditional land and distribution system. Individuals and local communities has the right to use land by occupation based on local traditions and can formalise this right by obtaining a certificate or a title of DUAT. Rural communities can also negotiate and agree with investors on commercial ventures that want to use their land. According to the Land Law, Communities should be consulted prior to approval of any DUAT title. Every land application process must include a community consultation to determine whether or not the area applied for is free of occupation. If it is occupied, the investor can then use the consulta to negotiate with the community over how to get access to the land they want. This device should ensure that local people benefit in concrete terms from any investment, participating as stakeholders in the development process in ways that they help to define.

The Malonda Foundation has provisional DUATs of about 90 000 ha in the Niassa province, where it intends to implement both large scale and small scale forestry projects. There are also plans to expand the area up to 170 000 ha in the future. In the process of application for DUAT, the foundation has organised, financed and implemented consultations and negotiations with concerned communities regarding delimitations of community land and demarcation for forestry plantations.

### **The need for the proposed study**

In Mozambique, community boundaries are established by long standing patterns of historical occupation and extensive land use systems. The small scale family farming, based on slash and burn methods, is the dominating agricultural production system in Niassa and represents the main source of support/income in rural families. It is also an extensive and mobile system with long crop rotation cycles, and thus requires large areas to be sustainable. In order to create a safe and stable livelihood, they have to rely upon diversifying their activities and make use of not only the arable land but also several other natural resources. Rural families get important inputs, for example from the forest, such as water, firewood, charcoal, construction material, fence, material for furniture and small canoes, honey, wild fruits and vegetables, mushrooms, medical plants, handicraft, fodder, fishing, hunting, etc.

This makes the rural families very vulnerable to changes in the use of land in their surroundings, especially if the changes will bring deteriorated environmental conditions and less access to land. When implementing development programmes to improve living standards and reduce poverty, the families need both their access to land and other natural resources and improvements in their agricultural production.

These strategic aspects need to be considered in the in-depth preparation of the assessment of future support from Sida to the Malonda Programme. As a part of that, the outcomes of the consultation and delimitation processes carried out in the rural communities are decisive. For that reason, it is important to identify to what extent, how and if the results of these processes correspond to local needs, rights and expectations. The results are expected to be positive, but could also turn out to be less beneficial for certain communities or certain strata of the population.

## **Objectives**

The overall objective of the study is to assess the implementation of community consultations and negotiations in the processes of community land-delimitations and demarcation in the land application process related to given concessions for land use and authorization of land use rights (DUAT).

### **The participation process**

- identify benefits, positive results and strengths for women and men and different social groups in the local communities as a result of the community consultations regarding community land-delimitations and community land use rights, negotiations with investors, transfers of DUATs and demarcation by private or other investors;
- identify possible risks, negative consequences, problems and weaknesses for women and men and different social groups in the local communities, that have appeared, or could appear, as an effect of the community consultations regarding community land-delimitations and community land use rights, and the negotiations on transferring DUATs to private or other investors, and how these could be reduced or eliminated;
- assess the implementation of community participation in the community consultations considering poverty, gender and rights perspectives;
- assess the local representation in the community consultations regarding gender, social stratification, age, health, education and ethnicity;
- propose mitigation measures to reduce or avoid identified risks and negative consequences, as well as propose methods on how to enhance beneficial impacts from the land process;
- give recommendations on how to proceed with continuous negotiations between investors and communities, including the participation of community representatives in the negotiations, to ensure legal rights and benefits to women and men in the affected communities.

### **Application of the Land Law**

- assess the application of the Land Law (if the Land Law has been correctly applied);
- analyse the discussions between communities and investors when land rights were ceded:
  - o Were they well conducted and in accordance with stipulated rules?
  - o Were the communities adequately informed of their rights and prepared for these discussions?
  - o Was there sufficient and representative *internal* dialogue inside the communities (say, between leaders and ordinary residents)?
  - o What was the nature of the agreement reached (beneficial to both or just one side; clear, legally enforceable; etc)?

### **Other aspects**

- identify the planned fund activities together with the local communities (local community funds)
- analyse local farmers strategies related to the interaction between small scale family agriculture production and wage work, (especially in cases when minimum wage is applied);
- together with the local communities analyse the role and integration of migrant workers.

## **Scope of work and methodology**

The study will concentrate on creating a deeper understanding of how the community consultations and land-delimitations have been understood and perceived by women and men and different social groups in the local communities and how the land-delimitations and land use rights correspond to the same people's needs and expectations. Within this objective it will need to:

- Give a description of how the community consultation, community land-delimitation, negotiations, transfer of land rights and demarcation processes have been carried out.
- Collect opinions, expectations and priorities expressed by women and men and different social groups of the population in relation to:
  - 1) the reforestation project's need of land and the community land-delimitations.
  - 2) the local need of land among different socio-economic groups and the community land-delimitations.
- Involve the local community with respect to gender and social stratification in:
  - 1) analysing the implementation of the land application process;
  - 2) analysing the impact of the consultations, land-delimitations, transfer of land rights and demarcation;
  - 3) clarify the long term cycle of land use in the local farming system in relation to project expansion;
  - 4) identifying benefits and possible risks and problems related to the process;
  - 5) identifying mitigation measures and how to strengthen benefits.

The study will be initiated with a desk-study of relevant background information. Field work will be carried out in selected communities where the consultation processes have been implemented. Adults, elderly and young people of both sexes, from different activities and socio-economic groups, will be invited to participate in the study. A limited local wealth ranking will be used to identify different stakeholders at community level. Criteria to be used in the wealth ranking are those perceptions based on and locally identified by the community. Interviews, consultations and discussions at community level will be done mainly in group sessions, both in mixed and separated groups of women and men and of people with different socio-economic background.

Interviews will also be carried out with women and men representing:

- local key persons and local leaders from local authorities (contemporary as well as traditional), local organisations, associations and religious societies;
- district administration and planning;
- district and provincial public authorities responsible for land application processes, agriculture and forestry activities;
- small scale farmers' organisations;
- private sector activities in forestry (small- medium- and large scale);
- staff and workers in the Malonda programme, plantations and nurseries.

## **Organisation of the Study and Team composition**

The team shall be composed of a specialist with background in sociology, anthropology or socio-economy with experience in gender perspective analysis and the use of participatory methods and a specialist in Land and Natural Resources Policy and Legislation.

Interpreter services will be necessary for the field work in the communities.

Tentatively 2 weeks will be needed for preparation and the desk-study, 2.5 - 3 weeks for the field work and 4 weeks for reporting.

## ANNEX 3: WORK PROGRAMME

### Study on Community Land, Niassa, April 29 to May 24, 2008

<b>1st week</b>	<b>April 29 to May 4</b>				
	<b>Tuesday 29/4</b>	<b>Wednesday 30/4</b>	<b>Thursday 1/5</b>	<b>Friday 2/5</b>	<b>Saturday 3/5</b>
	Gunilla arrives in Lichinga  15.00 Meeting & planning with Malonda Ms Celia, Mr Belindo, Mr Pangaya  (New Forests Lee C.)	8.30 Sida, PASC, Malonda  10.00 PCA FM Mr Sotomane  14.00 Malonda 16.00 PASC (Civil Society Support Programme)	Andre Calengo arrives in Lichinga  Internal work	8.00 Malonda  9.00 SPGC Technicians (Geography and Cadastre)  11.00 PD Tourism 14.00 SPFFB Technicians (Forestry and Wild Life)	9.00 ROADS (Environment and Sustainable Development)  14.00 Mr Castro Malonda  16.00 Planning

<b>2nd week</b>	<b>May 5 to May 11</b>				
<b>Monday 5/5</b>	<b>Tuesday 6/5</b>	<b>Wednesday 7/5</b>	<b>Thursday 8/5</b>	<b>Friday 9/5</b>	<b>Saturday and Sunday 10/5 and 11/5</b>
9.00 Malonda Tree Farm 10.00 Planning at Malonda 13.00 Technicians Malonda presentation  15.00 GED (GÅ)	Camille Rebelo 8.00 Mussa Nursery Workers Gr. women Visits Malonda F (14.00 Forests of Niassa) 16.00 Chikweti Å Tham, M G Gunja	Lichinga District 8.00 Mr Administrator  10.00 Mussa 14.00 Mapaco  Head of Administrative Post  Malonda F	New Forests J Ozanne  Sanga Nova Madeira  Chipanje Chetu  UCA	Sanga Maumbica A  Chipanje Chetu  UCA	Lago Mr Administrator (about Manda and Manhamba, Mecuce and Mbandesse plans) Nursery UMOJI Manda Wilderness Mala Cóbue Uchesse

<b>3rd week</b>	<b>May 12 to May 18</b>				
<b>Monday 12/5</b>	<b>Tuesday 13/5</b>	<b>Wednesday 14/5</b>	<b>Thursday 15/5</b>	<b>Friday 16/5</b>	<b>Saturday 17/5</b>
Lago  Maniamba Mecucue Chulica  Chikweti  (Head Office in Metangula)	Mr Administrator Lago  Mbandesse  Chikweti	Muembe 8.00 Mr Administrator 10.00 Ligogolo /Chiconono with Advisory Council 13.30 Chiuanjota 15.00 Nzizi	Lichinga Distr. Mussa Colongo Chikweti  Mapaco	Mr Administrator Sanga Unango/Malulo  Malonda Tree Farm Nursery  Chipango/ Cavago/Iringa	Sanga Unango/Malulo Chipango/ Cavago/Iringa Plantation Malonda Tree Farm Farmers' Associations Burundi Village

4 <sup>th</sup> week	May 19 to May 24				
Sunday and Monday 18/5 and 19/5	Tuesday 20/5	Wednesday 21/5	Thursday 22/5	Friday 23/5	Saturday 24/5
Work in Lichinga  <u>Monday</u> Mr Administrator Majune  Luambala	Sanga  Kalange/Miala  Distr Dir Act Ec, Sanga  16.00 Meeting Sida and Swedish Embassy Repr., Lichinga	Meetings in Lichinga  SPGC DPA, SPER SPFFB Malonda/Nhakosso  14.30 NGOs round table at UCA  17.00 GED (GÅ)	8.00 Meeting in Lichinga with Malonda  Gunilla and Calengo return to Maputo	Preparation  Swedish Embassy  Sida  Malonda	C Tanner  <u>Sunday 25/5</u> Gunilla returns to Sweden

**Gunilla Åkesson**  
**André Calengo**  
**(Christopher Tanner)**

**Swedish Embassy**  
**Sida**  
**Mozambique**

## ANNEX 4. PEOPLE CONTACTED

### Niassa, Lichinga

Jeremias Luis Ernesto Manussa	Provincial Director for Niassa Tourism
João Jussar	Swedish Embassy Lichinga, Programme Officer
Inocêncio Sotomane	Malonda, President of the Administration Council
Tito Gouveia	Malonda, Commercial Director
Célia Enosse	Malonda, Community, Gender and HIV/AIDS Manager
Francisco Pangaya	Malonda, Officer, Community Work Unit
Alexandre Chomar	Malonda, Communication Officer
Belindo Manhiça	Malonda, Officer, Environmental Programme
Ana Paula Nhavoto	Malonda, Lawyer
Nélia Jussar	Malonda, Lawyer
Chico Castro	Malonda, Technician
Celestino Kuntuela	Member of the Administration Council, Malonda Foundation
Mateus Salvador Macacua	Manager of the Mussa – Malonda Forestry Project
Eurico Cruz	Malonda, Executive Director
Gracindo Sayal	Malonda Tree Farm, Plantation Manager
Gracieta Nhamirre	Malonda Tree Farm, Engineer, forestry nursery
Lacerda Romua	Malonda Tree Farm, Engineer, forestry
Camille Rebelo	Forestry and Climate Change Consultant, Green Resources /Tree Farm
Julian Ozanne	The New Forests Company, Chief Executive Officer
Lee Cunningham	The New Forests Company, Chief Operations Officer Southern and East Africa
Mark van Koevring	Bishop of the Anglican Church and Administrator of Chikweti
Åsa Tham	Chikweti, Director
M Enácio Gunja	Chikweti, Legal Advisor
Lasse Lundberg	Chikweti, Former Deputy General Director
Neville Slade	Consultant in Agro-Business, Business Adviser
João Chichava	Head of SPGC, Provincial Services for Geography and Cadastre
Aida Jantar	Technician, SPGC, Provincial Services for Geography and Cadastre
Carlitos Renade	Technician, SPGC, Provincial Services for Geography and Cadastre
Valente Buanahassane	Technician, SPGC, Provincial Services for Geography and Cadastre
Celso Aleixo	Head of DPA, Rural Extension Service
Irene Afrei	Technician, SPFFB, Forestry and Wildlife Services
Martins Culumba	Technician, SPFFB, Forestry and Wildlife Services
Xavier Carpo	Technician, SPFFB, Forestry and Wildlife Services
Gunnel Rosander	PASC, Programme Director
Imbwango Mapoko	PASC, Officer, Development of Civil Society Organisations

Zefanias	PASC
Alifa Aide	UNAC
Júlio dos Santos Pêsego	Coordinator UNAC Niassa
Julião Daglasse	NGO Forum Niassa
Emílio José	President of the Council of NGO APACPE Niassa
Sabite Salimo	Forum Terra Niassa
Virgílio Bento Benesse	ROADS Provincial Focal Point Niassa
Eulalia Wairesse	ROADS
Jaime Namagoa	ACABE Niassa
Sebastião F. Tembe	ADEMIMO
José Sianbo	ADEMIMO
Elisa Assade	UCA
Omade Caisse	UCA
Paulino Imede	UCA
Carlos Afana	UCA
Xavier Jaime	UCA
Victorino José Molde	VACHEKULO
Alfredo Mesquita	MONASO
Manirambona Consolate	Concern Universal
Bernardo Alservu	PROAGRA
Feliciano Hilário	Casa Velha
Fernando N. Armando	NPCS

**Lichinga District**

Juma Taratibo	District Administrator, Lichinga
Carlitos Vasco Nipuite	Head of Administrative Post Chimbunila - Mussa

***Mussa***

Group of female farmers	6 women from Mussa area
Literacy group	Workers, Mussa/Malonda: 10 women and 4 men from Mapaco, Mussa, OUA and Naicuanga
Group of workers	Malonda/Mussa, 13 women, 27 men
Biraque Omar	Régulo's secretary, worker in nursery/Mussa and farmer
Residents and Community Structures	7 women and 50 men, Mussa village
Régulo Mussa - Ndembo	Mussa (Mapaco and Maikangwana)
Régulo Mussa Macuane	Macuane
Arafi Abilo	Representative Ndembo
Adala Afika	Counsellor Mussa
Jafar Ali	Counsellor to Régulo Mussa
Idrisse Assane	Advisory Council of the Administrative Post
Saíde Alifa	Trader and Advisory Council Post/District
Issa Amado	Trader
Assane Saíde	Trader
Saíde Bacar	Trader
Issa Cassimo	Trader
João Ndala	Trader
Nelson Ndala	Trader
Mustafa Kandiwo	Trader
João Aissa	Trader
Jafar Chaibue	Trader
Bacar Inosse	Trader
Iato Aide	Trader
Rosalina Issa	OMM (Organisation of Mozambican Women)
Fátima Iassire	OMM
Rosa Adamo	OMM and Advisory Council P.A.

Waite Aly	Secretary of Frelimo Party cell and responsible for Associação da Floresta Comunitária de Mussa
<b>Mapaco</b>	
Jaíbo Amano Siaia Residents and Community Structures	Régulo Mapaco Mapaco Village, 32 women, 38 men and 15 young people
Cassiano Buanasse Auado	Secretary of Frelimo Party cell
Andson Aiane	Secretary of Frelimo Party cell
Amansio Buana	Secretary of Frelimo Party cell
Nhanga Omar	Representative of Former Combatants
Bigula Ngoma	Secretary, OMM
Cossário Kunje	Shehe
Cassimo Danda	Shehe
Rachide Saise	Shehe
Group of female farmers	14 women from Mapaco
Group of male farmers	16 men from Mapaco
Group of female farmers in the fields	7 women from Mapaco
<b>Colongo</b>	
Residents and Community Authorities	60 women and 52 men from Colongo village
Régulo Colongo	Régulo
Régulo Catete	Régulo
Capito Abrão	Influential person
Carlos Elias	Resident
Machininda Aipi	Resident
Local representative	Frelimo Party
Workers	3 men who work in the plantations
<b>Muembe District</b>	
Maria Betânia	Permanent Secretary, Muembe District
<b>Ligogolo/Chiconono</b>	
Advisory Council Chiconono	Local representatives, 5 women and 25 men together with the Management Committee
Head of Administrative Post	Head of Administrative Post
Residents and Community Authorities	25 women and 20 men from Chiuanjota
Régulo Ntamila	Successor of Old Régulo Ntamila
Mosale Jasside Omar	Religious leader
Rachabo Iasside	Secretary of Frelimo Party cell
Juliana Ntamila	Worker in the plantation
Mr Ntuecha	Worker in the plantation
Residents and Community Authorities	2 women and 45 men from Nzizi
Lopez Zacarias	Head of Locality Nzizi
Matenda Adam	Régulo
Nachambo Omar	Régulo
Régulo Namalueso	Régulo
Livago Buanar	Régulo
Issufu Aide	Resident
Moises Aly	Resident
Issa Cássimo	Resident
<b>Majune District</b>	
Domingos Junqueiro	Administrator of Majune District

***Luambala***

Residents and District and Local Authorities Luambala 15 farmers, 10 District and Local Structures and 5 supervisors/workers from Monte Mozal project

Head of Administrative Post Head of Administrative Post

Namalento Saide Régulo

Nasope Régulo

Germano Capten Supervisor, Monte Mosale

***Sanga District***

Ferreira Mahumane Administrator of Sanga District

Victor Jonny Levene District Director for Economic Activities in Sanga

***Cavago/Iringa***

Residents and Community Authorities 5 women and 31 men from Cavago/Iringa (meeting 1)

Assamo Ncawanganha Régulo Cavago Sede

Matenda Aide Nduna and representative of Régulo Chipango

Ali Mbaraca Deputy for second Régulo Chipango

Omar Ndawadi Counsellor to the Régulo

Gloria Saide Resident, 5 family members employed in the plantation/nursery

Mahamedi Chilada Former combatant

João Fabião Resident influential person

Lourenço André Resident influential person

Raimundo Mustafa Resident influential person

Matias Salvador André Eawango

Residents and Community Authorities 6 women and 27 men from Cavago/Iringa (meeting 2)

Members of Farming Associations - 3 women and 7 men from village Burundi

União das Abelhas e Boa Esperança

***Kalange/Miala***

Residents and Community Authorities 15 women and 41 men from Kalange/Miala

Kalange Amade Régulo

***Nova Madeira***

Paikwila Rajabo Régulo and President of Committee for the Chipanje Chetu Programme

Residents 5 women and 20 men connected to Ch. Chetu Programme

Chata Aidi Old person

Ibrahim Mussa

Nikse Imedi

Danger Massia

Aidi Homadi

Yassine Amise

Bananar Mussa

Caetano Massia Project Supervisor

Luís Saide Bungo Member of Sawmill Association

Jampus Ali Hussene

Bernardo Cassimo Community Supervisor

Saide Mussa

Imulane Hassine Member of Committee

Tinia Abdala Member of Committee

Nkapa Alifa

Kaisse Usseni

António Cassimo

Biconi Pawila  
Chadrique Catemeche  
Cândida Sampani  
Akiba Amir  
Pedro da Graça Alifi  
Pedro Sandali  
Arafi Muamedi  
Fátima Saíde

Project Supervisor  
Community Supervisor

Member of Committee  
Committee Treasurer

***Maumbica***

Leonardo Riquizabda  
Mbuana Issa  
Community Member Chipanje Chetu  
Residents and Community Authorities

Head of Administrative Post  
President of Committee COGECO, Management Council

10 women and 45 men from Maumbica

**Lago District**

Manuel Gabriel Cabral  
Fátima Amado  
Paulo Saide

Administrator of Lago District  
Permanent Secretary, Lago District  
District Director for Economic Activities in Lago

***P.A. Maniamba***

Feliciano Amisse  
Alexandre Muchia  
Rainha Nantima  
Imedi Cássimo  
Saíde Kajambe  
M'Pele Pele  
N'ganga  
Residentes  
Adini Luis Ajida  
Adini Ajida Chamilo  
João Robisson  
Salvador Omar Awule

Head of PA Maniamba  
Technician, Administrative Post of Maniamba  
Traditional Leader of Maniamba  
Advisor to Queen, member of Advisory Council D  
Régulo, Chiwulika Village  
Nduna, Traditional Leader, Chiwulika Village  
Nduna, Traditional Leader, Chiwulika Village  
7 women, 13 men and 7 young people, Chiwulika Village  
Régulo, Mecucue  
Former Régulo Mecucue  
Head of Locality Mbondege  
Trader Maniamba

***Locality Mbandece***

João Rabisone  
Líderes comunitários  
Cássimo Awila  
Paulino Léngamo  
Fátima Aide  
Ana Ali  
Jaime Amosse  
Eduardo Buanamar  
Jaibo Buanamar  
Aide Buanamar  
Luciano Assane  
Amanse Imedi  
Amade Iassa Kulanga  
Victorino Rachabo  
Imede Caisse Issa  
Kadebe Chaíbo Nasquil  
Akuluwenga Fernando Saíde  
Orlando Cassimo Aly Pinga  
Fernando Assane Saíde  
Deolinda Thomas Niquisse

Head of Locality Mbandesse  
3 women and 25 men from Mbandesse  
Régulo  
Frelimo party  
OMM (Organisation of Mozambican Women)  
OMM  
Block Secretary  
Block Secretary  
Nduna  
Registrar, community court  
Head of office in Locality Mbandesse

Assane Aide Lipende  
Aly Nhanje  
Alifa Caisse  
Ndala Saïde  
Assumone Cassimo  
Amido Omar  
Assane Buanamar  
Jassine Domingos  
Armando Airone  
Mandingo Aide

***P.A. Cóbue***

Xavier Adamo  
Members of UMOJI

Residents and Community Authorities  
Residents and Community Authorities  
Régulo Uchesse  
Issão Cajune  
Emanuel Kalimedcha

**Maputo**

Odete Mugumela  
Augusto Tembe  
Lars Bergren  
Bengt Johansson  
Maria Vink  
Pontus Modéer  
Raimundo Cossa  
Maria da Conceição Quadros

**Sweden**

Lasse Krantz  
Love Theodossiadis

Head of 10 houses  
Head of 10 houses  
Head of 10 houses  
Old influential person  
Old influential person  
Former Combatant  
Secretary of Frelimo Party cell  
Secretary of Frelimo for organisation  
Responsible for mobilisation  
Local correspondent and literacy coordinator

Head of Administrative Post of Cóbue  
Union/Association of 16 Communities of Cóbue and  
Lúrio, Natural Resource Management Programme  
6 women and 13 men from Mala village  
24 women and 38 men from Uchesse village  
Aldeia Uchesse  
President of Committee, Uchesse village  
Agrarian technician and extension officer, Manda  
Wilderness Nursery

Malonda Foundation  
Malonda Foundation  
Malonda Foundation  
Swedish Embassy, Counsellor  
Swedish Embassy, Programme Officer  
Swedish Embassy, Programme Officer  
National Director for Land and Forests, MINAG  
Legal Advisor to the Minister, MINAG

Sida, Programme Officer  
Sida, Programme Officer

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This report is based on information collected within the context of the study concerning Community Land Rights in Niassa Province in Mozambique, with special attention paid to the programme implemented by the Malonda Foundation. This programme is supported and financed by the Swedish Government and aims to promote private investment in the province while seeking, during the course of the process, to ensure equitable and beneficial social impact as an explicit objective, in particular for the local population.

The study was commissioned by Sida (Swedish International Development Cooperation Agency) and the Swedish Embassy in Mozambique, as a contribution to the preparation of continued Swedish support to private sector development in Niassa Province. Provincial and local work was carried out during the period April 29th to may 22nd 2008.

The team consisted of Gunilla Åkesson, team leader, from Sida's Helpdesk for Environmental Assessment, Sweden, and André Calengo, legal consultant, Mozambique. Christopher Tanner, FAO's advisor in Mozambique and specialist in the Mozambique Land Law participated as a technical advisor. During the field work the team was accompanied by staff from the Malonda programme: Célia Enusse and Francisco Pangaya, both from the Community Work Unit, Alexandre Chomar, Communications Officer and Belindo Manhiça, official from the Environment Programme.

The report is part of the Report Series at the Swedish EIA Centre SLU, at the Swedish University of Agricultural Sciences. The Centre is commissioned by Sida to provide a Helpdesk to assist in integrating environmental consideration into Swedish development cooperation. The Helpdesk provides advice, training and guidance for Sida staff and support to capacity development in Sida partner countries.

This report is the result of an independent study commissioned by Sida. The views presented are those of the consultants and do not necessarily reflect Sida's views.