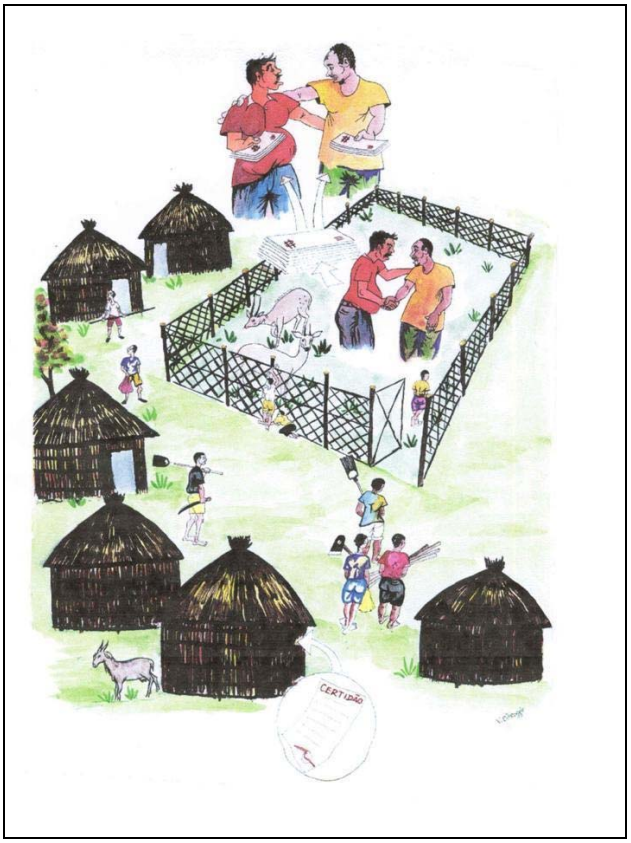
Mozambique's legal framework for access to natural resources:

The impact of new legal rights and community consultations on local livelihoods



Christopher Tanner and Sergio Baleira
based on the fieldwork of Ângelo Afonso, João Paolo Azevedo, João Bila, Constantino Chichava, Altino Moisés, Carlos Pedro and José Santos

2006

FOOD AND AGRICULTURE ORGANIZATION OF THE UNITED NATIONS

Livelihood Support Programme (LSP)
An inter-departmental programme for improving support for enhancing livelihoods of the rural poor.

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The Livelihood Support Programme

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

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

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

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Access to natural resources sub-programme

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

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

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

This paper considers one of the most important practical aspects of local participation in the Mozambique Land Law and other natural resources legislation: the community consultation, through which outsiders – the State, new investors, timber companies, hotel groups – gain access to local land and resources with the approval of local people.

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1. INTRODUCTION

This paper represents part of an area of work which analyses access to natural resources in Mozambique. An initial paper examined the extent to which Mozambique's recent regulatory changes to natural resource access and management have had their intended effects (LSP Working Paper 17: Norfolk, S. (2004). "Examining access to natural resources and linkages to sustainable livelihoods: a case study of Mozambique"). This paper is complemented by LSP Working Paper 27: Tanner et al. (2006). "Making rights a reality: Participation in practice and lessons learned in Mozambique".

This report looks at one of the most important practical aspects of local participation in the Land Law and other natural resources legislation: the community consultation, through which outsiders – the State, new investors, timber companies, hotel groups – gain access to local land and resources with the approval of local people. In the consultation, the community is asked if the land required by the investor is occupied or not. Three things then happen:

a) if the community says the land *is* occupied and does not want to hand it over, the applicant has to look elsewhere;

b) if the community says the land is *not* occupied, the State is free to allocate new rights over it to the applicant without any deal being struck with the community;

c) if it says the land *is* occupied but is prepared to hand it over, it *can* negotiate terms and conditions for ceding its land rights to the investor.

In each case a distinct "livelihoods condition" is established:

a) the "first condition": existing livelihoods are secure, but no other impact can be expected in terms of jobs, new infrastructure, etc, and no immediate local development process will occur (*no subsequent participation*);

b) the "second condition": the livelihood base is secure (resources not covered by the land request), but new livelihoods options as the local economy evolves are limited ("unoccupied" resources are no longer available for community projects, they *might* benefit from new development (jobs, roads, etc) but have no say in how or when (*minimal participation in externally driven development process*);

c) the "third condition": the community must have other resources to carry on as before, or a new livelihoods strategy must be developed using the resources or opportunities promised in the agreement (jobs, roads, infrastructure, shares in public revenues or in the returns of the project) (*potential for participation in externally driven development)*

In this context the extent to which local people know their rights and how to use them takes on huge significance. Apart from knowing that customary land rights are recognised in law as equivalent to a State-attributed DUAT, they should know that "occupation" as defined by the Land Law gives rights over far more than the

immediate areas they live in and cultivate. This can fundamentally alter how they might respond to the question, "Is this land occupied or not?"

They should also understand that their rights are private and exclusive, and that they *can* say "no" to the investor if they do not want to cede their land. And if they *are* prepared to cede their rights, they should be able to negotiate with the investor or the state, on the basis of real knowledge of the a) the value of their resources; and b) the potential return that the investor can expect.

The consultation, seen as a moment when local people are informed about a wide range of new and often abstract concepts and ideas, then becomes far more than just a visit to see if a piece of land is occupied or not. It is process during which people should firstly be told about their rights and about the project and its implications for them; and secondly, it should produce an agreement that brings benefits to both sides as stakeholders – the community as "title holders" of existing land and resource rights; the investor as the new 'development stimulus' bringing capital and know-how.

Not all is well with the consultation process however. This has been clear for some time now, from reports and feedback from numerous field trips in the years since the Land Law came into force. This impression was confirmed by the CFJJ/FAO study of land and natural resource conflicts[1], which showed definitively that:

- poorly carried out consultations are often a basic cause of bitter and long-standing conflicts between local people, the state, and those who would occupy their land and use their resources
- local people do not fully understand their rights and how to use them in the consultation to protect their interests or secure new resources for development
- the public agencies responsible for implementing the new laws are also failing to apply the community or local rights provisions correctly, and often appear to be firmly on the side of the new land right applicant

The research also showed that the participation of women in the consultation process is very weak, and that rural women are not aware of the specific rights they enjoy in the context of the Land Law and its constitutional backdrop. This question is of critical importance in a situation where the customary rights of women are obtained through key male figures and/or their membership in family groups, and are immediately put at risk when these males are dying at an early age as the HIV/AIDS pandemic takes hold across the country.

Nonetheless consultations are happening all over the country, as the cadastral services quite correctly carry them out as an integral part of every new request for a land use right. In this sense the legal requirement that a consultation is done *is* making investors aware of the need to respect local rights, and it is giving communities a new sense of self-worth and of "being noticed".

[1] Baleira, Sergio and Christopher Tanner (2004): *Relatório Final da Pesquisa sobre os Conflictos de Terra, Ambiente, e Florestas e Fauna Bravia.* Maputo, Centre for Juridical and Judicial Training and FAO. Based on fieldwork by Ângelo Afonso, João Paulo Azevedo, João Bila, Elénio Cavoessa, Constantino Chichava, Eduadro Chiziane, Altino Moisés, Carlos Pedro, José Santos e Carlos Serra.

The question in this context is whether or not the consultations as presently carried out are having any real impact on poverty and local livelihoods: are the communities losing out due to their relative weak position *viz à viz* the investor and the State, or are they beginning to gain concrete and useful benefits?

The question of real and useful impact, as part of a broader analysis of how communities participate in the consultation process, was identified as important issues for LSP-funded research. The focus is on three inter-related aspects of consultations:

- *the way they are carried out*: who participates, are they carried out in a way that allows or promotes participation, does implementation promote or obstruct the underlying rights and participatory principles of the land policy and law?
- *their impact on livelihoods*: do they secure livelihoods, provide concrete benefits to improve or diversify (strengthen) livelihoods, or create conditions for new livelihoods choices for local people?
- *their impact on local capacity to engage in development and policy processes:* do they raise awareness of rights, do they help local people to influence present plans and future policy? Do they help to "make rights a reality"?

2. THE FIELDWORK

These questions were investigated through a two-phase fieldwork programme:

- a random sample of land applications involving community consultations, taken from SPGC records;
- focused interviews and visits to selected communities to find out about the consultations that they were involved in.

The first exercise allowed a wider national level view of how consultations are carried out. The second looked in more detail at specific consultations and the extent to which communities understand what the process is about, what their rights are, and how they can use these rights as stakeholders to secure decent benefits for local people.

A complementary programme with support from UNAIDS also began looking at the participation of women in consultations and land management, how aware they are of their land and resource rights, and way the HIV/AIDS pandemic is affecting these rights.

2.1 The survey of SPGC records

The survey of SPGC-led consultations was carried out in 7 provinces: Maputo, Gaza, Inhambane, Zambezia, Nampula, Cabo Delgado and Niassa. Small urban and peri-urban land requests were excluded, and up to 40 cases per province were then selected randomly from SPGC files[2]. As much information as possible was collected on

- the nature of the land claim (area, location etc);
- the purpose of the claim;
- the nature of the consultation process:
    - how many people were present and who were they;
    - number of meetings;
    - details of any agreements reached;
- strong and weak points of the consultation question as a whole.

None of the SPGC filing systems offered an easy challenge, with incomplete databases and disorganised files that were in turn often incomplete and poorly filled in. But while the data is of varying quality, it reveals clear patterns when looked at as a whole. A quantitative analysis of the economic impact of consultations proved impossible however with the material available. There simply was not enough detailed information, although some cases did allow analysis as stand-alone case-studies.

A total of 260 cases were collected. Table One shows the distribution by province and the purpose of the land claim. As expected the large majority involve land for agricultural or livestock projects (173 out of 260, 67 percent). The distribution of projects in specific provinces reflects the way their economies are moving, and what investors think is the most viable economically. Livestock projects dominate in Gaza

[2] The CFJJ and FAO - LSP wishes to thank SPGC Service Chiefs and their staff who helped in the study, without whose support this discussion would not be possible.

for example, where the local ecology mostly suits cattle ranching. The number of tourism projects (34, or 13 percent) also show how rural land use is diversifying, notably in emerging tourist hotspots like Inhambane, where land requests for tourism are just under 50 percent of the total.

TABLE ONE

DISTRIBUTION OF CASES BY PROVINCE AND ACTIVITY FOR WHICH LAND IS BEING REQUESTED

Activity	Maputo	Gaza	Inhambane	Zambezia	Nampula	Cabo Delgado	Niassa	Total each Activity	Activity as percent of All Cases
Agro-livestock	25	3	5	14	13	15	8	83	32
Livestock	7	22	4	11	3	2	2	51	20
Agriculture	6	5	0	3	16	5	4	39	15
Tourism	0	4	19	1	1	3	6	34	13
Industry	0	2	5	8	4	1	1	21	8
Commerce	1	0	4	3	3	0	1	12	5
Wildlife	0	4	0	0	0	0	0	4	2
Religious	0	0	3	0	0	0	0	3	1
Social projects	1	0	0	0	0	0	0	1	0
Mining	0	0	0	0	1	0	0	1	0
Other	0	0	0	0	0	9	2	11	4
TOTAL	40	40	40	40	41	35	24	260	100

2.2 The way consultations are carried out

The survey of 260 land processes and consultations revealed that there is very little consistency in the recording of information, although a standard form is used by SPGC teams when they go to the field. There were consistent similarities in the data however that allow some important observations to be made about the way in which the consultations are being carried out in general:

- in the vast majority of cases there is only *one meeting;*
- where there is more than one meeting, the first is usually a preparatory meeting to set the date and time for the main consultation, with little real information presented at this point;
- *some* meetings are attended by large numbers of people from the community, but the number is "high" only in relation to the norm for most meetings, and not in relation to the number of people in the communities affected by the land claim;
- the majority of meetings involve very few people from the community;

- those who participate are normally community "leaders" (traditional chiefs, some "secretaries"[3]), and the opinion of the Chief nearly always predominates;
- previous meetings with Regulos often mean many "*consultas"* are a "done deal";
- many meetings had no-one from the District administration present, and their legality can therefore be questioned;
- women are rarely if ever actively involved; very few sign the official minutes;
- most written records were inadequate, with insufficient detail or no uniformity of presentation, and huge variations in the type and quality of information recorded;
- many *processos* present conflicting images of what exists on the ground: they describe farm plots and other evidence of human settlement, but then declare that the land is 'unoccupied' for the purposes of proceeding with the land claim;
- the "Acta" (agreement) signed by community representatives frequently did not reflect local views recorded elsewhere in the form as "interventions", even when these included requests for specific conditions or commitments;
- the information presented in the Minutes tends to be vague – "the investor will bring jobs", or "both sides hope that relations will be good" – and does not facilitate subsequent monitoring of the agreement;
- there is also a lack of detail and measurable indicators in relation to a time period during within which the agreement is to be implemented;
- none of the documentation relating to the agreement was formally notarized or officially recognised in a way that could give it legal validity in a court of law, should either side wish to pursue a claim for breaking the agreement.

The overall impression is of cadastral officers being asked to lead a complex process involving very different groups of people, under great pressure from above to do it as quickly as possible. New land claims must be processed in 90 days or less[4], and in this context the primary concern of SPGC staff is not to educate the community and promote local development, but to secure a community 'no objection' to the new land request.

On the community side, there are also serious questions about representation when most meetings involve relatively few people. Community leaders may be present, but by law, all "non-leaders" in a community are co-title holders of the community land use right (DUAT). Article 12 of the Land Law Regulations indicates that they must be consulted when major decisions about community-held resources are being taken. The typical process observed in this survey does not allow this to happen, and indeed the trend is in the opposite direction. Local leaders often dominate, and since Decree 15/2000, the prevailing view in DINAGECA is that it is now only necessary to talk

[3] "secretaries": officials at the lowest levels of local government, who not part of the public administration, but originate in the FRELIMO party cell system.

[4] This requirement came into force in late 2001, with a ministerial directive and new 'simplified procedures' issued by DINAGECA for getting a new DUAT.

with "community authorities" in the consultation[5]. This approach obviously simplifies the task for SPGC field teams, and makes it easier to meet the 90 day deadline.

There is nothing inherently wrong with meeting just a few leaders provided that a) they really represent the local community defined in the Land and Forestry and Wildlife Laws; and b) they also consult with the people they represent before a final decision is made. The first assumption is debatable. While they may be "community authorities", local leaders are not necessarily members of the local community which holds the DUAT over the land in question. If they are not, they cannot legally take any decisions about ceding the community right to someone else. This is because a "local community" in the Land Law context is *not* the same as a "local community" in the 15/200 context. The former is a *private entity* defined in terms of a range of land occupation and use activities; the latter is a public entity that can include several "Land Law communities". The issue of representation and participation therefore needs to be treated with far more care.

Even if the "community authority" *is* a member of the local community that is title-holder of the existing DUAT, there are contradictions in their role as community representatives on the one side, and as a petty official carrying out tax collection, crime prevention and public policy roles for the State. This official role and its related responsibilities are formally recognised by the State in ceremonies[6], and it cannot be assumed that local leaders represent or are in touch with the *private* voice of the communities they lead.

On the second point above, meetings are *not* usually attended by many community members apart from "leaders". Some form of internal consultation is therefore essential to allow information about the project and local rights to be taken into the community for discussion before decisions are made. With just one meeting of an hour or so, there is no way that this can happen. In a strictly legal sense then, most of the consultations in this survey are illegal, and should either be redone or thrown out.

SPGCs also do not seem to consider the process to be a *consulta* if a consensus is *not* reached (i.e. if they fail to secure the agreement of the community). In this sense the survey data confirm an impression gained in the earlier conflict research: it is assumed that the land application *will go through,* and that the objective is to agree terms, not to see if the community agrees with the project or not.

Finally, given the importance of this event for local development, it is surprising that there are no records of *consultas* as such – they are part of the cadastral *processo* linked to the new land claim. It is therefore difficult to compare *consultas* where the community says "no", with those where it says "yes", and assess why it acts this way.

[5] National Director of DINAGECA, speaking in a provincial meeting to discuss the National Land Strategy in Chimoio, Manica. This is a still unborn attempt to improve Land Law implementation.

[6] Decree 15/2000, Article 2: *Once they are recognized as legitimate [by their community] the community authorities are recognized as such by the competent representative of the State".*

2.3 The impact of consultations

The original idea of the survey was to put a monetary value to items and services recorded in agreements. Comparing this with the area requested and the size of the community would give some indication of the economic impact of the agreement. It would then be possible to see if the agreement compensates for the value of assets lost; or if it provides enough new income, capital or other benefits to allow the community to improve its activities, or gain access to new markets and economic opportunities.

Very few agreements were quantified however, although in some cases of cash compensation it was possible to assess whether or not "participation" in the community consultation resulted in a good deal for local people. Table Two below shows the conditions that are most commonly included in consultation agreements. Nothing at all was mentioned in 38 cases – the community apparently agreed to the request without conditions. This does not however mean that demands were not made and a "successful consultation" took place. Community requests recorded as "interventions" in *Actas* are often left out of final agreements, which might say simply that "*it was concluded that the community agrees with the investor….there are no problems."*

Putting these cases to one side, the most common item is employment for local people (91 cases, or 35 percent). Jobs *are* a good thing in rural areas with no employment, and they ought to have a positive impact on local livelihoods. This cannot be assumed however, as employment only has a real livelihoods impact if it a) is regular and secure, and b) offers more income than present or future use of the land by local people.

In this survey, very few cases specify how many jobs will be created, how much the wages will be, if they are full time or not, and what any other conditions might be. It is therefore very difficult to say if either condition is met. There is also evidence from these and other studies that many of the jobs created are filled by people brought in from outside, leaving only the most basic and usually part time or seasonal work for locals. Nevertheless the employment impact of new investment cannot be overlooked, and some cases studied in more detail below do suggest that some consultations *are* offering new livelihoods choices to local people.

TABLE TWO

NUMBER OF CONSULTATIONS IN WHICH SPECIFIC TYPES OF ITEM OR OTHER CONDITIONS ARE MENTIONED IN CONSULTATION RECORDS

Items Appearing in Agreements	Number of Agreements with Each Item								
	Maputo	Gaza	Inhambane	Zambezia	Nampula	Cabo Delgado	Niassa	TOTAL	percent TOTAL
Emloyment of local labour	6	19	24	18	9	13	2	91	**35**
Sale of products to the community	0	1	5	4	2	3	0	15	**6**
Compensation paid to occupant	0	0	19	0	4	6	0	29	**11**
Flour/rice mill for the community	0	0	1	3	4	0	1	9	**3**
Build social infrastructure (school, shop, etc)	5	5	7	9	2	6	5	39	**15**
Community can use animals/ploughs	0	1	0	0	0	1	0	2	**1**
Good relations with the community	5	57	5	12	2	1	0	82	**32**
Ccollect crops before ceding land	0	0	0	2	0	0	0	2	**1**
Financial participation	1	0	0	0	1	2	0	4	**2**
Population moves with compensation	0	0	0	0	0	0	0	0	**0**
New markets for local products	0	0	0	0	0	0	1	1	**0**
Veterinary assistance	0	6	0	0	0	0	0	6	**2**
Giving diverse items to the community	0	4	1	2	8	0	2	17	**7**
More transport/ access roads	2	2	0	0	0	1	0	5	**2**
Nothing declared	40	0	10	6	23	2	18	99	**38**
TOTAL OF CASES	40	40	40	40	41	35	24	260	**100**

Source: SPGC archives, seven provinces.

Whatever the outcome, both sides in the *consulta* know the promise of jobs is a powerful bargaining tool in rural economies with little wage employment. It is clear from the survey that the carrot of "jobs" is quickly waved in front of local people when a consultation begins, apparently with the desired effect.

The second most common item is "a good relationship with the community" (82 cases). Evidently everyone wants "good relationships", and this is a very easy condition to agree upon. Yet how are they measured, who enjoys them (are *all* community members friendly with the investor?), and what happens if they break down? These points are never specified, and in practical terms, 'good relationships' do not fill stomachs.

In third place are investor promises to build a school, well or other infrastructure. This occurs in 39 cases, and again many communities evidently find this idea appealing if the State has been unable to respond to their basic needs. Yet none of the *processos* surveyed include details about who will pay running costs, and how – if – the school or health post will be integrated into the current investment and spending plans of the relevant sector. Are education or health sector officials present at the meeting for example? If not, when and how are they brought in?

Several of these cases also involve the investor promising to build a local shop. By bringing commodities closer to local people, they help to alleviate the workload of women and save time traveling to the district town. But this can also be a double-edged sword creating relations of dependency between local people and the new land user. To what extent does the community "participate" in the shop, selecting stock, setting prices, sharing in the profits? The field data suggest that the answer is "never".

"Giving diverse items to the community" (17 cases) comes in a close fourth, just ahead of 'selling products to the community' (15 cases). "Diverse items" also include things like bicycles and radios for individuals or families whose land is in the area requested by the newcomer. These benefits are concentrated and unlikely to have a widespread impact on the wider population. And while a bicycle may be useful for getting around, and a radio for hearing crop prices, neither item can take the place of the productive asset lost.

Items such as flour mills (3 cases) are different in this respect and generally become a community resource. But like schools and health posts, little attention is given to running costs, maintenance, and management. The reality is that all of these categories are extremely difficult to quantify in terms of their impact on local livelihoods, and in fact do as much to generate new livelihood options for the investor (as shop owner or purchaser of local produce) as they do to raise local living standards.

"Impact" in all cases must also be looked at in two ways. Firstly, are the resources or service transferred to the community able to raise incomes or offer real livelihoods choices? Secondly, are the resources and services transferred a fair exchange for the land and natural resources being ceded to the investor? Is the community is getting all it should from the *consulta*? Is it getting enough new resources to alleviate poverty or re-invest in activities to diversity and/or improve local livelihoods? The survey suggests not.

One item where values are mentioned is "compensation" (*indenizaçaão)*, which occurs in 29 of the 260 cases (11 percent). In the Land Law, 'compensation' only applies when the State revokes a DUAT for some public interest project, and compensates people for the loss of standing crops, fruit trees, housing and any other infrastructure on the land. The term is increasingly found however at the heart of negotiations between investors and local people over land that is evidently 'occupied' because it has plots or trees on it.

The evidence suggests that a negotiation over "compensation" is becoming a standard feature of many *consultas.* What is really happening is a process of buying out local people who then sign the "no objection" in the *Acta* of the *consulta* – the land effectively becomes "de"-occupied. An alternative way of looking at this is that private assets are being sold by the community to the investor. In the case of "compensation" being paid for standing crops, a new DUAT over the newly 'de-occupied land' is issued to the investor. In the (much less common) case of "improvements" being sold to the investor – these can include crops as well as

infrastructure on the land - the new owner of the assets should request the underlying DUAT to be transferred to his or her name[7].

However it is looked at, the "compensation" agreed during a *consulta* is really a deal to buy the land rights. The real question then is, having lost its land, does the community have other resources it can use to support its present livelihoods strategy, or is the payment enough to start a new strategy somewhere else.

Some cases revealed substantial payments, such as US$16,000 "compensation" paid by for coconut trees standing on the land (see Box One below). Yet this was shared amongst 69 people, resulting in a payment of just over US$230 per person. This is a small amount for a household to build a new life elsewhere. And this is in a tourist area where negotiated values can be expected to be higher than elsewhere. Setting this a reference point would suggest that equivalent deals negotiated in less sought after areas result in even lower – and less useful – payments that will do nothing to replace or improve local livelihoods.

Nevertheless, selling your assets is one way of realizing the capital value locked up in them. Legal questions aside, this practice of "compensation" does mean that local people get something in their hands through the *consulta.* The issue is not whether they should sell or not, but whether they are getting enough. Or perhaps there is some other way in which they could benefit? Perhaps they could engage in a more genuine form of "participation" – as stakeholders with a share in the new enterprise, or as continuing 'owners' of the land, drawing a rent from the enterprise that is using it. Income derived in this way is likely to be higher, but is also *recurring and regular,* and can be invested in new agricultural methods or new activities.

2.4 Views of Cadastral Service officers

Cadastral service officers were interviewed as part of the survey, to find out what they thought of the way that consultations were implemented. One senior SPGC officer went so far as to say the consultation process is a "waste of time". It is not clear whether he meant that decisions to allocate the land are already taken higher up, or that communities do not understand the process, or that there is no point in doing something that cannot be followed up. What *is* clear is that SPGCs are under great pressure from above to process applications for new land rights within the required 90 day period, and time spent in lengthy consultations weighs heavily in their calculations.

By law of course it is the District Administrator who is charged with providing the *parecer* regarding community occupation. As the local representative of the State, he or she should also be the one to ensure that the rights of citizens are sufficiently well understood before they engage in the consultation process.

In the opinion of SPGC officers, few district administrators and their staff understand the process, and do little to promote constructive agreements. This is not to question their goodwill, but rather to underline the fact that few Administrators appreciate the

[7] In urban areas the land right passes automatically with the purchased property.

power of the new legislation as a democratising and pro-development package. The survey also reveals that many meetings take place without an administrative officer present. Both situations impose additional burdens on SPGC staff, whose technical role gets mixed up with the more political and facilitating role of the district administrator.

The earlier CFJJ/FAO conflict research also supports the view that most Administrators take the side of the investor, or are following instructions from higher up to ensure that the new land right is granted. This also puts SPGC staff under pressure. Many are very aware that along the way the community rights issue takes second place, and evidently find themselves compromised both professionally and morally.

With little time for follow up and no mandate to supervise post-consultation compliance with agreements, it is not difficult to understand why SPGC staff do not give more attention to the public information and community development aspects of the process. They are few in number and are already thinly stretched across large provinces with few vehicles and little equipment. With pressure from above to deliver the new DUAT, and do it in less than 90 days, community development and participatory decision-making is not on their agenda. Nor is it expected of them by their superior officers, who in turn are obeying instructions from higher up in the political hierarchy where policy processes are still largely formed in practice.

3. CONSULTATION CASE STUDIES

The second part of the fieldwork involved visits to selected communities to find out more about how they participated in the consultation, and what they understand about this process and the wider context of rights and obligations created by the Land Law. Table Three shows the number of communities visited[8].

TABLE THREE
NUMBER OF COMMUNITIES VISITED

Maputo	3
Gaza	3
Inhambane	3
Nampula	2
Cabo Delgado	4
TOTAL	**15**

3.1 Good examples

The survey uncovered some cases where reasonable agreements were being made, and with some clarity. One such case is on the tourist coast of Inhambane Province (Box One). The local community knows that they have lost control over a valuable resource, but are waiting to see if the investor delivers on his promises. The deal is a mix of payments to the individual rights-holders whose land lies within the area requested; and jobs and social infrastructure that can be enjoyed by the whole community.

The individual payments are termed "compensation". The investor does not pay the individual rights holders for the land, but 'compensates' them for the loss of crops and assets located on it. In this case the assets are mainly coconut trees. Payment was worked out using a table developed over recent years, and which seems to be used in many consultations in the area (Table Four).

So far, the investor has paid 2/3 of the value agreed as 'compensation' for the coconut trees standing on the plot. Some 12 community members have jobs, in basic manual work as guards or general labourers. It is a long way from the 130 jobs promised in the *consulta,* but it is a start. So far nothing has happened with the school and other social infrastructure.

There is strong investor demand for beachfront land here, and it is also clear that compared with other regions, these local communities are more experienced and are learning how to "participate".

The case in Box One is presented as a "good example" because the local community is still relatively happy with what has happened since the consultation. If all goes well, they stand a good chance of finding new ways to make a living, and incoming investment in the area as a whole is already changing their lives with improved road access to the nearby city and more vehicles passing to carry goods and people.

[8] Budget limits restricted this work to only 5 of the 7 provinces in the SPGC survey.

TABLE FOUR VALUES FOR CALCULATING 'COMPENSATION' INHAMBANE PROVINCE, FEBRUARY 2005	
Coconut tree up to 5 years old	MTS 950,000 (US$40)
Coconut tree over 5 years old	MTS 1,500,000 (US$65)
Mango and cashew trees	MTS 600,000 (US$25)
Citrus trees	MTS 375,000 (US$16)
Source: Field data, Bila 2005	

Nevertheless these same people told the interviewer that the consultation *"is prejudicial because they always lose their land in return for false promises, in clear collusion with government bodies"* [9] This would imply that given the choice, they might prefer to keep their land and come to some other, more 'participatory' arrangement with the investor.

Similar events are taking place in other communities in this area, and local views are equally ambivalent until they see real delivery on promises made. Their capacity to negotiate has clearly risen however, not due to any major information effort by government, but because they are smart and learn quickly, and the investment boom in their region has been running for several years now. Another example of this learning curve is the fact that another community close to the one in Box One quickly insisted in its agreement that the investor pays 60 percent of the "compensation" up front, to avoid problems of delayed or staggered payments.

BOX ONE

Coastal Tourism Project 1

This case is in an area of high investor demand, on the Inhambane coast. The area requested for a tourism project is small in real terms – 20 ha – but huge in terms of its economic value on prime beach front in an emerging world class tourist area. The title holders of the DUAT over this area are from a single local community.

A *consulta* was carried out on one day, lasting about 1 ½ hours. Nineteen local community members were present. The government side included representatives of the District Administrator, the District Directorate of Agriculture and Rural Development (DDADR), and the Locality President. 'Local authorities' – traditional leaders – were also there.

In interviews, the community said that they understand the objectives of the *consulta* are to find +out who the title holders are and negotiate compensation with them. To quote the field report, "*it is useful because it helps to identify the legitimate owners, but it is prejudicial because they always lose their land in return for false promises, in clear collusion with government bodies"*

Nevertheless an agreement was struck. The investor promised the following:

- compensation to the holders of the DUAT over the required area (69 people, to a total value of Mts 400 million, or about US$20,000). *At the time of the fieldwork, 2/3 of this had been paid over*.
- 130 seasonal jobs during the construction phase, and 30 permanent jobs once the place is operational. *At the time of fieldwork, 12 community members were employed as guards and helpers.*
- build a school, crèche, and a First Aid post with transport to take serious cases to Vilankulo. *At time of fieldwork, no progress on these items.*

The community thinks it is too early to assess the results of the *consulta,* although their expectations are high. They realise they have lost an important area, but for now relations with the investor are good.

The investors too are learning. The 2/3 payment made in the Box One case is an explicit response to earlier experiences in other (failed) *consultas.* "Last minute beneficiaries" appear claiming prior rights or "their share" in the spoils, claiming family or other links to the area. This results in conflicts with those who legitimately took part in the *consulta* which can then block the whole investment process[10].

[9] Bila, João (2005), pp 4.

[10] A case like this was investigated in the earlier conflict study, where the proposed investment was effectively stalled.

This problem is confirmed as a negative aspect of many consultations by both investors and SPGC officers. It does not mean that the consultation process should be stopped. Rather it underlines the need for it to be properly regulated and well administered. Meanwhile, investors and communities engaged in the *consulta* are coming up with their own solution – participatory policy making in practice.

3.2 Not so good examples

The first "not-so-good" is also from the Inhambane coast. In this case (Box Two), the community is saying that the investor has broken promises made during the consultation, and has occupied a lot more than was agreed to. The consultation process appears to have been poorly handled and did not allow for internal communication within the community. According to the community – including those who benefited directly from the agreement – the investor has not kept any promises.

The community does not know what to do and how to redress its grievances. To quote from the field report: "*the community does not see the point of taking the conflict to the court, since [the judges] clearly mix socially with the government authorities and they do not believe that the court is independent*[11].

The second "not-so-good" case is in Maputo Province (Box Three). This case is interesting for several reasons. Firstly, the land involved is apparently not used by anyone, and therefore was considered by the local land administration as being "available" to hand over to an investor. This assumption on the part of the SPGC underlines the persistence of the view amongst land administrators that unused land is unoccupied land, and that there are no existing rights over it.

BOX TWO

Coastal Tourism Project 2

This case involves 14 hectares on the Inhambane coast. There were several meetings with the investor and administrative officers, but no ´formal consultation´. The community view is that the administrative officers were there´ to help the investor get round the local community´. They also say that only ´local authorities and owners of the assets [on the site] were invited. Their leaders say the invitation was for everyone, but only those with a direct interest (asset owners) turned up.

The agreement includes:

- ´compensation´ for those with a customarily acquired DUAT over the area (*not everyone was compensated however, and no clear criterion used to value assets used to calculate compensation*)
- 70 jobs would be created (*to date, only a housemaid and guard*)
- build a school, health post, wells, a fish market, ,and improve the road (*nothing yet*)
- ´good relations´ between investor and community

The lack of clear criteria resulted in different levels of compensation paid: one family got MTS 3.5 million ´for 7 hectares`; another got MTS 14 million ´for 16 hectares´. The investor is also not doing his project, but is parcelling up the land and selling it to other foreigners who want to build holiday houses (which will bing in very few jobs).

The community ´feels really badly treated' and is desperate. To quote the field report, "*relations between investor and community are visibly terrible…and the investor has a plan to fence of community access to the beach"*. The livelihoods impact of this on a fishing community is self-evident.

Source; Bila (2005)

Secondly, this kind of case also shows how important it is to carry out a community delimitation whenever a new project is proposed (as indicated in the Technical Annex

[11] Bila, João (2005), p9.

to the Land Law Regulations)[12]. Delimitation results in the spatial identification of the community-held DUAT, based upon the broad definition of "local community" in the Land Law which includes "land for expansion" and "of cultural importance" (i.e. land that is unused but occupied).

A well done *consulta* could perhaps avoid the need for delimitation, but either way, the idea that unused land can be defined as "free" is something the 1997 Land Law was meant to put an end to. If the local SPGC does not understand this, it is even less likely that the local community will understand its legal rights over "unused" areas. And if the SPGC *does* see the land in this way, it is quite likely that they would argue that a *consulta* is not necessary.

As it happens the investor did make one visit to the locale to talk with the local people living nearby. He was accompanied by "a friend", who subsequently appears to have been either a SPGC or administration officer. Although this visit did not result in an agreement, the land application went ahead with several local signatures on an "Acta". There are clear implications here of either a) falsifying the community consultation document; or b) simply getting several local people to sign the paper who had nothing to do with the land in question.

BOX THREE

Agriculture Project – Maputo Province

This case involves 500 hectares in the centre-south of Maputo Province. The area was defined as 'waste ground' (*terra baldio)* by SPGC technicians in the *processo* of the land application, implying that no-one was using it and that it was therefore available to allocate to a new applicant.

For the community however, it is far from being 'wasteland' – it has religious importance (graves are found there), and it is being kept for future use and for their children.

A Mozambican citizen requested the DUAT over the area, and according to the *processo,* a consultation took place, signed by the community. The *'consulta'* appears to have been a visit to the area by the applicant, "*accompanied by 2 friends"*, who said he wanted to occupy 500 hectares.

The community leaders said he might have 150 hectares, but that he would have to come back again - all the member of the community should be present. The applicant never came back.

The community leaders insist that they never signed any *acta* or other document, yet apparently the signatures of 'local inhabitants' are on the document. The Locality Chief (lowest level government post) confirms that they signed…

The local community consistently deny that any consultation took place (this in a meeting of 17 people including the community leader). Meanwhile the land was occupied by the applicant, who has since 'sold it', to another investor who want to carry out agriculture and raise livestock.

Source: Moises (2005); Seuane and Rivers-Moore (2005)

The community is very frustrated, and now a new investor with his own version of "his rights" (having "purchased" the land from the first investor) is making things even more complicated. The community understands why a *consulta* should have been done: "*we are the ones who know where to have a machamba (*farm plot) *or grazing land, we know the area".*[13] In terms of exercising their rights, they also know that they could go to a court if an open conflict erupted. However they do not know how to do this.

[12] República de Moçambique (2000c): *Anexo Técnico ao Regulamento da Lei de Terras.* Maputo, Boletim da República, Diploma Minsterial No 29-A/2000. Article 7, Number 1, Line (b)

[13] Quoted in Moises, Altino (2005): *Um Olhar sobre o Processo das Consultas Comunitárias Realizadas na Província de Maputo: Acordos e Entendimentos entre as Comunidades Locais e de Terra.* Maputo, CFJJ. Field report, pp12.

Meanwhile, current livelihoods may not be immediately undermined, although the community does collect wild fruits and raw materials from its "unoccupied" land. The *future livelihoods* of the community, arising from a more intensive use of the land that has now slipped out of their control, have however been lost.

A third case also illustrates the problem of adequate representation and internal consultation. This case (Box Four) is on the border with South Africa, south of the new Limpopo International Park in Gaza Province. This area is susceptible to drought, and local land use is very extensive with large apparently unused areas. The issue of "free land" is also therefore very much at the centre of this case.

BOX FOUR

Inland Eco-tourism Project near a new Transfrontier Park

An investor wants 10,000 hectares on the border with South Africa and next to the Kruger Park. The land is also south of Massingir Lake, which forms the southern border of the new Limpopo International Park that will join with the Kruger to form a single transfrontier conservation area.

A first meeting to discuss the proposal included the investor and District Director of Agriculture, and several 'local authorities', or Regulos, from communities affected by the project. These community leaders *"showed themselves to be receptive [to the plan] and used the occasion to ask the investor if he could build a shop and some wells for them"*. He agreed to this, but stopped short of accepting other demands for a health post and a school because this was too costly and should be done with the relevant sectors.

The meeting took place on one day, and although several "leaders" were present, only one elderly Regulo was there from the community that would lose most land to the project. No other members of this most directly affected community were present. An accord was duly signed by all the leaders present, but it seems that they believed that the investor would return for other meetings to explain his plans to other lower-order chiefs (thus extending the range of the '*consulta')* and discuss other details of the agreement. These return visits have not happened. Meanwhile, the investor and administrative officers believe that the consultation process was carried out according to law, and that the investor can get the DUAT over the land and implement his project.

When the son of the Regulo found out that 10,000 hectares of community land had been ceded in this way, he protested and subsequently lead a movement to request a "re-consultation". The local public administration insisted that everything had been done legally; the case was also checked by the cadastral services who also concluded that all had been done according to law and that the case should not be re-opened.

With support from ORAM, a leading national "land NGO", the community presented a letter to the Governor. The local administration accused ORAM of being agitators, and banned them from working in the area. ORAM has in fact been there for some time, advising the community to delimit its land rights and rasing awareness of the Land and other natural resources laws. FAO was also involved in two neighbouring communities in late 2002, training ORAM and other NGO staff, SPGC and Extension Service officers in delimitation and participatory approaches. Two communities were delimited at that time. One of these – Canhane – has gone on to implement its own eco-tourism project (see the Workshop case studies).

The conflict has affected the wider community and resulted in a stand off between the elderly Regulo and his son. The public authorities insist that the case is closed, and that "due process" was followed. The community is now prohibited from collecting natural resources in the now-ceded area, and the public authorities support the investor saying that the area now "has an owner'". In his visit to discuss the *consulta,* the CFJJ researcher was told by the community that doing another *consulta* would make no difference. Their view is that the administration and the investor are on the same side.

Source: Azevedo, João Paulo (2004): *Relatorio Final da Pesquisa de Campo, na Área de Terra, Meio Ambiente, Florestas e Fauna Bravia: Província de Gaza.* Maputo, CFJJ/FAO; and (2005): *Relatório da Actividades nas Comunidades na Província de Gaza: Fevereiro e Março de 2005.* Matola, CFJJ/FAO

The new transfrontier park and wider plans for tourism development ("bush-beach" tourism between the Kruger-Limpopo area and the coast) have given a huge boost to new investor demand in the area. New projects are nearly all for eco-tourism and require lots of land. As title-holders of the main resource – large areas of land - local people should be well placed to gain from new investor-driven economic opportunities. In fact there are several conflicts here, including inside the park itself where local people are being asked to move to areas outside the park.

This particular case involves an investor who has requested 10,000 hectares to start a game farm and eco-tourism venture. The consultation was carried out with the "local authorities" in the shape of several Regulo from communities affected by the project. An agreement was reached involving the investor agreeing to build a shop and drill some wells. Access to water is a critical factor in fact, as the community now in conflict moved away from their land and now live mostly in the neighbouring community, precisely because it was so dry.

The son of the Regulo later returned from South Africa to find that this very large area had been ceded, and that the community was being denied access to the natural resources within it. An internal conflict has since developed, dividing the community and resulting in the local administration also banning the national NGO ORAM from working in the area.

The administrative services have consistently argued that the law was followed and that the appropriate legal mechanism – the community consultation – was applied. Legal and conflict issues aside however, it is apparent that building a shop and drilling some wells will not result in rising incomes for the local population, derived from the new and more economically viable activity of eco-tourism carried out on their land.

3.3 Land concentration

The survey also provided some indication of how the overall pattern of land occupation is shifting in Mozambique. Behind the reality of the consultation process, which at the very least is obliging both the State and investors to pay some attention to local rights, a process of land concentration appears to be under way that will nullify any gains made by local people in the longer term.

Table Five shows the situation in Gaza Province for example, where areas requested by investors are classified by size. New projects in Gaza include land areas for raising cattle, and other large areas destined for eco-tourism and game ranching ventures. Similar patterns are found in the data from other provinces. This trend is also confirmed by the Mozambican research firm Cruzeiro do Sul, from fieldwork in Manica Province. While this particular was not the focus of the present study, it is clear that a process of land concentration is underway.

If this is the case, then the livelihoods impact of the consultations becomes something of a side issue, with the underlying process progressively reducing the options available to the rural population. In this context, the consultations are facilitating a negotiated enclosure process, whereby local people are ceding their land more or less voluntarily in return for a series of agreements that in fact bring them very little in concrete terms.

TABLE FIVE
LAND CONCENTRATION TRENDS IN GAZA PROVINCE

Area (ha)	Number of Cases	Total Area Requested (ha)	percent of Total Area Requested
0 – 10	8	52	0.5
10 – 50	4	127	
50 – 100	1	100	
100 – 500	7	1940	1.5
500 – 1000	4	3504	3
1000 – 10,000	15	84,136	65
> 10,000	2	39,000	30
TOTAL	41	128,859	100

Source: Azevedo (2005)

3.4 Community perceptions

There is widespread awareness - and acceptance - of the basic constitutional principle that "land belongs to the State". At least this single fundamental aspect of the land legislation is widely known. The more detailed work carried out at community level also shows that a strong natural sense of local rights exists everywhere. People feel that where they live and farm is "their land". Beyond this natural sense of having rights over their land and local resources, and feeling aggrieved when outsiders ignore or abuse them, communities are only dimly aware of the rights that the State – as owner of their resources - also gives them.

The case studies above reveal different levels of understanding regarding these rights, and how they can be used to bring concrete benefits, or defended if threatened. Most have heard of the Land Law and see it as something that should protect local people. This survey however confirms the impression gained in earlier work that local people feel relatively powerless when confronted by an investor who is evidently supported by state officials accompanying the land claim.[14] The whole process of "compensation" is about coming out of an undesirable situation with at least something – the idea that they can say "no" is not regarded as an option.

In some areas – notably Manica, and Nampula – awareness of the rights conferred by the Land Law is higher. This is largely due to the continuing efforts of local NGOs after the Land Campaign initiative launched in the late 1990s to take basic Land Law principles out to the communities. Communities in certain parts of Nampula province are far more able to "participate" in land management in a way that comes closer to the rle foreseen in the land legislation. They are aware of the intrinsic value of land delimitation as a measure to define and protect their rights, in a region that has been the focus of steadily growing investor interest in its land and natural resources.

The example of the community in Box Four also underlines the importance of telling people about their basic rights and how to use or defend them. Armed with this information, provided again by an NGO and not by state entities, the community is resisting a large land claim that brings them little real economic benefit, and which

[14] Baleira and Tanner (2004), op. cit.

will rule out any form of local use of this land either for present subsistence or future diversification into community-based eco-tourism.

If knowledge about basic legal rights is weak, understanding how to defend rights through the justice system is even weaker still. Some communities are aware that they could perhaps take their grievances to the courts, but have no idea how to do this. And if they did, they would not have the resources to do it anyway. Most, however, do not even think of the courts or the wider judicial system as a way of defending their rights. Judges and local public prosecutors are identified with "the State", which in this case means "the government" - the separation of powers and the independence of the judiciary is simply not part of the picture. They are friends with the local administrator and sector officials, who in turn are frequently seen as being on the side of the investor in consultations. [15]

The CFJJ/FAO conflict study also underlines the fact that the judiciary is seen as one "sector" alongside the others – the "crime sector" - and is the place you go to in the case of assault or robbery or other clearly identifiable criminal activities. The idea of "competence", or having the technical mandate in a specific area, is deeply engrained. If it is a land conflict, the land administration deals with it, and if they fail to resolve the issue, the problem simply goes higher and higher up the administrative and political hierarchy until the Governor steps in to try and sort things out. A judge is not a surveyor or forester – how can he or she help in a land dispute?

3.5 The Gender Dimension

Alongside the main LSP activity, other fieldwork supported by UNAIDS looked at the participation of women in consultations. This exercise also sought to assess the understanding and awareness of the Land Law amongst rural women, and how the formal legislation of the State affects their land rights acquired through customary channels. The impact of the HIV/AIDS pandemic is then looked at in this context.

The first point that comes out of this fieldwork – which is still underway at the time of writing – is that in a wider situation where consultations are rushed through and involve very few people anyway, it is almost irrelevant to assess whether women participate in them or not. The underlying issues of land concentration, land claims that seem to be impossible to resist, and a general lack of awareness of basic rights and how to use them, are all of far greater significance in the long term when assessing the participation of women. To quote from the initial field report, "*it is not possible to come up with hypotheses from a gender perspective, because [both] men and women do not participate in the consultation process*[16]*"*. A similar point can be made about the HIV/AIDS pandemic, where the finer points of how men and women relate over land issues are rapidly overtaken by the sheer scale of its impact on communities.

Having said that, the research is showing that even where consultation meetings do take place, women do not actively participate in the process. To quote again from the report, "*the hierarchies of gender manifest themselves in sometimes unnoticed ways, where for example, it is notable that in all meetings women sat on the ground, talking*

[15] Baleira and Tanner (2004), op. cit.

[16] Seuane and Rivers-Moore (2005), p15.

little and in a low voice in the presence of men. It was observed that in the presence of men, the women even stated that they did not speak Portuguese in order not to be encouraged to get involved, but in the absence of the men [in later focus group sessions] *they expressed themselves quite well, several even acting as translators in the meetings*[17].

These observations confirm what is already widely known, that men are the ones who deal with the outside world in most parts of rural Mozambique. This does not mean that women – or at least "senior" women - do not get involved in the activities being discussed however. Once the outsiders have gone away, it is clear that do have a voice, albeit conditioned by gender relations in which their role and their influence is defined by their marriage into the family of their husbands, or by the place in the hierarchy of uncles and other men who manage land and take key decisions.

In the case of land consultations that are carried out in just one day or less, and involve just one meeting, it is of course impossible for even this 'behind the scenes' participation to take place. Having more than one consultation meeting then becomes a basic requirement if women are to be involved in any significant sense. Women are in any case not rights holders in the sense of having "ownership" over the land and resources they use. Their position is very similar to that of the community in general, *viz à viz* the State – they have a use right acquired by the act of marrying into a specific family. This right is not "ownership", and the husband or the lineage to which he belongs acts like the State, as holder of the "radical title". A right acquired through customary channels is however equivalent to a State-attributed DUAT, and in any case women as members of the community have full co-title rights to participate in all decisions about how community land is used and disposed of (in a consultation for example). Yet the field reports states that "*Women do not exercise rights of co-title together with their husbands, including management of and access to decision making about the assets that they maintain and often increase* [18]".

In a general context where knowledge of even the most basic rights conferred by formal State laws is very weak, the fieldwork finds that there is not not much difference between men and women. There is certainly no awareness at all of how the Constitution and the Land Law protect women against the discriminatory aspects of customary norms and practice when land rights are threatened by divorce or by the death of the husband or other male land rights holder or land manager.

To conclude this discussion on the role of women in land management and how this affects their rights over the land they depend upon for survival, a quote from the field report is again useful: "*Being in a situation of ignorance about their rights under civil laws in Mozambique, allied to aspects of their socialization that impede them from taking decisive positions in certain situations, women do not have the necessary tools*

[17] Ibid, p17.
[18] Ibid, p17.

to exercise their rights as owner or co-proprietor of specific assets, and are subject to arbitrary expulsions and expropriation [of their land] inside their communities[19]*."*

[19] Ibid, p17.

4. DISCUSSION

4.1 Why do a consultation?

Consultas are not initiated by the community, but are a legal requirement imposed on anyone seeking new land rights in Mozambique. This innovation introduced in the 1997 Land Law is at least obliging both investors and the State to take local rights into account when managing new land applications, and the process is also helping to make communities more aware of their rights and feel that they are being noticed and " valued" for the first time.

The *consulta does* in fact allow local people to say if the land being requested is occupied, thus safeguarding areas they need for their agricultural activities. If the area is not occupied, the SPGC proceeds with the surveying and registration of the new land right; if it is occupied, they do what they can to facilitate an agreement with the present rights holders – a community or individuals within it – and the applicant, following Article 27 of the Land Law Regulations. Once this is done, they are free again to advance with the surveying and registration of the new right. SPGC officers work hard at this, and the effort they make has to be recognised and given due credit.

The National Land Directorate (DINAT) could therefore be right when it says that the *consulta* is sufficient for protecting local rights (and by extension, local livelihoods). It can also be argued that "the second livelihoods objective" is not in fact their concern – the focus in the Land Law itself is on ensuring that requested land is not occupied, with local "participation in the titling process" as per Article 24 of the law limited to saying yes or no to this question. Examination of all three legal instruments – law, regulations and technical annex – can support this view, as there is little mention of using the consultation to promote local development, either explicitly or implicitly.

However, the same Article 27 that requires terms and conditions to be negotiated over access to occupied land also opens the way for discussions that can address the 'third condition' above, securing something in return for ceding a local DUAT that will protect or even augment local livelihoods:

> "*The statement [*parecer] *of the District Administrator refers to the existence of not, in the area requested, of the Land Use and Benefit Right* [DUAT] *acquired through occcupation. Where other rights do exist over the requested area, the statement will include the terms through which the partnership will be regulated between the titleholders of the DUAT acquired through occupation and the applicant."*

Thus the *consulta* may well be when both sides determine whether the land in question is occupied or not, but it is *also* a process through which benefits and conditions can be negotiated that could have a significant impact on existing and future livelihoods. And in a country where the bedrock of official social and economic policy is the struggle to end absolute poverty, officers implementing the consultations should be looking beyond securing existing systems of subsistence production – a

kind of "secured poverty" – to how this mechanism can be used to lift local people *out of poverty,* and onto the road of becoming better off.

4.2 What happens in practice?

Article 27 notwithstanding, it is evident that the *consulta* is not intended to be a discussion of the proposed project leading to its acceptance or rejection by local people. There is no sense in which they are 'participating' in a process that will decide what kind of development will take place in their area, and what their role in this process will be if it goes ahead. The focus is on securing the land right for the investor, in line with clearly stated Government policy to fast-track land claims as part of a wider belief that new private investment will bring growth and jobs, and thus contribute to ending poverty.

In this context the *consulta* as currently conducted is a development instrument with major consequences for local people, wielded by public agents implementing the law to achieve specific policy objectives handed down to them by their superiors. It is *not* specifically intended to secure new material resources and opportunities for the community to use in its own development. Indeed Article 27 implies that the request for the land in question *will go through* – no explicit allowance is made in the law for it being rejected if rights already exist, insisting merely that terms will be agreed to regulate 'the partnership' between existing and new rights holders.

This impression is confirmed in the survey and case studies, where local people feel pressured to accept the new land claim as if it were a kind of public expropriation of the legally defined land right. Following the Land Law provisions for expropriation, the major issue is then "compensation". Three questions stand out in this case: a) how the concept of "occupation" is understood by both sides – community and investor/land administrator); b) how the conditions in the statement of the Administrator are arrived at, and who represents the community in this context; and c) the subsequent status of the administrator statement as a legal document that binds all parties into a form of contract.

Changing this approach is very much up to the various protagonists now active in Mozambique – civil society, the private sector, politicians. "Participation" by local people, using all the legal and other means available to them in these and other laws, will be a key ingredient in this much wider debate. A fourth question then becomes critically important: what is the impact of the present approach on local livelihoods, and is it in any sense addressing the "third livelihoods condition", bringing new resources and opportunities that will allow people to escape poverty by earning or producing more?

Occupation and awareness of rights

The field data suggest that very few communities fully understand what is happening to them when an investor arrives accompanied by the local cadastral team and administrator. Knowledge of the Land Law, which recognises the existence of extensive rights acquired through customary norms and practices, is very weak, except in areas where NGOs have been active over a period of several years. In principal, the State should be concerned to fully inform local people of their rights in

this context – explaining how the Land Law defines "occupation", using an analysis of historical occupation, land use and production systems, and the need to preserve unused areas for future use. If they do not understand this basic aspect of the law, local people will not be able to consider how to use their full legal rights before saying to the visitors, "yes, that area is occupied" or "no, it is not".

It is clear from the fieldwork that the present consultation process provides very little space for this public education function. A huge amount of information is provided in the first, and often only meeting. The whole project is described, often in obscure language and containing ideas and activities that are remote and incomprehensible for even local leaders. Some attempt may even be made to quickly explain the Land Law, and the local community or its leaders are asked to make a decision. Figuring out where boundaries are and if other communities are involved or not is impossible in this kind of situation.

The law in fact calls for a "community delimitation" in this kind of situation[20], but this is rarely if ever considered in the *consulta* context. Indeed for smaller areas where it is clear who is directly affected and it is possible to negotiate with individual rights holders (such as in Box One above), a delimitation may not be necessary. In applications involving large areas however it almost certainly is, given that a primary objective of the *consulta* is to establish whether or not the land in question is "occupied" or not.

Reaching agreements and representation

The fieldwork reveals a process that is too quick, involves too few people, and does not allow for any process of internal consultation between community members. The level of real participation is very low. The need for some kind of internal consultation is required by law, under the conditions of "co-titling" through which the community DUAT is equally shared and managed by *all* community members. With just one short meeting, such an internal process is impossible. And if no internal consultation takes place, not only is there no real participation in the final decisions, but the legality of whatever "the leaders" agree to is certainly in doubt. The case in Box Four above demonstrates what can happen in this kind of situation.

It is also not sufficient to simply consult local leaders during the consultation, particularly if no other meetings are arranged. There view that Decree 15/2000 allows this approach, which is clearly easier for those conducting the *consulta,* is incorrect. A "Land Law community" is a private entity and title-holder of a private and exclusive right, the State-attributed DUAT[21]. As such, the internal management of that DUAT is subject to the principles of co-titliing as defined in the Land Law Regulations[22], and it is simply not enough for the leaders present to agree without any attempt to communicate and discuss this decision with the wider community they represent.

Moreover, the "Decree 15/2000 community" is defined differently, and includes everyone living within a certain "unit of territorial organization, namely locality,

[20] Article 7 of the Technical Annex to the Land Law Regulations (República de Moçambique 2000c).
[21] See CTC Consulting (2003), pp xx-yy, for a fuller discussion of this point.
[22] Article 12.

administrative post and district"[23]. There is a clear correlation here between this definition of a "local community" and the basic building blocks of state administration. This community, and its leaders, are *public* figures. The "local authorities" of the Decree may well have a public function *viz à viz* land use in their areas – relaying policy and maybe even educating local people about their rights – but they alone cannot represent the *private entity* which is the "Land Law communities". Indeed a "local authority" present at a consultation may not even be a member of the community in question – Box Five illustrates this point well.

If this approach continues to be followed, agreements will increasingly reflect the specific views of a limited number of relatively influential people at local level. Participation in the consultation process will also be minimal. And the legality of most consultations can be put in doubt.

Follow-up

The nature of the *Actas* does provide any real basis for either side to pursue grievances if they feel that the agreement is not being adhered to. Even if communities knew how to take a case to court and had the funds to pay for a lawyer, the agreements that appear in the cadastral process are not written as contracts. They have very little quantitative detail, no time scales for implementation, and are not legally recognised. Such documents would be difficult to use, both in any subsequent inspection visit, or in a court of law.

Non-compliance is however a serious problem, and appears in several of the cases looked at in detail. In the earlier conflict research, and in the CFJJ/FAO training programme with judges and prosecutors, this issue also came up time and again. District level judges especially are very aware of how non-compliance with consultation agreements is causing simmering tensions and open conflicts between local people and those who have come to use their resources. Adherence to contracts and the subsequent recourse to the courts to defend ones rights is still however a very weakly rooted practice, even in urban Mozambique. Some form of public oversight would seem to be required in the medium term at least.

There are, however, no public institutions mandated to follow-up on consultation agreements. Certainly the SPGCs do not have this role or authority, and *consulta* agreements are not filed separately in a contract database of any kind. The SPGCs do not have the staff and material resources to do this anyway – they are already hard pressed to supervise implementation of investor projects once the DUAT is awarded, collect land taxes, and carry out their basic surveying and registration functions.

In fact there is no technical need for a specific agency to track these agreements. If they were framed as legally binding contracts between two parties, either side can take steps to ensure that the agreement is respected. And if either side is let down, and personal pressure fails, they can take the other side to court for breach of contract.

[23] República de Moçambique (2000b): *Regulamento do Decreto 15/2000.* Diploma Ministerial No 1-7-A/2000. Article 1, Number 5.

The reality at local community is far removed from this procedure however, and there is an assumption that the State should look after things. The fieldwork reveals clearly that awareness of how to use the courts in this way is virtually non-existent; where there is some awareness of this civil law role of the courts and the wider justice system (in which the Public Prosecutor is a key, and much underused component), local people have little confidence in it anyway, seeing judges as part of the State system and on the side of the administration and the investor.

4.3 Livelihoods impact

With consultations that allow little space for people to be informed about their rights, what "occupation" means in law, and which involve a limited number of community "representatives", it is unlikely that either side is able to fully assess the livelihoods impact of a project or the agreement that allows it to proceed. At the very least however, it could be said that the present consultation process *is* addressing the first and second "livelihood conditions" introduced at the beginning of this discussion. Some attention is being paid to the need to guarantee local rights over land now being used to support the population, and where *machambas* are present and the community has other resources it can allocate to families who give them up, there is a minimal benefit for local people.

Even a very cursory glance at the agreements however indicates that their impact on livelihoods is marginal. Table Two above reveals a range of conditions that in real terms are worth very little, even if they are fully implemented. The one certain thing is that the promise of employment is an important incentive for local people, and is quickly put on the negotiating table by the investor (and the public sector officers) as one reason why the community should agree to cede its land rights.

The impact of employment should not be underestimated, *provided that investors implement their projects, and do in fact employ local people.* Indeed recent research conducted by the African Safari Lodge programme underlines the fact that employment created by new investments – in this case in new eco-tourism ventures – has the single biggest impact on local livelihoods. This impact rises even more if higher level employment is involved, with training for local people included in the agreement.

The cases surveyed here however suggest that a) most jobs are just promises; and that b) most jobs are of a very low level and are not secure. Giving up access to resources that can at least sustain a family at a basic level, for uncertain and poorly paid jobs, seems like a high risk exercise.

Moreover, even if jobs *are* created in exchange for local rights, this is not necessarily "participation" in the sense that local people are able to determine the nature of the local development process and its impact on their lives. Indeed if it involves ceding their land rights and becoming employees, it involves a major change in sociological terms. A *de facto* alienation from the land occurs, with the prior status of "owner" (or title holder to be legally correct) replaced by hierarchical relations of dependence with a new "owner". They shift from being stakeholders who could use the resources themselves if they had access to credit or know-how, or demand some economic participation in the project, to being simply poor people looking for a job.

Agreements involving schools, health posts and other social infrastructure are also flawed. In the first place, such agreements necessarily have to be made with the full knowledge of the local sector officials, who can assess what is needed to integrate these facilities into existing programmes. Secondly, few investors actually get around to building them. One investor identified in the research had the sense to say "no" to this proposal, which most often comes from the side of the community. It is not clear why communities frequently ask for this as a condition – it seems that they are prompted to do so by a local NGO, or even by a local administration that is keen to see the land claim go through. Indeed it is interesting to note that even the Land Commission video "A Nossa Terra" has a scene where the NGO facilitator mentions a school as one thing that an investor can provide during the consultation[24]. Perhaps this is why communities so commonly request schools and wells!

Other items offered to communities also seem appealing on the surface, especially to a population that is poorly prepared to negotiate and does not have a clear idea of the value and extent of the resources it controls. The 3 cases of a rice or flour mill being given to the community are a case in point. Closer analysis of these cases can reveal a less positive picture however. There is evidence that second hand machinery is sometimes supplied, and that investors then fail to install it and get it running. The value of a flour mill – put at around US$1500 new, by one commercial supplier in a provincial capital – is also not exactly a great amount to pay a community which might be ceding a very large part of its "patrimonio".

One community in Manica is a case in point. Information provided by a participant in the LSP workshop in Maputo on the reality of participation in practice[25] suggests that some 45,000 hectares were ceded to an investor in 2003/4, under great pressure from local government, in return for a mill that still does not work, and a promise to build a local shop (still not built). In other words, the investor has paid less than 10 US cents per hectare for land he will now use as a game farm and safari venture. Evidently the livelihoods impact of this kind of *consulta* will be minimal, and more likely will be negative given that the commuity is now prevented from hunting and collecting natural materials and wild foods from this area.

4.4 Compensation payments

Of the 29 cases of consultations resulting in "compensation", 19 are in Inhambane Province. Many of these are on the coast in areas much sought after for new beach hotels and lodges. In these already highly commercial areas, the practice of paying something to get the community land right is well established. Compared to the Manica case above, these agreements appear quite substantial, reflecting both the demand for land from investors, and an evident and growing capacity on the part of local people to negotiate. Closer examination of even these agreements however reveals a process that will have little direct impact on livelihoods, at least in terms of direct benefits given to those who took part in the *consulta.*

[24] In fact this scene was deliberately left in the video, which was designed as a training tool but which has often since been used as an information resource about the Land Law (the author was involved in its production, as part of earlier FAO support to the Land Commission) .

[25] March 2004. The workshop report is available as an LSP Working Paper in English and Portuguese.

The "good practice" case in Box One involves a payment totaling US$16,000. This is however divided amongst 69 people, averaging just over US$ 230 per person. This is not exactly a great deal, and will certainly not help these people achieve any quantum leap out of poverty. Indirect benefits such as jobs and improved transport to nearby Vilankulo are more difficult to assess, and it is already evident that new investment in this area has brought important new economic opportunities and employment to the local population as a whole. Nevertheless, the central issue is whether the consultation itself has a livelihood impact. Even in these cases the answer has to be 'no'.

This conclusion is even more pertinent if the agreements reached are set against some estimate of the real value of the land being handed over. The two examples discussed above allow a rough estimate to be made of land values in the Inhambane coast, at least as represented by the *consulta* agreements. These are shown below:

Box One:	US$ 800 per hectare
Box Two:	US$ 20 per hectare
	US$ 37 per hectare

Putting these three "payments" together gives an average value of about US$390 per hectare. On the other side of the picture, the developers of the Sanctuary Project in Inhambane are said to have been asking up to US$200,000 for ten hectare plots, or US$20,000 per hectare.

These are very rough figures and a far more systematic assessment of real market values is needed before accurate calculations can be made. They do however show the huge difference between what local people are getting from the initial consultation process, and what the value of the land could be once in the hands of the new rights holder.

At local level it is clear that people see this whole exercise as a land sale. While the deals in the boxes above were based on the value of standing coconut trees, they were expressed by local people as "MTS X million for Y hectares of land". Whether land sales are legal or not is not at issue here (the sale of assets *is* legal in any case). The real question is the prices local people are getting for their resource, and if these payments have any impact on their basic poverty and livelihoods choices. Faced by investors with far greater resources who are also backed by local administrative officers, and without any real knowledge of how strong their rights are and how they can use them more productively, local people even in this relatively advanced part of Mozambique are not getting what they should be getting out of the *consulta* process.

There are also questions about the legality of what is happening in a country where land cannot be bought and sold, and it says a great deal about how rights are treated and understood by both sides. Compensation is in principle paid only when the State revokes a land right in the public interest[26]. In the cases discussed here, there is no question of expropriation in the public interest – the issue is about an investor securing land that already has an "owner", and how he or she pays for it. This is land sale. Nevertheless, the use of the term "compensation" is perhaps appropriate, in situations where local people feel that the State is obliging them to give up their land right to the investor or incoming project.

[26] Land Law, Article 16, Number 2; Regulations Article 15 Number 2, Article 19 Number 3.

For example, while communities in coastal Inhambane recognize that the consultation helps to identify them as "the legitimate owners", during the consultation "handing over their land is almost imposed upon them, under threat of not receiving anything".[27]

This perception that the State is on the side of the investor is supported in the earlier case studies, which reveal several situations where local people feel powerless when "consulted" by a virtual army of technical staff, political leaders, and investor representatives[28]. A good case of this from the earlier conflict study is in the new Quirimbas National Park, where *indenização* has been paid to local people obliged to leave their island to make way for a hotel project To quote from the relevant fieldwork report, "*there was a meeting directed by the ex-District Administrator who was accompanied by the investor and a representative of the Institute of Small Scale Fisheries,* ***inviting*** *the population to abandon [the island] and seek their destiny elsewhere, for the installation of [the project]. It was made clear that the order to abandon was specific and that compliance was obligatory"* [29].

In this case compensation was duly paid by the investor, who was duly advised by government entities and appears to have been acting in good faith throughout. "Compensation" payments calculated on the basis of standing coconut trees, the price apparently being about MTS 20,000, or less than US$1. Payments to each family also included an agreed value for their simple houses, with the highest recorded payment being about MTS 5 million or so (around US$300). Again these values bear no relation to the real economic value of the resource being secured by the developers, and are barely enough to allow the families to set up home again in the coastal areas to which they were transferred. Underlying all of this, the community was unable to exert any real control over a process aimed to move them off their island[30].

4.5 Good consultations

The survey has identified many weak points in the present consultation process. Firstly, in just one meeting, lasting a couple of hours, it is impossible for local people to absorb the huge array of new information, proposals, perhaps even basic lessons on what their rights are. Being unaware of their rights and how to use them then puts them at a serious disadvantage when it comes to negotiating terms for ceding their land rights (assuming that they decide to do this).

Even where preparatory meetings have taken place, leaders also have to communicate with the community *after* the meeting in which the investor explains what they want, so that all co-title holders know what is at stake. A second meeting should then handle the negotiation, and again the leaders should 'consult' internally.

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[27] Bila, João (2005): *As Consultas Comunitárias Realizadas na Província de Inhambane: Uma Visão do Processo, Acordos e Entendimentos entre as Comunidades Locais e os Investidores.* CFJJ/FAO.

[28] Baleira, Tanner et al (2004): *Relatorio Final da Pesquisa sobre os Conflitos de Terra, Ambiente, e Florestas e Fauna Bravia.* Maputo, CFJJ/FAO, Project GCP/MOZ/069/NET. Pp32

[29] Chichava, Constantino (2004): *Relatorio Final da Pesquisa de Campo sobre Conflitos na Area de Terra, Meio Ambiente, e Florestas e Fauna Bravia.* CFJJ/FAO. Pp13.

[30] Chichava, Constantino (2004): *Relatório Final da Pesquisa de Campo sobre Conflitos na Área de Terra, Meio Ambiente, Florestas e Fauna Bravia: Província de Cabo Delgado.* Maputo, CFJJ/FAO.

A minimum of four meetings is implied by this sequence of events:

- preparatory meeting when the District Administrator and investor arrive to introduce the issue and set a date and time for the first community meeting
- a first "consultation", to:
  - explain the project and what land and other resources the investor wants to use (*investor role)*:
  - Inform the community about their rights and other relevant aspects of the various laws (*state role)*
- a second "consultation", when:
  - the community representatives, *having duly consulted with the other title-holders, community members,* begin the negotiation
- a third "consultation", when:
  - The community, through its representatives *and after they have consulted internally to explain what is proposed and what is on offer,* gives its decision on the proposals and any deal that has been negotiated.

4.6 Who should do the consultation?

There is no doubt that SPGC officers work hard to ensure that the consultations are done in accordance with their limited vision of what is at stake. As indicated above, this vision is driven largely by the need to get the community "no objection" and process the new land claim as fast as possible.

Many SPGC officers interviewed are also acutely aware of the limitations of the process and the way it places communities at a disadvantage. But should topographers and surveyors be put in charge of such a process anyway? Very few are trained in community level or participatory techniques, or understand the broader dimension of the land and natural resources legislation as instruments for reducing poverty and promoting local development.

A good indication of this is the fact that in Nampula, where relations between the NGOs doing land work and the SPGC are quite good[31], local NGOs are often asked to accompany a consultation and facilitate the meeting. NGO staff are trained for community level work and to focus on the social dimension of what is going on. Rural extension workers are as well. Topographers and surveyors are not.

District Administration staff are equally unschooled in how to conduct a consultation, and certainly do not know the legislation and its context well enough to explain to people who have never heard of a DUAT what their rights are. Nor do they have any real idea of the consultation process as a negotiation in which the community is also an economic actor with legitimate rights to defend or place on the negotiating table in order to get something worthwhile out of the process.

[31] This reflects a constant commitment to Land Law implementation in Nampula, in which church and NGO groups were at the forefront of testing the community delimitation methodology that was later incorporated into law as the Technical Annex to the Land Law Regulations. The SPGC chiefs were broadly supportive of this process, and the current service Chief attended a Land Commission/FAO course in community aspects of the Land Law when he was a junior officer.

The focus on the cadastral services in this context should perhaps be reconsidered, with a stronger role given to extension workers who are specially trained in the techniques of mediation and who receive a basic grounding in the relevant laws. There is also a clear need for support to the communities during the consultation process. Legal support is expensive, but ideally they should be accompanied and advised by someone with legal expertise. At the very least, some form of paralegal support could respond to local needs. Where this would be located – in the State structures, in NGOs, or in the community itself, is a question to consider.

What *is* the role of the State here? Do its officers really promote local participation in this dialogue between parties who in many respects are extremely unequal, in their awareness of their rights, in financial terms, in their access to political power and public services? The survey shows clearly that at present, the State simply does not fulfil its public service role to promote and protect the welfare of its citizens.

On the one hand, as originally foreseen in the National Land Policy, it legitimately and correctly wants to see new investment in rural areas. By promoting new private and public projects it is helping local people in the fight against poverty, bringing jobs, new infrastructure, access to markets. On the other hand, the State also has an obligation to inform people of their rights under law, and to ensure that they can either hold onto these rights if they want to, or can use them to obtain a legitimate and substantial return for ceding them to someone else.

The cases reviewed here indicate that this civic education function is not carried out either by the administrator and his staff, or by the cadastral service technical officers who are charged with carrying out the *consulta.* Without this kind of basic information, and without support to determine what its existing rights are and where they extend to, a local community will always be at a disadvantage, and will not gain any significant livelihoods enhancing benefits from the process.

As a final comment, it has to be said that for all its defects, the *consulta* is a process with sound objectives – at one level to find out of the land is occupied, at another to allow people to negotiate terms for giving up their rights. Compared with the situation before the 1997 Land Law, the fact that a *consulta* is now always carried out, albeit badly in most cases, is still a huge step forward in recognising the existence of local rights and the voice of local people. The challenge now is to make it more equitable, and to give local people the knowledge and support need to secure far larger returns from the process. With real resources, and access to good jobs *while remaining as stakeholders and rights holders,* they can achieve real improvements in their livelihoods strategies, through new activities in the evolving local economy, and investments in new techniques and inputs on their remaining lands.

Further information about the LSP

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

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

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

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

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

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

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

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

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

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

For further information on the Livelihood Support Programme,
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