



Land Governance in an Interconnected World

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LAND RIGHTS, INCLUSIVE DEVELOPMENT AND BENEFIT SHARING TO ACHIEVE GUARANTEED CO2 EMISSIONS REDUCTIONS (ER)

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Abstract

This paper looks at how customary land rights intersect with REDD+ projects to reduce CO2 emissions from forests areas with local populations. It then looks at how the emissions reductions can be guaranteed far into the future. Without this, they cannot become a vehicle for long-term investment by international institutions. The paper uses a new REDD+ emissions reduction programme (ERP) in Mozambique as a reference case. It examines how the progressive Mozambican policy and legal framework supports the design of a successful ERP seen as an integrated rural development programme, including the distribution of ER revenues to local people whose collaboration in the programme is essential. To discuss the long-term guarantee issue, the paper looks at a little used feature of the Mozambican constitution and suggests that States must embrace a more radical, devolved form of local partnership to generate ERs now, and guarantee their long-term permanence and marketability.

Key Words: land-rights, Mozambique, REDD+, rural-development



Introduction

This paper looks at how the recognition of customary land rights can intersect with REDD+ projects to reduce CO₂ emissions from forested areas that are cut down and degraded by the people who live there. In the absence of alternative livelihoods strategies, local farmers continue to cut and burn forest for itinerant agriculture; increasingly, they are also looking for cash income from the forest, which invariably involves cutting down even more trees. These activities create a destructive cycle which releases CO₂ and degrades whole eco-systems.

Logic tells us that this process can only be stopped or slowed if those who depend upon the forests change the way they use these resources. Poverty and the lack of viable livelihoods alternatives also drive the move into other unsustainable activities. This is one reason why REDD+ projects now embrace a wider rural development approach, whereby poverty alleviation and rural development initiatives become part of the strategy to conserve forests and carbon stocks.¹ REDD+ is still a key instrument in the fight to combat climate change, but to be successful, it must also address the underlying socio-economic and political drivers of deforestation.

This is a case-based, theoretical essay about the way that land rights are an essential starting point for developing a REDD+ programme which is essentially a rural development strategy. The essay then looks at the key question of how to ensure that the emissions reductions achieved by this strategy can be guaranteed not just through the lifetime of the project, but far into the future. Without such guarantees, it is difficult to see how ERs can become a form of marketable commodity, held by institutions as an investment much like other forms of real property.

The essay draws upon two technical reports written by the authors for a new emissions reductions programme (ERP) in the northern province of Zambézia, in Mozambique (FNDS 2017). The Government of Mozambique has demonstrated a clear commitment to addressing current rates of deforestation and achieving corresponding reductions in carbon emissions (ERs) (FNDS 2017). The emissions reductions program document (ER-PD) reveals that in Zambézia, it intends to 'reduce emissions due to deforestation in the accounting area by 20% below the reference level in the first 3 years (2018-2020) and by 25% in the

¹ UN-REDD Program Fact Sheet ABOUT REDD+. <http://www.unredd.net/documents/redd-papers-and-publications-90/un-redd-publications-1191/fact-sheets/15279-fact-sheet-about-redd.html>



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following 4 years (2021-2024)' (ibid:22). The bulk of the ERs will then be sold to the Forest Carbon Partnership Facility (FCPF) of the World Bank, generating significant revenues for the GoM.²

The resulting ERP is in fact an integrated programme that includes an agricultural value chain project linking smallholders and commercial farmers, and forest and natural resources management initiatives. The Zambézia Integrated Land Management Programme (ZILMP) covers 9 districts in this largest province of Mozambique. The total area of 5.3 million hectares of which 3 million hectares were forest in 2015 (FNDS 2017:46), the area which it is anticipated will generate the projected emission reductions (ERs). The forest cover is degrading quickly³, as a growing rural population continues to rely on itinerant slash-and-burn agriculture, make charcoal for Mozambican and Malawian markets, and cut hardwood trees for intermediaries linked to illegal logging interests.

The challenge is how to persuade local people to change these destructive behaviours. Assuming that resettling them out of the area is not an option, the solution must involve that replace current livelihoods with a viable alternative. Behind this scenario is the question of local rights – the rights of local people over land and natural resources, their right to participate in decisions that affect their futures (including the design and implementation of investment projects in their midst, and the right to benefit in concrete terms from these projects. An ERP project is of course like any other, but more than most perhaps, depends fundamentally on how the forest is used by and shared with local people.

The ZILMP area in Zambézia is interesting as case study not just because of the land use and behavioural challenges required to generate the ERs. It also raises interesting land and resources governance questions because Mozambique has a progressive, rights-based policy and legal framework for land and natural resources. This well-known framework recognises and protects customarily-acquired land rights, as well as the right of local people to use the natural resources on their land (forests, wildlife, medicinal plants, etc.) (McAuslen 2014; Tanner 2002, 2017). A 2004 constitutional revision also created the concept of 'community public domain'. This gives 'local communities' a *de facto* stake in the publicly-owned

² The Reference Emission Level is 10,220,558 tCO₂e/yr, representing a total of 10,891,282 tCO₂e of ER to be achieved by December 2024. It is anticipated that up to 10,000,000 tCO₂e will be sold to the FCPF (FNDS 2017:22)

³ Between 2005 and 2015 (the reference period for the ERP), the total deforestation area was 350,610 hectares, or 35,061 hectares/.year, a mean annual deforestation rate of 1.05 percent (FNDS 2017:23).



natural resources in their areas and devolves significant natural resource management powers to local community level.

This combination of factors in an area to be included in a REDD+, ER project offers a unique opportunity to explore how a progressive and inclusive land and resources governance framework can facilitate a successful strategy to halt deforestation and contribute to the fight to halt climate change.

Land Use and Deforestation in Zambézia Province

The people living in the areas covered by the ZILMP depend almost entirely on the forest and the land on which it stands. Their livelihoods strategies use these resources in several ways: clearing the forest for subsistence agriculture and moving on to other forested areas when soil fertility drops; producing charcoal using rudimentary traditional techniques; and engaging with illegal logging, cutting trees for intermediaries who gather together logs for illegal export (Mozambique does not allow the export of unprocessed, cut trunks, but despite recent moratoriums, the trade continues).⁴

Recent work on the drivers of deforestation has shown that around 72 percent is caused by itinerant agriculture, with forestry, bioenergy (charcoal), and 'urban sprawl' accounting for 9, 7 and 7 percent respectively. (FNDS 2017:57) In other words, deforestation is driven by a rural population locked into traditional land use patterns, and whose poverty is driving them to exploit the forest in other, sometimes illegal ways. Poor people with no access to the resources needed to maintain soil fertility and raise yields use slash-and-burn to then move steadily through the forest, leaving degraded and deforested land behind them. In the past, rotation periods were long enough to allow the forest to recover. Now however, high rates of demographic growth and climate change are undermining this strategy. The average population growth rate in the ERP area is a very high 3.1 percent (FNDS 2017:54); population density is rising, rotation cycles are reducing, and the strategy is inherently unsustainable. The result is increased deforestation and permanently degraded landscapes.

In other forested parts of the world, local people are struggling in similar ways to maintain once sustainable livelihoods strategies. In some countries, the pressure on forests is vastly increased by

⁴ A moratorium on new forestry concessions was put in place soon after the MITADER 'super-ministry' was created in early 2015, bringing land, the environment (including natural forests), and rural development, under one institutional roof. MITADER has since been attempting to identify and curtail illegal logging and the illegal exporting of unprocessed timber.



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governments that allocate very large areas to private sector projects to clear the forest and plant commercial plantation crops like soya or palm-oil. Brazil is a well-known case; in Southeast Asia, Cambodia, Indonesia and Myanmar also stand out (FAO 2016). Where they are not forced out completely, local people must live in ever smaller areas, rendering traditional livelihoods unsustainable (LIOH 2015). Here the core process is state-sponsored land expropriation and governance issues. What is interesting about Zambézia is that the deforestation and degradation is fundamentally about how local people are using the landscape in which they live.

The drivers of deforestation can indeed be thwarted and new more sustainable strategies established. According to FAO's State of the World's Forests 2016 (ibid), in Latin America the rate of deforestation in 2015 was nearly a half of what it was in 1990. The report makes a strong case for policies that link agricultural incentives with environmental criteria, new or improved silvo-pastoral practices, payment for environmental services and the recovery of degraded pastures, to 'prevent the expansion of the agricultural frontier at the expense of forests'.⁵ There are large plantation projects bordering the ZILMP area, but most of it is still occupied by local communities practicing traditional ways of living – it is essentially local land use combined with extreme poverty that is the problem. However, even here change can be encouraged. To quote a senior FAO officer, "Hunger eradication and food security can be reached through agricultural intensification and measures such as social protection, rather than through expansion of agricultural areas at the expense of forests."⁶

The GoM recognises that the area covered by the EPR is 'an especially important front of deforestation ... According to extraction from national data, between 2005 and 2015, total deforestation in the ER Program accounting area represented 350,610 ha – corresponding to 35,061 ha/yr – with a mean annual deforestation rate in the ER Program area of 1.05% during the reference period (2005-2015).' (FNDS 2017:58). Given this commitment, and the presence of poor rural communities living in the forested areas and largely responsible for the elevated rate of deforestation, the Zambézia ERP offers a good opportunity to see how reducing deforestation and generating ERs can be achieved in practice, through a combination of different measures that change how local people use *their* forest landscape.

⁵ <http://www.fao.org/americas/noticias/ver/en/c/425600/>

⁶ Ibid.



The Mozambican policy and legal framework

Mozambique has a well-known, progressive legal framework for land and natural resources governance. In principle, this framework provides an ideal set of instruments for developing a collaborative and inclusive strategy that links local people with external State and private sector actors. This same framework can be used to achieve ER targets as well.

Land

Constitutionally, all land is State property. However, all Mozambicans have a constitutional right to use land when they need it for their own use or to start a new land-based project. The Government then allocates a Land Use and Benefit Right⁷ (the 'DUAT' to use its Portuguese acronym); this applies to any citizen, be they local smallholders, or investors from outside the area, and to foreigners wanting land for new projects. The Constitution also recognises 'acquired rights', which are rights acquired by those already occupying and using land for household and subsistence purposes. Moreover, these acquired rights are to be respected when new DUATs are being allocated.

The recognition of 'use and management' rights acquired through customary land systems dates back to the 1995 National Land Policy (NLP). The NLP also included two other principles that are now key to a rights-based ERP and REDD+ strategy: new investment must not only avoid harming resident populations, it must also directly benefit them; and the extensive areas used and managed by 'local communities' can be identified and registered in the cadastre, after which 'any other entity or person will be obliged to negotiate with the local community...[allowing] the community to enter into partnership in the investment, sharing the profits and benefits resulting from the investment'.⁸

The 1997 Land Law put these principles into effect by creating the figure of the 'local community' referred to above. This collective entity holds a DUAT which is managed collectively through a system of co-title⁹. Article 12 of the 1997 Land Law then determines how a DUAT can be acquired, including by this new custom-based collective territorial unit:

⁷ *Direito de Uso e Aproveitamento da Terra*, or DUAT

⁸ National Land Policy of 1995, paragraphs 17, and 24/25. In: Serra, C. (ed). 2012. *Colectânea de Legislação sobre a Terra*. Maputo, Ministry of Justice, Centre for Legal and Judicial Training, 4th edition.

⁹ The Land Law Regulations of 1998 specify that the 'co-title' follows the principles of 'co-property' as laid down in the Mozambican Civil Code.



- a) Occupation by national individuals and local communities, according to customary norms and practices, as long as these do not contradict the Constitution;
- b) Occupation by nationals who, in good faith, have used the land for at least ten years;
- c) Authorization of a request presented by singular or collective persons in the manner established in this Law. ¹⁰

It is 'occupation by local communities' that is of interest here, for it at this collective level of land holding that extensive resources like standing forests will be used and managed by local people. Evidently, it is then necessary to identify the local community on the ground and duly register it.

Working with the Local Community Concept

Article 1, Clause 1 of the Land Law gives a definition of the Local Community which is essentially a description of a local land use and management system based in 'customary norms and practices':

'A grouping of families and individuals, living in a circumscribed territory at or below the level of a locality [the lowest unit of public administration], which works to safeguard common interests through the protection of areas of habitation, agricultural areas, whether cultivated or in fallow, forests, sites of cultural importance, pastures, water sources and areas for expansion'¹¹

The DUAT is proved and identified on the ground through the legally-prescribed process of *community land rights delimitation*. This methodology - approved in a Technical Annex to the Land Law Regulations in late 2000 - involves a participatory rural diagnosis of land use and the history of how the land was occupied by a specific 'grouping of families and individuals'. Local knowledge reveals existing borders between neighbouring communities (often identifiable on satellite images, saving hugely on survey costs). Techniques like Venn diagrams also analyse the socio-economic relationships between different settlements, and the local structures through which sub-community land access and use is regulated.¹² The area of 'common interest' is identified, the limits of which then define the extent of the collective DUAT.

¹⁰ Serra, op.cit., p21

¹¹ ibid, p19

¹² This is described in detail in Tanner, C., De Wit, P., and Norfolk, S. 2009.



Open Borders

The nature of the delimited boundary around a Local Community is critical for enabling the inclusive investment process envisaged in the 1995 NLP. As a land use system, the local community can have an open or closed border. An open border allows new investment projects to happen inside, bringing benefits to local people; a closed border may offer greater protection of local rights, but reduces the options for local people to interact with investment and other development projects. The integration of customary and commercial use *in the same landscape* and *inside a local community* is the outstanding feature of the 1997 Land Law – there is no separation into ‘community areas’ and ‘commercial areas’. Moreover, the Local Community is expected to participate in the management of ‘land and natural resources’ within its DUAT area, including allocating new DUATs to investors within its borders.¹³

Community Consultation

The participation of the Local Community in land and natural resources management is achieved through the mandatory process of *community consultation*. Also created by the 1997 Land Law, community consultations must be carried out before any new DUAT is awarded by the State for a new project. The objective is to determine if the land in question is ‘free from occupation’; usually it is not ‘free’, even where the land or resources are currently in use (they may be in fallow or reserved for future use, as today’s plots become tired and villages move to new areas to cultivate). In this case, the consultation has the primary objective of determining the ‘partnership between the [original DUAT holders] and the entity person requesting the land’¹⁴.

Various pieces of supplementary legislation have since been approved to clarify the community consultation process. The most relevant here is Resolution 70/2008, which requires those wanting very large areas for a project, to include the terms of the partnership agreed with local rights holders, when they submit the technical proposal and formal request for a new DUAT. This requirement underlines the fact that a process of *negotiation* leading to a detailed *contract* is an essential element of the package needed to give both the investors the security they need to invest, and local people the security they need to guarantee existing livelihoods and/or pursue new (non-exploitative) opportunities that are opened up by the investment process.

¹³ 1997 Land Law, Article 24

¹⁴ Article 13 of the 1997 Land Law and Article 27 of the 1998 Land Law Regulations



Community Land Use Plan

The other innovation that has taken place in recent years as the as part of the delimitation process, a *community land use plan* (CLUP) is also developed with the local community. This plan can pre-identify areas that the community may consider of low priority for its own needs, and which be pre-selected for offering to investors through a consultation and resulting agreement. The CLUP can also form the basis for a community-based natural resources management plan, including conservation and other activities aimed to enhance existing eco-system services. Together with the provisions of Article 24, it is at this point that the Land Law and the 1999 Forest and Wildlife come together, to create the framework for facilitating community engagement and collaboration with the ERP in pursuit of achieving the planned-for ERs of over 10,000,000 tCO₂eq.

Forest and Wildlife Legislation

As with land, all natural resources including forests are the property of the State. Therefore, although a local community holds a DUAT acquired by customary occupation, this does not give them an automatic and exclusive right to use the resources on 'their' land as if they owned them. The 1999 Forest and Wildlife Law does however recognize the right of local people to use the natural resources in their areas for household and subsistence use

For such purposes, local people do not have to request any permission from the 'owner' (the State), to use the resources in question. The only limitation will be the need to abide by conservation regulations regarding how these resources are used, cut down and hunted.

However, if they want to use these resources for a commercial purpose, then they must seek authorization from the State, via the provincial forestry services. Local communities can request a *simple licence* for activities like charcoal production for example, which they then sell in urban markets and across the border in Malawi. External investors must go through a more complex *concession* process, which requires a full formal proposal and a series of related activities including setting up appropriate processing plant and guaranteeing transport etc. The law also requires investors seeking a concession to carry out a consultation with the local community or communities that live in and around the area where the target resources are located.

It is at this point that the 1997 Land Law and the 1999 Forest and Wildlife Laws intersect in an important way for future REDD+ and ER projects. The Local Community as defined in the Land Law is replicated



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exactly in the 1999 Forest and Wildlife Law (indeed this definition is used in all other natural resources legislation which includes or refers to local communities in some way). This precise overlap is fundamental for establishing the link between land tenure rights, rights over forests, and the development of an effective ER program that includes a benefits-sharing mechanism.

The Land Law process of delimitation establishes the spatial dimension not of a right of ownership, but of the *right to use and benefit from the land* that is then subsequently delimited. Article 24 of the Land Law does however give significant management powers to the Local Community, covering both land *and the natural resources* that are located within its borders. This management is carried out using, amongst other things, 'customary norms and practices'. This participation of the local community extends to engaging with investors and the State when a new DUAT is being requested for a land-based project. Essentially this means the community consultation process, when an agreement with those who want the land is negotiated.

In the forestry context, a firm or entity requesting a concession – to cut timber for example – must also consult with the local community whose members depend upon the forest for a range of livelihoods needs. A project that seeks to preserve the forest rather than cut it, and to generate marketable ERs as a result, is like any other investment project, and should also require a consultation and agreement with the respective community or communities.

It is in this way that a strategy to change existing patterns of land use can be discussed and agreed. For this to happen however, attention must turn to how communities will survive after an ER project is launched, and what they expect to gain from it. Given the relatively long time lag between an ER project starting, and ERs being at a measurable and marketable scale, it is evident that something other than participation in ER-linked revenues must also be considered. As noted above, the REDD+ programme is now seen as a rural development programme with conservation and ER objectives built into it. It is recognized that in order to achieve conservation outcomes, it is essential to include activities that promote and contribute to local development. This point is also made in the context of the trade-off between leaving the forest standing, and likelihood that agriculture will continue to be a major element in local household livelihood strategies. In other words, a change in patterns of forest use must be matched by equally substantive changes in the way that farming is practiced by collaborating communities.



Using the Land Law to Change Land Use and Achieve ERs

As discussed above, the idea of partnership between local communities and incoming investments and projects is a core element of the inclusive philosophy that is built into the Mozambican legal framework for land and natural resources. Before this can happen however, the local communities in an area targeted by investors should be delimited. This achieve three principle outputs: a) it proves the existence of the acquired DUAT; b) it clearly reveals on an official map where the limits of the DUAT are; and c) it establishes which local structure and group of leaders represents a specific, delimited community. If the area involved is very large – as in the case of the ERP for example – the delimitation process will go further and identify several local communities and their respective representational structures.

Although not yet legally mandatory, experience accumulated since the Technical Annex was approved in 2000 has shown that producing a Community Land Use Plan (CLUP) is also an important by-product of the delimitation process. Doing a CLUP is a natural extension of the land use analysis that is part of the rural diagnosis methodology. It also ties in with *development blueprint* offered by the 1995 NLP and the 1997 Land Law, and their ‘rights and negotiated investment’ philosophy: if a Local Community is to locate land for investors, it makes sense to do this proactively and pre-identify areas that it considers as non-essential for current or future use. These areas can be identified on the CLUP map, allowing new investors to know immediately which land they can access with an assumption that an agreement of some kind can be made with the DUAT-holding local community.

A similar point applies to the identification of forests and other resources that might be subject to a possible conservation management or sustainable forest management initiative. It makes sense to work with the local community and its leaders, *during the delimitation*, to begin discussing the conservation dimension of a CLUP, identify the resources in question, and come to an outline agreement about these resources being managed with local support.

It has also become much clearer in recent years that while delimitation may secure land rights, on its own it will not produce the kind of development scenario foreseen in the 1995 NLP and subsequent legislation. It needs to be set within a wider vision of rural development, where secure tenure over land and resources are the platform upon which a range of activities can be planned that bring together local



communities, investors and the State. This has been well demonstrated in a detailed Policy Note on Delimitation and Rural Development written for the World Bank in 2010 (Norfolk 2010).

Delimitation and CLUPs as the Starting Point

To achieve the ERs foreseen in a viable ERP, very large areas must be included in the project. The initial spatial framework is therefore best seen in terms of a large landscape that probably incorporates many villages and settlements, different areas of agricultural land use, and large areas of standing forest. This kind of landscape is typical of the extensive areas of Zambézia Province where the proposed ERP will operate. In such a landscape, it is clear that many people occupy and use different areas of land, and use the landscape as described above – itinerant agriculture, linked to progressive deforestation using slash-and-burn techniques, and an increasing reliance on charcoal production to generate cash income. What will not be clear at the outset is precisely how many Local Communities there are (using the Land Law definition), and where the boundaries are between each one.

In line with the provisions of the Technical Annex to the 1997 Land Law regulations, carrying out a delimitation of existing acquired DUATs is a matter of priority ‘in areas of local communities where the State and/or other investors intend to start new economic activities and/or projects and development plans’.¹⁵ Clearly a Government-sponsored ERP constitutes such a ‘project and development plan’. Consequently, all the constituent elements of the wider ZILMP programme include resources to delimit local communities at the landscape level, as the first stage of implementation.

Over such a large area, it is certain that more than one Local Community will be identified. The delimitation process will then prove the existence of the acquired collective DUATs of each Local Community and identify the borders between them. Once they are registered in the Cadastral Atlas, their status as a legal entity is confirmed, allowing them to enter into contract as foreseen in the 1995 NLP, and put into effect through the consultation provisions of the Land Law and its regulatory instruments.

Delimitation will also identify a community structure that is already in place (local leaders including land chiefs etc.), or facilitate the creation of an appropriate new structure. In either case, the Technical Annex stipulates that for the purposes of accompanying the delimitation process and signing the

¹⁵ Ministerial Diploma No 29-A/2000 of 17 March, Article 7, No 1(b).



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resulting documents, this structure must include ‘a minimum of 3 and maximum of 9 men and women from the community, chosen in public meetings’.¹⁶

As discussed above, the other outcome of this process (which is *not* formally required by the Technical Annex), is the CLUP. This is developed on the basis of an initial discussion of a community longer-term development vision that can lead on to a kind of outline development plan or agenda. A typical delimitation will then involve doing a transversal cut across the community territory and site visits to different areas, to identify present land use patterns; this work is complemented by community meetings, with men and women separately at first, to identify the resources used by each group (which might otherwise be left out – women, for example, may not include areas of standing forest used for hunting). As part of this process, and with an idea already forming of how the community sees its longer term use of these resources, it is then possible to begin mapping out *future use*, including the identification of areas to be allocated to investors (with an appropriate agreement), and areas that can be included in conservation management programmes.

This future use is the focus of the CLUP. A good CLUP should provide a plan that includes agreement over fixing agriculture in existing cleared areas; which forest areas can be sustainably used for certain elements of the community’s livelihoods strategy; and which forest areas can be set-aside as reserves for the purposes of a conservation activity of some sort.

The outcome of this kind of delimitation process across an extensive landscape is shown in Figure One below¹⁷. The diagram shows firstly, the boundaries between four communities which may or may not be of the same ethnic group, but which meet the criteria of a ‘grouping of families and individuals, living in a circumscribed territory ... which works to safeguard common interests’, and which occupies its territory and uses its resources according to ‘customary norms and practices’. It also shows how their current pattern of land use, including slash-and-burn access to forested land for farming, is causing the forest to recede over time. And finally, with the help of the delimitation team, it has been possible to identify some areas that could be made available to investors.

¹⁶ Ibid. Article 6, No 3.

¹⁷ Figures One and Two are from Tanner, C., 2017. Land Tenure Assessment for the ER-PD. Etc Terra.



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Figure 1

Delimited Communities with Basic Land Use Plans

- Forest (commons, forest products) 
- Areas for investment (partnerships) 
- Traditional agriculture rotates through landscape (and forest)
 - current plots 
 - abandoned plots 

 DEFORESTATION

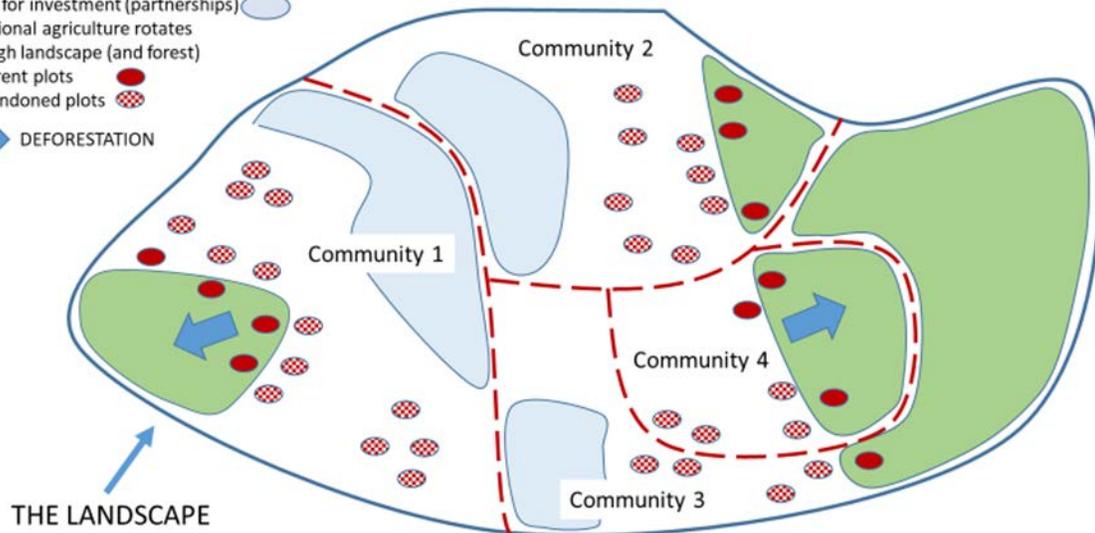


Figure Two then shows the CLUPs of the same communities, after passing through a delimitation as part of an ERP. The communities have been encouraged by the delimitation team to consider how they might accommodate a change in how they use the forests. For the ERP, the essential objective is to slow or even stop the shrinking of the forest borders; and identify degraded areas that can be reforested or simply allowed to grow back without being cut again.

Critically, the CLUP shows agricultural areas that are fixed. In other words, the communities are being asked to stop itinerant farming. The CLUP also includes larger areas of land where new commercial agricultural will be started by private investors, after reaching agreement with the respective local communities and their leaders.



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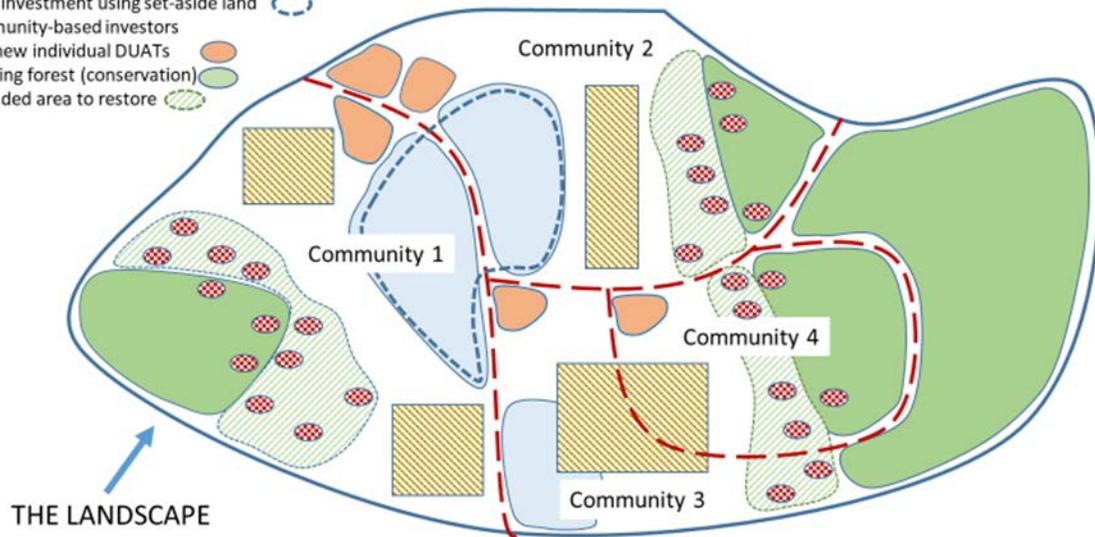
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Figure 2

Delimited communities with CLUP – ERP and other ZILMP projects

- Sustainable local agriculture 
- Large investment using set-aside land 
- Community-based investors with new individual DUATs 
- Standing forest (conservation) 
- Degraded area to restore 



Evidently, these other elements of the CLUP require additional inputs to make them happen. If they are to continue to make a living from agriculture and give up their traditional use of the forest to clear and find new fertile soils, a way must be found to ensure that soil fertility does not decline in the newly fixed farming areas. Along the way, the communities may also adopt new farming techniques and improved seeds that increase yields, or they may diversify their activities in response to technical orientation and/or the creation of new markets by the new commercial projects.

In short, a successful ERP is essentially a rural development programme that will promote land use changes by providing *alternative opportunities* that have impacts on local incomes and development scenarios. And, at the heart of this process, lies the question of land rights as the basis of securing the active collaboration of local people. Mozambique is indeed fortunate to have a Land Law in place that provides for such a scenario to be considered.

The ZILMP Framework

The ERP/ZILMP has been developed with exactly this kind of scenario in mind. It provides an excellent blueprint for how to locate a successful REDD+/ER strategy within a wider strategic vision of rural



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development that a) addresses poverty (the basic driver of deforestation in this case), and b) provides local people with new economic opportunities and enhanced livelihoods. The Ministry of Land, Environment and Rural Development is committed to this approach nationally through the National Integrated Programme for Sustainable Development (*Programa Estrela*), launched in 2015. Set within this strategic vision is another key project, *Project Terra Segura*, or the 'Secure Land Project', which aims to issue 5 million titles over plots occupied and used by smallholder farmers whose rights largely come through their local customary systems. *Terra Segura* also plans to delimit 4000 Local Communities nationally. Guaranteeing tenure security and mapping community-held DUATs are therefore essential conditions for implementing the over-arching *Estrela* vision of sustainable rural development.

In the specific case of Zambézia, the ZILMP includes four inter-related investment projects that together constitute the overall ERP. These are: the *Sustenta* project, to fund new commercial agriculture and link this to a wider group of smallholder farmers who will benefit from the new market and value chain opportunities, two community-based forest conservation and regeneration projects (MozBio and MozFIP), and MozDGM. All of these projects have strong community participation at their core and include significant resources to fund several hundred community delimitations across the nine districts covered by the ZILMP umbrella.

The *Sustenta* project will also work with local leaders to confirm and title the DUATs of individual households and other sub-community groups that have been allocated and managed through the local customary land management system. The newly formalised land rights will then facilitate the allocation of new investment credits, and the creation of partnerships between selected entrepreneurial farmers, and the rest of the community. The conservation and forestry projects meanwhile, will work with the same community leaderships and higher level local government structures, to develop community-based sustainable natural resources management and forestry activities.

Together these projects will provide the incentives to induce changes in the way that local people use the forest. In this way, they will cut the rate of deforestation and hopefully generate the planned reductions in carbon emissions. Through the delimitation process, CLUPs can be developed along the lines of Figure Two above, and local community structures reinforced or created to engage in the implementation of the overall package.



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ER Revenues – the Final Piece in the Jigsaw

Assuming the REDD+/ER/ZILMP strategy is successful, the GoM will reach its target of over 10,000,000 tCO₂eq, locked away through preventing further deforestation and restoring degraded forest areas. As part of the ERP agreement with the World Bank and the Forest Carbon Partnership Facility, this process will be verified and certified according to established international standards, and ER Certificates will be issued and duly registered in a new registry created for the purpose. The resulting ERCs will then be sold to the World Bank for a value estimated to be around USD\$40 million.

An important part of the ERP package and strategy to change land use practices towards a more commercial, higher yielding, and *fixed* agriculture, is the additional promise of sharing these revenues with the Local Communities that have collaborated with the programme. Mechanisms are already in place for doing this, in both the 1997 Land Law and in the 1999 Forest and Wildlife legislation. Thus the local communities that have been delimited in the ERP area must be consulted with a view to a) establishing their land rights over the areas in question; and b) to reach agreements over how they are to participate in and benefit from new projects that are planned in these areas. In addition, the 1999 legislation and its respective regulations established the principle that communities affected by new forestry projects should receive 20 percent of public revenues generated by new commercial projects seeking to exploit the forests and other natural resources of the country.

The usual situation in this context has typically been communities facing loss of access to the forest and/or seeing 'their' trees being taken away by licensed concession holders. The 20 percent share is therefore a *de facto* recognition of the loss of their legal right to these resources, and is in effect a compensatory payment. These revenues do not of course represent the full value of the revenues generated by a particular forestry project; they are a percentage of the public income derived from taxes and other charges on the project. In the case of the ERP however, the GoM is the developer and implementer of the programme, and owner of the ERs that result. Even if the figure of 20 percent were still to be used – and this is still to be established in the ERP benefit-sharing plan - the share of the revenues generated by the ERP that should go to the local communities could be considerable.

Distributing benefits

How to distribute these benefits then becomes a further challenge for the GoM. Once again, the land rights and delimitation process is important for determining how the anticipated revenues are to be managed and divided amongst the collaborating Local Communities. Returning to Figure Two above, it



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is easy to see that once the delimited communities are transcribed onto appropriate maps, it can be decided which communities are most closely involved with which projects, and which are the ones across the overall landscape that should benefit the most from ERC revenues that are generated by *their changes in land use*. Moreover, the delimitation process and capacity-building work by the set of ZILMP projects will create the necessary structures to receive new revenues, develop local development plans, and manage the use of the funds that derive not just from the ERP, but also from the new agricultural partnerships and economic activities promoted by the ZILMP.

The long-term guarantees of ERs and ‘community public domain’

All of the above is feasible using the existing policy and legal framework for land and natural resources in Mozambique. A new Regulation specifically for REDD+ projects was also developed and approved in late 2017 which emphasises the need to ensure effective community participation and some form of benefit-sharing. The present essay could therefore end here. However, a key question underpinning the REDD+ strategy, and the ability to treat ERs as a commodity worth of becoming a form of investment, is whether or not States can guarantee the long-term integrity of the ERs by guaranteeing the long-term survival of the forests that generate them.

Mozambique offers a useful signpost towards an answer. There is another feature of the wider constitutional framework that merits further consideration. This is the concept of *community public domain* and how it related to how local communities engage with the ZILMP, what their mandated responsibilities are, and how they should benefit from the ER revenues generated from ‘their’ forests. This engagement is of course the bedrock of any guarantees that the State of Mozambique can offer those institutions and individuals who are buying ERs, that the forests producing them are ringfenced and will be sustainably managed and preserved well into the future.

Although the DUAT is a private right allocated by the State, it is clear even in the 1997 Land Law that the Local Community which it created is a kind of ‘hybrid’ entity with both a private and public face. The Land Law attributes DUATs to the Local Community on a collective basis, and these are legally private rights held in the name of the respective Local Community. The same law however also gives the Local Community a series of roles in the management of land NRs, thus:



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- Participating in mandatory community-investor consultations when new economic projects are proposed (Article 13);
- The allocation and management of land rights (DUATs) inside its borders, according to customary norms and practices (Article 12 (a));
- The *management of NR within its borders* (Article 24, Clause 1 (a));
- The allocation of new DUATs to outside interests (titling) (Article 24, Clause 1 (c)).

Especially considering into account that all land, forests and other natural resources are the property of the State, these management tasks give the Local Community a *public character* as well. This is clear for example in the allocation and management of land rights ‘according to customary norms and practices’ to individuals and households *within* local communities; these rights by law are then *automatically* DUATs, like any other. In other words, the structures that guide and regulate land and natural resources at community level are in effect issuing DUATs on behalf of the State.

This public face of the Local Community was given even greater weight by the 2004 revision of the Constitution of the Republic of Mozambique (CRM). This revision created the concept of *community public domain*, through its Articles 98 and 263:

*The law shall regulate the legal regime of property in the public domain, as well as its management and conservation, and shall distinguish between the public domain of the State, the public domain of local authorities and the **public domain of communities**, with due respect for the principles of imprescriptibility and immunity from seizure (Article 98, Clause 3, emphasis added).*

And:

*The law shall establish institutional mechanisms for liaison with local communities, and it may delegate **to local communities certain functions that are within the powers of the State** (Article 263, Clause 5, emphasis added).*

The community public domain concept allied with the existing public functions already specified in the 1997 Land Law introduces an entirely new level of right over natural resources and the products of their ‘use and development’ by investors and others. The ERs generated by the ZILMP are the outcome



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products of the ERP, achieved by the combination of delimitation and the implementation of a series of rural development and forest management projects. Because the ERP/ZILMP is a Government-implemented programme (i.e. there are no investors involved), the ERs so generated are indeed the property of the State – both because they are a constituent element of an existing state asset (trees), and because they are the ‘product’ of a State-promoted investment programme.

However, the 2004 CRM revision has created a situation where these resources are also within the community public domain, and are managed for the State by the respective Local Community (through measures to induce land use changes). The application of the constitutional principle, alongside all the other measures discussed above, can profoundly affect the way that ERs are treated, during ERP implementation and when ERs are sold and transferred to the World Bank. This is because:

- The community public domain is a subset of the wider ‘public domain of the State’, and extends across an area that is identified as ‘a local community’;
- This area can be assumed to equate to the Local Community of the 1997 Land Law and 1999 Forest and Wildlife Law, as this also has specified ‘functions that are within the power of the State’;
- The local community referred to in the CRM can then be identified on the ground using the community delimitation instrument laid out in the Technical Annex of the Land Law Regulations;
- As a sub-set of the State public domain, the hybrid ‘private-public’ Local Community can be deemed to hold and manage the radical property right over ‘its’ land and NR, on behalf of the State;
- These resources include natural productive and conservation forests within the Local Community that have not been subject to any form of license or concession agreement, either with the Local Community of a private investor;
- The application of the community public domain concept means that the carbon in these forests forms part of the patrimony of the Local Community;



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- By extension, the ERs that derive from State-projects like the ZILMP in these areas are also part of the patrimony of the respective Local Community.

Therefore, while the State may be the ultimate 'owner' of the ERs and thus able to transfer ER title to third parties (like the World Bank), the Local Community (duly delimited and certified) is also 'owner' of the ERs insofar as they derive from resources that are part of its community public domain. The practical implications of this are that even in the case of ERs that derive from a public project and are therefore State property, the GoM agencies empowered to negotiate over and transfer ER title *must* reach agreement with the representatives of the Local Community over a) their right to negotiate with the World Bank of the transfer of title over what are in fact community public assets, and b) how the revenue generated is shared with the respective Local Community or Communities.

Once again, the delimitation instrument is central to understanding this relationship and facilitating a discussion over who manages what and how ER revenues are to be distributed. Through delimitation conducted across a whole landscape, as indicated above in Figures One and Two and proposed within the ZILMP, the State can include Local Communities in any proposals to sell ER title to a third party, as proposed in the ERP/ZILMP. Note however, that given the added element of community public domain, any agreement must have the approval and active involvement of the community as *de facto* holders of the ERs that are being generated by changes in the way they use *their* trees.

In principle therefore, the Local Communities in the ERP areas *should be able to negotiate for a far larger share of the revenues, allowing a part to be allocated to the central state for its costs instead of the other way around.*

It is clear in the current political-economy of Mozambique that the centralized Government representing the State is far from ready to fully accept the implications of the community public domain concept created by its own Constitution. It appears that the central organs of the State – the Government and its agents within MITADER and the FNDS – are insisting that ERs are State property at central level, and it is then up to the central level institutions to discuss with Local Communities how they engage with and benefit from the ERP.

However, it is equally clear that the ERP process, and the prospect of generating new marketable 'commodities' (ERs) through what is in effect a community-State partnership, opens up important



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questions about devolved power and natural resources management functions. How these powers and functions are devolved and managed is at the heart of guaranteeing a long-term management plan that will ensure the permanence of ERs into the future, and thus underwrite their marketability today.

It remains to be seen, as the ERP is implemented, how this relationship is defined and managed over time, and what its implications are for longer term success in not only generating the proposed 10,000,000 tCO₂eq of ERs, but more importantly, in *maintaining the safeguarded forest resources and preventing any future use from taking place.*

It is suggested here that to achieve this longer-term guarantee, States and their development partners must make serious and genuine commitments to even more devolved forms of local community-State interaction. This interaction would include not just the management of resources on behalf of the central state, but a devolution of ownership over public assets – in this case natural forests – and products like ERs that sound, sustainable management practices can produce. This longer-term guarantee is of course, the bedrock of the ERs being treated as a marketable ‘thing’ with legal and transferable title, in the first place. And without this guarantee, the central pillar of REDD+ and the fight to control climate change is removed.

Conclusion

The discussion shows how progressive land rights legislation combined with good governance practices can encourage local people to change how they use natural forests, as part of a wider programme to halt or at slow down deforestation. Recognising rights is not enough however; this strategy must also include a wider vision of inclusive, people-centred development, the provision of feasible options for developing new livelihoods, and a significant degree of devolved land and natural resources management right down to local level.

By building local people into a REDD+ programme from the start, it should be possible to secure agreement on changes to local land user practices, and link programme activities with other measures that diversify and enhance local incomes in ways that are non-forest dependent. And, as part of the arguments to get local people onside, and as part of the wider mitigation and livelihoods diversification model, a significant participation in revenues from ERC sales is used a lever to achieve the desired land use changes.



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The outcome is entirely consistent with the way in which the REDD+ programme has evolved towards being a wider rural development programme, which provides the essential *development* context for a successful ER process.

Within this strategy, accepting local rights over the resources in question, and then going beyond this to accepting the right of local people to participate fully in programme designed, development, implementing and benefit sharing, underwrites the achievement of ER targets. How this is achieved will of course vary from place to place; but the example of the Zambézia ERP provides an excellent example of how the principle can work in practice, and what is needed to kick-start it: a) appropriate legislation recognising local rights over the land and resources in question (this turns them into stakeholders as opposed to groups ‘whose needs must be taken into account’); b) an approach to land and resources governance which is genuinely *devolved, participatory and inclusive*, and seeks to distribute ER benefits for local people not just to buy their participation, but *as an explicit part of a wider, people-centred and sustainable rural development strategy*.

Critically however, the prospect of receiving this share of public revenues does not dispense with the need for the other income replace and enhancing activities – it will be several years before ERs can be certified and transformed into marketable certificates. A wider rural development strategy is then essential both to begin producing alternatives for local people, and underwriting the long-term security of the ERs once they have been achieved.

The development of the ERP/ZILMP programme offers useful insights into how this can be achieved through a well-managed, integrated rural development programme. To quote from one of the reports developed by the authors as part of the ERP development phase:

‘The package of land rights delimitation and [forest use rights] creates an important platform for making agreements with the GoM as ‘owner’ of ERs that are produced inside a delimited Local Community. These agreements can include both community-based REDD+ projects and/or public projects that require local community support and buy-in to work. Both options could be discussed and built into the Community Land Use Plan (CLUP) that will be part of the delimitation activities being supported by the Sustenta and MozFIP projects in the ZILMP accounting area.’ (Tanner 2017b:18)



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What the Zambézia ERP/ZILMP case also underlines, is the critical importance of a legal framework that protects existing land and forest rights and requires some form of legally mandated negotiation over development scenarios that use local land, between local rights holders and other external interest (including States). Only in this way is it possible to have a situation where local people can become genuine stakeholders *and beneficiaries*, rather than mere bystanders, when the measures prescribed by FAO in its 2016 report, and by other observers, are designed and implemented.

The 'elephant in the room' issue is however the longer-term security of the guarantees which the State of Mozambique is able to offer as to the permanence of the ERs that are generated by the ERP. It is argued in the last part of this essay, with relation to the concept of community public domain, that a far deeper change in power and management relations is needed if things are to move from a type of 'deal' over what local people will do in exchange for evidently important benefits, towards a situation where they assume a long term commitment to ensuring that the forests remain standing well into the future, if not forever.

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