

**COMMUNITY-INVESTOR
PARTNERSHIPS IN MOZAMBIQUE**

Mozambique



➔ Local communities and investors successfully partnered to set up the Covane Community Lodge. *Photo: Peace Parks Foundation*

By Anna Knox and Christopher Tanner

INTRODUCTION

Private investment is critical to Mozambique’s development strategy. Investment can stimulate the rural economy by helping to modernize the agriculture sector, provide rural employment, and establish new markets and market linkages. Private investment can fund the development of Mozambique’s natural resources, the establishment of rural infrastructure, and the development of its tourism sector. Private investment can also cause enormous harm. Ill-considered projects may displace communities, disrupt or marginalize smallholder farming, and degrade natural resources.

Mozambique’s land laws seek to protect local rights over land and resources while explicitly encouraging investment. This investment must, however, be environmentally sustainable and benefit local communities. The law requires investors to consult with local communities before they can obtain rights for investment projects. These consultations are designed to ensure that both sides reach an agreement that will mitigate the impact of losing the land and even generate new opportunities for local people.



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➔ Farms like this one in Mozambique's Lago District sell products to local tourist lodges. *Photo: Manda Wilderness Community Trust*

LEGISLATIVE FRAMEWORK

The Constitution and the 1997 Land Law recognize rights acquired by customary occupation as equivalent to the State Land Use and Benefit Right, or DUAT. DUATs acquired in this way are held in perpetuity, and need not be surveyed or registered. Most rural land in Mozambique is occupied by communities holding customary DUATs, and is used for multiple purposes including residency, infrastructure, social reproduction, crops, livestock grazing, forest resources, and reserved land for future generations.

Those seeking rights to use and develop land for private investment must first ascertain if the land is subject to a pre-existing DUAT. If it is, the investor must consult with the community about the potential investment, and secure their agreement to cede their rights to the investor. It is implicit that the community approves any land use and development plan. In exchange for ceding their DUAT, the community may seek specific benefits from the investor. The District Administrator is responsible for verifying that a consultation has occurred and that the investor's DUAT request can move forward.

OPTIONS FOR COMMERCIAL RELATIONSHIPS

Communities and investors have a variety of options for structuring their legal relationship. In most cases, one or more communities cede a portion of their land to an investor in exchange for an agreed set of benefits. The investor acquires a 50 year DUAT to the land (with the opportunity to renew for another 50 years). This is an exclusive private right, which gives the investor secure tenure and enough time to enact and benefit from their planned development. The law does not clarify whether the DUAT reverts to the community after the 50 or 100 year period, or if the State assumes control of the land.

In exchange for ceding their land right, communities can negotiate for certain terms and benefits. These might include:

1. **Joint ventures.** The community and investor establish an enterprise in which both parties share in the profits (and potentially the losses) of the enterprise. The enterprise may be subject to joint management.
2. **Cash payments.** The investor agrees

to pay a lump sum to the community, periodic fixed payments, or some combination of these during the period of landholding.

3. **Employment.** The investor agrees to employ a certain number or percent of community members over a certain period of time; other employment terms and conditions may be established.
4. **In-Kind Contributions.** The investor agrees to provide certain goods or services to the community, such as building and staffing a school or clinic.

These benefits might be combined; the variety and scope of benefits is not restricted and can conform to the priorities and needs of both sides of the agreement. The government may overrule a community's decision to forego development if the project is found to be in the national interest. Moreover, with the exception of applications for areas over 10,000 hectares, the consultation agreement is not a required part of the investment proposal submitted to the government. With the District Administrator's sanction and a community agreement (for large projects), the government can allocate a DUAT to the investor assuming that all other requirements have been met.

Most investors acquire a DUAT from the community; however, an alternative relationship structure between communities and investors does not require this. Profit-sharing and fixed-payment contracts can be negotiated whereby the community retains control of the DUAT, while the investor gains land use rights. This approach is mutually beneficial - the community maintains its DUAT, while the investor does not have to find land or acquire a DUAT.

MARKING LOCAL RIGHTS AND BOUNDARIES

Rights acquired by customary occupation are not required to be registered and recorded on official maps, therefore the exact location of local rights and the communities that exercise them are not always clear. This ambiguity can cause community rights to be overlooked by investors, either intentionally or unintentionally.

Delimitation - a process that engages communities in land use planning and records the community's land boundaries on the cadastre - can avoid this outcome. By evidencing the community's DUAT on the cadastral map, investors know the extent of community boundaries and which communities to engage with.

Delimitation also has the potential to enhance community awareness of their rights and the potential value of their land. It can be a useful tool for ensuring an effective consultation process later on, resulting in a firm and viable community-investor relationship. Identifying community boundaries on the cadastral map minimizes or prevents the risk of contested claims and facilitates better agreements that, in turn, reduce the potential for future conflict.

SUCCESS AND FAILURE

Although Mozambique's Land Policy and Land Law were designed to enable both communities and investors to benefit from their rights to land and natural resources, community-investor partnership is a relatively new concept for most government officials and investors. Implementation has resulted in both positive and negative outcomes, as demonstrated by two projects undertaken in Gaza Province.

The ProCana project provides an example of how government officials and investors neglected to use the law as an instrument for equitable development while the Covane Community Lodge, a tourism project, has positively impacted the lives of local people.

The ProCana Project

ProCana Limitada—a sugarcane plantation project—was launched in 2007 when oil prices were high and the biofuel industry seemed poised to flourish. The project was formally closed in 2009 after oil prices dropped and the biofuel industry's prospects dimmed. ProCana Limitada provides an illustration of how goals for equitable and sustainable rural development can be undermined by private investment, despite a legal framework that seeks to ensure otherwise.

+ FACT

Under the Constitution and the Land Law, communities can gain Land Use and Benefit Rights in perpetuity based on their historic occupation of the land.

→ Soybean field in Mozambique. Photo: Manda Community Wilderness Trust



ProCana was granted a DUAT for 30,000 hectares of land to develop a biofuel project cultivating 24,500 hectares of sugar cane and building a 300 million liter ethanol plant. Although the company conducted community consultations, local leaders were reportedly pressured to support the scheme, and local communities were not adequately informed of their legal rights and ability to negotiate with the government and investors. The government subsequently gave ProCana a 50-year lease for the land and guaranteed use rights for 750 million cubic meters of water annually. Under the agreement between the company and the government, the company committed to employ 7,000 Mozambicans, develop infrastructure, and improve pastureland.



➔ A planned investment in sugarcane failed to properly involve local communities in planning as directed by law, and ultimately fell apart. *Photo: Neil Palmer/CIAT*

The promised benefits did little to assuage local concerns about the project and had scarcely materialized prior to the project's collapse. The lease reportedly appropriated more than half the land belonging to local communities, as well as land intended for the resettlement of communities residing in the new Limpopo National Park. Meanwhile, communities already relocated from the park accused the local government of leasing their pasture land to ProCana and compensating them with pasture land too far away to use. Smallholders in the area asserted that the project would have diverted water needed for irrigation with a dire effect on local livelihoods. Many locals were dubious about promises of employment, even for low-wage cane cutting.

According to local researchers and some media reports, no delimitation of existing rights was done before the ProCana DUAT was allocated. Local officials may have therefore been unaware of the extent of rights held by local communities under the terms of the Land Law. Information regarding the community consultations is conflicting. ProCana officials report that they met with leaders of local communities and obtained their approval for the project, but did not elaborate on the agreements reached. There are also allegations that no genuine consultation took place with communities affected by the project, suggesting that the provisions of the land

legislation governing private investment were not followed in the early stages of project development. As a result, an opportunity was lost to bring local people into the project as stakeholders.

The cancellation of the project raises the question 'what happens to the land now?' In principle, it should revert to its previous occupants, the local communities who had legal DUATs over the area. However, there are signs that the government is seeking alternative investors or other ways of using the land, rather than returning it to local communities.

Covane Community Lodge

The experience of the Covane Community Lodge distinguishes itself by highlighting how the Land Law can be used to promote a more equitable community-investor partnership. In 2002, the Swiss NGO Helvetas, in partnership with USAID, identified an area that could potentially benefit from tourism activities linked to the nearby Limpopo

and Krueger National Parks. Helvetas visited members of the two communities in the area - Canhane and Cubo - and suggested that they delimit their land to secure local rights and then implement a community-based tourism project to take advantage of the new opportunities offered by the Park.

USAID and Helvetas national staff contacted the Land Commission and FAO to train NGO and local land administration staff in the delimitation process, part of which involved delimiting the Canhane and Cubo communities. During the delimitation, Helvetas helped the community to understand the economic potential of its land, and the community prepared a land use plan that included identifying a site for a tourism lodge overlooking the lake. This later became Covane Community Lodge.

The lodge project created employment opportunities for community members and generated revenues for local

➕ FACT

Mozambique's Land Law provides the basis for mutually beneficial community-investor relationships. However, success requires that private investors and government engage rural communities and respect their rights.

suppliers to the lodge. The experience improved the community's planning capacity and its ability to deal with the outside world. In the process, the community created new institutions that gave previously underrepresented groups, such as women, opportunities for leadership roles in the community.

As Helvetas looked for ways to wind down its support, the community felt unprepared to manage and market the lodge effectively. While early income was significant, the full potential of the site could only be realized with new investment and targeted marketing. With assistance from the African Safari Lodge Foundation and Technoserve, the community participated in a formal tender process that enabled them to select a private investor to upgrade and market their lodge. The investor would not have to apply for a DUAT, but would retain the major share of the profits from the lodge in return for its marketing and management inputs. The Ford Foundation, the World Bank IFC and the Government Tourism Fund mobilized financial support for the partnership.

The investor is now working with the community to upgrade and expand the lodge, with the prospect of increasing income over a twenty-year period,

with returns detailed in the contract document. The investor has commitments to employ and build the capacity of community members. The community will be free to negotiate a new contract once the twenty year period ends. The community will reap benefits from the revenue sharing, employment, and capacity building benefits secured by the agreement. It will also continue to use its land asset to diversify its livelihoods strategy, enhance community infrastructure, increase income, and reduce poverty.

MAKING PARTNERSHIPS WORK

Without support, most rural communities are unequipped to forge equitable partnerships with private investors. Communities need to understand the land law and the rights it affords them - including the right to have their land delimited and be consulted when investors seek to use their land. They also need to understand the value of their land and natural resources and the benefits that they can negotiate for if they decide to transfer land rights to an investor.

Communities also need to be familiar with the range of options for legal relationships with investors so that they can make an informed choice. They may also need support in drafting legal contracts, strengthening their organizational structures, engaging in business planning, and delivering on agreements.

Few local government officials understand how to promote and develop this kind of dynamic and interactive process between local people and the private sector. It is evident that they, too, require capacity building. Critically, the public sector must provide efficient services to underpin these agreements and ensure that the terms of the contract are respected by both sides.

Consultation with local communities and respect for community land rights can help investors meet their objectives and create a more secure investment climate. Investors who genuinely engage with communities and provide benefits equivalent to the rights they acquire can realize profits in addition to the rewards of positively impacting the lives of local people through sustainable development. Well-designed projects

that use the instruments provided by the Land Law can utilize skills in a local workforce, minimize the potential for conflict, and contribute to corporate goals for social investment.

Mozambique's land legislation provides a framework for mutually beneficial community-investor relationships. However, the establishment and maintenance of these relationships requires private investors and government to commit to engaging rural communities and respecting their rights. With that commitment, communities can participate as equal partners in advancing a new model for rural development and poverty reduction.



→ Young boys in Mozambique. Photo: RDI

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