

PERCEPTIONS OF COMMUNITY LEADERS ON THE LAND LEGISLATION IN MOZAMBIQUE: The Case of Nacata Community, Malema District

Tomás Castelo Armando, Horário Justino Namuhessa

Abstract - This paper discusses the perceptions of community leaders on the legislation of land in Mozambique, a study conducted in Nacata community, Malema district. Due to the importance of land for a Mozambican common citizen, especially, those leaving in the rural areas. This study thought to investigate the community leaders' preparedness to cope with this legislation. Seven community leaders from Nacata Community participated in an interview which lasted for 30 minutes each. As a qualitative study, the interview questions sought to collect information categorized into three domains; general knowledge on legislation of land, the process of acquisition of a DUAT, and leaders' opinion on the legislation of land in Mozambique. The study indicated that community leaders in Nacata community, Malema district are in their 50s and the leadership is dominated by men. The only woman in the group, dedicates herself to tackling spiritual problems. In general, these leaders demonstrated inconsistent knowledge of the legislation and the responsibility fell either under the district government or poor Portuguese skills, the language which the legislation is written. Setting up community learning and resource center was thought to have the potential to improve not only knowledge of legislation but also to serve as community showcase of maps displaying the landscape of important places and resources.

Keywords: Community leaders, legislation, land, law, DUAT

Resumo - Este artigo discute as percepções dos líderes comunitários sobre a legislação de terras em Moçambique, um estudo realizado na comunidade de Nacata, distrito de Malema. Devido à importância da terra para um cidadão comum moçambicano, especialmente, aqueles que saem da área rural, este estudo pretendeu investigar a preparação dos líderes comunitários para lidar com esta legislação. Sete líderes comunitários da Comunidade de Nacata participaram de uma entrevista que durou 30 minutos cada. Por ser um estudo qualitativo, as questões da entrevista buscaram coletar informações categorizadas em três domínios; conhecimentos gerais sobre a legislação de terra, o processo de aquisição de um DUAT e a opinião dos líderes sobre a legislação de terras em Moçambique. O estudo indicou que os líderes comunitários na comunidade de Nacata, distrito de Malema, têm cerca de 50 anos e a liderança é dominada por homens. A única mulher do grupo se dedica na resolução de problemas espirituais. De um modo geral, estes líderes demonstraram um conhecimento incoerente sobre legislação e a responsabilidade recai ou sobre os governos distritais ou o fraco domínio da língua portuguesa, língua em que a legislação está redigida. A criação de um centro de aprendizagem e recursos da comunidade foi dita como tendo o potencial de melhorar não apenas o conhecimento sobre legislação, mas também para servir como uma vitrine comunitária de mapas que mostram a paisagem de locais e recursos importantes.

Palavras chave: Líderes comunitários, legislação, terra, lei, DUAT

1 INTRODUCTION

Mozambique embraces local development as one of the strategies that contributes to increased yields through production and productivity of the people who work in agriculture, livestock, and exploitation of other natural resources. Of course, to ensure that these rural areas achieve the desired development outcomes there is a need to establish synergies among various sectors, from education, to health, infrastructures, community engagement to name a few. These synergies could contribute to better exploitation of existing natural resources to contribute to local development by lowering poverty levels, increasing food security and income. In

Mozambique many projects have been established that ended into conflicts between the local communities and the enterprises, [5], [1], [6]. These researchers have disclosed claims such as "We do'nt wat to move from here, mut the company is forcing us to move out. You us go. This is my place. I belong here, this is my place. It was born here. It pains me to leave the place where I was born and die in another place. From Ex-resident of Chipanga, [1].

It due to claims like the one in this quotation that we seek to understand what are the perceptions of the community leader in Nacata community about the legislation on Land to ensure that situation like this one is avoided. The second reason is that the researchers we have seen on this topic have most been related to the coast of Mozambique, such Nacala-a-Velha, Angoche and place where megaprojects have been established. While there is no megaproject in Nacata Community, there are so many natural resources which can attract investors whether people or companies. We are not disregarding investors but the level of preparation of community leaders seems to have potential to avoid recurring situations.

- Tomás Castelo Armando, Lecturer of English and Applied Linguistics at Universidade Rovuma in Mozambique, holds a Master degree in Business Communication by Atlantic Intl University, currently pursuing a MBA Program in Entrepreneurship and SME management in Nicosia University, E-mail: tarmando@unirovuma.ac.mz
- Horário Justino Namuhessa, Holds an Honours Bachelor in Geography Education, works for Serviço Distrital de Planeamento e Infra-estruturas in Malema, E-mail: namuhessa@gmail.com

2 MALEMA DISTRICT

Malema District is located at the Western end of Nampula Province, about 250 km from Nampula city, Northern Mozambique. On the North, it borders with Niipepe, Cuamba, Maua and Metarica Districts of Niassa Province across the Lúrio river. On the South, it borders with Alto Molocué and Gurué Districts of Zambézia the Province, through the Ligonha River and Namuli Mountains. On the East the district borders with the of Ribaué and Lalaua Districts and to the West, once again, there is, Niipepe District of the Niassa Province, through Lúrio river. In terms of land surface, Malema District has an area of 6,122 km². with about 223,791 inhabitants and a population density of 36.6 inhabitants/km². The District of Malema is administratively divided into three Administrative Posts, naming: Malema -Sede, Mutuáli and Chuhulo and ten larde communities, namely: Canhunha, Murralelo, Nataleia, Nioce, Mutuáli, Nacata, Muesse, Chuhulo Sede, Nipácue and Niona, [17], [2], [4].

The Proposta de Fundamentação de Mudança de Categoria do Distrito de Malema, [17] state that Malema District has 486,000 hectares of fertile and arable land which occupies 76.1% of the total area. On top of that, it has six big rivers, namely Lúrio, Nalume, Mutidae, Lalaua, Nataleia and Malema. Furthermore, the district has forests with the following commercial trees for wood production, Methyl, Metonha, Umbaua, Chanfuta, Umbila, Jambir, Blackwood. With regards to wildlife, the district has Gazelles, Monkeys, Rabbits, Elephants, Crocodiles, Birds and Birds. The most common mineral resource is quartz. Given the availability of these information to the public, there are so many people and enterprises that have interests in exploitation of some and/or all of these resources.

Based on idea that all activities, people, and resources sit on the land, the law of land in Mozambique emerged as a solution to secure that there is a protocol to be undertaken in the process of land concession to citizens and enterprises in Mozambique. Since independence in 1975, the constitution stated that land belongs to the government of Mozambique. As a developing country, most of the land is located in rural areas. Rural areas in Mozambique are organized in communities and each community is headed by a leader or group of leaders. Indeed, communities vary and leadership domains also vary according to space/territory (land) that the leader is responsible for. One of the principles put forth in law is community consultation, which requires involvement of the leaders and local citizens in the process of decision-making for occupation of land. The involvement of local leaders require that these leaders understand what the law says about land occupation whether by individual people and/or companies who which to invest or exploit natural resources.

Therefore, the implementation of this research intended to answer the question 'to what extent do community leaders, in Nacata Community, Malema district, understand the principles underlying the law of land occupation Mozambique'?

2. LITERATURE REVIEW

2.1. COMPARING LAWS OF LAND

Mozambique is said to one of the best examples in Africa to have put in place a good methodology regarding to the law of land. The Constitution of Mozambique,[15] in its article 109, No. 1-2, states that "land is owned by the State and must not be sold, or in any other way alienated, nor mortgaged or pledged". Comparing to other constitutions such as South Africa, the role of the government is to ensure good legislation regarding to land access. "The state must take reasonable legislative and other measures, within its available resources, to foster conditions which enable citizens to gain access to land on an equitable basis". The Zimbabwe's constitution, in its in its section about right of land, No.7, only grants agricultural land to all citizens including women. That is, land in general does not belong to the government and the constitution recognizes the weakness. Therefore, it states that "the people of Zimbabwe must be enabled to re-assert their rights and regain ownership of their land; and accordingly,". the use of the term's re-assert, regain, indicate that their ordinary people have lost access to land to landlords.

Following the successful definition of land ownership, the constitution of Mozambique defines general guidelines in the article 110, number 1-2, and article 111. Regarding to the use and benefit of land, the State of Mozambique determines the conditions of use and benefit of the land granted to people born in Mozambique or have citizenship regardless of their social or economic purpose. Furthermore, the constitution recognizes and protects the rights acquired by inheritance or occupation, unless there is reservation or if the land has been legally assigned to another person or entity.

3 LEGISLATION OF LAND IN MOZAMBIQUE

As referred in the previous section about comparison of the constitution of the three bordering countries with regards to land, the main law which governs land ownership, right to use and pass on is postulated by the Constitution of Mozambique from article 109 to article 111, [15]. The postulates in these sections of the constitution were not enough to explain how this process should be conducted. There 1989, the government through its Assembly in Parliament released Law 6/79, of July 3, Law of Land in Mozambique, [12]. However, the country faced challenges related to development and experience in application of Law 6/79, of July 3, which led to its revision in 1997. This revision, led to law 19/97 of October 1,[14], which intended to adapt the law of land to the new political, economic and social situation. That was to guarantee access and security of land tenure for both Mozambican farmers and domestic and foreign investors. Once again, land was defined as the most important that the country had, and its value should contribute to the development of the national economy. Therefore, national and foreign citizens were encouraged to use and exploit land and its related resource.

Law 19/97 of October 1, [14], introduced defined 19 cconcepts to ensure its comprehension, naming: local community, right

of use and exploitation of land, public domain, forestry exploration, special license, land use map, occupation, national legal person, foreign legal person, national natural person, foreign natural person, exploitation plan, land use plan, urbanization plan, land ownership, Claimant, Holder, Title, and nature protection zone. While all these terms are important, it pays to define the first three because they are closely related to these research work. The first concept is local community - the grouping of families and/or individuals, living in a territorial level of locality or lower, which aims to safeguard common interests through the protection of residential areas, agricultural areas, whether cultivated or in fallow, forests, sites of cultural importance, grasslands, water sources and areas of expansion. Then there is, right of use and exploitation of land (also known as DUAT), it is the privilege that natural or legal persons and local communities acquire over the land, with the demands and limitations postulated in the law. The concept of public domain refers to an area destined to satisfy the public interest.

It was also in the Law 19/97 of October 1, in its article 13, where the idea of community consultation was postulated in the following way: *The process of entitling the right of land use and benefit [DUAT] includes the opinion of the local administrative authorities, preceded by consultation with the communities, for the purpose of confirming that the area is free and has no occupants, [14].*

The statement in number 3 of articles 13, indicates clearly that the first most important requirement is to consult with community if an area identified has no occupants, and then proceed with the legal process at the government level. That is, if the community disagrees with an intended occupation, it can be difficult. The question remains how prepared is the community, especially, the leaders to discuss land concession in Nacata community? What do they know about land occupation and use in Mozambique?

The revision of the Law of land, which resulted in Law No. 19/97, of October 1,[14] introduced several innovations related to the recognition of rights acquired by occupation by local communities and national born people who, in good faith, occupy the land for at least ten years. Due to that, there was a need for the government to replace Decree No. 16/87, of July 15,[13], which regulated the Law of land to Decree 66/98, of December 8,[10] to fulfil the innovations brought by the current law. In terms of scope, the Decree 66/98, of December 8, [10], in its article 2, states that this decree does not applies to areas not covered by areas under the jurisdiction of Municipalities that have Municipal Registry Services, with the exception of Article 45, which is applicable throughout the national territory. From now and then, if one stays in one place whether there is real estate or Mozambique, the government will consider him/her to have right to use and benefit the land and/or real estate therein. These laws and decree left a gap about how the community consultation could be undertaken. In the following section, we explore a specific Ministerial Diploma which depicts how this process is expected to take place.

4 COMMUNITY CONSULTATION

Considering the importance of community consultation in the

process of concession of right to use and benefit land (DUAT), in Mozambique, in 2011, through Ministerial Diploma [11], the ministry of Agriculture, which responds for land in Mozambique issued this Ministerial Diploma, in order to adjusted the rules for consultation with local communities. The Ministerial Diploma about community consultation is very short document with seven articles. Given its importance to the portrayal of the role community leader, it is worth naming the first six articles: (1) consultation phases, (2) participation, (3) intervention of district, administrative post, and advisory councils, (4) financing the consultation process, (5) validity of consultations, and (6) disclosure of procedures.

The first article comprises two phases which can be summarized in the following terms. The first one is with the local community, which consists of a public meeting with a view to provide them with information about the request for DUAT and the identification of the boundaries and a second public meeting, which happen three days after the first one, to make a statement from the local community about the availability. In second phase, any further meetings can be held whenever there is additional information to be provided to the local community. With regards to participation, this process required presence of (a) the district administrator or his representative; (b) the representative of the registration services; (c) the members of the village and locality advisory councils; (d) members of the local community and the owners or occupants of the neighboring land and (e) the applicant or his representative. Here we see that members of village and members of local community are the community leaders that we wish investigated their level preparedness to handle this process wisely. Article 5 and 6 about validity of consultations, and disclosure of procedures respectively, state that consultations that do not respect the procedures established in this Ministerial Diploma with other applicable legislation are not valid and administrative authorities at district will disclose specific procedures for consultation with the local community, in order to ensure the effective participation of communities in the management of land and natural resources. So far, we have seen that from [14], [10], and [11], the government has made a lot of effort to empower the community in the process of land management.

5 METHODOLOGY

The analysis brought about in this study is driven from psychologist is study was designed to be qualitative and descriptive. We resorted to Synthesizing theory, the case of Neisser's analysis-by-synthesis model, [3] and psycholinguistic domain of perceptual features which shape bias when learning names for novel objects, a critical skill acquired during language development, [18]. The choice of these theory and perception domain is due to the complexity of a law in general and the facts that the leaders that participated in this study speak but very poor Portuguese. Therefore, in terms of comprehension they are compared to children who are still squiring a language. In the case of these leaders, they have to translate the information related to the law of land in their mother languages and them synthesize what they understood to space ownership (reference). With these resources brought from

psychology and Psycholinguistics, we intend to study space as defined by the governed of Mozambique and space as a total dimension, [7] and therefore as a political, social and especially geopolitical in the sense of Mendonça, [8] look at space as a deciding factor for the implementation of technical and informational objects which carry social control through the system of objects and actions. That is, when one is granted a DUAT, no matter where he is and what he does he makes decisions about happen or not in that space.

The data used in this study was called through bilingual open interview guide and the interviews were recorded on a form in Portuguese. The information is the nearest correct utterances in *Emakhuwa*, the Bantu language spoken in Nacata Community, Malema District, [9]. Other data was taken from three district documents reports to complement what the leaders said including the map of the district.

6 RESULTS

We interviewed seven leaders from Nacata community, where all of them were farmers. In terms of age the youngest was 52 and oldest 65. There was only one women leader who takes the position of *apwiyamwene* translated as Queen of the community. The most important leader is the *Régulo*, also called *mwene* translated as King of the community, and locally he is said to own the community. Therefore, there is one *Régulo*, and one *Apwiyamwene*. In terms of order of authority, the *Régulo* comes first, followed by a *cabo*, them "Líder do terceiro escalão" translate as Leader of the third category, and the last one is the "Chefe do povoação" translated as chief of a neighborhood.

The positions of *Régulo*, *Apwiyamwene*, and *Cabo* are already defined by the community. For instance, when a *regulo* passes, a male person from his family in the side of the mother is selected to replace him and he is immediately called *Régulo Cunvare* in Nacata community. In time of this research, the legal name of *Régulo Cunvare* is Paulo. That happens to *apwiyamwene* and *Cabo*. But other leaders are not necessarily from *Cunvare* family and their names are not influenced.

The first question we asked was about tasks assigned to each leadership position in the following terms: *What are your tasks as a leader?* From this question *Régulo* said:

The *Régulo* controls the *Cabos* and, in turn, has the task of advising the population to work on land, to respect the government and to obey all the criteria that the government says. He is the ultimate guiding person for the community and represents the population.

Response from Mr. Paulo who *Régulo Cunvare*

The response from the *Régulo* indicates clearly that he holds the highest responsibility and he serves as an interface between the community and the district government at all levels. That none government institution should work in that community without informing him. He works directly with *Cabos* and when asked the same question the *Cabo* said "[...] my tasks are to control the population, hold village meetings, solve community problems." While the Queen said "My tasks as a leader are: solving problems of lack of rain, I invoke gods to fall rain or maybe another problem I also solve." While one is social leader in the absence of *Régulo*, the queen is more of a spiritual leader. She works to solve problems beyond human power, such as

invoking gods. Other leaders serve more as neighborhood agents who collect information to the *Cabo* and *Régulo*, encourage people to participation in public community activities and obligations before the government, their answers to same question were:

[I serves as a guide, that is, I take information from the community to the locality and vice versa, collection taxes and telling people to clean roads.]; [My tasks are to control the population and solve problems]; [I solve community problems, mobilize the population to pay taxes.], [The leader's tasks here are to control the population, hold village meetings, solve community problems.]; and [I mobilize the population to participate in some activities such as: road cleaning, construction of public infrastructure, payment of taxes].

Responses from Leaders of the third category, the chiefs of a neighborhoods.

The second questions that these community leaders were asked was "Have you ever heard about the Law of land? The answer to this question was unanimous. All of them said yes. Then, we proceeded to the third questions "What do you know about the law of land? The answers indicated that all leaders know that one needs to have a document to be granted the right to use and exploit it properly, except the *apwiyamwene* who said that "the law of the law of land says that if someone is born, he must return to the land where he came from". she understands land is a spiritual manner. Another question was about to whom does land belong to in Mozambique? Here all the five leaders except the *Régulo* and *apwiyamwene*, said that land belongs to the state, which is goes along with what is postulated in the Constitution of Mozambique. While the *Régulo* said "land in Mozambique belongs to the people. The government when it arises found people living in their places" to *apwiyamwene*, "land in Mozambique belongs to God". Looking at the content of these answers, it is clear that these people's answers are according to the tasks they do in the community.

To deepen their perception, we introduced the concepts of DUAT which is well known and it is almost impossible to talk about land in Mozambique without referring to it. The first question related it was "What do you know about the Right to Use and Benefit from Land (DUAT)? In this case, all leaders know that a DUAT is a document that grants the right to exploit land. Nevertheless, the details are interesting. Some leaders such the *Régulo* said "About the DUAT, I know that it is an instrument through which the person who has the land to live safely, it gives ownership" and *apwiyamwene* said "DUAT is a document for exploring wood" an answer which is shared by the *Cabo*. The queen and the *Cabo* look at DUAT as a license to operate in the profitable wood industry in Mozambique. Other leaders said that described a document which indicates the boundaries between communities. The second questions in the DUAT topic was "who is granted the right to have a DUAT? Three leaders, the queen and the chief and the leader of third category, said that "[...] the population must have', 'whoever is entitled to DUAT is the zone leader because it is his area', and 'everyone who handles documents has the right to have a DUAT' respectively. The *Régulo* and *Cabo* said 'who should have the DUAT is the regulation because he is the responsible owner of the communities' and 'who is entitled to DUAT is the leader of the zone.' [*Cabo*].

Then intended to check if the leaders know long can one hold a DUAT when asked 'What is the maximum term for a DU-

AT? none of them was able to mention 50 years, as per article 17, no.1. of the Law of land 19/97, October 1, period after which it has to be renewed. Another question was what are duties of the community in the land management process? These leaders said that they have to control, inspect, farm, and grow animals. They did not mention the consultation process that have to be involved during land concession. The last question but was to check from the leaders if the taxes paid to access land were fair. They said it was very expensive and the community should not pay. However, one of the leaders who has a DUAT said that he was not charged any amount because he applied through SUSTENTA project. The last question was 'If you were to change something in the land law what would it be?' they suggested that price is free for the community and the community leadership should be communicated when DUATs are granted by the government.

7 DISCUSSION

The results from this study indicate that community leaders in *Nacata* community are in their 50s. The leadership group is dominated by men. The only women in the group dedicates herself to tackling spiritual problems. We assessed three domains of knowledge related to the legislation of land and one related to leaders' opinion on this legislation. The first domain was on the general knowledge of the legislations on land based on what the constitution Mozambique postulates. The leaders demonstrated inconsistency in their answers where some said that land belongs to the state, population and gods. There are leaders who even admitted that they did not know about it, even though all of them admitted to have heard about the law of land. The second domain we assessed was related to DUAT, the document which one must have to use and benefit from a certain area of land. Once again, there are so many discrepancies in the answers. The third domain has one questions, which intended to give community leaders the opportunity to evaluate the legislation and suggest issues that could be added. Here they suggest exception of payments and/or reduction of fee that are paid to get a DUAT. Furthermore, they suggest the district government to improve the communication protocol with the community leaders.

The main encounter is that the community leaders in *Nacata* Community, Malema District, in Mozambique have but limited and inconsistent knowledge about the law governing how land is accessed and the need for the document which grants land concession. This can be explained by either the level of literacy of these leaders, since most of them speak *Emakhuwa*, a local national language or by poor dissemination of the legislation about land by the district government. On top of that, the legislation on land has not yet been translated into local national languages which are spoken by the majority of citizens in rural communities. Although, we did not ask whether they had undergone a training on legislations of land, the comparison of how these leaders contradict themselves in relation to land ownership, land utilization and need to have DUAT, makes it clear that these leaders need either training or refreshment. For instance, the seventh article of the Ministerial Diploma [11], issued by the Ministry of Agriculture, put the district government in charge of educating the community on

legislation of land. That is, it the district government's fault if the community leaders know a little about this decision-making instrument.

Many researches on territory and space occupation have been conducted, especially in places where communities had been moved from region into another, [5], [1], [6]. These studies have shown aversion to accepting the movement, by the community, from one region into another, because of social, spiritual and historical abandonment of their identity. The case of *apwiyamwene*, there is a place where she invokes gods and ancestors, which if they will move from this place, it will be lost. In Mozambique, every family in the rural areas have their cemetery, moving them means leaving their ancestors, as far their belief on ancestry intervention on their lives.

The case of DUAT, we noticed that people lack clarity about why have it. They believe it is a license to exploit resources and it is paid to have one, even by the community. Once again, studies such as [5], [6], and [16], have reported so many conflicts between the community and external intervention in the process of land concession. As results, this study found very few indigenous people in the communities who have a DUAT for their farms and/or place they live in. That is why, it sounds well to say that the government grants DUAT to people for free, the same way parents register their babies for free. Given the low level of literacy and poor communication skills in the official language, the government should set a community learning and resources center to ensure lifelong education for the elder and the community. The community learning and resources center, should contain not the maps of community but a library about the main legislation that community leaders, students, visitors and investors should see in first meeting. These maps could contain important places for the community, such as cemeteries, rivers, mountain, and ongoing projects in the community. In addition to the maps, the resources center could collect important books and other leaning materials for the community to learn from.

8 CONCLUSION

Community leader play an important in the successful implementation of success local programs and in *Nacata* Community, their engagement is notorious. They are responsible for community mobilization for construction and rehabilitation of public infrastructures such as roads, schools, and hospitals. They are also the responsible for encouraging people to undertake production of crops and livestock. That is why the government embraces them as partners for local development. The topic of land continues very important in Mozambique and community need to understand what the legislation says about it so that they can contribute to its protection and preservation. In the case od *Nacata* Community community's responsibility is limited to working the land and growing animals.

The royal family leaders namely; the Régulo, the Queen and the Cabo misunderstand the law of land and are very defensive when it comes to discussing land ownership and concession. They seem to regard the idea of DUAT to serve only to exploit resources but ownership granted to this family. In that case, social, religious and historical places would be protected

from concessions for exploitation of natural resources. The law of land in Mozambique is one of the best in Mozambique. On the paper, much power is given to community and community leaders. Nevertheless, the government is the main player and the process is male dominated, even though this region is known as a matriarchal society.

9 IMPLICATION OF THIS RESEARCH IN LAND MANAGEMENT IN MOZAMBIQUE

This research touches important aspects of how people, especially leaders, understand legislation in Mozambique. If leaders do not understand very common laws which affect their lives and those of their communities and children, what about more specific laws? Furthermore, if the district government is responsible for disseminating regulations what should be the best strategies to implement this duty so that community, especially, the leaders are well informed to work on the interest of the people? In the future amendment of the law of land in Mozambique, could consider free charges to the community members who have been living there for more than 30 years for example.

10 FUTURE RESEARCH ON LAND LEGISLATION

There are so many students concluding their programs at bachelors, master, doctoral degrees in Mozambique. In addition to that, there are so many public and private universities, which have interests in social well-fare. These students and researchers could consider visiting communities like Nacata Community to develop programs, in order to educate leaders and communities on legislation.

Although this study was conducted in a rural community, where the nearest city is as far as 100 km, it portrays a typical community in Mozambique. The inconsistency of the leaders' knowledge on this subject matter, indicates that it might be a national reoccurring issue. This might be what originated the complaints of the people in community where external investors came and the community was forced to move out. Therefore, there is a need to conduct comparative analysis between the perceptions of the leaders in those communities affected by these projects and those that have not. Another research opportunity lies on the need to conduct community translation projects of laws, from the constitution to specific laws like the law of land, the decrees and ministerial diplomas.

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