

**Decentralized Legal Support and Capacity Building to Promote
Sustainable Development and Good Governance at Local Level**

(GCP/MOZ/081/NET)

Mid-term Tripartite Evaluation

Final Report

Rome, May 2007

The Mid-term Evaluation team members wish to express their warm gratitude to all those who contributed to organize and carry out this exercise: the Project, CFJJ, FAO-Maputo.

We also wish to thank Project partners from the Government of Mozambique, from NGOs, from bilateral organizations and from communities, who kindly spent some of their time answering our questions and helping us understand the complexity of their work.

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Acronyms

CBO	Community Based Organization
CFJJ	Centro para a Formação Jurídica e Judicial (Centre for Legal and Judicial Training)
Danida	Danish International Development Assistance
DfID	UK Department for International Development
DNAC	National Directorate for Conservation Areas, MITUR
DP	Province Directorate
DUAT	Direito au Uso e Aproveitamento da Terra (right to use and utilization of land)
FAOR	FAO Representation
FAO-Rep	FAO Representative
FFB	Floresta e Fauna Bravía (Forest and Wild Life)
GCP	Government Cooperative Programme
GoM	Government of Mozambique
GTZ	German development aid agency (Gesellschaft für Technische Zusammenarbeit)
HIV/AIDS	Human Immunodeficiency Virus/Acquired Immune Deficiency Syndrome
HQ	Headquarters
IPAJ	Instituto para o Patrocínio e Assistência Jurídica
LEGN	FAO Legal Office
LoA	Letter of Agreement
LTU	Lead Technical Unit
MCC	Millennium Challenge Corporation
MDG	Millennium Development Goal
MiCoA	Ministry of Environmental Coordination
MINAG	Ministry of Agriculture
MITUR	Ministry of Tourism
MoJ	Ministry of Justice
MoU	Memorandum of Understanding
NGO	Non Governmental Organization
NPC	National Project Coordinator
NRM	Natural Resource Management
NTE	Not to be Exceeded
PA	Protected Area
ProDoc	Project Document
SDAA/NRLA	Land Tenure Service of FAO
STA	Senior Technical Advisor
TA	Technical Assistance
TCP	FAO Technical Cooperation Programme
MTE	Mid-term Tripartite Evaluation
ToR	Terms of Reference
ToT	Training of Trainers
TPR	Tripartite Review Meeting
UNDP	United Nations Development Programme
WB	World Bank

Executive Summary

Introduction

1. The Mid-term Tripartite Evaluation (MTE) of the project “Decentralized Legal Support and Capacity Building to Promote Sustainable Development and Good Governance at Local Level, GCP/MOZ/081/NET” (referred to as the Project) took place in the period 11-24 February 2007. The members of the MTE team were: Prosecutor Amabélia Chuquela, representing the Government of Mozambique; Ms Rosalie Kingwill, representing the donor; and Ms Tullia Aiazzi, representing FAO and team leader. The team as a whole provided all required competencies and experience to perform the tasks assigned. The Project had started in April 2005, to last three years, with a total budget of US\$ 2.4 million.

2. The team assembled in Maputo, travelled to three provinces, held meetings and had extensive discussions with the Centro de Formação Jurídica e Judiciária (Centre for Legal and Judicial Training, CFJJ) of the Ministry of Justice, with Project staff, the FAO Representation and a range of CFJJ/Project stakeholders, including Government, NGOs and partners. Discussions at all levels focused on strengths and weaknesses as perceived by interlocutors of the CFJJ/Project work, and suggestions for improvement and for the future. Insofar as possible, the team cross-checked information collected with different stakeholders. The sample of interlocutors was reduced in size, but it included all groups of beneficiaries and partners of the Project so far. The team also analysed at length a number of documents produced by the CFJJ/Project.

Key findings and conclusions

3. The MTE considers that the Project was very ambitious and is on the right track to attain all of its objectives. Sound strategic choices were made on the level of intervention and good, solid results were achieved so far. The CFJJ/Project’s commitment to the development of a permanent skills base in knowledge of the legal frameworks, and in mediation and arbitration was impressive: participants to the training events at the different levels were enthusiastic and felt empowered; in a number of cases, they had already put into practice the newly acquired skills with positive resolution for all parties, of local conflicts. Behavioural changes in professional performance were also reported. The legal advice provided to different stakeholders had a multiplier effect for CFJJ/Project efforts, reaching out at community level through other projects.

4. The choice of maintaining close collaboration with the CFJJ, following the experience of the previous project¹ even for a more wide-ranging training approach, proved very successful. On the one hand, the CFJJ was a key and valuable player for good governance and implementation of the rule of law in Mozambique; its institutional mandate and position, the independence and integrity of its leadership, the competence and commitment of its staff, all contributed to its high profile and high quality performance. On the other hand, the Project has contributed and strengthened effectively the CFJJ capacity as a Centre of Excellence in the field of NR-related legislation and the MTE considers that this result should be preserved and fostered.

5. Equally, the MTE is aware that monitoring and research to some extent have lagged behind, mostly because of financial and administrative reasons. Other key on-going activities were also delayed, in particular the publication of the manual for Paralegals, mostly due to over-stretched human resources. A number of follow-up actions will have to be included in the work-plan for 2007, to strengthen the effectiveness of training courses.

6. Interesting partnerships were developed around gender issues, with UNAIDS and University of Toronto. Also, the MTE acknowledges the efforts made to mainstream gender issues in the curricula of Paralegals and district administrators. However, considering the formidable challenge gender equity represents in rural Mozambique, the issue was not captured and absorbed to the desired and necessary extent by participants to the training courses and more will have to be done on this key theme.

7. The MTE sees also a number of challenges that should be tackled by the CFJJ/Project, of

¹ GCP/MOZ/069/NET

old and new nature: some are of a structural nature, intrinsic to the legislation itself; some resulting from the positive evidence of the value and effectiveness of CFJJ/Project training; others stemming increasingly from the acquisition and enforcement of community rights.

8. Among these, a major operational challenge is the up-scaling of training capacity to meet needs expressed for awareness raising, information diffusion and harmonization in the application of NRM-related legislation at the different levels, in particular for Paralegal and District levels. There is no doubt that the CFJJ, in accordance with its core functions of training of the judiciary, should maintain and strengthen its research and think-tank role on strategy and methodology for developing capacities in the country on NR-related and other legislation. However, the CFJJ direct involvement in wide-ranging training across the country at different levels could change quite substantially, following decisions of a more political and strategic nature. The MTE identified three possible options in this regard.

9. A second major challenge is the need of communities for legal advice in the case of complex conflicts, representation in court, and setting up legal entities. Three possible scenarios for this function were also formulated, to be coordinated with other existing initiatives on-going in the country.

10. Challenges related to structural legislation inconsistencies and incompleteness, along with those linked to the acquisition of rights and sharing of benefits and land administration, should be tackled through the action-research programme under the CFJJ/Project umbrella, on selected case studies, whose result should be diffused through publications and fed back into the Centre's training courses. Partnerships could also be developed with appropriate national and regional University institutes or other specialised research institutions dealing with these issues. The MTE believes that mutual exchange of experience would enrich the Project's focus.

11. Last, the MTE sees added value in the continuous involvement of FAO into this field of action in Mozambique, in terms of knowledge acquired, strategic vision and honest broker role, all matching and strengthening CFJJ own profile. Unfortunately, the same cannot be said in terms of operational capacities, though some recent changes in regulations and procedures could pave the way to further improvements.

12. Moreover, the Project is proving to be quite a unique experience for FAO and possibly at the international level, on training for the good governance and rule of law of NR related legislation. This valuable experience can feed back into FAO normative work, thus becoming available to other countries.

Recommendations

To all parties: the Embassy of the Netherlands, CFJJ, FAO, the Project

13. The MTE recommends that 18 months extension be granted to the Project starting from currently planned NTE date, with additional budget to cover technical assistance, training and research activities based on the level of delivery foreseen in 2007, approximately US\$ 1,200,000.

14. A revision of the plan of activities and budget should be done as soon as possible, to reschedule the current plan of work over two years (March 2007-March 2009) to include new activities as follows:

- i. support to the process of revision of the CFJJ mandate, structure and statute, to include an adequate analysis of the institutional and financial implications of the options illustrated in the main text, and any other considered pertinent, through a specific consultancy;
- ii. follow-up on the above consultancy, to support implementing the selected options for training and legal advice to communities, to take-off and be operational for at least one year;
- iii. if necessary after consideration of probability and timeliness of alternative sources of funding (e.g. Norway), recruit a full time gender specialist to support mainstreaming of gender issues and analysis in all training and research activities by the CFJJ/Project;
- iv. prepare, organize and implement one awareness raising and information diffusion event at Ministers level, for all concerned ministries and GoM institutions;
- v. prepare, organize and implement information and awareness-raising seminars at regional level

- for Province Governments and Administrations, on NR-related legislation;
- vi. develop collaboration with investors- and business-representing bodies, such as Chambers of Commerce, to identify best ways to diffuse information among their members and constituency, on rights and duties under the NR-related legislation;
- vii. develop research around the key challenges identified on the interface between community members, including unpacking intra-community rights, gender and equity relations and integration of family law in the NR-related legislation, integration of alternative Land Administration processes, including adjudication.

To the Ministry of Justice and to CFJJ

15. The MTE recommends that efforts be made to strengthen on a permanent basis the core human resources capacity of the CFJJ, to enable it to face the increasing demand on its delivery, maintaining the quality of its performance.

16. The MTE recommends that the CFJJ includes in its planning exercises a three to five year-term plan of training for the judiciary and other categories of beneficiaries.

To the Ministry of Agriculture and the Ministry of Tourism

17. The MTE suggests that MINAG and MITUR should improve and harmonize the methodology followed for community consultative process, including awareness raising and training on participatory processes, gender and social inequalities issues, etc. The CFJJ could assist the two ministries based on its wide experience in participatory training and NR-related legislation.

18. The MTE also suggests that staff trained as Paralegals from both GoM and NGOs/CBOs should be increasingly entrusted with the responsibility for directing and managing the consultative process between external actors and communities, to avert from the beginning any potential conflict, insofar as possible.

To the Embassy of the Netherlands in Mozambique

19. The MTE recommends that the Embassy of the Netherlands continues its dedicated commitment to the good governance of NR-related legislation in Mozambique and assumes and advocacy role on this subject with other members of the Donors' Justice Work Group in the country.

To CFJJ and the Project

20. The MTE team recommends that the following activities be included in the CFJJ/Project plan of work, irrespective of any additional fund allocation and extension of external support²:

- i. finalise the Paralegal manual;
- ii. strengthen the presence of the CFJJ at region/province level, according to requirements, by defining better profile and terms of reference for this function;
- iii. set up a system of follow-up for all typologies of training, adequate to each type of training, to enhance their long-term effectiveness;
- iv. include in the District level training, the District Director of Agriculture, to bring in their competence and knowledge of local NR use and to harmonize with this key institution, understanding of the legislation spirit and implementation;
- v. support further the Ministry of Tourism and Protected Areas Administrations, with legal advice and by expanding the target audience of the next training course, to improve their understanding and practice within their mandate, of the NR-related legislation;
- vi. assist MITUR and MINAG in discussing different interpretations and inconsistencies, if any, in the NR-related legislation, and if the case, in solving them in the best possible manner;
- vii. build up a baseline of data on certain selected case-studies, to monitor through appropriate indicators changes over time of communities' behaviour in selecting channels of assistance in dealing with NR-related issues and conflicts, as well as the performance of different solution routes (including the judiciary) and the overall result in securing communities' property rights.

² These are not listed in order of priority, since they could be implemented simultaneously

- viii. share information and experience on lessons learnt through the Project with other international institutes and civil society institutions dealing with similar problems concerning land rights legislation and implementation in the context of land and legal reform in Africa.

To FAO in Mozambique

21. The MTE team recommends that the FAO Programme in Manica makes available funds for the completion of the delimitation and titling process of communities around the Coutadas in Macossa District and at Quinta das Laranjeiras in Chimoio, to allow them full access to any due entitlement under the current legislation and its practice.

22. The MTE suggests to FAO in Mozambique to pursue advocacy activity on NR-related issues with GoM, other UN agencies and donors, from the different perspectives, i.e. natural resources assessment, monitoring and management, links between NR and food security, gender issues, good governance of this sector.

To FAO

23. The MTE team recommends that FAO Administration and Finance Department and Audit follow up closely the advantages and risks stemming from increased flexibility in LoA arrangements, including more than one LoA at each time with the same institution.

24. It also recommends FAO to improve further the flexibility of administrative tools available for field project implementation, within the safeguard of guarantees for proper use of resources, as proposed by the Country Evaluation of FAO activities in Mozambique, namely: *“Adoption and use of a Memorandum of Understanding, for transferring the responsibility for some operational activities, and managing and disbursing the related funds to a national entity.”*

25. The MTE recommends to LEG, SDAA and any other concerned entity in FAO, to draw lessons and guidelines from the experience of the CFJJ/Project on capacity development aimed at legislation implementation, and make them available to others by mainstreaming them into their normative work at global level and in their field work in other countries.

1 Introduction

26. The Mid-term Tripartite Evaluation (MTE) of the project “Decentralized Legal Support and Capacity Building to Promote Sustainable Development and Good Governance at Local Level, GCP/MOZ/081/NET” (referred to as the Project) was mandated to “...*assess progress towards the declared objectives of the project, and the relevance of the project and its activities in the current context of equitable and sustainable development and good governance in Mozambique.... A more important objective is to provide recommendations to the Government, FAO and the donor on how the activities initiated by the project can be consolidated and sustained.*”³ Particular attention was to be given to the institutional framework to enable attaining the Project objectives. The Terms of Reference (ToR) of the MTE were discussed in detail with stakeholders and will be attached to the final evaluation report.

27. The MTE took place in the period 11-24 February 2007⁴. The members of the MTE team were: Prosecutor Amabélia Chuquela, representing the Government of Mozambique; Ms Rosalie Kingwill, representing the donor; and Ms Tullia Aiazzi, representing FAO and team leader. The team as a whole provided all required competencies and experience to perform the tasks assigned.

28. The team assembled in Maputo, travelled to three provinces, Manica, Sofala and Maputo, held meetings and had extensive discussions with the Centro de Formação Jurídica e Judiciária (Centre for Legal and Judicial Training, CFJJ) of the Ministry of Justice which is the Government Implementing Agency, with Project staff, the FAO Representation and a range of CFJJ/Project stakeholders, including Government, NGOs and partners. Among others, the team had the opportunity to meet with the Judge of Gorongosa District in Sofala Province, and with end users of CFJJ/Project activities in two communities, in Manica and Maputo Province.

29. Discussions at all levels focused on strengths and weaknesses as perceived by interlocutors of the CFJJ/Project work, and suggestions for immediate improvement, as well as for the medium to long-term future. Insofar as possible, the team cross-checked information collected with different stakeholders. The sample of interlocutors was reduced in size, but it included all groups of beneficiaries and partners of the Project so far. The team also analysed at length a number of documents produced by the CFJJ/Project.

30. The MTE team prepared a preliminary summary focusing on conclusions and recommendations that was discussed during the Tripartite Review meeting (TPR) on February 23 in Maputo. The present final draft is circulated to all stakeholders, for comments and suggestions. The output of the two consultations will be integrated into the final evaluation report, as appropriate. The Budget Holder (BH) of the Project will prepare a Management Response, after consultation with the relevant Government institutions, in which it will indicate FAO’s follow-up to the evaluation report, including an indicative time-schedule. This document will be circulated to all concerned, with the final MTE report.

2 Background and Context

31. The Constitution of Mozambique affirms the Right to Land Use and Utilization (Direito de Uso e Aproveitamento da Terra, DUAT) among the constitutional rights and since 2004, local communities are entitled to judicial status in relation to land rights.

32. The Government of Mozambique (GoM) took initial action on legislation regulating the access to and use of the country natural resources assets in the mid-90s, as follows:

- In 1997, the Land Law was formulated, based on a participatory process with ample civil society involvement: it recognises traditional customary rights to land of the rural population and specifically requires that local communities participate in natural resource management and in the resolution of resource conflicts;

³ Terms of reference of the evaluation mission, final

⁴ By then, the Project was at its 23rd month of activities, with 13 months still to go.

- In the same year, the Environmental Law was also approved, which includes important provisions for community participation and the defence of newly created, ‘diffuse’ environmental rights that are enjoyed by communities and other social groupings as well as by individuals;
- In 1999, the Forest and Wildlife Law was approved: it mandates local community participation in the management and sustainable use of natural resources and the establishment of historical and cultural heritage zones. Regulations for the management of Protected Areas are also included. Responsibilities for its implementation are shared between the Ministry of Agriculture (MINAG) and the Ministry of Tourism (MITUR): both are mandated for implementing the consultative process at community level, MITUR in the case of communities overlapping with Protected Areas, including hunting concessions or coutadas;
- A law for territorial planning, which reinforces rights as established by the Land Law, has been prepared and is expected to be approved by the Council of Ministers (2007);
- The mandate of the Ministry for Environmental Coordination (MiCoA) has been slightly reinforced in 2006, in terms of authority to enforce relevant legislation.

33. These Laws (from now on collectively called Natural Resources, NR, legislation) provide an important legal foundation for enhancing and protecting the rights of local people to manage and use land and natural resources, within a participatory and democratic legal framework. They are also in line with the Local Government Law (2003), which allows local governments to manage national resources and share this responsibility with local communities and traditional authorities.

34. GoM policy since 2004-05 has been to boost the drive to decentralise development planning to province, district, sub-district (Administrative Post) and community level, this to be carried out through a participatory approach. Provincial Governments and District authorities have to prepare their development strategies, adapting national guidelines from the central government to specific provincial and district circumstances and needs. Within this perspective, the development of capacities at decentralised level has become a key element to ensure sustainable development and social equity, through good governance, implementation of the rule of law and respect of citizens’ rights.

35. Another recent pertinent event (2006) was the formulation of the second Poverty Reduction Strategy Paper (PRSP), called Plano de Acção para o Combate à Pobreza Absoluta II (PARPA II), which integrated the Millennium Development Goals into its objectives. “Good Governance, Legality and Justice” is one of PARPA’s six priority areas, and secure land and natural resources rights for the poor are recognized as an essential condition for combating poverty.

36. Back in 1999, the Government through the Ministry of Justice (MoJ) and the High Council of the Judiciary (Conselho Superior da Magistratura Judicial) set up the Centre for Legal and Judicial Training (CFJJ), as part of its efforts to improve the capacity of the national judicial system. The Centre is the leading institution in Mozambique devoted to the training of the judiciary: all graduated magistrates, including prosecutors and judges, attend a 10-month course at the CFJJ, prior to being posted in the national court system and in the Public Ministry/Prosecutor General service (PGR). The Centre, with support from different partners, has also developed into an important centre of research, training and capacity-building on a range of issues concerning law, governance and development, servicing a wide-range of stakeholders.

37. It is generally recognized that implementation of the NR-related laws has been uneven and weak. The Evaluation of FAO activities in Mozambique in 2006 stated: “A significant factor has been poor understanding of the principles and practical application of these laws by a wide range of key stakeholders, including community leaders and members, local public service officers and the judiciary. As a result, the potentially strong positive impact of these laws on local livelihoods, good governance and poverty alleviation objectives has been diminished.”⁵ Evidence made available to the MTE by all interlocutors, confirms this statement.

38. The Embassy of the Netherlands in Mozambique has been supporting coherently and

⁵ Evaluation of FAO Cooperation Programme in Mozambique 2002-2005, June 2006, FAO

effectively the NR-related legislation and good governance process for many years now, and the Project is well embedded in the overall partnership programme Mozambique-Netherlands. Intentions as expressed to the MTE, were for further commitment in the future. The Embassy is also member of the Donors' Justice Work Group: in this context, it seems to be the only donor devoting resources and attention to NR-related issues.

39. At the same time, two related initiatives seem to be on the take off lane:

- the Community Land Registration, Negotiation and Planning Support Programme, called Land Fund (Fundo da Terra para as Comunidades), is a five-donor grant of approximately US\$ 600,000-1 million/year bringing together DfID, the Embassy of the Netherlands, Irish Cooperation, SIDA, Swiss Cooperation. MINAG apparently expressed interest in contributing to it. The Fund is open to communities and civil society organisations and seeks to improve the enabling environment and capacity of government, private sector, and NGOs to provide appropriate services in assisting rural communities to register their land rights and negotiating economic benefits from land concessions. In parallel it aims to integrate land rights allocation with local development planning processes as well as linking national policy with practical pilots at provincial and district level. The Fund will be piloted in the provinces of Gaza, Manica and Cabo Delgado for five years with a mid-term review at the end of the second year.
- the Millennium Challenge Corporation will launch soon a project, mandated to provide similar assistance to communities in the Northern provinces, to carry out land-titling processes.

3 Assessment of Project Objectives and Design

3.A Justification

40. FAO has been assisting the Government of Mozambique on the elaboration and implementation of NR related legislation, through the support of The Netherlands and other donors, since GoM's very initial steps. The Organization contributed to the formulation of the Land Law, the Forest and Wildlife Law and their regulations; it supported MiCoA with its own funds through Technical Cooperation Programme projects (TCPs) for the elaboration of the territorial planning legislation (see Annex III). Overall, FAO supported 21 out of 185 local communities⁶ who have delimited their land and provided targeted support to specific delimitations that test new ideas linking land rights to community development and community-private sector partnerships⁷.

41. In 2000, concerns about the need to develop national capacities for the implementation of all NR-related Laws, identified in the judiciary system the first level of responsibility for ensuring the appropriate application of the legislation. This led to the formulation of a project aimed at mainstreaming these themes in the CFJJ curricula for magistrates. GCP/MOZ/069/NET, Support to the Judiciary in Implementing New Legislation on Land, Environment and Forestry and Wildlife, was funded by The Netherlands and implemented by FAO from 2001 to 2004. Training outputs and results of this project are still widely recognized as highly successful, by magistrates and by external observers in the Government. Project's outputs and support were also used by other FAO NRM-related interventions (see Annex 3). Among its objectives, it included the pilot training for community tribunal lay judges: this was stopped in 2003 due to the emerging possibility that the reform under preparation of the judiciary system in the country, could affect substantively this level of judgment.

42. Resources made available by stopping the training of community tribunal judges were diverted on research around case studies of more complex natural resources conflicts (involving communities and outside interests) with a view to understanding how these were handled and what the implications would be for a local level training programme aimed at community leaders and traditional conflict specialists.

43. The research was conducted in 2004, analysed about 160 conflicts and showed that even

⁶ Representing some 5-10% of the communities in Mozambique

⁷ Ibid

in the more complex cases, recourse to courts by local people was still the exception rather than the rule. More significantly perhaps, the prosecution service of the Public Ministry very rarely intervened to ensure that laws are being correctly applied by administrative agencies. Local people also tended to see the judiciary as politicized, difficult to use, or ineffective when higher level political actors were the real decision makers. It may be fair to say that information diffusion on all legislation in the country is very poor and that the judiciary is largely perceived as having a role almost exclusively in cases related to criminal cases such as murder or theft.

44. It may be worth noting here that only estimates can be made about the total number of conflicts around NR between communities and external actors in Mozambique. In theory, any concession issued for the use of NR can trigger a conflict whenever the investor does not respect the legislation and communities are aware of their rights. Indeed, it is likely that the number of conflicts will increase for some more years in those areas of high interest for investors, while the word of mouth spreads and awareness raises about communities' rights and entitlements and before concessionaires see the advantage of complying with the rule of law.

45. The research also clearly identified the gaps in knowledge and understanding of the NR-related legislations at different levels including Protected Areas and relevant training requirements, the need to empower rural communities through access to information and support at local level, the need for a new approach to local conflict management, the need to adopt an action-research approach to feed experience stemming from local level into the CFJJ normative training work.

46. These results led the parties involved in the project to agree on the formulation and funding of a follow-up initiative, to tackle issues highlighted. The new Project, GCP/MOZ/081/NET was approved in early 2005 and started in April 2005, to last three years, with a total budget of US\$ 2.4 millions. Foreseen closing date (NTE date) at the time of the MTE was March 2008.

3.B Objectives

47. The ProDoc states the Project Development Objective as follows: "Consolidate the progressive and democratizing elements of land and natural resources legislation and make more effective use of existing legal and judicial structures, thus contributing directly to good governance and decentralization in Mozambique, the alleviation of poverty, and the promotion of an equitable and sustainable development process."

48. The ProDoc proposed six Immediate Objectives, to fill the main gaps identified in 2004. These could be summarized as follows:

- Develop and implement a training package for local community leaders and members and other individuals involved in resource access and use;
- Strengthen the practical impact of district level judges and prosecutors, with training to enhance their understanding of how the three natural resources laws and other development-related laws work in practice;
- Training local government, sector officers, and "Paralegals" in i) the basic principles of the three natural resources and other development-related laws; ii) the application of these underlying principles in practical development situations; and iii) mediation and arbitration skills that can promote secure and constructive agreements between local people and new investors, etc.
- Improve arbitration and mediation mechanisms used in Mozambique, and promote understanding of how to deal with new 'diffuse' rights created through the new natural resources legislation, and the role of the Public Ministry in upholding these rights and the rule of law generally.
- Establish a monitoring and evaluation system to systematically assess a) the impact of the project training components and b) the performance of the judiciary, Public Ministry and other relevant actors;
- Support and strengthen the research and M&E capacity of the CFJJ, provide technical assistance to other sector projects requiring CFJJ support, and support the development of regional.

49. Human resources constraints within the CFJJ in 2005 led to re-thinking the structure of training and to a new proposal. Consequent adjustments of the Project Logical Framework were coherent with these decisions. Newly formulated Immediate Objectives, endorsed by the Project Tripartite Review meeting (TPR) in March 2006 were the following:

- Immediate Objective One: Develop and implement a training package for Paralegals and local community leaders and members and other individuals involved in resource access and use.
- Immediate Objective Two: Interactive training for combined groups of district judges and prosecutors, and District Administrators, to enhance their understanding of how the three natural resources laws and other development-related laws work in practice, and how each “sector” should intervene more effectively in natural resources cases.
- Immediate Objective Three: Training in the three natural resources laws and other key development-related legislation, for key local government officers in National Parks and Conservation Areas, with a focus on development impact and correct use in the context of underlying policy and juridical principles, and the mediation and negotiation of agreements and conflicts to reduce conflict and achieve sustainable social and economic development as well as conservation goals.
- Immediate Objective Four: Improve arbitration and mediation mechanisms in Mozambique, and promote understanding of how to deal with new “diffuse” rights created through the new natural resources legislation, and the role of the Public Ministry in upholding these rights and the rule of law generally.
- Immediate Objective Five: Design and establish a monitoring and evaluation system, to systematically assess the performance of the judiciary, Public Ministry and other relevant actors over the longer term, with lessons learned feeding back into the regular CFJJ training programme.
- Immediate Objective Six: Support and strengthen CFJJ research and M&E capacity, provide technical assistance to other sector projects requiring CFJJ support, and support regional linkages (including a Regional Conference).

50. The MTE considers that the new Immediate Objectives number 1, 2 and 3 improved the strategic relevance of the Project thrust, without distorting its initial mandate, thanks to the methodological innovation of bringing together different groups of stakeholders who share responsibility and interest at different levels of legislation implementation.

51. Overall, the initial and the current Logical Frameworks were coherent and consistent and targets were clearly set out. Unfortunately, almost all indicators suggested were outputs in fact, and this may have prevented the LF from being a useful management and monitoring tool of Project progress towards its Intermediate and Development Objective.

3.C Project Design

52. The ProDoc identified two core strategic principles: i) to build on and strengthen existing institutions; and ii) to enhance the capacity of a wide spectrum of actors who have roles to play in the implementation of the relevant laws and the effective realization of rights under those laws. Both were well grounded in the previous experience and were well reflected in the Project design and implementation process.

53. The Project was designed to be and is effectively implemented from within the CFJJ, which ensures the long-term institutional sustainability of its thrust on capacity development. The fact that needs for wider scope of training raised in the mean time is partly a positive result of the Project, which could not be in any case tackled by the intervention at the moment of formulation.

54. The lean structure of technical assistance foreseen – one Senior Technical Adviser, one administrator, one secretary, one driver and five national consultant trainers/researchers - has proved to be strong enough to bring added value and human resource capacities to the CFJJ, allowing in any case the Centre to be in the driving seat of the Project.

55. The decision to use Letters of Agreement to recruit staff and cover operational expenses

was perfectly in line with the aim of strengthening national capacities and CFJJ ownership of the Project, including mainstreaming of Project's outputs in CFJJ core activities. However, their intrinsic weakness as an administrative tool should have been known and some alternative arrangements, e.g. PSA contracts with staff to avoid charging LoAs with salaries, could have been foreseen to avoid delays in Project implementation.⁸

4 Project Implementation

4.A Project Budget and Expenditure

56. Total funds provided by the donor amounted to US\$ 2.43 million. By the time of the MTE, the budget balance was US\$ 1.1 million, having delivered through actuals and commitments, about 54% of the initial budget. The balance should allow funding of all activities foreseen in the 2007/08 Plan of Work.

57. In August 2006 the first Budget Revision (BR A) of the Project was prepared and approved, reflecting the modifications to the plan of work and strategy approved in the Tripartite Review Meeting in March 2006.

58. Overall delivery was delayed in 2005 due to difficulties in the management of LoAs and diversion of CFJJ resources from Project activities. This was compensated by a much more intensive rate of expenditure in 2006, which looks likely to be maintained in the remaining Project life.

59. Letters of Agreement were used to fund most in-country activities to be carried out directly by the CFJJ, including payment of salaries of Project national professional staff.⁹ This specific aspect had to be approved by FAO Headquarters (HQ). At Project inception, it was agreed to use local LoAs: these could be approved by the FAO Representation for a maximum amount of US\$ 25,000 each, and should allow faster progress on procedural steps. Five local LoAs were thus opened, four with the CFJJ and one with the NGO Kutsemba. The down side to this decision was that any single LoA would be enough to cover salaries, but no funds were left for operational costs. The first step out of this blockage was taken at the end of 2005, by preparing one LoA within the approval responsibility of FAO Regional Office (RAF) in Accra: this allowed the liberation of almost US\$ 100,000 in a very reasonable time-span, approximately two weeks. Further, during 2006 FAO HQ approved the possibility to have two LoAs open with the same institution at the same time and raised the ceiling for local LoAs in Mozambique to US\$ 50,000. The combined effects of these changes looked quite effective at the time of the MTE, and pace of implementation had improved. However, most stakeholders stated strongly that LoAs are inappropriate and inadequate administrative tools for field project implementation.

60. Initial allocation to the different budget items indicated that approximately 47% would be used for salaries of international and national staff and consultants, respectively 27%, 13% and 5%, and 24% was set aside for training activities. Equipment was maintained at a minimum of 2%, the rest being allocated to travel (10%) and support costs (13%). BR A brought about some major changes in the earmarking of funds through LoA, which increased from 13% to 35%, due to an internal transfer of the item Training to Contracts. Other minor adjustments seem to have brought the total amount allocated to salaries down to 42%. The decision to purchase cars for CFJJ Province Officers increased expenditures for Equipment from 2% to 7%.

61. In conclusion, the MTE considered that the overall pattern of expenditure was coherent and balanced against the core technical assistance and training activities thrust of the Project.

4.B Government Support

⁸ Direct fund management by the STA is still the most efficient delivery tool, though this affects negatively capacity building and ownership.

⁹ Through LoAs, funds get disbursed usually in three installments, respectively 30%, 50% and 20%. The second and third installments are liberated upon presentation of detailed financial reports on the use of the previous amount.

62. The national implementing agency of the Project was the CFJJ of the Ministry of Justice. Its commitments, as stated in the ProDoc, were as follows:

- make available counterpart and support staff, office space and equipment, and will facilitate access to Government, academia, the private sector and documents in general;
- assist in the identification of public officials to participate in project training courses and study tours, and release them from their duties as may be necessary to fully participate in said courses/tours;
- ensure the cooperation of all public institutions necessary for the successful implementation of the training and other activities under this project.

63. These commitments were met so far. Some difficulties however arose at the beginning of the Project in 2005, when the CFJJ was asked by MoJ to double its main core course for the Judiciary. This extra, unplanned work stretched the CFJJ human resources for other initiatives very thinly, including the Project, for both substantive matters and for administration. The fact that CFJJ/Project courses often take place outside Maputo, adds extra demand on staff time and availability. Since then moreover, the Centre has progressively widened its core and project funded activities, without increasing proportionately its human resources capacity. Until very recently, CFJJ resources for administration and accountability were quite inadequate.

64. The MTE mission noted during its work, how the CFJJ human resources were hugely overstretched. The simple process of identifying two weeks for the evaluation was a complex juggling exercise, and one of the key CFJJ/Project staff could not be present because of commitments abroad. The CFJJ took action in 2006 to strengthen the overall human capacity of the Centre with seconded staff from MoJ, but at the time of the MTE, there was still no certainty that this initiative would be successful.

65. At another level, misunderstandings within MoJ about the FAO cooperation agreement in Mozambique have also negatively affected Project activities. Initially, it took one year for MoJ to budget adequately import duty payment for the Project vehicle foreseen. Since the car was purchased, however, it has been sitting in the Customs of Mozambique compound, because of lack of written agreement by MoJ to have the vehicle under FAO's "property" during the Project life, as per the norm. In spite of almost another year of discussions and the request by the FAO Representation to the Ministry of Foreign Affairs to mediate, the problem had still not been solved by the time of the MTE. This situation is an obstacle to CFJJ/Project proper implementation of activities.

66. Another important gap remained to be solved by the time of the MTE. Each Loa included financial provisions for a final audit to ascertain the validity of the financial statements, to be organized by the CFJJ. In spite of a formal reminder by FAO in September 2006, no audit had yet been carried out of the five LoAs operationally closed since August 2005. The MTE team was told that this is planned for the first quarter of 2007.

4.C Project Management

67. A key event from the point of view of Project management was the sudden change of the Director of the CFJJ, at a very short notice in early 2006 at the beginning of the teaching year. The incumbent was moved back to the Supreme Court and his substitute was appointed a few months later, but because of a very unfortunate car accident, she could not be fully operational until late 2006. A definite improvement took place in last months, yet these circumstances affected during most of 2006 the overall functioning of the Centre, as well as its staff morale and the implementation process of the Project itself. In this respect, the MTE noted that the Project coordination from the CFJJ side requires strong vision and commitment, along with managerial and organizational capacities, and acknowledges that all these characteristics may not be easily found all in the same person.

68. This notwithstanding, the MTE considers that the Project management function as implemented by the Senior Technical Advisor (STA), the FAO Representation and CFJJ, was quite effective in steering the Project through most obstacles so far:

- the FAO Representation in the country played a constructive and positive role, in particular on

administrative matters;

- changes made by the CFJJ/Project to the structure of the training programme to tackle the sudden increase of CFJJ core training activities in 2005, led to streamlining courses for different actors and to more rational use of resources, all this resulting in a very effective training strategy;
- the Project seconded its administrator full time to the Centre in 2005 to support the rapid increasing workload of the Centre itself;
- the Project recruited in late 2006 an Executive Secretary for the organization and logistics of Project activities.

69. Thus, the two main causes of implementation delays, i.e. LoAs and human resource constraints in CFJJ, were mostly outside the direct control of the Project. Measures taken so far proved their worth: the MTE regrets that some of these were not adopted earlier, though admittedly only monitoring activities were substantially hampered.

4.D Technical and Operational Backstopping

70. The ProDoc established that five backstopping missions should be carried out by the two services – legal (LEGN) and Land Tenure (NRLA, ex-SDAA) - supporting the Project from a technical point of view, over the three years. By the time of the MTE, only one mission by LEGN had taken place in March 2006. Inputs from this mission were well appreciated by the Project.

71. The second and third missions should take place in spring 2007, one from each Service. Unless sudden needs arise and otherwise agreed by the CFJJ/Project after the two planned missions, it is unlikely that further backstopping will be necessary before the end of the Project: the BR that will follow the MTE should also take this into consideration.

72. The Embassy of the Netherlands in Mozambique has also shown interest and commitment to the Project, by participating actively in the TPR in 2006 and in the MTE, as well as in the progressive work of the Project. Embassy staff supervising the Project are well aware of the issues and difficulties related to the Project thrust and have brought it up recently in the Donor's Justice Work Group. This seems to be a key initial step to raise attention and play an advocacy role around these themes among peer donors and UN agencies involved in good governance.

5 Project contribution to the development objective

5.A Outputs, results and impact

5.A.1 Develop and implement a training package for paralegals and local community leaders and members and other individuals involved in resource access and use.

73. The notion of “para-legal” support at local level was introduced officially by the Project ProDoc, among the needs the new Project aimed to tackle in the overall objective of improving access to legal advice and mediation support for both communities and administrative personnel. “Paralegals” were thus listed among the Project beneficiaries, to be identified “...from existing community committees, NGO field staff, and even public agencies. They can also be private operators or be part of other services and organizations groups.” They have become de-facto key actors in the conflict resolution processes linked to the application of the NR-related laws, although no steps were taken so far for the official definition and recognition of this role.

74. The CFJJ/Project prepared in 2005 and launched in 2006 the training of Paralegal staff, through four courses in four different Provinces that exposed 91 participants, 70 from NGOs and 21 from the Public Sector, 22 women among them, to two weeks of theory and practice about the NR legislation. Contents of training focused on different aspects of legislation application, on mediation skills and participatory processes, on links between local development, food security and NRM. The

practical experience focuses on direct analysis of NR related conflicts, taking place in selected communities, with the participation of community leaders and members. Four more courses are planned in 2007, in new provinces. This was the target set in the March 2006 Aide-Mémoire, for this revised I.O. Staff from some Province Directorates of Agriculture, specifically from Geography and Cadastre and Forest and Wildlife sectors, as well as from MITUR and MiCoA, also took part in the courses.

75. The MTE met with Paralegals trained in three different provinces, all of them working with NGOs. Appreciation was unanimous, though it was clear that in the case of staff from more experienced NGOs, added value and impact were less evident. It was stated that the training had enabled Paralegals to support communities successfully in a number of conflicts, thanks to greater knowledge of the legislation, new mediation skills and overall individual empowerment. Also, their presence accelerated the process of setting-up community-level NRM Committees as well as titling and access to the legal 20% share of taxes from concessions¹⁰. Community members stressed how strengthened they felt thanks to the presence of a Paralegal close to them.

76. The MTE could not meet front line GoM staff who had participated in the training, although Province level staff from MINAG expressed praise for the initiative. Quite clearly, GoM field staff from line ministries will be less able to apply in practice their acquired knowledge and skills, because of their low hierarchical position. Interestingly, it was mentioned by Province-level staff that they could not take on a mediatory role since they are usually one of the parties in conflict.

77. Weaknesses were identified quite unanimously in the delays in distributing the Paralegal manual and other documents which were apparently promised during the training events as well as in the lack of follow up so far. The latter seems definitely an activity worthy of attention by the CFJJ/Project, since it would provide direct feedback for the manual under preparation, it could be used as an opportunity to gather information for the data-base and it would strengthen Paralegals' capacity and self-confidence. Quarterly meetings of half/one day with Paralegals in each province could greatly enhance long-term effectiveness of the training event.

78. In respect to the promising results above, the MTE was told that information about community rights and the potential and actual benefits that could flow there-from is spreading very fast, as might have been expected. This will automatically raise the demand for legal support and advice on NR-related issues at community level. The MTE thus shares the concern expressed by virtually all interlocutors, about the huge need to upscale at country level the training of Paralegals. Indeed, this seems to be one of the biggest challenges the CFJJ/Project may have to face as key element of its exit strategy.

79. Another gap mentioned by interlocutors at the different levels and widely verified by the MTE in its meetings, was the need for awareness raising, information diffusion and harmonization of understanding among GoM National and Province-level staff and private investors, on respective duties and rights inscribed within the NR legislation.

80. Last, the suggestion was made frequently, to include training for Community traditional and government leaders: they play an important role in liaising between GoM institutions and rural population and their improved knowledge on land- and NR-legislation could improve the overall implementation of the legal framework. There is however a strong counter-comment to this: such an effort would be extremely complex and costly, taking into consideration the sheer number of communities that would require such capacity development, the lack of clear cut roles and responsibilities of these local institutions, and the diversity of vernacular language across the country. Indeed, these are well known obstacles to the diffusion of information and capacity development on a wide range of topics and themes, e.g. agriculture. Further, it could also be argued that information and awareness raising about rights at community level would be a good enough step ahead, considering that the broader knowledge of legislation and public institutions necessary to assist communities in their negotiations with external stakeholders, requires educational levels not easily usually available in the communities in any case.

81. Thus, the MTE believes that under present circumstances of resource constraints,

¹⁰ Source: FAO project GCP/MOZ/027/BEL, Manica Province

outreach information across-the-board aimed at communities would be useful but they would still come short of actual needs, whereas the training of paralegal from NGOs and CBOs, looks like a highly strategic and effective solution to the problem.

5.A.2 I.O. Two: Interactive training for combined groups of district judges and prosecutors, and District Administrators.

82. One pilot training took place in October 2006, after almost one year of coordination work. This was a very innovative approach, that brought together for the first time in a common training the heads of the Administration, Judiciary, Prosecutor and Police offices from 6 Districts in Maputo and Gaza Provinces. Six more similar events are planned in 2007, aiming to cover eventually 42 Districts, out of 127 in the country (33%). This was the target set in the March 2006 Aide-Mémoire, for this revised I.O. It was decided correctly that priority should be given to Districts with high level of conflicts over NR.

83. The MTE met two participants of the first course: both were very enthusiastic about it, although they could not provide cases of improved application of the legislation, considering the relatively short time elapsed from the event. Key outputs mentioned were:

- raising awareness on land and NR legislation related issues;
- harmonization and shared understanding of legislation on land and NR;
- development of a more open attitude to interact on these and other issues with other key actors;
- development of a more attentive consideration of background context related to NR issues whenever pertinent, in the analysis of criminal cases.

84. Similar positive assessments were also expressed by representatives of the Ministry of State Administration, of the Police, of the High Council of the Judiciary, and by external observers. The Police representative stated that a module on NR legislation was going to be integrated into the training of their staff, and that two new bodies of police would soon be created, for Forest and Wild Life and for Maritime and Fresh Water Bodies.

85. The MTE noted, as also mentioned by one of its interlocutors, that the participation in the training of the District Director of Agriculture (DDA) would bring extra added value, considering the role of this institution in the community consultative process and in monitoring NR use and management.

86. The CFJJ/Project should make provisions for follow up of the first training events, possibly six months and one year later, to assess their effectiveness in the application of the NR legislation. A possible indicator could be the number of cases solved more efficiently thanks to coordination among District institutions and through the correct interpretation of the legislation.

87. In relation to this component, a previous FAO project evaluation in Macossa had indeed noticed that “confusion still existed about the respective roles of actors involved: the Committees and their guards (fiscais), the Police and the Judiciary system, partly due to lack of awareness and information at Police level about the legislations and their application modalities.” Thus, it is clear that the CFJJ/Project training at District level met a key gap in the proper implementation of NR legislation and in good governance at District level.

88. Moreover, statements by participants about their change in attitude toward wider collaboration show how instrumental the course was in developing intra-governmental cooperation or co-operative governance, thus in improving State performance and implementation of the rule of law. The MTE considers that this experience might deserve wider diffusion to increase the effectiveness of decentralization processes.

5.A.3 I.O. Three Training in the three natural resources laws and other key development-related legislation, for key local government officers in National Parks and Conservation Areas,

89. During the previous project, MITUR had requested the CFJJ to provide targeted training in the three main natural resources laws for its Parks’ and other senior managers, including their role

within the wider legal and administrative framework.

90. By the time of the MTE, the CFJJ/Project had carried out only one training event for key staff in National Parks and Conservation Areas, at the end of November 2006. The event was organized in close collaboration with the Ministry of Tourism (MITUR), who is the leading agency for Protected Areas (PAs) in the country, at the premises of the Administration of the Gorongosa National Park. Eight out of 12 national PAs were represented, seven by their administrators, one (Limpopo) by the Chief Warden¹¹. All key staff from Gorongosa participated, as well as senior staff from the Ministry. In total, 16 people of whom 3 women. The District judge of Gorongosa also took part as resource person. One more similar event is planned in 2007, thus accomplishing two third of the planned target.

91. Training contents include common understanding of the NR-related legislation for PAs, legal procedures to control and report on illegal acts within PAs, community rights in relation to PA benefits and common efforts toward diversification of livelihoods strategy, to reduce stress on local ecologies, etc. It may be useful to remind that conflicts around PAs often include human/animal conflicts.

92. The overall appreciation of staff in Gorongosa and from MITUR of the training was highly positive: it helped harmonization in understanding the spirit and the practice of the legislation and prevention of unlawful behaviour by the PA's Authorities, due to misunderstanding and isolation. One immediate result mentioned was the application of the correct, and faster, procedure to assess and process cases of poaching and illegal activities in the buffer zones (i.e. gold mining). Also, the innovative sentence of poachers to work within Gorongosa Park is bringing positive results for all parties: some of the culprits were eventually recruited as scouts by the Park itself, because of their skills and knowledge of the area.

93. It was suggested that these training events should include other staff levels from PAs, namely rangers/warden chiefs (chefe da fiscalização), sector chiefs (chefe de sector da fiscalização) and heads of community relations departments, who are operational in most PA at the moment. Also, yearly refreshment courses would be considered useful. The MTE agrees with the overall suggestion and considers that the planned training course in 2007 should widen the level of participants as suggested.

94. Further, the MTE noted and agreed with a number of interlocutors who stressed the need for further support from the CFJJ/project on the following aspects:

- diffusion of information and harmonization of interpretation on the legislation at MITUR National and Province level Directors;
- interpretation of legislation on relations between communities and Protected Areas across the country;
- identification of alleged inconsistencies between the Land Law and the Forest and Wild Life Law, if any, and contribution to any process aimed at their solution.

5.A.4 I.O. Four: Improve arbitration and mediation mechanisms in Mozambique, and promote understanding of how to deal with new "diffuse" rights

95. Within the context of the Mozambique judiciary system, awareness and tools aimed at defending diffused and environment-related citizens' rights are an area with large scope for improvement. Thus, this Intermediate Objective aimed at strengthening capacities at the upper level of the system, by using study tours to a foreign country to raise awareness and inspire change about this important field of legal rights.

96. Two study tours were organised under this component, in November 2005 and in November 2006: 12 Prosecutors, six women and six men, and three CFJJ/Project staff visited Brazil for two weeks each group. Balance was also pursued in the provincial posting of Prosecutors, though not all provinces were eventually represented.

¹¹ Two PAs were without Administrator and two were run by respective Province Director. The MTE considers these should also have been included.

97. Main objectives were to learn how the Brazilian Public Ministry operates at state and federal level, in relation to the defence of diffused or public rights, and to develop links between the Brazilian organizations for Public Ministry Graduate Schools and CFJJ. Particular attention was given to contacts with the Public Ministry in the State of Pernambuco, the Public Ministry at federal level, the Tribunal of Justice in Pernambuco, the Graduate School for the Public Ministry, the Pernambuco Centre for Mediation and Arbitration, environmental associations. Brazilian authorities welcomed the initiative and contributed actively to its success.

98. In both groups, the experience contributed to create awareness and raise attention of participants to diffused rights, to environmental, cultural and historical heritage issues, and on the active role the Public Ministry can have in relation to these topics. The Mozambican Prosecutors could note the differences in the mandate of Public Ministry in Brazil, who defends civil society and not only the State. Further, it provided an opportunity to learn about extra-judicial and faster legal instruments for conflict resolution in these sectors. Participants considered that the choice of Brazil was particularly effective, as well as the selection of Prosecutors as participants, considering the role this specific actor can play in these issues.

99. The second group noted as a weakness, the short notice they were given before departure and the lack of contact with members of the first group: both factors prevented them from facing the experience more prepared and informed, so as to make better use of this overall very valid opportunity.

100. Each group produced a report, with recommendations aimed at the integration of diffused right into the Mozambique judiciary and legal system: these range from the need for prosecutors to be duly informed and trained on diffuse rights, to the invitation to accelerate the approval of a relevant bill of law, as part of the Mozambique legislation in protection of citizens' rights, as well as the possibility to create a specialized body within the system on these issues. A seminar is appropriately planned by CFJJ/Project for April 2007, to discuss the result of these visits at a wider and higher level. This will allow analysing the recommendations formulated and drafting the road map ahead, if any.

101. The MTE considers that the seminar and possibly some related diffusion/follow-up activity should be the concluding activity under this I.O.

5.A.5 I.O. Five: Design and establish a monitoring and evaluation system, to systematically assess the performance of the judiciary, Public Ministry and other relevant actors over the longer term, with lessons learned feeding back into the regular CFJJ training programme.

102. A consultancy was carried out with Project funds in 2005, which provided better understanding among CFJJ/Project staff of the principles behind a monitoring and evaluation system, including indicators. This was highly appreciated, and a wider discussion apparently developed, on what should be the thrust of a monitoring system for the judiciary in Mozambique.

103. In late January 2006, following preliminary discussions with the World Bank on the subject, CFJJ/Project staff took part into in a Bank Workshop on Impact Evaluation. Key staff from the Higher Council for Legality and Justice and members of the Donors' Justice Work Group, were among participants as well. This occasion allowed in depth discussions about a sector wide M&E system for the Justice sector and the related impact evaluation framework, and contributed to clarify the steps forward.

104. In late 2006, specific work started to set-up a database to include NR-related conflict cases. The data base will eventually be linked to the CFJJ document repository (hemeroteca). By mid-February 2007, only cases identified during the 2004 research activity had been introduced. Up-dating the CFJJ/Project records with other information, was delayed mostly due to the difficult disbursement of funds through the LoAs in 2006. The tool looks users-friendly and very innovative in the national context: it will have to prove its worth in practice, before it will be possible to convince those outside CFJJ/Project of its usefulness.

105. The ProDoc foresees among the outputs of this I.O. a "case study database". So far, again due to cash-flow problems, no action was taken to implement this activity. The MTE considers that such a tool would be very useful and should be set up with a representative sample of case studies, to

track the performance of alternative ways to resolve NR-related conflicts over time.

106. In both types of monitoring, key elements were supposed to be the CFJJ Province Officers (see below), who should collect data and information on old and new cases, feeding this into the data base at central level. Funds disbursement problems affected their capacity to travel and collect data, thus it is not possible to assess their performance and effectiveness on this aspect.

107. Further, the MTE noted that so far no efforts were made by the CFJJ/Project to follow up and monitor results of training activities, thus missing a good opportunity to feed back any lesson learnt in successive training courses.

5.A.6 I.O. Six: Support and strengthen CFJJ research and M&E capacity, provide technical assistance to other sector projects requiring CFJJ support, and support regional linkages (including a Regional Conference)

108. The CFJJ acknowledged that the Project contributed a new vision and challenge to the work of the Centre on NR-related legislation training and proved to be a good opportunity for continuous capacity building. The Project also supported financially the participation of staff in a Research Methods Course at the CFJJ, carried out by a Portuguese university based consultant paid for under the DANIDA funding.

109. Equally, two papers presented by the STA at regional meetings, namely “Land Rights and Enclosures: Implementing the Mozambican Land Law in Practice”¹² and “Mozambique Country Case Study on Improving Tenure Security for the Poor”¹³ together with other documents at national seminars in the last two years, would have contributed to raise the profile of the CFJJ as a point of reference on land and other related legal issues. In this respect, the Regional Conference planned for late 2007 on NR-related legislation in the region, will be another opportunity for wider networking.

110. One research activity was foreseen by the ProDoc, on the gender dimension of land and natural resources access and use within the context of the HIV/AIDS pandemic (Direitos das mulheres e crianças e o impacto da HIV/SIDA). This was carried out in two steps, with funds provided by UNAIDS and methodological and technical backstopping by the Project: the first research phase included also the analysis of women’s involvement in the community consultative process. A Canadian intern from Toronto University with specific background on gender issues, who collaborated for six months with CFJJ, assisted the research process. Results are discussed later on.

111. Last, the CFJJ/Project responded effectively to demands for support coming from FAO and non-FAO projects and initiatives, on different aspects of NR-related legislation. The list includes the Belgian funded and FAO implemented project in Manica Province, the MINAG funded and FAO implemented “Support for Community Forestry and Wildlife Management (Phase II)” project¹⁴, the participation in the Steering Committee of the Africa Safari Lodge Programme, the Danida funded activities in Sofala, around Gorongosa National Park. All “clients” were enthusiastic and highly appreciative of the support received.

112. Among these, the collaboration between CFJJ/Project, the FAO project in Macossa District of Manica Province and the forward-looking concession-holder of Coutada 9, one of the hunting areas in the District, has become the first successful example in the country of collaborative NR management and benefits sharing among communities and investor¹⁵.

5.A.7 CFJJ Province Officers

113. The function of CFJJ Province Officers was foreseen in the ProDoc, to “*form the basis of*

¹² Christopher Tanner, at the International Conference The Changing Politics of Land in Africa: domestic policies, crisis management and regional norms, University of Pretoria, 28-29 November 2005

¹³ Simon Norfolk and Christopher Tanner, FAO Workshop Improving tenure Security for the Rural Poor, Nakuru, Kenya, 22-26 October 2006

¹⁴ This Unilateral Trust Fund is the follow up to GCP/MOZ/069/NET.

¹⁵ Impact Assessment of Community Based Natural Resources Management for Food Security, Case Study of Macossa District, Francesca Declich, FAO, March 2006; Improving nutrition and household food security in Manica Province, Mozambique; GCP/MOZ/027/BEL, Mid-term Tripartite Evaluation Mission, Final report, FAO, September 2006

new out-posted network for M&E and data collection". Their work-plans included: continuing case study research into natural resources conflicts, supporting implementation of the training programme, and liaising with provincial partners. The TPR in March 2006 confirmed these roles, including implementing the M&E activities and be trainers in the CFJJ/Project training team.

114. At the moment of the MTE, three Province Officers were in post since early 2006, with a regional mandate in the South, Centre and North of the country. Two of them were on the Project payroll through LoA, whereas the third was a Centre staff member. As mentioned above, their performance on monitoring was minimal, but they had a key role in the organization of the training courses.

115. An interesting development of this function took place in Sofala Province, where the CFJJ Province officer assisted partners providing legal advice and mediation function, also thanks to his academic background in Law. In particular, he assisted Danida funded Natural Resources Management Programme in their negotiations with the National Park of Gorongosa on community delimitation processes.

116. The MTE considers that a solid knowledge and understanding of legislation and legal issues seem to be key elements in the professional profile of this category of officers, considering that CFJJ Province Officers represent a centre that has a mandate on these aspects and that these skills are particularly scarce at regional and province level. The cost-effectiveness of posting CFJJ officers in conflict-ridden provinces seems to be very high considering that the mediation and advisory role these officers should play, requires frequent interaction with other actors.

5.B Gender Issues

117. The ProDoc raised very clearly the issue of poor understanding of women's and children rights in the context of the Land Law and similar other legislations, wherein customary norms and practices are fully recognised while taking a strong defensive approach for vulnerable groups. Indeed, the Land Law stresses quite clearly women's equal rights to land. Also, the 2004 research indicated the need to have a far stronger gender dimension in the new project.

118. The Project was thus supposed to include gender as an explicit part of the training packages to be developed and implemented, and through consolidating already initiated collaborative arrangements with UNAIDS and national NGOs.

119. Indeed, there is clear evidence of the efforts by the CFJJ/Project to achieve some gender balance among training participants. As mentioned above, on the occasion of study tours to Brazil, women were 50% of the participant Prosecutors, more than two times the national percentage for this profession. On the other hand, the presence of female participants in the training courses for Paralegal, District Authorities and Protected Areas was much lower, though admittedly, this was most likely due to a gender bias in the participating institutions.

120. As mentioned above, work with UNAIDS produced a research document in Portuguese, an interesting collection of cases in two Provinces, that illustrates how early deaths of spouses due to the HIV/AIDS pandemic affect women's and children's security nets and control over household's assets, in particular in urban environments. The two studies have already fed back into the training courses and the CFJJ/Project considers them to be an important platform for stronger integration of gender issues into the training programme.

121. The CFJJ/Project included and discusses women's equal rights to land extensively in the training packages for magistrates at CFJJ level; mention and discussion of these rights also takes place in the training for Paralegals, and supposedly also in the training for District authorities. The training material is still relatively thin, focusing mainly on equal legal rights at community level. While this is an essential angle, there is insufficient attention to the occurrences of gender discrimination embedded in every day practices within communities; and on the differential impact of development on men, women and children resulting from unequal control over land and property. The MTE acknowledges that the focus in these courses is on community rights, rather than individual rights. Nevertheless, raising awareness and sensitizing trainees on gender rights, needs to be complemented with more qualitative material on the influence of gender on power relations both within communities and at the

interface between communities and other public or private stakeholders. More awareness and attention to gender issues in community consultative process could improve the overall quality of the process and its long term development effects on household livelihoods. Further comments on the challenges of incorporating gender relations into the CFJJ/Project research programme are illustrated below under Old and Upcoming Challenges (5.F.2).

122. Finally, the MTE considers that gender concerns should be a key theme of the Manual for Paralegals: there is no evidence that discussions on gender during the course impressed and left a deep mark in participants.

5.C Environmental Impact of Results

123. The CFJJ/project thrust does not include – and correctly so - any analysis of the environmental impact on the natural resource base of the proper application of the NR-related legislation. Moreover, considering the generalised lack of adequate baseline and monitoring data, the MTE had no means to assess this impact at any level. Thus, apart from the little evidence already available, only general hypothesis can be formulated here.

124. The population in rural Mozambique often lacks the information and knowledge about sustainable natural resources management under increasing population pressure and changing environmental conditions. Under these circumstances, any information and awareness raising action on these topics may have a beneficial effect: for example, it was reported that local committees for NRM set-up under delimitation processes had immediate visible effects on the reduction of bush-fires, among others.

125. It is usually the case that concessions for the use of NR end up in heavier and wider exploitation of the resource base, than what was initially granted. If communities have a direct interest in the concession, it is highly likely that recognition of their rights and their empowerment through information and assistance through Paralegals will help to control and reduce illegal extraction.

126. However, the possibility exists as well that once communities get financial benefits from concessions more systematically, they might allow and even encourage wider extraction, in absence of alternative sustainable livelihoods. In these cases, GoM institutions and their partners will have to play two key roles: i) regulatory function to ensure that concessions do not undermine the resilience of the natural resource base; and ii) development function to improve the sustainable diversification of livelihoods for the rural population.

127. On the other hand, in the case of community areas overlapping with PAs, if an equitable share of benefits are transferred to the communities from tourism and hunting activities through recognition of their rights, it will be likely that communities themselves will facilitate and enforce a better control and management of the resource. The case of Coutada 9 in Macossa is an encouraging example in this sense.

128. In conclusion, there is evidence that proper assessment and monitoring systems of the state of natural resources in Mozambique should be set-up, though this area clearly falls out of CFJJ/Project mandate.

5.D Sustainability

129. In relation to the sustainability of Project's results at its primary level of intervention, the CFJJ stated that the training packages developed and implemented with the Project support are pertinent and consistent with its mandate and that they will be mainstreamed together with the relevant ToT capacity, into its core function.

130. Equally, at the level of the end users of training results, i.e. communities who benefit from better informed Administrators and from Paralegal support, CFJJ/Project efforts can be long-lasting, unless drastic changes in legislation occur and modify its basic thrust and modalities of application.

131. Another opportunity to extend the long-term sustainability of CFJJ/Project results are the initiatives by DfID and MCC around the Land Fund: Paralegals have a clear role in building up

capacity in communities and generating demand for the facilities paid for by the Funds, and better informed District and PA Authorities will facilitate the proper application of the legislation in case of conflicts.

132. In terms of financial and economic sustainability, the MTE can only observe that financial resources for the CFJJ and most of its training activities are not covered by the MoJ budget, nor is there a CFJJ line in GoM's annual budget. Equally, there are no short- and medium-term prospects that funds will be available from GoM's resources, to support up-scaling of CFJJ/Project training activities for Paralegals and District and PAs Administrators, let alone more experienced legal advice to communities or funds for delimitation and demarcation processes.

133. At the same time, the MTE believes that all these functions are the responsibility of the State, with its own resources or with assistance from its partners. The current scenario tells that in the absence of donor-led initiatives such as the Netherlands-CFJJ-FAO partnership, the Land Fund and the MCC project, the Government has no means to ensure that all citizens have equal access to the rule of law in so far NR-related legislation is at stake. This entails that at least in the short and medium-term, only donors will be the main source of resources for this area of work in Mozambique.

134. Indeed, it could also be argued that delimitation and titling processes are key elements of pro-poor policies, and investing in these could have a significant impact on sustainable development opportunities for beneficiaries, in particular rural communities. Seen from this perspective, capacity development with its multiplier effect would be a key, necessary step to facilitate these processes and good governance in more general terms.

135. Alternatively, a potential source of funds could be the tax revenue from investors/concession-holders: a fixed percentage of that could be re-invested in training and legal support to communities. In this process however, due safeguards should be set-up to ensure that the 20% ear-marked for communities from that revenue does not get diverted to finance training, legal advice and delimitation costs.

5.E Overall effectiveness of intervention

136. The MTE considers that one year before its planned end the CFJJ/Project is fulfilling its mandate and achieving most of its objectives. The ProDoc indicated sound strategic choices, which were subsequently adapted to changing circumstances, increasing the overall effectiveness of the Project training component.

137. Results so far show that trainees at the different levels are enthusiastic and feel empowered; in a number of cases, they have put into practice the newly acquired skills with positive resolution for all parties of local conflicts. Behavioural changes in professional performance were also reported. The legal advice provided to different stakeholders has a multiplier effect for CFJJ/Project efforts, reaching out at community level through other projects.

138. The Project has contributed and strengthened effectively the CFJJ capacity as a training institute, as a think-tank and researcher, as respected interpreter of the legislation in NR-related matters. Capacities were also developed on diffuse rights, which may contribute in the medium term to important changes in the thrust and action in the broader national judiciary system.

139. Last, the MTE considers that the added-value of the Project inputs in the form of technical assistance to CFJJ and the strategic relevance of the training programme have enhanced the overall cost-effectiveness of the intervention.

5.F Potential long term impact: old and upcoming challenges

140. Securing the land rights of the poor in Mozambique is the overriding concern of the CFJJ/Project, although it does not have the ambition to accomplish this directly. The MTE considers that the intervention, through its training in legal principles, its promotion of mediation and negotiation skills and its awareness-raising aspects, is playing an important role in improving the balance of power between community members and external applicants for land concessions in certain targeted situations; and that its continuation could over time make a significant impact on the tenure

security of the poor in the country more generally.

141. However, the evidence presented during the evaluation suggests that despite the CFJJ/Project and despite the legal rights clearly enunciated in the Land Law, the land rights of the majority of Mozambicans, particularly in the rural areas, remain extremely vulnerable. This area represents a major long-term challenge for all concerned. From the point of view of the CFJJ/Project., in practical terms this translates into how to scale-up the Project thrust to country-level and how to improve the training material building upon the good results achieved so far.

142. Old challenges persist in that evidence points to continued abuse of people's legal land rights and poor application of the legal frameworks. At the same time, evidence from and results of CFJJ/Project activities trigger and unveil new areas of research and intervention that should also be tackled to meet the overall objectives of the Project, i.e. deepen democracy in the area of land and natural resource rights and contribute positively to decentralisation and good governance for sustainable development. Thus, the MTE has isolated certain themes that require attention, grouped for convenience around three sub-themes. The first is the interface between the community and state or private investors and the second is the interface between members of the community. In reality, these two sub-themes interact and mutually reinforce each other. Finally, the ongoing challenges of Land Administration in the context of community and customary rights are briefly reflected.

5.F.1 Interface between community and private and/or state investors

143. One of the reported successes of the CFJJ/Project is the development of conceptual and practical tools for carrying out some of the key elements for the successful application of the Land Law (Law 19/97), viz. delimitation, demarcation, community consultation and community-investor partnerships in a participatory, democratic and interactive way; and the spreading of awareness for the correct application of the procedures set out in the Technical Annex of the Land Law. In spite thereof, problems persist, both with the correct application of the delimitation methodology and afterward.

144. Delimitation is the first important step to spatially define the legally recognised land rights held by communities, and there are strong indications that the CFJJ/Project has contributed substantially to enhance the strategic importance of this step and the correct technical application thereof, by helping to define the extent and scope of community land rights vis-à-vis developers and investors. However the extent of delimitation has been small: by 2006 delimitation had been conducted in 185 communities with 88 holding land-use certificates and a further 24 acquiring titles¹⁶. While significant, this is but a small dent in the rural population that have legally recognised land rights that require "stronger" protection through delimitation and registration. Indications are that public funds are not available to perform this essential task systematically or even sporadically, which is thus mainly being supported by donors and NGOs.

145. A continuing problem is the weak balance of power between community representatives and those of outside investors. In this respect, correct application of consultation procedures is essential. MTE's respondents reported that consultative processes are frequently flawed and can be manipulated by more powerful interests, by vested interests or through lack of skill or political will. It was further reported that State actors mandated to carry out the consultative processes, namely MITUR and MINAG, are not adequately equipped in terms of competence and methodology to perform the task appropriately. Even delimitation may not fully safeguard the rights of communities, since it was reported by one NGO that delimited boundaries were subsequently moved in favour of the concession holder. Although the MTE was unable to confirm this instance officially, the suggestion is that even delimited boundaries may remain vulnerable to later modifications by powerful outside interests and the State.

146. In this respect, a useful quote comes from the FAO Impact Assessment Study on Food Security in Macossa District: "*if such opportunity (i.e. the consultative process) is not dealt with proper skills and is not carefully managed, the entire process may result only in scarce and occasional benefits for the communities, while they become alienated from their land and means of survival*". It

¹⁶ ibid

was also reported that conditions imposed for the granting of concessions over delimited land, e.g. percentage of income, benefits in cash or kind, percentage of taxation paid by the state, etc., are frequently not respected or adhered to.

147. Other sources confirm these statements. Research papers written by Project staff and others indicate problems with concession holders acquiring prime use rights in Mozambique, for example concentration occurring on the best land as the balance of power between the communities' representatives and concession-holders is skewed in favour of the latter. A paper on Mozambique presented at a workshop at the International Institute for Environment and Development (IIED) in London in May 2006 held that consultation processes with incoming investors have been problematic: *"Community representatives (three to nine) are required to sign the consultation report, but numerous cases have been documented of wealthy business people buying off local leaders with paltry sums of money or gifts to get them to sign and thereby acquire rights to land. There are many cases of ongoing conflict between private business and community members over land and natural resource use, and in general, the private sector is not meeting its responsibilities as agreed during the consultation processes. At the moment, large-scale agriculture and timber companies are pushing smallholders onto less fertile lands or engaging them in contract farming (e.g. tobacco and cotton) where they do not get a fair price for their produce, or providing extremely poorly paid employment on forest concessions, while limiting community use of forest products."*¹⁷

148. In summary delimitation is increasingly proving to be a critically important step in the process of defining the extent and scope of community land rights. Though not required by law, it has shown to be an essential defence of land rights in the face of demands for land by investors and as a potentially useful strategy to define community-park relationships. Yet: (a) it is not happening across the board and is not being systematically supported by the state (b) it is in any case only the start of an ongoing process to secure the rights that the law recognises. These concerns require further monitoring by "super-partes" institutions. In addition, monitoring and analysis seems to be necessary in the case of a reportedly "grey area in the law" concerning the rights of use that investors acquire in cases where they negotiate commercial contracts on community land. The question of subleasing is emerging as a potential solution.

149. In all cases, respondents reported a huge unmet demand for direct legal assistance in the context of relationships between communities and other stakeholders. Training of Paralegals is a key step in this direction: courses give guidance on the provision of basic advice, how to follow correct legal processes, helping communities gain access to the correct legal channels, how to serve as a bridge between communities and authorities/investors and identifying and bringing in expert legal support when needed. Thus, Paralegals from NGOs can and will play a key mediatory role in minor local conflicts and in accompanying their clients in the first steps on major complex conflicts. However, by their very nature they are not equipped with the professional competencies to give communities advanced legal advice on the possible options to defend their rights, nor to stand besides them in court when this becomes the only viable option. The MTE considers that appropriate assistance would be necessary in the form of (a) legal advice; (b) setting up legal entities where desired or needed; and (c) representation if litigation is pursued. However, neither the Centre nor FAO can fulfil this demand, because of their institutional mandate. The need for direct professional legal assistance in complex cases is thus indicated.

5.F.2 Interface between members of communities

150. Testimonies of most respondents pointed to a high probability of problems concerning intra-community conflicts and land rights. Examples include the distribution of same amount of financial benefits through tax revenue to small and large "sub-communities" within the same demarcated area; traditional authorities allocating a fixed percentage of that income to themselves; intra-community disputes, etc. Yet the CFJJ/Project has to date not grappled at a concept level with

¹⁷ Nhantumbo, I (2006), Securing Land Rights: How are rural and urban communities in Mozambique coping? IIED Briefing Paper, 2006

this area.

151. In this respect, the MTE's view is that delimitation as a mainly spatial vehicle for identifying outer boundaries of a "local community" does not adequately highlight the content of the inside rights within the delimited area. These rights contribute to define the delimited area's external boundaries, but by remaining invisible they "loose" weight and power. In turn, this process weakens the external boundary itself.

152. Indeed, customary rights within communities are not flat or homogenous. They tend to surface after delimitation of community land, at the moment of demarcation of private land and distributing benefits from development projects to pre-existing land rights holders. A case among others, the in-migration of newcomers into communities, especially when word gets around of a potential development project and funds distribution in a given community.

153. Though individual customary "inside" rights are all protected by the Land Law (Law 19/97) and are equivalent to a State DUAT, they are subject to customary norms and practices that may be far from equitable. In these circumstances, the initial unity of community structures becomes more fragile, interests tend to disaggregate across families, age cohorts, gender or economic interests and issues of power and authority within the community become more visible and open to scrutiny.

154. Community members have means for distinguishing differential rights, i.e. who has rights to what land, overlapping rights to different land use areas within the common property area¹⁸, etc. However, while many customary norms and practices that are well understood locally are worth preserving, others may have no relevance in the context of the contemporary political economy and others include outdated and unconstitutional violations of the rights of individual family members. In this respect, widespread abuse of women's rights, particularly widows' rights, and children and orphans rights were alluded to in the responses to the MTE.

155. Gender relations in particular are a critical aspect of land rights relations in respect of decision-making and property devolution, and these need to be better understood for the purposes of securing land rights of individual family members within communities. The CFJJ/Project is in a very good position to use its case study material for more in-depth research programmes at the household level and in this way contribute to its goals of democratising and decentralising power at the grassroots level.

156. In the light of the above, the MTE's view is that rights at community level need to be unpacked and analysed, not for purposes of delimitation or individual sub-division/registration but to clarify family rights vis-à-vis each other, particularly: i) to strengthen women's and orphans rights to use/property; ii) to define the scope and limitations of local traditional and community structures to represent rights holders in respect of decisions concerning land rights and in so doing improve and strengthen local representative structures and iii) in the context of distribution of benefits flowing from development investments on community land, to ensure equitable distribution and prevent intra-community disputes erupting.

157. The suggestion is thus that CFJJ/Project research programmes should extend to household level research in selected case study areas. The challenge here is research aimed at capturing and understanding local practices concerning rights allocation and use, holding and devolution of property, with the purposes of developing decentralised land administration systems (see 5.F.3) and for monitoring the extent of possible customary discrimination or abuses against certain categories of people, such as widows, orphans, children and others that may be identified.

158. These considerations and concerns should be mainstreamed in the training of Paralegals, by providing them with special tools to defuse these potentially conflicting situations before they erupt into open intra-community antagonism. Other aspects that would deserve particular attention in training are the following:

- a. the question of fair and uniform adjudication procedures for the confirmation of customary rights in the event of disputes;
- b. building representative local organisations.

¹⁸ Common property is not parcelled into individual farms or plots and boundaries are more fluid

159. The MTE also suggests that the scope of CFJJ/Project should be widened to include Family Law, Property Law and Succession Law. Some preparatory research and consultation will be required to investigate the scope of family property within that broad arena. Customary law views the man as the head of the family and the custodian of all family assets, which means that women face problems in securing rights to land, and, in the event of the husband's death, conflicts often follow¹⁹. Furthermore, a research report (1996)²⁰ maintains that despite the Constitutional protections for gender equality before the law *"under both written law and customary norms, a patriarchal cultural model influences gender relations in succession"* indicating that even the written legal mechanisms in Mozambique have weaknesses regarding gender equality and equity in property.

160. The MTE believes that the focus on family property rights will serve a double purpose: it will make more visible, strengthen and clarify land rights of poor individual members within their community; it will strengthen the legal standing of local communities that tend to be perceived as being relatively artificial bodies with no legal standing to hold land in their own name, unless they form a legal entity, in their dealings and deliberations with more powerful outside interests and investors. The legal experts associated with the CFJJ/Project consider that the Land Law very clearly indicates that the local community DUAT is held in its own name, thus that local communities do have legal standing. However, many institutions and government officers do not accept this. Banks especially find it difficult to make the leap of faith that is needed to accept "local communities" as legal entities. This may be partly related to the relative strengths and weaknesses of rights within the communities and also between communities and other entities that have, or acquire, rights to the same resources. The MTE's hypothesis is that by strengthening the parts, i.e. the rights of individual family members and family property, the local community will be seen more clearly as a "sum of parts" with strong individual customary rights. This does not imply the mandatory individualisation, sub-division or registration of community land.

161. Introducing the notion of stronger and weaker rights to different land use areas, while complicated, could also facilitate negotiations with other stakeholders where rights overlap, e.g. in the case of commercial contracts on community land mentioned above and in Protected Areas. Delimiting community land within a Park area, which is a total protection zone where community DUATs are not recognised so far, could be done subject to a "dilution" of community rights in favour of other residential and use rights in those areas, that could become subject to co-management between community members' structures and Park authorities. Thus, the areas of community use that overlap with conservation use could be co-titled to reflect the rights and duties of each. Under these circumstances the community would be obliged to acknowledge that its rights to the park areas are weaker than its rights to its own exclusive use areas. This arrangement would protect and secure community rights in the face of the widespread opinion that community rights in PAs should be completely extinguished.

5.F.3 Land Administration issues

162. Respondents at the CFJJ/Project, NGO and community level seldom spoke of "land administration" in the context of community rights. The term appears still to be associated with the formal processes of demarcation for private users, registration, transfer of use rights in the urban context and the application and issuing of title. The potential to interrogate intra-community rights raises the need for an alternative body of land administration experience relating to customary and community land rights.

163. The work of the CFJJ/Project and antecedent interventions has amassed a considerable body of alternative "land administration" experience in the form of training manuals, experience with implementation of delimitation, mediation and negotiation at community level. This can be acknowledged as a stream of emerging "land administration" competence, with the view to further

¹⁹ Nhantumbo, I (2006), Securing Land Rights: How are rural and urban communities in Mozambique coping? IIED Briefing Paper, 2006

²⁰ Department of Gender Studies (1996) *Women and Law In Southern Africa Research Project - Right to Succession and Inheritance, Mozambique*, Centre for African Studies, Eduardo Mondlane University

expansion and possible accreditation in future.

164. However, an important element currently missing from the training objectives in this body of alternative land administration mechanisms is adjudication of rights. While the adjudication of rights that are to be formalised is more clearly set out in the Land Law, there is no comparative system of evaluating the relative strength of intra-community land rights. As these become increasingly visible, there will be increasing demand to adjudicate them.

165. Research work would thus be necessary on the building up of alternative form of evidence of people's rights to provide adjudicators with the necessary criteria for awarding rights. In other words, how do local people prove they have rights within the community and what forms of evidence they use. Based on the development of a set of evidence, the idea of a "hierarchy of rights" could be built up to standardise adjudication procedures.

166. Based on the above, although emphasis so far was correctly on arbitration and mediation, skills in adjudication of land rights in the context described above will become increasingly necessary. Future expansion of the CFJJ/Project could therefore consider a role for the development of a body of trained and accredited adjudicators. While this activity could be performed by Paralegals, these would need to be trained in specific adjudication skills and examined and accredited by a nationally recognised institution, such as the CFJJ.

167. The MTE would also like to suggest two more areas of focus for the CFJJ/Project:

- a. monitoring the strength of the legal instruments concerning land rights protection in Mozambique, especially with regard to (a) the consultation procedures in the Technical Annex to the Land Law and (b) internal rights of families and family members; the suggested case studies should provide a vehicle through which such tracking could be done;
- b. research work on more decentralised land administration systems: while not a specific objective of the CFJJ/Project, the issue strikes at the heart of its overriding goal and it would seem that more focus needs to be provided in the training materials on these matters in order to strengthen (a) intra-community land rights and (b) community land rights in relation to outside investors and the state.

6 Conclusions and recommendations

6.A Conclusions

168. The MTE considers that the Project was very ambitious and is on the right track to attain all of its objectives. Sound strategic choices were made on the level of intervention and good, solid results were achieved so far. The CFJJ/Project's commitment to the development of a permanent skills base in knowledge of the legal frameworks, and in mediation and arbitration was impressive: participants to the training events at the different levels were enthusiastic and felt empowered; in a number of cases, they had already put into practice the newly acquired skills with positive resolution for all parties, of local conflicts. Behavioural changes in professional performance were also reported. The legal advice provided to different stakeholders had a multiplier effect for CFJJ/Project efforts, reaching out at community level through other projects.

169. The choice of maintaining close collaboration with the CFJJ, following the experience of the previous project²¹ even for a more wide-ranging training approach, proved very successful. On the one hand, the CFJJ was a key and valuable player for good governance and implementation of the rule of law in Mozambique; its institutional mandate and position, the independence and integrity of its leadership, the competence and commitment of its staff, all contributed to its high profile and high quality performance. On the other hand, the Project has contributed and strengthened effectively the CFJJ capacity as a Centre of Excellence in the field of NR-related legislation and the MTE considers that this result should be preserved and fostered.

170. Equally, the MTE is aware that monitoring and research to some extent have lagged

²¹ GCP/MOZ/069/NET

behind, mostly because of financial and administrative reasons. Other key on-going activities were also delayed, in particular the publication of the manual for Paralegals, mostly due to over-stretched human resources. A number of follow-up actions will have to be included in the work-plan for 2007, to strengthen the effectiveness of training courses.

171. Interesting partnerships were developed around gender issues, with UNAIDS and University of Toronto. Also, the MTE acknowledges the efforts made to mainstream gender issues in the curricula of Paralegals and district administrators. However, considering the formidable challenge gender equity represents in rural Mozambique, the issue was not captured and absorbed to the desired and necessary extent by participants to the training courses and more will have to be done on this key theme.

172. The MTE sees also a number of challenges that should be tackled by the CFJJ/Project, of old and new nature: some are of a structural nature, intrinsic to the legislation itself; some resulting from the positive evidence of the value and effectiveness of CFJJ/Project training; others stemming increasingly from the acquisition and enforcement of community rights.

173. Among these, a major operational challenge is the up-scaling of training capacity to meet needs expressed for awareness raising, information diffusion and harmonization in the application of NRM-related legislation at the different levels, in particular for Paralegal and District levels. There is no doubt that the CFJJ, in accordance with its core functions of training of the judiciary, should maintain and strengthen its research and think-tank role on strategy and methodology for developing capacities in the country on NR-related and other legislation. However, the CFJJ direct involvement in wide-ranging training across the country at different levels could change quite substantially, following decisions of a more political and strategic nature. The MTE sees three possible options in this regard:

- a. CFJJ will be directly mandated with the responsibility for country-wide training at different levels on NR-legislation. This would require larger financial autonomy, strengthening the Centre's human resources on training at different levels and its administrative, organization and logistics capacities. Although a possible solution would be focusing on Training of Trainers from different institutions responsible then for wider dissemination, the MTE considers this option raises considerable risks of overloading the Centre directly with organizational and implementation tasks that are not fully pertinent and relevant to its core valuable thrust of Centre of Excellence and think-tank.
- b. a "subordinate institution" is created within CFJJ or within MoJ, responsible for implementing training activities across the country at different levels; this would be financially autonomous, with strong capacities on training, organization, administration and logistics. Technical contents and training methodology should be responsibility of the CFJJ and close coordination between the CFJJ and the new institute would ensure mutual exchange of experience. This option would allow maintaining the highly valuable proximity of image with the CFJJ and would facilitate cross-fertilization between the two institutions. One possible obstacle to this option would be the institutional basis for setting-up the Subordinate Institution within the CFJJ or MoJ.
- c. an independent non-profit organization becomes the responsible institution for wide ranging training, with full financial autonomy. Training strategy and methodology would be agreed with CFJJ, fed by the Centre's research and manual production activity; actual training activities would respond to demand and funds by donors and development partners.
- d. under all options, a system of CFJJ supervision and certification of Paralegal trainees should be set-up, i.e. all trainees coming out of the CFJJ-trained Trainers' courses, or out of the Subordinate Institute or out of the non-profit organization would have to sit through a CFJJ managed exam before being issued the certificate of training. This would ensure uniformity and quality of preparation, as well as strengthen the institutional role of Paralegals and pave the way to the accreditation of this profession.

174. A second major challenge is the need of communities for legal advice in the case of complex conflicts, representation in court, and setting up legal entities. Possible scenarios for this function seem to be as follows:

- a. no specific intervention is envisaged at all and communities through access to the Land Fund,

obtain advice and assistance from professional advocates.

- b. the CFJJ develops a specific training package for middle- and senior level staff from NGOs or other sectors, to raise their capacity aiming at the model of “Higher level paralegal”, to be played from within each organization;
- c. a non-profit organization develops its competencies and skills in this field, possibly along with competencies in training along the lines defined by the CFJJ. This scenario echoes closely a proposal made to UNDEF through FAO-Mozambique by an NGO linked to CFJJ, to support setting-up a network of “pro-bono” lawyers assisting communities in land rights and the like.

175. In relation to the challenge above, the MTE mission is aware that at the moment of writing, different initiatives exist or will become operational soon, with similar concern about making available legal advice at community level. In order to avoid duplication of efforts and repetition of experiences, the analysis above should be coordinated with them, namely:

- the imminent initiative by MoJ through the Instituto do Patrocinio e Assistencia Juridica (Institute for legal assistance, IPAJ), to formulate a national strategy to provide legal assistance to deprived citizens. The Mission is not fully sure whether communities as such would be one of the target groups within the strategy. Should this be the case, exchange of information with the CFJJ around this issue would be advisable;
- the set-up of the Land Fund for Communities aimed at the Southern Region, funded through a multi-donor trust fund, to support communities in delimitation and demarcation activities, with legal advice and for local development initiatives;
- the start-up of a project funded by the Millennium Challenge Corporation in the Northern Region, with similar objectives to the Land Fund above.

176. Challenges related to structural legislation inconsistencies and incompleteness, along with those linked to the acquisition of rights and sharing of benefits and land administration, should be tackled through the action-research programme under the CFJJ/Project umbrella, on selected case studies, whose result should be diffused through publications and fed back into the Centre’s training courses. Partnerships could also be developed with appropriate national and regional University institutes or other specialised research institutions dealing with these issues. The MTE believes that mutual exchange of experience would enrich the Project’s focus.

177. Last, the MTE sees added value in the continuous involvement of FAO into this field of action in Mozambique, in terms of knowledge acquired, strategic vision and honest broker role, all matching and strengthening CFJJ own profile. Unfortunately, the same cannot be said in terms of operational capacities, though some recent changes in regulations and procedures could pave the way to further improvements.

178. Moreover, the Project is proving to be quite a unique experience for FAO and possibly at the international level, on training for the good governance and rule of law of NR related legislation. This valuable experience can feed back into FAO normative work, thus becoming available to other countries.

6.B Recommendations

179. Recommendations are addressed to all and each stakeholders, for ease of reference.

To all parties: the Embassy of the Netherlands, CFJJ, FAO, the Project

180. The MTE recommends that 18 months extension be granted to the Project starting from currently planned NTE date, with additional budget to cover technical assistance, training and research activities based on the level of delivery foreseen in 2007, approximately US\$ 1,200,000.

181. A revision of the plan of activities and budget should be done as soon as possible, to reschedule the current plan of work over two years (March 2007-March 2009) to include new activities as follows:

- i. support to the process of revision of the CFJJ mandate, structure and statute, to include an adequate analysis of the institutional and financial implications of the options illustrated above, and any other considered pertinent, through a specific consultancy;
- ii. follow-up on the above consultancy, to support implementing the selected options for training and legal advice to communities, to take-off and be operational for at least one year;
- iii. if necessary after consideration of probability and timeliness of alternative sources of funding (e.g. Norway), recruit a full time gender specialist to support mainstreaming of gender issues and analysis in all training and research activities by the CFJJ/Project;
- iv. prepare, organize and implement one awareness raising and information diffusion event at Ministers level, for all concerned ministries and GoM institutions;
- v. prepare, organize and implement information and awareness-raising seminars at regional level for Province Governments and Administrations, on NR-related legislation;
- vi. develop collaboration with investors- and business-representing bodies, such as Chambers of Commerce, to identify best ways to diffuse information among their members and constituency, on rights and duties under the NR-related legislation;
- vii. develop research around the key challenges identified on the interface between community members, including unpacking intra-community rights, gender and equity relations and integration of family law in the NR-related legislation, integration of alternative Land Administration processes, including adjudication.

To the Ministry of Justice and to CFJJ

182. The MTE recommends that efforts be made to strengthen on a permanent basis the core human resources capacity of the CFJJ, to enable it to face the increasing demand on its delivery, maintaining the quality of its performance.

183. The MTE recommends that the CFJJ includes in its planning exercises a three to five year-term plan of training for the judiciary and other categories of beneficiaries.

To the Ministry of Agriculture and the Ministry of Tourism

184. The MTE suggests that MINAG and MITUR should improve and harmonize the methodology followed for community consultative process, including awareness raising and training on participatory processes, gender and social inequalities issues, etc. The CFJJ could assist the two ministries based on its wide experience in participatory training and NR-related legislation.

185. The MTE also suggests that staff trained as Paralegals from both GoM and NGOs/CBOs should be increasingly entrusted with the responsibility for directing and managing the consultative process between external actors and communities, to avert from the beginning any potential conflict, insofar as possible.

To the Embassy of the Netherlands in Mozambique

186. The MTE recommends that the Embassy of the Netherlands continues its dedicated commitment to the good governance of NR-related legislation in Mozambique and assumes and advocacy role on this subject with other members of the Donors' Justice Work Group in the country.

To CFJJ and the Project

187. The MTE team recommends that the following activities be included in the CFJJ/Project plan of work, irrespective of any additional fund allocation and extension of external support²²:

- i. finalise the Paralegal manual;
- ii. strengthen the presence of the CFJJ at region/province level, according to requirements, by

²² These are not listed in order of priority, since they could be implemented simultaneously

- defining better profile and terms of reference for this function;
- iii. set up a system of follow-up for all typologies of training, adequate to each type of training, to enhance their long-term effectiveness;
- iv. include in the District level training, the District Director of Agriculture, to bring in their competence and knowledge of local NR use and to harmonize with this key institution, understanding of the legislation spirit and implementation;
- v. support further the Ministry of Tourism and Protected Areas Administrations, with legal advice and by expanding the target audience of the next training course, to improve their understanding and practice within their mandate, of the NR-related legislation;
- vi. assist MITUR and MINAG in discussing different interpretations and inconsistencies, if any, in the NR-related legislation, and if the case, in solving them in the best possible manner;
- vii. build up a baseline of data on certain selected case-studies, to monitor through appropriate indicators changes over time of communities' behaviour in selecting channels of assistance in dealing with NR-related issues and conflicts, as well as the performance of different solution routes (including the judiciary) and the overall result in securing communities' property rights.
- viii. share information and experience on lessons learnt through the Project with other international institutes and civil society institutions dealing with similar problems concerning land rights legislation and implementation in the context of land and legal reform in Africa.

To FAO in Mozambique

188. The MTE team recommends that the FAO Programme in Manica makes available funds for the completion of the delimitation and titling process of communities around the Coutadas in Macossa District and at Quinta das Laranjeiras in Chimoio, to allow them full access to any due entitlement under the current legislation and its practice.

189. The MTE suggests that FAO in Mozambique pursues advocacy activity on NR-related issues with GoM, other UN agencies and donors, from the different perspectives, i.e. natural resources assessment, monitoring and management, links between NR and food security, gender issues, good governance of this sector.

To FAO

190. The MTE team recommends that FAO Administration and Finance Department and Audit follow up closely the advantages and risks stemming from increased flexibility in LoA arrangements, including more than one LoA at each time with the same institution.

191. It also recommends FAO to improve further the flexibility of administrative tools available for field project implementation, within the safeguard of guarantees for proper use of resources, as proposed by the Country Evaluation of FAO activities in Mozambique, namely: *“Adoption and use of a Memorandum of Understanding, for transferring the responsibility for some operational activities, and managing and disbursing the related funds to a national entity.”*

192. The MTE recommends to LEG, SDAA and any other concerned entity in FAO, to draw lessons and guidelines from the experience of the CFJJ/Project on capacity development aimed at legislation implementation, and make them available to others by mainstreaming them into their normative work at global level and in their field work in other countries.

Annexes

Annex 1 - Terms of Reference
for a Joint Evaluation Mission by The Government of the Kingdom of the Netherlands, FAO, and
the Government of Mozambique

GCP/MOZ/081/NET

***“Decentralised Legal Support and Capacity Building to Promote Sustainable
Development and Good Governance at Local Level”***

1. Background

With support from the Embassy of the Kingdom of the Netherlands, since April 2005, FAO has been providing technical assistance and other implementation support to the Centre for Juridical and Judicial Training (CFJJ) of the Ministry of Justice, Government of Mozambique.

This cooperation builds upon the success of a previous project that focused on training the Mozambican judiciary in new laws on land, the environment, and forest and wildlife. In its final year this project (2004) included a research study of land and natural resources conflicts, and managed two smaller research exercises funded by the FAO Livelihood Support Programme (LSP), and UNAIDS.

This research examined the role of the judiciary and other actors in natural resources conflicts (including public administrators and the police); and awareness amongst local people of their basic rights, and how to use them in practice. A key issue is whether or not local people know how to use the existing legal and judicial system to defend their rights when threatened or abused. The UNAIDS study also looked at the resource rights of women and how these are increasingly at risk due to the HIV-AIDS pandemic.

The research indicated a need for a follow-on project that would build upon the strengths of the first project, while refocusing training and capacity building on local level and district actors. This is the project now being reviewed.

1.1 Objectives

The project will deepen the understanding of their rights amongst local people, and how they can use them in practice to achieve concrete development and governance objectives. It will also strengthen the capacity of judicial and other key actors to correctly implement the natural resources laws, and intervene appropriately in conflicts in line with their specific institutional and constitutional mandates.

Development Objective

‘Consolidate the progressive and democratizing elements of land and natural resources legislation and make more effective use of existing legal and judicial structures, thus contributing directly to good governance and decentralization in Mozambique, the alleviation of poverty, and the promotion of an equitable and sustainable development process.’

Immediate Objectives

1. Develop and implement a training package for local community leaders and members and other individuals involved in resource access and use, enhancing awareness of their rights, and how to use and defend these rights either through constructive engagement with State and other interests seeking to use local resources, or when necessary, by recourse to legal and judicial institutions.
2. Strengthen the practical impact of district level judges and prosecutors, with training to enhance their understanding of how the three natural resources laws and other development-related laws work in practice, including: working with customary specialists and deal with customary norms and practices; intervening more proactively in civil cases (thus upholding *all* laws, not just those

regulating theft, assault etc.); and providing technical legal advice to local administrative staff as they implement development activities using the new laws.

3. Training local government, sector officers, and ‘para-legals’ in i) the basic principles of the three natural resources and other development-related laws; ii) the application of these underlying principles in practical development situations; and iii) mediation and arbitration skills that can promote secure and constructive agreements between local people and new investors etc.
4. Improve arbitration and mediation mechanisms used in Mozambique, and promote understanding of how to deal with new ‘diffuse’ rights created through the new natural resources legislation, and the role of the Public Ministry in upholding these rights and the rule of law generally.
5. Establish a monitoring and evaluation system to systematically assess a) the impact of the project training components and b) the performance of the judiciary, Public Ministry and other relevant actors, with results feeding back into improved project training and materials development, and the CFJJ core training programme.
6. Support and strengthen the research and M&E capacity of the CFJJ, provide technical assistance to other sector projects requiring CFJJ support, and support the development of regional linkages (including holding a Regional Conference), and provide capacity-building support at a time when the CFJJ itself is investing in a new building to house the Research Department with State General Budget funds.

Once implementation began, it quickly became clear that the CFJJ timetable and other capacity constraints could not accommodate the range of activities foreseen. Management team discussions resulted in a proposal to simplify the activities in a way that did not change the objectives *per se*, but made implementation easier. The proposal was discussed in an *ad hoc* tripartite meeting held in March 2006, and the following modifications were agreed:

- New Immediate Objective One: consolidating the community and paralegal training foreseen in Immediate Objectives One and Three into a single ‘paralegal’ training with both civic education and legal support functions at community level (no change to the previous underlying objectives)
- New Objective Two: combining the 6 regional-level trainings for district administration officers (Immediate Objective Three) and the training of judges, prosecutors and other relevant actors (Immediate Objective Two) into 7 regional-level trainings for all these categories of district-level officer (the objective has a clearer focus on clarifying the respective roles of each group in conflict prevention and resolution, and on deepening their understanding of the natural resources laws as they affect local level development and governance issues)
- New Objective Three: training for National Park and Conservation Area managers (Immediate Objective Three) as a stand-alone exercise, which complements and is conceptually part of the overall training programme to improve implementation of the natural resources laws and achieve the Development Objectives above.

1.2 Activities and Outputs

Activities and Outputs have been restructured to reflect the March 2006 agreement²³. The result is an integrated package of training aimed at key actors at different levels, backed up by case study research, and capacity building.

1. Immediate Objective One: Develop and implement a training package for paralegals and local community leaders and members and other individuals involved in resource access and use.

²³ The original set of Activities and Outputs is available in the Project Document.

Activities:

- Develop and field test a training package, using data and material from earlier research supported by FAO/Netherlands in GCP/MOZ/069/NET
- Train selected public sector and NGO staff as paralegals, including participatory training and mediation techniques
- Carry out community level training as part of the paralegal courses
 - Design appropriate training materials to use in future courses
 - Produce materials for all project-supported trainings over three years

Outputs:

- Tested and improved training package
- 8 regional-level trainings for paralegals (160 paralegals trained)
- 4 community level meetings as part of the paralegal courses (32 communities with paralegal support initiated)
- Methodology developed for implementing training over the longer term (frequency, location, collaborative relationships with other institutions etc)

1. Immediate Objective Two: Interactive training for combined groups of district judges and prosecutors, and District Administrators, to enhance their understanding of how the three natural resources laws and other development-related laws work in practice, and how each 'sector' should intervene more effectively in natural resources cases.

Activities:

- train district level judges and prosecutors, and District Administrators in key principles of the natural resources
- develop an interactive training programme with district level officials from the main sectors of 'the State' (executive, judiciary) to better understand their respective roles in law implementation and conflict resolution
- enhance the way district level officers work with customary practitioners and consider customary legal principles within their casework

Outputs:

- 7 interactive training seminars for District judges and prosecutors (150 district officials taking part in seminars)
- clearer understanding of the roles of each district level 'sector' in natural resources cases (implementation of the laws and conflict resolution)
- 150 district officers trained in mediation and arbitration skills
- improved understanding of the technical and operational relationship between customary legal systems and specialists, and the formal system
- a longer-term training package integrated into the CFJJ programme

1. Immediate Objective Three: Training in the three natural resources laws and other key development-related legislation, for key local government officers in National Parks and Conservation Areas, with a focus on development impact and correct use in the context of underlying policy and juridical principles, and the mediation and negotiation of agreements and conflicts to reduce conflict and achieve sustainable social and economic development as well as conservation goals.

Activities:

- design training packages for National Park and Conservation Area managers
- two five-day training seminars for National Park and conservation area managers, that includes the Tourism and other relevant legislation as well as the three core natural resources laws
- develop training materials '*in-situ*'
- refine and produce training materials for use in future CFJJ programmes and by other interested parties (public sector, NGOs etc)
- develop a methodology and plan for the longer-term implementation of this overall training package

Outputs:

- two seminars carried out (40 managers trained)
- clearer understanding of basic principles of the laws and how to implement them
- training packages developed with plans to continue working with sector

4. Immediate Objective Four: Improve arbitration and mediation mechanisms in Mozambique, and promote understanding of how to deal with new 'diffuse' rights created through the new natural resources legislation, and the role of the Public Ministry in upholding these rights and the rule of law generally.

Activities:

- training of judges, prosecutors and other relevant actors in basic mediation and arbitration skills (now integrated with Objective Two seminars)
- send Mozambican judges and prosecutors on short courses in Brazil
- exchange visits by CFJJ trainers and researcher to study small-claims and mediated settlement processes in Pernambuco
- visits to Mozambique by Brazilian judges and specialists

Output:

- 10 Mozambican judges/prosecutors sent on short study visits
- 4 study visits to Brazil by CFJJ staff
- clearer understanding of the evolving role of the Ministerio Público in relation to upholding the law, with roots in the effective use of new natural resources legislation by civil society and community groups
- district level judicial and prosecution service officers trained in mediation and arbitration skills (within Objective Two courses)

5. Immediate Objective Five: Design and establish a monitoring and evaluation system, to systematically assess the performance of the judiciary, Public Ministry and other relevant actors over the longer term, with lessons learned feeding back into the regular CFJJ training programme.

Activities:

- design an appropriate M&E system, including indicators, analytical framework and research capacity, to:
- assess the impact of project training, and contribute to the development of final training and materials packages
- assess the performance of judicial officers and institutions in a systematic way with feedback into improved procedures and performance over the longer term

- establish the existing database of conflicts and case law (jurisprudence), and a system for systematically adding to this database over time
- provide technical support to the design and maintenance of these systems

Output:

- M&E system designed and operational, with CFJJ staff to maintain it
- training impact assessed with resulting improvements incorporated into training and materials packages
- case database established and functioning within a long-term sustainable framework
- feedback into the CFJJ regular programme
- reports and recommendations as appropriate, including recommendations to the judicial and Public Ministry directorates
- more effective longer-term performance of judges and prosecutors

5. Immediate Objective Six: Support and strengthen CFJJ research and M&E capacity, provide technical assistance to other sector projects requiring CFJJ support, and support regional linkages (including a Regional Conference).

Activities:

- recruit and contract a national coordinator/researcher to support the overall programme and supervise the field activities
- recruit and contract four national researchers to form the basis of new outposted network for M&E activities and data collection
- carry out research into selected key issues, notably the gender dimension of land and natural resources access and use and the impact of the HIV/AIDS pandemic in this context
- provide technical support as required to partner FAO supported projects and other sectors at their request (costs supported by requesting agents)
- organize and implement a Regional Conference on the role of the judiciary in land and natural resources issues
- capacity building of general research capacity
- create a capacity to design and produce innovative material based on fieldwork and other CFJJ activities, and contribute to strengthening the CFJJ website and online material
- provide equipment to support the project activities, including one field-capable vehicle, three field motorbikes, computers and audio-visual equipment

Outputs:

- National coordinator recruited and contracted for three years
- Four national researchers contracted for three years
- Technical support to requesting partner projects and sectors, with results achieved and reports
- Key issues identified and reported on (women's rights, HIV/AIDS etc)
- Regional Conference carried out and proceedings document produced
- Case-database installed and expanded as a regular activity
- Capacity for materials development, including methodologies, manual design and working with graphic-design and publishing houses
- CFJJ website strengthened and with new material
- Field-capable vehicle supplied; four field motorbikes supplied
- Five computers and accessories supplied
- Audio-visual training and other research equipment supplied

2. Purpose of the Evaluation

As the project enters its final year, the evaluation will assess progress towards the declared objectives of the project, and the relevance of the project and its activities in the current context of equitable and sustainable development and good governance in Mozambique. The evaluation should also look at the national institutional and legal framework for natural resources management, and the way in which the project is contributing to the implementation of this framework and identifying relevant policy issues.

While the mission may recommend changes in project implementation if evident operational difficulties are identified, a more important objective is to provide recommendations to the Government, FAO and the donor on how the activities initiated by the project can be consolidated and sustained. In this respect the mission will also assess the need for further external assistance to consolidate progress and ensure achievement of both the immediate and longer term development objectives.

3. Scope of the Evaluation

While the Evaluation should take into account the original project objectives and activities, it should be guided by the revised training structure and activities that were defined in the March tripartite meeting, and are detailed in Section One.

The mission will assess implementation against these objectives, and the relevance of the project and its objectives to development priorities and needs in Mozambique today. The following aspects will be taken into account:

a) Clarity, and realism of the project's development and immediate objectives, including specification of targets and identification of beneficiaries and prospects for sustainability.

b) Quality, clarity and adequacy of project design including:

- clarity and logical consistency between, inputs, activities, outputs and progress towards achievement of objectives (quality, quantity and time-frame);
- realism and clarity when specifying prior obligations and prerequisites (assumptions and risks);
- realism and clarity of external institutional relationships, and in the managerial and institutional framework for implementation and the work plan;
- likely cost-effectiveness of the project design.

c) Efficiency and adequacy of project implementation including: availability of funds as compared with budget for both the donor and national component; the quality and timeliness of input delivery by both FAO and the Government; managerial and work efficiency; implementation difficulties; adequacy of monitoring and reporting; the extent of national support and commitment and the quality and quantity of administrative and technical support by FAO.

d) Project results, including a full and systematic assessment of outputs produced to date (quantity and quality as compared with workplan and progress towards achieving the immediate objectives). The mission will especially review, the status and quality of work on:

- Paralegal training and related community level work
- Other training activities and how these complement the overall training programme
- The Brazilian exchanges and their relevance to the overall programme
- Gender aspects, insofar as the project addresses the rights of women over resources and how these can be strengthened and defended
- Project support to the Monitoring and Evaluation objectives, and the research and technical assistance role of the Counterpart

- e) The prospects for the beneficiaries (government and NGO staff, and communities covered by the project) and the host institution sustaining project results after the termination of the project. The mission should examine in particular:
- The response to and demand for the kind of activities being developed by CFJJ with project support
 - The socio-political and technical context of CFJJ activities supported by the project and whether longer term follow-up is needed or advised
 - The innovative nature of the programme being developed by the host institution with project support
 - The way in which the project has complemented other activities and programmes (in the specific context of rural development activities outside the host institutions)
 - The prospects for these synergies to be maximised after the termination of the project
 - Potential effects of GoM decentralization policy and wider development strategies on project results, as well as the contribution of the project itself to these processes.
- f) The cost-effectiveness of the project (*see definition in Annex 1*).
- g) Any other matter the Evaluation will consider useful and pertinent

Based on the above analysis the mission will draw specific conclusions and make proposals for any necessary further action by Government and/or FAO/donor to ensure sustainable development and the full use of the achievements and outputs of this project. This assessment will include any need for additional assistance and activities of the project prior to its completion.

Note that any proposal for further assistance should include clear specification of objectives and the major suggested outputs and inputs.

The mission will also draw attention to any lessons of general interest, within the immediate sectoral context of the host institution programme, and the wider rural development and food security context of the FAO programme in Mozambique.

4. Composition of the Mission

The mission will include team members with the following areas of expertise and skills:

- Evaluation of training and participatory development programmes;
- Technical knowledge in development law;
- Legal literacy and the role and integration of customary norms and practices in the modern day policy and legal context
- Implementation of land and natural resources laws;
- Institutional context of rural development and land and resources administration in Mozambique.
- Community development issues
- Participatory training approaches;
- Gender issues in the rural development and natural resources context;
- Rural development;

Mission members should be independent and have no previous direct involvement with the project either with regard to its formulation, implementation or backstopping. Tentatively, mission member profiles will be as follows:

- Team leader (FAO): degree level specialist with experience of evaluating training and participatory development programmes, in the context of implementing land and natural resources legislation and policy in practical development situations; familiarity with judicial and legal questions in a development context; technical background in development law or some other related social

science discipline, including rural development and community level issues; at least eight years of professional experience, including team leader experience in project and programme evaluation.

- Government team member: degree level specialist with experience of the implementation of land and natural resources laws, including the institutional context of rural development and land and resources administration in Mozambique. The government team member must have practical experience of community development issues, **and be familiar with participatory training approaches**. Familiarity with the justice sector and legal procedures in Mozambique is also required. Technical background in law, rural development, or related discipline, with at least four years of senior level experience.
- Donor team member: degree level specialist in the implementation of land and natural resources laws, with experience of community level work and related policy issues, including decentralisation and local economic development, legal empowerment and the role of indigenous and customary laws and practices in a natural resources context. Experience also in institutional capacity evaluation and project implementation. Technical background in rural development, programme design and implementation, or related technical area, with at **least eight years senior level experience**.

At least one member of the team should have specialist or significant additional experience and expertise in gender issues. Specific experience of the problems faced by rural women in accessing and using land and natural resources is important in the context of this project.

5. Timetable and Itinerary of the Mission

The Evaluation Team will assemble in Maputo, with initial travel arrangements planned so that the team can have briefing meetings at the FAO Representation on the morning of Monday 12 February 2007, and at the CFJJ. The outline tentative itinerary will be as follows:

12 February:	Team assembles at FAO for initial briefing and to meet the STA and National Coordinator (morning) Team meets with the Host Institution Directorate for briefing and to discuss workplan (afternoon)
13 – 20 February:	Evaluation work including field visits to two communities and provincial level NGOs, District Administrations and District judicial officers involved in the project
21 February	Report writing
22 February:	Discussion of preliminary findings and recommendations
23 February:	Departure
5 March:	Circulation of final draft report

6. Consultations

The mission will maintain close liaison with the Representatives of the donor and FAO and the concerned national agencies, as well as with national and international project staff. Although the mission should feel free to discuss with the authorities concerned anything relevant to its assignment, it is not authorized to make any commitments on behalf of the Government, the donor, or FAO.

7. Reporting

The mission is fully responsible for its independent report which may not necessarily reflect the views of the Government, the donor or FAO. The report will be written in conformity with the headings shown in Annex 3.

The report will be completed, to the extent possible, in the country and the findings and recommendations fully discussed with all concerned parties and wherever possible consensus achieved.

The mission will also complete the FAO Project Evaluation Questionnaire.

The mission leader bears responsibility for finalization of the report, which will be submitted to FAO within two weeks of mission completion. FAO will submit the report to Government(s) and donor together with its comments.

Annex 2 - Key persons met by the MTE

Maputo

CFJJ/project

Dr Maria Benvinda Levi, CFJJ Director
 Dr Christopher Tanner, STA GCP/MOZ/081/NET
 Dr Sergio Baleira, National Project Coordinator
 Dr Fernando José Fidalgo Cunha, Head of Training Department
 Dr Carlos Serra, CFJJ trainer and natural resources legal expert
 Dr André Jaime Calengo, consultant in land and natural resources laws
 Mr Win Neelman, consultant in statistics and database design
 Dr Terezinha da Silva, former Assistant to the Director, now with Women and Law in Southern Africa (WLSA)
 Dr Jafar Mussa, CFJJ Administrator
 Dr Saturnino Samo, Sofala Province Officer, lawyer and CFJJ trainer-researcher
 Mr Altino Moisés, Province Officer, researcher
 Mr João Paulo Azevedo, Province Officer, researcher
 Dr Joaquim Fumo, Head of Research Department
 Mr Assane Mamade, Province Officer, researcher
 Ms Irene Almeida, Database and documentalist-researcher
 Ms Gizela da Silva Reis, Project Executive Secretary
 Mr Custodio Myssareka, IT officer

Royal Embassy of the Netherlands in Mozambique

H.E. the Ambassador Frans Bijvoet
 Mr Peter Flik, Head of Cooperation and Development; Deputy Head of Mission
 Ms Celia Jordão, Programme Officer Sustainable Development
 Mr Bastiaan Engelhard, Political Affairs

Ministry of Justice

Dr Macamo, Deputy Prosecutor General
 Dr Sandra, Secretary of the High Council of the Judiciary
 Dr Eleonora Niantamba, Prosecutor
 Dr Gloria Cadamo, Prosecutor
 Judge Helena Kida, Chibuo District

Ministry of Tourism/DNAC

Ms Julieta, Chief DNAC
 Mr Adolfo Lichuga

MINAG/DINATEF

Dr Raimundo Cossa, Deputy National Director

Ministry of Local Administration

Mr Placido Pereira, Deputy National Director

Ministry of Domestic Affairs

Mr Antonio Quissita, Training Department
 Mr Paulo Mamusse, Police Chief, Marraquene District

FAO Representation

Mr Peter Vandor, FAO Representative
 Ms Margarida David e Silva, Assistant FAO Representative

Ms Patricia Nicolau, Programme Officer
Ms Olga Silva, Operations
Ms Gaia Segola, Programme Officer

DANIDA

Ms Vanessa Saez, legal advisor

African Safari Lodge Programme

Ms Ana Dinis, programme Director

Helvetas

Mr Luis Dinis

Manica Province

Director, Manica Province Agriculture Directorate
Mr Carlos Ribeiro, Duietor, Manica Province Tourism Directorate
Chief, DPA/SPFFB
Ms Ermelinda Estefania Michofa, DPA/ SPFFB
Mr Elenio Cavoessa, DPA legal adviser
Mr Carlos P. Enoque, Chief, DPA/SGC
Mr Mario A. Jooa, MiCoA Manica Province
Dr Romualdo Leite, FAO Manica Province Coordinator
Ms Catarina Chidiamassamba, NRM Technical Advisor, FAO Manica Province
Mr Horacio Patricio, NRM technician, FAO Manica Province
FAO staff, Manica Province
NGO KWAEDZA managers and staff, Vila Manica
Mr Felix Cossa, ORAM, Manica
Mr Armando Mendonça, ORAM Manica
Mr Luis Semente, Caritas Sussundenga
Mr Manuel Possam, Forum Terra Manica
Nyakwanyikwa Community
Members of the Quinta das Laranjeiras Farmers' Group.

Gorongosa National Park

Mr Roberto Zolho, Park Administrator
Head of the Community Relations Department
Judge Hassane, Gorongosa District

Sofala Province

Ms Nabanga, Head Environmental Education. MiCoA Sofala Province
Ms Gaia Allison, DANIDA GERENA Advisor
Mr Jean Paul Vermuller, GTZ PRODERE
ORAM Sofala Province staff

Maputo province, Matutuine District

NGO Kutsemba staff
Madjaijane Community

Annex 3 - FAO contribution to natural resources legislation in Mozambique

Land Law

The formulation of the 1995 National Land Policy and the subsequent 1997 Land Law was supported through FAO technical assistance provided by two back-to-back TCP projects TCP/MOZ/2235-Support to the National Land Commission, and TCP/MOZ/5612-Support to the Consolidation of the Land Commission. This innovative policy and legal package created the main local community concepts for the subsequent Forest and Wildlife Law (see above). FAO subsequently supported its implementation through a Netherlands-funded project, GCP/MOZ/059/NET-Assistance to Mozambique in Developing and Implementing a National Land Programme, and to PROAGRI funded UTF/MOZ/070/MOZ-International Technical Assistance for the Implementation of the National Land Programme.

This comprehensive programme has also led to FAO-Netherlands support to legal and judicial training in land and natural resources legislation, through GCP/MOZ/069/NET-Support to the Judiciary in Implementation of New Legislation on Land, Environment Forestry and Wildlife, and its follow-on project aimed at taking this legal training down to district and community level, GCP/MOZ/081/NET-Decentralized Legal Support and Capacity Building to Promote Sustainable Development and Good Governance at Local Level.

Forestry and Wild Life

Collaboration between FAO and GoM on forestry issues dates back to the early post-independence period, when several national forestry institutions were set up which are still operational and thriving today. Among various initiatives, between 1991 and 1996, UNDP funded with FAO technical assistance the formulation of the National Forestry and Wildlife Programme, during which participatory management of natural resources gained momentum. This also led in early 1997 to an important initiative launched through a Mozambique-Netherlands-FAO partnership, to develop national skills and capacity to deal with the concepts and practice of community based natural resources management. A multi-year project (68 months) was funded, GCP/MOZ/056/NET-Support for Community Forestry and Wildlife Management, with dual development objectives: *Improve the standard of living of rural communities through increased access to forest and wildlife products for household needs and marketing, as well as the generation of income from employment, small industries and hunting fees. Resource base of forestry, wildlife, agriculture and animal husbandry protected, managed and utilised in a rational way by local communities.*

The project was extended to 70 months and ended in August 2003, with total expenditure above US\$8.6 million. It worked with the National Directorate of Forests and Wildlife (DNFFB) at central and field level, reaching eventually ten locations in almost all Provinces, which served as demonstration sites and assisted in the development and testing of methods and approaches for local community involvement in forestry and wildlife management. They also served as training grounds for technicians and students, and provided an opportunity to pioneer the application of the new Land Law (see below). GCP/MOZ/056/NET supported the participatory delimitation of local land rights resulting in the issuing of community land tenure certificates, motivating other community-based initiatives to follow similar community empowerment activities. The main recommendation from GCP/MOZ/056/NET on institutional capacity building of DNFFB led directly to a new project, UTF/MOZ/074/MOZ-Support for Community Forestry and Wildlife Management: Phase II, to ensure long-term financial benefits from community forestry resources for those communities that had obtained legal ownership and authority over the forests.

These projects were also structured to accompany the implementation of another key project, GCP/MOZ/050/NET-Assistance to Mozambique in Forestry & Wildlife Legislation, which was

implemented in the period 1996-2000 with the overall objective “*to create a legal and regulatory framework conducive to implementing new policies and strategies for forestry and wildlife conservation and sustainability, while strengthening local governments and mobilizing private-sector resources*”. This initiative reflected Government policy to redirect forest and wildlife strategy away from an exploitation of the resources driven by the external demand for foreign exchange, towards the conservation, management and sustainable utilization of those resources. This new course was seen as beneficial to rural communities, the private sector and consumers, while contributing to environmental stability. The process became increasingly participatory and required several extensions and increases in budget, eventually reaching US\$ 390,000. The Forest and Wildlife Law was approved in 1999, but implementing regulations were only completed and approved in 2002, with two important diplomas regulating resource sharing approved only now in 2005.

Territorial Planning

The Government of Mozambique programme for 2000-2004 included territorial and land use planning as one of its priorities and the mandated authority, the Ministry of Environmental Coordination (MICOA) requested FAO support on the task. This was provided through TCP/MOZ/2903 and its second phase TCP/MOZ/3005, Support to the Development of a Territorial Planning Policy and New Legislation. Activities will be completed by April 2007.

The projects aimed to strengthen and (where appropriate) facilitate adequate coordination and participation between key institutional players inside and outside the Government, at all levels, to produce consensus over strategies for implementation of the new policy and legislation on Territorial Classification and Planning, through the development of regulations, training needs assessment and implementation strategy with work-plan.

Work progressed, though at an uneven pace. The bill of law should be approved by the Mozambique Legislative Assembly in 2007.

Extract from Impact Assessment of Community Based Natural Resources management for Food Security Study: Case Study of Macossa District, Francesca Declich, Evaluation of FAO activities in Mozambique, 2006

Natural Resources Management

The process of negotiation and discussion on natural resources management among the main local stakeholders and institutions at national level put in place and facilitated by the FAO project in Macossa has favoured a conflation of views between the Ministry of Tourism and the Ministry of Agriculture. Both now agree that a re-delimitation of the boundaries of the coutadas is needed. Part of such areas is already deforested, cultivated and encroached upon by settled population.

Facilitated by project's activities, the participatory zoneamento (i.e. mapping of the territory in 3 areas: multiple use, community use and wildlife hunting use) is implemented in compliance with the art. 10, par.3 of law 10/99 7th July and art 5 of the following regulations and already took place for the entire coutada no. 9, even outside the boundaries of the district of Macossa. Also a large area of 67,000 hectares with a big potential in terms of timber extraction was marked for Community Management of Natural Resources, under the responsibility of communities established on the borders of the fazenda da foresta e fauna bravia. The property rights certificate (certidão de posse) was delivered in August 2005 to the Chigunhene regulo. These are the first crucial steps to start proper management of natural resources in the area.

Following the experience of zoneamento in coutada no. 9 it is envisaged that other coutadas will be submitted to the same process because administration, government and authorities have recognised it as a good solution to the invasion of the conservation areas and to slow down, if not to stop, their on-going degradation. Only after the zoneamento, communities can be involved in preserving the

areas where they live in order to obtain the benefits foreseen by the law. Moreover, as people start getting benefits from the local concessionaire in one coutada it is necessary to start similar processes also in neighbouring coutadas, to avoid a push-pull factor of human migrations from other areas.

It is evident that community activities concerning CBNRM already have some impact in the aldeias (communities). People discuss the issues, traditional authorities are informed about a number of issues concerning the Land Law and the Forest and Wildlife Law, most of them are participating in the zoneamento of their territories. The zoneamento implemented in many areas is a key event for communities to start planning the use of their territory. However, it is also clear that activities concerning Natural Resource Management Committees are still at the beginning. Many communities have not yet provided their community scouts to the committee. Community scouts have not yet sufficient authority to enforce rules and in any case, such authority should also be endowed by widespread awareness within communities of the need to prevent uncontrolled burning, poaching and indiscriminate lumbering. Such awareness may be reached through further dissemination activities within communities' assemblies, to reach an audience beyond traditional authorities.

Most community traditional leaders are aware of the possible benefits stemming from the presence of private investors in their areas. According to the survey carried out during this study, 87% of the leaders asserted that they would accept potential investors in their areas should they be approached in this regard. However, those leaders who have already dealt with private investors seem either unaware of the importance of written agreements, or are unable to negotiate them, concerning the exploitation of their areas and the benefits their community should receive. One can assume that if traditional authorities interviewed are not particularly aware of the importance of written agreements, communities at large will be even less so. These in fact often refer to fumo and regulo for issues concerning land and properties. Moreover, it emerges from qualitative information gathered by interviewing these authorities, that they do not have any means to reject an investor who does not comply with agreements negotiated with the community. For instance, only after 5 years of negotiation was able one community to obtain the benefits agreed upon with an investor. Much efforts and costs were put in pushing the investor to comply with his promises (money for travel to the AP, aldeia councils meetings etc.). Moreover, a public participatory meeting organized by the FAO was probably the key occasion to present the case in public.